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CONSENSUAL EXPLOITATION

The Moral Wrong in Exploitation and Legal Restrictions on Consensual
Exploitative Transactions

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ABSTRACT

This thesis is about so-called consensual exploitative transactions: transactions to which all parties agree voluntarily, and which are beneficial for all parties, but which are still widely considered exploitative, and for that reason legally restricted in many countries. The thesis asks two main questions: 1. What is wrong with consensual exploitation? 2. What implications does the answer to this question have for the legal restriction of consensual transactions that are regarded exploitative in modern liberal societies? In answer to the first research question, the thesis starts by distinguishing and analysing five competing views of the wrong in consensual exploitation that exist in the present-day philosophical debate on exploitation; and rejects all five answers. Next, the thesis offers an alternative answer, which is that the wrong in consensual exploitation can best be understood as a matter of greediness—a failure of the virtue of generosity. The thesis then turns to the second research question: what understanding exploitation as greediness implies for the legal restriction of exploitative transactions. It discusses and rejects the view that law ought only to be used to regulate ‘right’ and ‘wrong’ behaviour, and not to promote virtues or discourage vices, such as generosity and greediness. The thesis argues that legal restrictions on consensual exploitative transactions can be justified as a means to prevent greediness, and to promote a certain other-regardingness, and illustrates this argument with two examples of laws that regulate consensual transactions which are widely regarded exploitative: minimum wage laws and payday loan laws.

DECLARATION

I declare that this thesis has been composed by me; that the work contained in this thesis is my own; and that the work has not been submitted for any other degree or professional qualification.

Wendy van der Neut

15 September 2013

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TABLE OF CONTENTS

CHAPTER 1 – INTRODUCTION: CONSENSUAL EXPLOITATION AND LEGAL RESTRICTIONS ON EXPLOITATIVE TRANSACTIONS.....	7
1.1 Introduction and research questions.....	7
1.2 Central terms and scope of the project	10
1.2.1 Consensual exploitation.....	11
1.2.2 Uncontroversial goods.....	13
1.2.3 Interpersonal exploitation	16
1.2.4 Commercial transactions	17
1.3 Outline of the thesis	19
CHAPTER 2 – VULNERABILITY, CONSENT, NEEDS, INJUSTICE.....	23
2.1 The vulnerability account of exploitation	24
2.1.1 Vulnerability and exploitation	24
2.1.2 Problems with the vulnerability account.....	27
2.2 The consent account of exploitation	31
2.2.1 Positive freedom and consent	33
2.2.2 Problems with the consent account of exploitation.....	38
2.3 The needs account of exploitation	45
2.3.1 Duty of beneficence.....	46
2.3.2 Dependency.....	50
2.3.3 Problems with the needs account of exploitation	52
2.4 The injustice account of exploitation	58
2.4.1 Distributive justice in private transactions	59
2.4.2 Problems with distributive justice in private transactions	61
2.4.3 Exploitation as prior injustice	68
2.4.4 Problems with exploitation as prior injustice	70
2.5 Taking stock: The problem of consensual exploitation	81
CHAPTER 3 – UNFAIRNESS	83
3.1 The unfairness account of exploitation	83
3.2 Fairness and production costs.....	88
3.2.1 Production costs-based theories of value.....	90
3.2.2 Problems with production costs-based theories of value and fairness	93
3.3 Why do production costs make for a fair price?	99
3.3.1 Productivity and fair wages	99
3.3.2 Needs and fair wages.....	101
3.3.3 Production costs and fair prices.....	102
3.4 Fairness and the competitive market price.....	104
3.4.1 The fair price as the competitive market price	104
3.4.2 Problems with the fair price as the competitive market price	105
3.5 Why is the competitive market price fair?.....	106
3.6 Fairness and bargaining disadvantages	111
3.7 Why does the bargaining disadvantages method constitute a fair price?	113
3.7.1 Vulnerability.....	114
3.7.2 Injustice.....	115
3.8 Exploitation as unfairness: Conclusion	117

CHAPTER 4 – EXPLOITATION AS GREED	121
4.1 Virtue	122
4.2 Virtue in moral theory	126
4.3 Generosity and greed.....	134
4.3.1 Generosity	134
4.3.2 Greed	138
4.4 Context-dependence.....	143
4.4.1 Virtue and context-dependence	143
4.4.2 Context-dependence, generosity and exploitation	146
4.5 Perception, emotion and exploitation.....	150
4.5.1 Virtue and perception.....	151
4.5.2 Virtue and emotion.....	154
4.5.3 Perception and emotion: responsiveness.....	158
4.5.4 Perception, emotion and exploitation.....	160
4.6 Possible objections	162
4.6.1 Self-centredness	162
4.6.2 Unfortunate circumstances	165
4.6.3 Relation to the unfairness account of exploitation	166
4.6.4 Relation to Ruth Sample’s needs account of exploitation	168
4.6.5 What is the difference between duty-based and virtue-based explanations?	171
CHAPTER 5 – EXPLOITATION AND THE LAW	179
5.1 Exploitation, greediness and the law.....	180
5.2 Other-regardingness in political theory.....	187
5.3 Virtue and the law	189
5.3.1 Autonomy	191
5.3.2 Ethical liberalism.....	193
5.3.3 Political liberalism	200
5.4 Examples	204
5.4.1 Minimum wage law	205
5.4.2 Payday loan regulation	212
CHAPTER 6 – CONCLUSION	221
6.1 Overview arguments of the thesis.....	221
6.2 Final reflections	227
BIBLIOGRAPHY OF CITED WORKS.....	231

CHAPTER 1 – INTRODUCTION: CONSENSUAL EXPLOITATION AND LEGAL RESTRICTIONS ON EXPLOITATIVE TRANSACTIONS

1.1 Introduction and research questions

This thesis is about the concept of exploitation. There are many different types of situations that are called exploitative. In some of them, such as forced prostitution, the exploited person is coerced. In others, the exploited person is deceived or tricked, such as when someone persuades a person with Alzheimer's disease to donate a large sum of money to her. Yet there are also situations that are widely considered exploitative, in which the exploited person actually consents to the interaction voluntarily and rationally, and in which she benefits from the interaction. Think, for instance, of sweatshop factories in developing countries which pay their employees extremely low wages; of loan providers who ask exorbitant interest rates to people who are in urgent need of money; of companies that do not pay any salary to interns who need the work experience; of a passerby who offers help to a stranded person, but only for a high price; of people who, after a natural disaster, go to the affected area to sell essential goods like water, food, and generators, for many times the usual price; of taxi drivers who, during a national rail or bus strike, triple their fare; and of people in need of money who sell an organ or other body part, who enter prostitution, or who agree to paid surrogacy. In all these cases, the exploited person consents, we can assume, rationally, sufficiently informed, and voluntarily to the transaction that is deemed exploitative. However, while it is easy to see why exploitation that involves coercion or deception is morally wrong, it is not immediately clear what is wrong with allegedly exploitative transactions to which the exploited person consents voluntarily. After all, in all the above examples, it seems that the exploited people would be worse off without the transaction. Moreover, in many of the examples, it seems that the exploiting party is morally permitted not to enter into the transaction at all. For instance, most people would agree that, generally speaking, employers are

morally permitted to choose not to hire interns, or to choose not to outsource part of their company to a developing country.¹ And if they choose not to, people who desperately need internships, or people in developing countries who desperately need work, are worse off than when they are offered, respectively, an unpaid internship, or work in a sweatshop factory. Hence, it seems that if the alleged exploiting parties are not under an obligation to enter into the transaction at all, and when they do, the transaction is beneficial for the exploited person compared to no transaction, the alleged exploiters are not harming the alleged exploitees, but are actually benefiting them.

Nevertheless, consensual transactions such as the ones described above are widely criticized as being exploitative, and in many countries, this accusation of exploitation is used to justify the legal restriction or prohibition of such transactions. Think, for instance, of the legal regulation of working hours, minimum wages,² maximum interest rates,³ maximum rent, prostitution, paid organ donation, and paid surrogacy. Other examples include legal prohibitions on price gouging (increasing prices of essential goods after a natural disaster),⁴ and the practice of courts to declare vastly uneven contracts unconscionable and to refuse to enforce them.⁵ In the arguments in favour of such regulations, the charge of exploitation is frequently used as though it is self-evident what 'exploitation' means, what is wrong with it, and why the practice in question is exploitative. Yet this is not the case. Within the fields of moral and political philosophy, there are several competing views of what the term exploitation means and of what makes it wrong, especially in the case of consensual transactions.

¹ See for a discussion of this point AD Bailey, 'The Nonworseness Claim and the Moral Permissibility of Better-Than-Permissible Acts' (2011) 39 *Philosophia* 237-250, 238.

² See chapter 5, section 4.1.

³ See chapter 5, section 4.2.

⁴ For an overview of such laws in the United States and for discussions of price gouging as exploitative see e.g. JC Snyder, 'What's the Matter with Price Gouging?' (2009) 19(2) *Business Ethics Quarterly* 275-293; and M Zwolinski, 'The Ethics of Price Gouging' (2008) 18(3) *Business Ethics Quarterly* 347-378.

⁵ For examples of courts using the concept of exploitation in their analysis or justification in contract law cases see R Bigwood, *Exploitative Contracts* (Oxford University Press, 2003) chapters 6-8, with chapter 6 specifically focusing on unconscionable dealings.

This is the starting point of my thesis: on the one hand the charge of exploitation is used as a justification for the legal restriction of a number of voluntary transactions, but on the other hand it is not clear what the term actually means, what is wrong with it, and thus what makes those transactions exploitative. Yet different views of what ‘exploitation’ means may have different implications for the type of transactions against which the charge of exploitation can be used as an argument, and for the extent to which it may be used as a justification for *legal* limitations on those transactions.

The aim of the thesis is therefore to analyse the question of what makes so-called ‘consensual exploitation’ morally wrong, in order to determine the implications the answer to this question may have for the legal restriction of certain voluntary transactions which are deemed exploitative in present-day liberal societies. This means that the project has two main research questions:

1. What is wrong with consensual exploitation?
2. What implications may the answer to this question have for the legal restriction of certain voluntary transactions that are regarded exploitative in present-day liberal societies?

By asking the question of what is wrong with consensual exploitation, I do not mean to assume from the outset that something is necessarily wrong with it. I realize that there are many people who argue that there is nothing morally wrong with what I have called consensual exploitative transactions, and who argue that such transactions should not rightly be called exploitative.⁶ My approach is the other way around: there *are* many people who consider certain voluntary commercial transactions morally problematic because exploitative; and in all present-day liberal societies, there are laws or calls for laws to restrict those transactions, that are at least partly based on claims about those transactions being exploitative. My question is: given that these claims exist, for

⁶ A well-known contemporary libertarian advocate of the idea that consensual transactions such as sweatshop labour and price gouging are not morally wrong or exploitative is Matt Zwolinski. See e.g. his ‘Sweatshops, Choice, and Exploitation’ (2007) 17(4) *Business Ethics Quarterly* 689-727; and ‘The Ethics of Price Gouging’, *op.cit.*

what reason(s), if any, can these transactions be said to be exploitative, and to what extent can those reasons be used to justify the legal restriction of such transactions? In other words: in all present-day liberal societies, there are (calls for) laws that restrict consensual exploitative transactions, and my aims are: (a) to analyse what is wrong with such transactions—what makes them exploitative—and thereby to know what it actually means to justify legal restrictions on those transactions with the fact that they are exploitative; and (b) to consider to what extent this justification is an acceptable ground for legal restrictions on consensual transactions in a liberal society.

The next section further specifies and clarifies the above research questions and its central terms, and stresses what the project is *not* about. Section 1.3 provides a summary of the argument of the thesis and an overview of its chapters.

1.2 Central terms and scope of the project

The concept of exploitation has both a moral and a non-moral meaning. In its non-moral meaning, it simply stands for ‘to take advantage of’ or ‘advantageous use’. Think of the exploitation of an oil field, or the exploitation of a goalkeeper’s weakness in order to score a goal. In this thesis, the term exploitation is always used in its moral meaning.

Broadly speaking, the moral concept of exploitation means ‘taking advantage of someone in a wrongful way’. Exactly what this wrongful way is—what is wrong with exploitation—is of course one of the main questions of the thesis. Moreover, the fact that exploiting means taking wrongful advantage of someone, entails that when we ask what is wrong with exploitation, we at the same time ask what exploitation *is*, and which transactions can rightfully be called exploitative. This means that writers disagree about which types of transactions can be used as examples of exploitation. For instance, someone who argues that the wrong in exploitation is distributive injustice, may say that the earlier mentioned example of taxi drivers who triple their fare during a

national rail strike, is not a case of exploitation because no distributive injustice is involved, while someone who argues that the wrong in exploitation is unfairness may say that it is a case of exploitation. Yet at the same time, it is unavoidable to refer to examples of exploitative transactions when explaining the concept of exploitation. This is because, since the meaning of the term exploitation is contested, the term itself offers no basis for a shared discussion if we do not at least have an idea of what sort of practices we are talking about when speaking of exploitation. At several points in this thesis, therefore, I will refer to what I take to be common intuitions about certain practices being exploitative or non-exploitative, even though I realize that if one does not share these intuitions, my argument will become less convincing.

Since, when we ask what is wrong with exploitation, we at the same time ask what exploitation is, a precise definition of the term exploitation cannot be given here. Nevertheless, because exploitation is a term that people use in several different ways and to condemn many different types of transactions, I do wish to further specify the usages of the term that I will focus on in this thesis.

1.2.1 Consensual exploitation

A first distinction that should be made is between what may be called ‘non-consensual exploitation’ and ‘consensual exploitation’. As described above, the term exploitation is used, on the one hand, to describe ways of advantage taking in which the exploitee’s consent is somehow impaired, such as coercion, deception, or taking advantage of a mental incapacity or concealment of information. On the other hand, the term is used to criticize transactions to which all parties consent voluntarily, rationally and sufficiently informed. In this thesis, I only focus on the second type of exploitation-claim. This is because such claims seem to constitute the most challenging philosophical problem. As Alan Wertheimer put it, we do not need to be moral rocket scientists to know why it is wrong for someone to gain from an interaction that harms, deceives, or

coerces another.⁷ Yet it is much less clear how interactions can be wrong if they are voluntary and beneficial for all parties involved. Consequently, it is also less clear whether and to what extent the legal restriction of such consensual transactions can be justified. Hence, wherever I use the term exploitation in this thesis, it always refers to consensual exploitation and thus to transactions that involve no coercion, deception, insufficient information or mental incapacities.

It might be objected that such a sharp distinction between coercive and non-coercive transactions cannot be made. It may be thought that, for instance, the problem with people who agree to work in a sweatshop factory for an extremely low wage, is exactly that their consent is not *truly* voluntary, because they are coerced by their lack of other opportunities. This is, in fact, one of the competing views in the philosophical debate on what is wrong with exploitation, and will be discussed at length in the next chapter. For now I want to maintain that regardless of the merits of that view, we can at least see a difference between being coerced to consent to a transaction by another person under threat of force, and consenting to a transaction we do not like to take part in because it is in our harsh circumstances the best choice we have. And the former type of situation is not dealt with in this thesis.

By saying that this thesis only focuses on consensual transactions, I also do not mean to deny the existence of other reasons that can make it difficult to draw the boundaries between what is fully and not fully consensual. For example, it will not always be clear in practice how to decide whether someone was sufficiently informed, sufficiently rational, or unduly influenced. However, these are not issues that I want to focus on in my thesis. My thesis starts with the fact that there are laws, and calls for laws, to restrict allegedly exploitative transactions in which the exploitee's consent is not considered to be typically⁸ impaired in any of those ways. My question is: *if* there are no such impediments to consent, what can then make a transaction exploitative?

⁷ A Wertheimer, *Exploitation* (Princeton University Press, 1996) 13.

⁸As said, worries about the prevalence of such impairments to consent do regularly underlie (calls for) the legal regulation of allegedly exploitative practices. This is, for instance, the case with medical research in developing countries. See e.g. JS Hawkins and E Emanuel (eds), *Exploitation and Developing Countries: The Ethics of Clinical Research* (Princeton University Press, 2008).

1.2.2 Uncontroversial goods

A second distinction should be made between different ways in which the term exploitation is used. On the one hand, people use the term to condemn a wrong in what might be called the terms of a transaction: either in the outcome of a transaction (the relative benefits and burdens assigned to the parties), or in the negotiation process leading to this outcome. This is, for instance, the case when we say that employers exploit their employees if they pay them extremely low wages, or that moneylenders exploit borrowers if they ask exorbitant interest rates. On the other hand, the term exploitation is also used to condemn transactions because of the *type* of good that is sold, irrespective of the price that is paid for this good or the negotiation process resulting in that price. This is, for instance, the case with the sale of drugs or cigarettes, but also with prostitution and the sale of human organs. Such transactions are often seen as exploitative, even if the seller or buyer is offered a good price.⁹ The idea behind such criticism is that certain things should not be seen as tradable goods at all, and that selling or buying them is inherently wrong. This is often justified with the argument that trading in such goods amounts to wrongful commodification or objectification, that it is degrading for the seller, or that it violates the Kantian maxim not to treat another as a mere means.¹⁰

Sometimes, both meanings of the term exploitation are involved in claims that a certain practice is exploitative. Someone might, for example, criticize paid organ donation for the fact that donors are not paid enough for what they sell, and at the same time think that organs should not be sold or bought at all. And some theories of exploitation try to address both types of

⁹ For a discussion of the concept of exploitation in this meaning of the term, see JL Hill, 'Exploitation' (1994) 79 (3) *Cornell Law Review* 631-699; and S Wilkinson, *Bodies for Sale: Ethics and Exploitation in the Human Body Trade* (Routledge, 2003).

¹⁰ See e.g. MM Ertman and JC Williams, *Rethinking Commodification, Cases and Readings in Law and Culture* (New York University Press, 2005); and MJ Radin, *Contested Commodities* (Harvard University Press, 1996).

exploitation-claim.¹¹ Nevertheless, I will only focus on the first type of exploitation-claim, referring to a wrong in the terms of the transaction instead of a wrong in the type of good sold. This is because the meaning of the two types of claims, and the arguments that underlie them, are very different. Although the term exploitation is used in both cases, it is a different thing to claim that it is wrong to sell goods for a certain price, and that it is inherently wrong to sell certain goods. Those two usages of the term exploitation therefore require two largely different analyses when trying to answer the question of what is wrong with exploitation.¹² And since what is wrong with exploitation might be completely different for the two different types of exploitation-claims, addressing both types of claims would also require two different analyses when addressing my second research question, on the possible implications for the legal restriction of allegedly exploitative transactions.¹³ For those reasons, this thesis only focuses on the first type of exploitation-claim, and when I speak of exploitation in this thesis, it is always assumed that the good that is being exchanged is itself not controversial.

In relation to this, it should be pointed out that in this thesis the example of sweatshops is used at several points. The term sweatshop generally refers to factories or workshops where people are employed at very low wages for long hours, often under poor or even dangerous working conditions. When I talk about sweatshops in this thesis, I will primarily refer to long working hours and low wages, instead of to bad or dangerous working conditions. This is because calling bad or dangerous working conditions exploitative can be meant in two different ways, relating to the two meanings of the term exploitation

¹¹ For instance, Robert Mayer (further discussed in chapter 3) explains both in terms of unfairness. See his 'What's Wrong With Exploitation?' (2007) 24(2) *Journal of Applied Philosophy* 137-150, 144-145.

¹² The argument that trading in a certain good is inherently wrong depends on features of that particular good, and thus requires a case-by-case analysis of all different goods and services that are regarded as non-tradable. For example, many of the reasons why some regard the trade in sexual services as morally wrong, are quite different from the reasons why some regard the trade in drugs, or body parts, or embryos, as inherently wrong. Thus, one might think that while, for instance, the trade in embryos is indeed inherently wrong, the trade in sexual services is not (or the other way around).

¹³ While the first type of exploitation is usually regulated through private law or administrative law, the second type of transactions are, in many countries, governed by criminal law.

distinguished in this section. First, one might call bad or dangerous working conditions exploitative in the 'terms of the transaction' meaning, just as low wages are called exploitative. In other words, one might think that bad working conditions and low wages in sweatshops are exploitative, but might think that if the wages would be dramatically increased, the bad working conditions would not necessarily be wrong of exploitative, as the high wages would compensate for them.

On the other hand, one might call dangerous working conditions exploitative in the second meaning of the term exploitation. That is: one might think that employers should never ask people to work under certain conditions or should never ask them to endanger their health or lives, no matter how well they pay their employees. I think that this second idea plays a role in many claims that dangerous working conditions in sweatshop factories are exploitative. The idea may well be right and a valid objection against some sweatshops, but, as said, this meaning of the term exploitation is not what this thesis looks at. It should therefore be assumed that when I mention claims that sweatshops are exploitative in this thesis, it is not this type of claim that is under discussion, but the claim that sweatshops are exploitative even if they do not require people to endanger their own health or lives, or even if one thinks that endangering one's own health or life is something that an employer is allowed to ask from her employees in a consensual transaction.

Relatedly, while the term sweatshop broadly refers to factories or workshops where people are employed at very low wages for long hours, the term sweatshop is also sometimes used to describe factories where people do not work voluntarily, but are forced to work, and receive no wages. Since, as explained in the previous section, the goal of this thesis is to analyse consensual exploitation, and not coercive exploitation, it should be noted that whenever the term 'sweatshop' is used in this thesis, it refers to the non-coercive meaning of the term sweatshop.

1.2.3 Interpersonal exploitation

Arguably the most famous account of exploitation is Karl Marx's theory of exploitation.¹⁴ Marx used the term for situations in which non-producing classes receive profits created by producing classes, which is made possible in capitalist societies by an unequal distribution of the means of production. Many (neo-)Marxist writers after him have used the term in a similar manner, and argued that exploitation is unjust or a form of coercion.¹⁵ In the past three decades, however, the concept of exploitation has also received increased attention by liberal thinkers. They attempt to explain why exploitation is wrong within a liberal framework, without discarding basic liberal principles such as private property and freedom of contract. They thereby provide a theory of exploitation that can form a basis for legal restriction of exploitative transactions within modern liberal societies.

In the (neo-)Marxist literature, exploitation is generally treated as a systemic phenomenon, which stems from macro-economic relations between groups. Individual members of an exploiting group might actively and intentionally take advantage of their dominant position, but this is not necessary for the occurrence of exploitation. (Neo-)Marxist writers thus use the term exploitation to condemn the working of entire systems or societies. In contrast, liberal theories of exploitation generally use the term to criticize particular individual transactions *within* such systems. The liberal concept of exploitation thus denotes a relationship between individuals instead of between groups. The question 'what is wrong with exploitation?' on the liberal conception, refers to how particular individuals act wrongly when they exploit other individuals.

¹⁴ K Marx, *Das Kapital: Kritik der Politischen Ökonomie* (1867).

¹⁵ See e.g. GA Cohen, 'The Labor Theory of Value and the Concept of Exploitation' (1979) 8 *Philosophy and Public Affairs* 338-360; N Holmstrom, 'Exploitation' (1977) 7(2) *Canadian Journal of Philosophy* 353-369; J Reiman, 'Exploitation, Force, and the Moral Assessment of Capitalism' (1987) 16 *Philosophy and Public Affairs* 3-41; and J Roemer, 'Should Marxists Be Interested in Exploitation?' in J Roemer (ed), *Analytical Marxism* (Cambridge University Press, 1986) 260-282.

In this thesis I will only focus on the liberal conception of exploitation—exploitation as ‘interpersonal exploitation’.¹⁶ This is because the aim of my project is to analyse the concept of exploitation as a ground for the legal restriction of private transactions in present-day liberal societies. What matters in my project is thus primarily what is wrong with private exploitative transactions, and not what is wrong with certain features of the system or society in which those transactions take place. After all, in both just and unjust systems we can distinguish between transactions that we find more and less exploitative.¹⁷ For example, economic relations between developed and developing countries are characterized by many injustices, and are as a whole often considered exploitative. Still, certain economic exchanges within this system, such as sweatshop labour, are generally seen as more exploitative than others, such as fair trade partnerships.

Nevertheless, I realize that it is debatable whether a sharp distinction between the justness of private transactions and the justness of the system in which those transactions take place can always be maintained. It will depend, for example, on the extent to which we think that people are morally responsible for the unintended bad consequences their transactions may have on a macro level, or for compensating existing macro injustices.¹⁸ This will be addressed at length in the discussion of some of the theories of exploitation that are analysed in chapter 2.

1.2.4 Commercial transactions

A final distinction that should be made is that the term exploitation is applied on the one hand to commercial transactions, and on the other hand to personal interactions. All the examples of exploitative interactions I have given so far

¹⁶ Bigwood, *op.cit.* 3.

¹⁷ Although this would probably be denied by Marxists who hold that if a system is unjust, all transactions that are contingent on that system are automatically exploitative; and also by classical liberals or libertarians who hold that if the initial distribution of resources in a society is just, all voluntary transactions within it are automatically just. This will be further discussed in the next chapter.

¹⁸ Hence, ‘liberal’ arguments for why individuals act wrongly when exploiting others sometimes rely on the systematic phenomena that make such exploitation possible. Yet if the focus of such theories is the wrongness of the individual transactions, they can, at least for the purposes of this thesis, be classified as liberal theories of exploitation.

(sweatshop labour, money lenders, internships, etcetera) fall in the first category. They are all transactions of essentially a commercial nature: interactions between relative strangers who do not initially know each other personally and only enter the transaction and start a 'relationship' for personal gain. Yet people in personal relationships of a non-commercial nature are also sometimes accused of exploitation. Consider, for example, the following two situations.¹⁹

a) A man and woman in a romantic relationship are considering whether to have children. The man would like children, but prefers not to do any of the childcare and to only care for the children financially. He knows that his partner would rather not do the childcare alone, but that she dislikes even more the prospect of not having children at all, or of finding a new partner. He therefore proposes to have children on the condition that she will do all the childcare, and the woman agrees.

b) The parents of a child spend all their savings on holidays, because they know that the child's grandparents will not allow the child to go without good education, and that the grandparents have enough savings to pay for the child's college, although they may have to reduce some of their retirement activities.

These are two examples of what may be called 'exploitation between intimates'.²⁰ Many people will say that the man in the first example is exploiting the woman, and that the parents in the second example are exploiting the grandparents. Whether or not this is so, in this thesis, I will not focus on exploitation in intimate relationships, but concentrate on exploitation in commercial transactions between relative strangers. This is partly because answering the question of what is wrong with exploitation may require two rather different analyses for the two types of exploitation claim, and partly because most calls for the legal restriction of consensual exploitation concern commercial transactions. Nevertheless, in the final concluding chapter of the thesis, I will reflect on the possible similarities of the two types of exploitation

¹⁹ These examples are based on examples in R Sample, *Exploitation, What It Is and Why It's Wrong* (Rowan and Littlefield, 2003) 8-9.

²⁰ Sample, *op.cit.* 9.

and the possible application of my view of exploitation to instances of exploitation between intimates.

To summarise, when I speak of 'exploitation' or 'exploitative transactions' in this thesis, what I have in mind are commercial transactions that are consensual and concern a good that is itself non-controversial, but that are still criticized as being exploitative. In the next section, I will give an outline of the thesis' chapters and a summary of its main arguments.

1.3 Outline of the thesis

As described above, this thesis has two related central research questions: (1) what is wrong with consensual exploitation? (2) what implications may the answer to this question have for the legal restriction of certain voluntary transactions that are regarded exploitative? The greatest part of the thesis is devoted to analysing the first question, in chapters 2, 3 and 4. The thesis returns to the second question in chapter 5.

Chapter 2 distinguishes four competing views of what is wrong with consensual exploitation that exist in the philosophical debate on exploitation. The first view, which I will call the vulnerability account of exploitation, says that exploitation is wrong if and because exploiters take advantage of others' vulnerability. The second view, which I shall call the consent account of exploitation, says that consensual exploitative transactions are wrong if and because they are not truly consensual, because exploited people are forced by their circumstances to consent to the exploitative offer. According to the third view, which I will call the needs account of exploitation, consensual exploitation is wrong because we have a moral duty to help people in need, and exploiters neglect this duty, instead taking advantage of people in need. The fourth view, which I call the injustice account of exploitation, says that the wrong in exploitation is a matter of injustice, because exploiters take advantage of existing injustices or exacerbate injustice. I argue that all four views are

unsuccessful in explaining the wrong in exploitation, for various reasons. One common problem, I argue, is that the four accounts ultimately primarily explain moral wrongs in the 'background circumstances' in which exploitative transactions take place, instead of in the transactions themselves. I argue that this is problematic because, while exploiters may have moral duties towards people with whom they transact that follow from shared responsibilities to alleviate grim background circumstances, what is required for such duties is not dependent on the particularities of the transaction. Consequently, the requirements of such moral duties are not related to whether and when we regard transactions as exploitative.

Advocates of a fifth account of exploitation, which I will call the unfairness account, seem to avoid this problem by arguing that the wrong in exploitative transactions is an unfairness in the benefits and burdens that each party receives. This account is currently the most widely shared view of what is wrong with exploitation, and is the focus of chapter 3. There, I argue that the unfairness account is right in observing that the wrong in exploitation lies in the fact that exploiters receive an excessive benefit, and that this account gives an adequate description of which consensual transactions we find exploitative, but that it does not actually justify why such transactions are morally wrong. Therefore, I argue, this account of exploitation does not actually provide an answer to the question of what is wrong with exploitation.

In chapter 4 I put forward my own, alternative, view of what is wrong with exploitation. I argue that while the other accounts of exploitation all argue for a certain moral duty not to exploit, what exploiters do wrong can best be understood as a failure of virtue. Specifically, I argue that exploitation is a failure of the virtue of generosity—greediness. I set out this argument in detail in chapter 4, and argue that an important part of the virtue of generosity is a certain other-regardingness and perception of other people.

In chapter 5, I return to the second central question of the thesis and ask: if I am right that the wrong in exploitation is a matter of greediness, a failure of the virtue of generosity, what implications may this have for the legal restriction of exploitative transactions? In particular, I ask: What does it mean to justify

legal restrictions on consensual transactions with the argument that they are exploitative? And to what extent is this an acceptable argument for the legal restriction of consensual transactions in a liberal society? I first argue that if the wrong in exploitation is greediness, laws that aim to restrict exploitative transactions can be understood as a means of curbing greediness and promoting a certain other-regardingness. I also argue that this can be seen as an important goal for societies on many different political theories, even liberal ones. Next I discuss the possible objection that while curbing greediness or promoting generosity may be a worthy goal, the law should only be used to enforce the 'right', and not to promote the 'good'—including the virtue of generosity. I argue against this objection that while we may have good reasons for being reluctant towards allowing too much state intervention, we cannot justify making an absolute distinction between 'arguments for the right', and 'arguments for the good' when debating which laws are desirable. The desirability of certain anti-exploitation laws therefore has to be decided on a case-by-case basis, comparing their disadvantages with the goods they aim to achieve. I conclude the thesis by further illustrating this argument, and my argument that anti-exploitation laws can be understood as a means of curbing greediness and promoting other-regardingness, with two examples of laws that restrict consensual transactions that are regarded exploitative: minimum wage laws and payday loan laws.

In chapter 6, I summarize the main findings of the thesis, and briefly discuss some possible implications of my view of consensual commercial exploitation for other types of exploitation.

The main original contributions to knowledge of this thesis are a) its mapping out and analysis of the existing arguments in the non-Marxist debate on what is wrong with exploitation; and b) its formulation of a new account of what is wrong with exploitation, and consideration of the possible implications for legal regulation. As such, this thesis is primarily a theoretical investigation of the concept of exploitation. Nevertheless, as said above, the concept of exploitation is often used in everyday discussions and topical public debates about several

different types of social issues, such as the regulation of minimum wages, payday loans, unpaid internships and extortionate rents. Therefore, the hope is that this thesis may not only contribute to the theoretical debate on the concept of exploitation, but also, thereby, to debates on such real-life social issues.

In the next chapter, I will start by analysing four competing views of what is wrong with consensual exploitation that can be found in the philosophical debate on exploitation.

CHAPTER 2 – VULNERABILITY, CONSENT, NEEDS, INJUSTICE

In this chapter, I begin my analysis of the question of what is wrong with consensual exploitation, by discussing four competing views that exist in the philosophical debate on exploitation. The first view, which I will call the vulnerability account of exploitation, says that exploitation is wrong because exploiters take advantage of the vulnerability of others. The second view, which I will call the consent account, holds that consensual exploitation is wrong because it is not *really* consensual. The third view, which will be called the needs account of exploitation, holds that exploitation is wrong because exploiters neglect a moral duty to help people in need. The fourth view, the injustice account of exploitation, says that exploitation is wrong because exploiters take advantage of injustice. I will argue that all these understandings of exploitation are problematic, and cannot adequately explain what is wrong with consensual exploitation. One problem they have in common is that they are ultimately only able to explain what is wrong with the background circumstances of exploitative transactions, instead of with the transactions themselves. A fifth view of what is wrong with exploitation, which I will call the unfairness account, appears to avoid this problem by referring to ‘transaction-specific unfairness’ to explain the wrong in exploitation. This account will be discussed in the next chapter.

Although I distinguish five existing accounts of exploitation, there is the possibility that some of the answers might work better when combined than on their own, and the interplay between the different arguments will be discussed at several points. It should also be noted that there are many differences in the arguments given by writers whom I classify under the same account. Moreover, some theories of exploitation do not fit neatly in one of the categories I distinguish, but may be seen as a combination of two different accounts.²¹

²¹ Mikhail Valdman’s theory, for example, includes elements of both the unfairness account and the consent account (M Valdman, ‘A Theory of Wrongful Exploitation’ (2009) 9(6) *Philosophers’ Imprint* 1-14), while Ruth Sample argues both for the argument I call the injustice account and

Nevertheless, I do consider it useful to distinguish the five categories, because my aim is to analyse the debate on what is wrong with exploitation in terms of the arguments featuring in the debate, and not to analyse the work of specific authors. Still, I will discuss certain authors at more length than others, as I regard their work as strong articulations of certain arguments about what is wrong with exploitation.

The next section starts by analysing the vulnerability account of exploitation. Sections 2.2, 2.3, and 2.4 analyse, respectively, the consent account, the needs account, and the injustice account of exploitation. The chapter ends in section 2.5 with a brief conclusion.

2.1 The vulnerability account of exploitation

2.1.1 Vulnerability and exploitation

The first account of exploitation I will discuss says that exploitation is wrong because exploiters use other people's vulnerability for their own gain. For example, Alan Wood, who is probably the most prominent proponent of this argument, states:

I suggest that the moral belief that makes exploitation objectionable is the following: Proper respect for others is violated when we treat their vulnerabilities as opportunities to advance our own interests or projects. It is degrading to have your weakness taken advantage of, and dishonourable to use the weakness of others for your ends.²²

If the use of someone's vulnerability explains the wrongness of exploitation, an important question is: what is 'vulnerability'? A common definition refers to the possibility of being harmed, either physically or emotionally, and the ability to

the argument I call the needs account (R Sample, *Exploitation, What It Is and Why It's Wrong* (Rowan and Littlefield, 2003)).

²² AW Wood, 'Exploitation' in K Nielsen and R Ware (eds), *Exploitation* (Humanities Press, 1997) 2-26, 15. For a similar argument see e.g. AL Carse and MO Little, 'Exploitation and the Enterprise of Medical Research' in JS Hawkins and EJ Emanuel, *Exploitation and Developing Countries: The Ethics of Clinical Research* (Princeton University Press, 2008) 206-245.

protect oneself from such harm.²³ In this sense, all humans are naturally vulnerable,²⁴ because all humans can be affected by disease, crime, hunger, violence, loss, grief, and other harms, and no one can completely protect herself against such harms. Nevertheless, although all humans are to some extent vulnerable to harms such as violence, disease or loss, some people are more at risk of suffering certain harms than others. For example, on average, people in South Africa are more at risk of sexual violence than people in the UK, whereas within both countries, women are more at risk than men. Similarly, some people are more capable of protecting themselves against harms than others. For instance, although people in all countries can contract serious infectious diseases, those who live in countries with childhood vaccination programmes are, on average, much better protected against such diseases than those who live in countries without such programmes. And in the latter countries, rich people are, generally speaking, more able to protect themselves against such diseases than poor people. Hence, although all humans are vulnerable to some extent, vulnerability is a matter of degree, and especially vulnerable are people who are both highly susceptible to harms, and have few opportunities to protect themselves against those harms.

When talking about exploitation, it is common to discuss vulnerability in terms of needs and desires, instead of harms. Thus, instead of saying that someone is vulnerable because she might suffer the harm of, say, hunger, violence, or loneliness, people say that she is vulnerable because of her need for food, protection, or companionship. Needs, or potential harms, make people vulnerable in two different ways. First, there is the harm associated with the need itself: the harm of feeling hungry, being attacked, or being lonely. Second, those needs create the potential for further harm, because other people may use our needs to abuse or wrongfully take advantage of us. For example, if someone is in desperate need of income, she may more easily be deceived by human

²³ See e.g. MA Fineman, 'The Vulnerable Subject and the Responsive State' (2010) 60 *Emory Law Journal* 251-275, 267; D Schroeder and E Gefenas, 'Vulnerability: Too Vague and Too Broad?' (2009) 18 *Cambridge Quarterly of Healthcare Ethics* 113-121, 117.

²⁴ See e.g. J Butler, *Precarious Life: The Powers of Mourning and Violence* (Verso, 2006) chapter 2.

traffickers who pretend to offer her work abroad in the hotel industry, while in reality leading her into prostitution.

Assuming that a strict division between needs and desires can be made, it is arguable that not only needs, but also desires can make us vulnerable. A desire for, say, a new car, can cause harm in the two senses above: if the desire is not met one will suffer simply by not having the desire met, and having this desire makes it possible that someone else will wrongfully take advantage of the desire. Hence, if vulnerability is the possibility of being harmed, and the ability to protect oneself from such harm, then it seems that desires make us vulnerable as well. Nevertheless, the dangers of harm associated with desires are likely smaller than the dangers associated with more serious needs, such as food, shelter, or protection against violence. This is another reason, then, why vulnerability is a matter of degree; and other things being equal, serious needs make us more vulnerable than mere desires.

In consensual transactions, it may not be our absolute level of vulnerability that matters, but our relative vulnerability compared with the person we are transacting with. If I am negotiating about buying someone's car, and I have quite a serious need for the car and do not know many alternative sellers, but I know that the seller has an even more urgent need for income or that she knows even less potential buyers, the seller is more vulnerable than I am. For that reason, vulnerability in transactions is sometimes described in terms of relative bargaining positions. Wood, for instance, says: 'if one party to an exchange has a significantly stronger bargaining position than the other ... then that difference constitutes a clear case of vulnerability on the part of the weaker party'.²⁵

The argument of the vulnerability account of exploitation is that in all instances of exploitation, the exploiter takes advantage of the vulnerability of the exploitee, and this is what makes exploitation wrong. Think of the examples of typical exploitative transactions mentioned in the previous chapter, such as sweatshop work in developing countries, loan providers who charge exorbitant interest rates to people who are in urgent need of money, and taxi drivers who

²⁵ Wood, *op.cit.* 10.

triple their fare during a national rail or bus strike. In all these examples, the exploiters are vulnerable, in the sense that they have a need for, respectively, income, quick cash, and transportation, and little opportunities to meet their need. And in all these examples, the exploiters use this vulnerability for their own gain: to get the exploiters to agree to a transaction that benefits the exploiters greatly.

I agree that the use of another's vulnerability is a defining feature of consensual exploitative transactions. Nevertheless, I will argue that this feature cannot adequately explain what is wrong with exploitation.

2.1.2 Problems with the vulnerability account of exploitation

In this section, I discuss two key problems with the vulnerability account of exploitation—the theory that exploitation is wrong because exploiters use another's vulnerability for their own sake. The first problem is that it is unclear which type of vulnerability leads to exploitation. The second problem is that it is unclear why taking advantage of others' vulnerability is necessarily wrong.

Concerning the first problem, as said above, vulnerability is a matter of degree, and all humans are always vulnerable to some extent. All humans also continuously use other people's vulnerability for their own sake. I, for instance, use my friends' desire for friendship to satisfy my own desire for friendship, while bus companies, discotheques and bakeries use my desires for transportation, dancing, and chocolate cake as a means to earn money. Nevertheless, most people do not find these transactions necessarily exploitative, and do not say that everyone is continuously exploited. Hence, it seems that it is only a certain degree of vulnerability, or perhaps a certain type of vulnerability, of which it is exploitative to take advantage. This is confirmed by Alan Wood, who says that we should acknowledge the difference between 'human interactions that play on genuine vulnerabilities',²⁶ which are exploitative, and those which are not:

²⁶ Wood, *op.cit.* 9.

Surely it would be implausible to the point of absurdity if someone were to suggest that *any* need or desire constitutes vulnerability. To suppose this would be to make exploitation virtually ubiquitous in human social life and as much a factor in quite a number of innocent human relations as it is in many very nasty ones.²⁷

The question is thus: how are we to decide which vulnerabilities constitute 'genuine' vulnerability, that is, exploitable vulnerability, and which do not? Wood acknowledges that he cannot answer this question,²⁸ but others have tried to do so. One possible answer is that it is only serious needs, or basic needs, that can make one truly vulnerable. Thus, if we are in need of food or shelter we are truly vulnerable, but if we want to dance in a discotheque or eat chocolate cake, we are not. This answer comes close to the theories that will be discussed in section 2.3 in this chapter, which analyses the needs account of exploitation. There I will argue against those theories that we can also exploit people who do not have any serious needs to be met, by exploiting, for example, their desires, kindness or sense of duty. Since, as I will argue there, we can exploit people who do not lack any basic needs, defining 'genuine' vulnerabilities as basic needs cannot be a satisfactory way of deciding which vulnerabilities are relevant for exploitation and which not.

Another possible way of defining 'genuine' vulnerabilities is that they are all things that other people can wrongfully take advantage of, such as need, desire, fear, kindness or sense of duty. This answer recognizes that focussing exclusively on (basic) needs is too restrictive, and that we can be vulnerable to exploitation if we do not lack any basic needs. Yet this answer can also not be a satisfactory definition of vulnerability, if vulnerability is used to explain what is wrong with exploitation. Defining (genuine) vulnerabilities as features that other people can wrongfully take advantage of, is similar to saying that vulnerabilities are features that other people can exploit—exploitable features. Yet the questions the vulnerability account tries to answer are what exploitation is, and what makes it wrong. It answers that exploitation is taking advantage of someone's vulnerability for one's own gain. This means that if we define

²⁷ Wood, *op.cit.* 9.

²⁸ Wood, *op.cit.* 8.

vulnerability as an exploitable feature, we are saying that exploitation is taking advantage of someone's exploitable features. Or, in other words: to exploit is to take advantage of features we can exploit. This is a tautological definition,²⁹ and does not throw any light on what exploitation is, or why it is wrong. Similarly, it does not illuminate what vulnerability is, because vulnerability becomes anything that makes one vulnerable to exploitation, while exploitation is taking advantage of vulnerability. We thus still have to answer the questions we started with: what are the features we can exploit, that is, genuine vulnerabilities, and why is taking advantage of those features exploitative, that is, wrong. Thus, if vulnerability is to explain what makes exploitation wrong, this method of defining vulnerability does not work, because we cannot define vulnerability in terms of exploitation, if we define exploitation in terms of vulnerability.

So far I have discussed one problem with the argument that exploitation is wrong because exploiters use others' vulnerability for their own sake: the problem that it is unclear which type or degree of vulnerability can lead to exploitation, or, in other words, what 'vulnerability' is to mean in the context of exploitation. A second problem is that even if we could agree on what vulnerability means in the context of exploitation, it is unclear why taking advantage of someone's vulnerability is necessarily wrong. Wood, in the citation at the beginning of section 2.1.1, says that taking advantage of vulnerability for one's own benefit is wrong because it is degrading and violates respect for others. However, the meaning of the term 'degrading' is perhaps as vague as the meaning of the term exploitation, as many have remarked.³⁰ As a consequence, saying that using another's vulnerability for one's own gain is degrading may not bring us much further than saying that it is wrong—we still do not know why it is wrong or degrading. Although I agree with this criticism, my main

²⁹ This is also argued in T Logar, 'Exploitation as Wrongful Use: Beyond Taking Advantage of Vulnerabilities' (2010) 25 *Acta Analytica* 329-346, 345.

³⁰ JC Snyder, 'Needs Exploitation' (2008) 11 *Ethical Theory and Moral Practice* 389-405, 394; Valdman, *op.cit.* 5; A Wertheimer, 'Book Review Ruth J. Sample, "Exploitation: What It Is and Why It's Wrong"' (2007) 19 *Utilitas* 259-261, 259.

objection does not hinge on the vagueness of the term degrading. What it means to degrade someone has been variously described as using someone as a mere means or instrument; or in a manner to which she could not rationally consent; or in a way that is an assault on her subjective sense of dignity; or as if she is of less value than other people.³¹ My objection is that even if we grant that one of these descriptions convincingly explains what degrading someone involves, and why it is wrong, using others' vulnerability for one's own gain is *not* necessarily degrading, wrong, or exploitative.

Imagine that there is only one grocery shop in a remote town, and that the next closest shop is more than two days travelling away. Because of this, the owner of the grocery shop (say, A) could set exceptionally high prices for most of her products. Suppose, however, that she decides not to do so and instead sets prices similar to those of most other grocery shops. In this example, the inhabitants of the remote town seem to be vulnerable to A, even according to a strict or 'basic needs' definition of vulnerability: they need basic goods such as food, drink and other groceries that only A can reasonably provide, which gives a much stronger bargaining position to A. Furthermore, A uses this need and vulnerability for her own gain: as a means to earn money by selling groceries.³² Still, we would not call her an exploiter. In the same way, people take advantage of others' genuine vulnerabilities all the time without necessarily exploiting them. It thus appears that taking advantage of others' vulnerability is not considered wrong or exploitative per se. Therefore, although taking advantage of others' vulnerability for one's own gain may be a feature of exploitative transactions, it is a feature that does not, in itself, explain what makes those transactions wrong.

In sum, vulnerability signals the *possibility* of being wrongfully taken advantage of (or of being harmed in another way). But that does not mean that every time

³¹ See Carse and Little, *op.cit.* 209; AW Siegel, 'Kantian Ethics, Exploitation, and Multinational Clinical Trials' in JS Hawkins and EJ Emanuel, *Exploitation and Developing Countries, The Ethics of Clinical Research* (Princeton University Press, 2008) 175-205, 185.

³² It might be objected that A does not truly take advantage of the inhabitants' vulnerability, because she does not make her prices as high as she could have. This view will be considered in chapter 3, where the unfairness account of exploitation is discussed.

we take advantage of someone's vulnerability it is necessarily wrongful, or that it is wrongful in itself to take advantage of vulnerability. We thus need a separate argument to show why taking advantage of people's vulnerability in a consensual transaction is wrong under certain circumstances, in certain situations, or in certain ways.

The other three accounts of exploitation that will be discussed in this chapter might be interpreted as providing three different answers to this question. The first says that taking advantage of someone's vulnerability in a consensual transaction is wrongful and exploitative if the other's consent is invalid; the second that it is wrongful if the other lacks basic needs; and the third that it is wrongful if her vulnerability arises out of a prior injustice. I will discuss the first argument, which I will refer to as the consent account of exploitation, in the next section.

2.2 The consent account of exploitation

The idea of the consent account of exploitation is that consensual exploitation is wrong because it is not *really* consensual. If someone consents to a transaction to which she does not actually want to consent, merely because her circumstances are so bad that she has no better choice, this cannot be called truly voluntary, the argument says. Instead, it is said, such a person is coerced by her circumstances. Michael Sandel says, for example:

[M]arket exchanges are not necessarily as voluntary as market enthusiasts suggest. A peasant may agree to sell his kidney or cornea in order to feed his starving family, but this agreement is not truly voluntary. He is coerced, in effect, by the necessities of his situation.³³

³³ MJ Sandel, 'What Money Can't Buy: The Moral Limits of Markets' (1998) *The Tanner Lectures on Human Values* 94. I realize that this citation is about selling body parts, whereas my thesis focuses on transactions in which the good sold is not itself controversial, as is the case with body parts. Nevertheless, the citation is illustrative of an argument that could equally be made about exploitative transactions in which the good sold is not itself controversial, such as sweatshop labour or payday loans. This argument is not widely supported in the present-day liberal philosophical debate on exploitation, but it is frequently encountered in non-academic debates about exploitation. It is also prevalent in Marxist discussions on exploitation: see e.g. N Holmstrom, 'Exploitation' (1977) 7(2) *Canadian Journal of Philosophy* 353-369, 35; J Reiman,

To avoid misunderstanding: there are a number of ways in which someone's consent can be impaired. Someone may, for instance, be deceived, coerced, or insufficiently informed, or have insufficient mental capacities to make a truly voluntary decision. The argument I am discussing in this section does not say that exploiters' consent is invalid because of any of those situations. Taking advantage of such defects in consent can certainly be wrongful and exploitative, but the question under discussion is what is wrong with *consensual* exploitation. That is: what is wrong with transactions that are deemed exploitative, but to which all parties agree voluntarily, sufficiently informed, and with sufficient mental capabilities. The argument of the consent account says that such transactions are wrong because the exploiters' consent is not truly voluntary, because the exploiters' desperate circumstances leave her no better choice than to consent.

The argument of the consent account is intuitively quite plausible, and is a frequently heard complaint about exploitative transactions. Consider the examples of typical consensual exploitative transactions mentioned in the previous chapter, such as the sweatshop factory, the loan provider, and the stranded person who gets offered help for an exorbitant price. In all these examples, the exploiters indeed do not really like to consent to the transactions under the terms specified, but only do so because they have no better choice. The employees in the sweatshop factory would much rather have fewer working hours and higher wages, but cannot get any other or better job. People lending money from loan sharks really do not want to pay very high interest rates, but only do so because they need the money and cannot find a loan with a cheaper interest rate. And stranded passengers really do not like to pay an exorbitant price for help, but only do so if they feel their circumstances leave them no better choice.

'Exploitation, Force, and the Moral Assessment of Capitalism' (1987) 16 *Philosophy and Public Affairs* 3-41; J Schwartz, 'What's Wrong With Exploitation?' (1995) 29(2) *Noûs* 158-188.

Despite the intuitive plausibility of a consent-based explanation of the wrong in exploitation, I will argue that the invalidity of exploitees' consent is not what makes exploitation wrong, and that the consent account of exploitation cannot satisfactorily explain what is wrong with exploitation. Before doing so, however, I like to forestall a possible objection against my arguments: that they presuppose a negative conception of freedom, and that, on a positive conception of freedom, my objections to the consent account are less compelling. After I have shown, in section 2.2.1, why I think positive conceptions of freedom do not reduce the validity of my objections against the consent account, I will set out these objections in section 2.2.2.

2.2.1 Positive freedom and consent

Classical liberals or libertarians typically hold a 'negative' conception of freedom. Simply put, they see freedom as the absence of something: of constraints imposed by other humans. We are free, on this view, if we are not prevented by anyone to do what we want to do. 'Positive' conceptions of freedom, in contrast, focus on the *presence* of something: the ability to do what we want to do.³⁴ There are several different conceptions of positive freedom that have different views of what it is that should be present for the existence of freedom. As Jeremy Waldron notes, rivalling the negative conception of freedom are 'a variety of "positive" directions, each placing stress on quite different philosophical themes, and yielding a diversity of non-negative conceptions.'³⁵ What they all have in common is the belief that something more than the mere absence of external constraints imposed by other humans is required before people can be called truly free, even though they differ on what that something is. While some, for instance, focus on internal factors such as self-mastery or rational control,³⁶ others focus on external factors such as available resources. It

³⁴ I Carter, *A Measure of Freedom* (Oxford University Press, 1999) 6.

³⁵ J Waldron, *The Right to Private Property* (Oxford University Press, 1990) 298-299.

³⁶ The best-known account of positive freedom is perhaps put forward by Isaiah Berlin in his *Two Concepts of Liberty* (in his *Four Essays on Liberty* (Oxford University Press, 1969)). Berlin describes positive freedom as being self-determined; as having control of our own true interests and destiny and being able to control our passions. A classic example is that of a person addicted

is this second type of theories of positive freedom, that focuses on external factors necessary for freedom, that underlies many of the claims that exploiters' consent is not truly voluntary.

When thinking about which external factors should be taken into account when measuring freedom, a first distinction that should be made is that while some theorists take all constraints into account, most theorists only consider obstacles caused by other *people*. They do not regard natural obstacles, such as not being able to walk on water, as reducing the level of our freedom, but merely as limitations of our options. This choice may be linked to another distinction: the distinction between non-normative freedom and normative freedom.³⁷ The first describes an empirical fact: what is *possible* for a person to do. The second refers to authoritative norms (such as laws or normative rules) and asks what a person is *entitled* to do. Yet even if we would agree on the necessity of distinguishing between natural and social obstacles to freedom, it is not always clear where to draw the boundaries. Especially disputed cases are constraints influenced by macro-economic forces, such as poverty and unemployment: do they merely affect people's options or do they make them (more) unfree?³⁸

Many classical liberals and libertarians try to solve this problem by arguing that only restrictions that are brought about intentionally count as restrictions of freedom. Macro-economic situations that are generated unintentionally, for them, do not limit people's freedom, even though they will limit the possibilities of what people can do. More egalitarian-minded writers often argue that we should also consider some unintended social restrictions like poverty as affecting people's freedom, and even certain restrictions that could be seen as natural limitations, such as genetic handicaps or illnesses. For

to smoking who wants to stop smoking but does not, even though it negatively affects many parts of her life. Even though such a person is not forced to continue smoking, this choice is not *really* voluntarily, supporters of this account of freedom would say, because it is brought about by the person's addiction and irrational desire and does not serve her real interests. Hence, on this view of freedom, freedom requires the presence of self-mastery and rational control, which are said to affect the extent to which a person acts autonomously.

³⁷ MH Kramer, *The Quality of Freedom* (Oxford University Press, 2003) 61.

³⁸ I Carter, 'Positive and Negative Liberty' in EN Zalta (ed), *Stanford Encyclopedia of Philosophy* (Spring 2013 Edition) 11.

them, unfreedom is brought about by both the presence of intentional interference by other people, and the absence of resources (in a broad sense of the term) that are necessary to be able to make valuable choices. Such writers generally refer to their understanding of freedom as positive freedom or 'real' freedom,³⁹ and it is this version of positive freedom that is mostly used in arguments about exploitation.

Amartya Sen describes this type of positive freedom as 'concentrating on what a person can choose to do or achieve rather than on the absence of any particular type of restraint that prevents him or her from doing one thing or another.'⁴⁰ For example, he says, 'if a person happens to be poor and hungry because of low real wages or unemployment, *without* his having been prevented (by the state or by some strong-armed individual or institution) from seeking a higher wage or finding employment, then the person's negative freedom may not have been, in any way, violated, even though his positive freedom from hunger is clearly compromised by circumstances.'⁴¹

While on this conception freedom is defined as what people can actually do given the resources available to them, there are different views on which resources to take into account and how best to measure them. Some writers focus on commodity bundles or income,⁴² others on the possession of a certain level of primary goods. 'Capability theorists', in contrast, argue that these options do not adequately reflect people's actual freedom. If, for instance, two persons receive the same amount of income or primary goods but one of them is blind, this person will have to spend a large part of her money on services to deal with her handicap, while the other person can spend much more on other things. Capability theorists therefore argue for measuring people's positive freedom in terms of their 'capabilities': the 'alternative functionings' that they

³⁹ See e.g. MC Nussbaum, 'Nature, Function, and Capability: Aristotle on Political Distribution' in J Annas and RH Grimm, *Oxford Studies in Ancient Philosophy* (Oxford University Press, 1988) 145-184, 183; P van Parijs, *Real Freedom for All* (Oxford University Press, 1995); and A Sen, 'Freedom of Choice, Concept and Content' (1988) 32 *European Economic Review* 269-294.

⁴⁰ Sen, *op.cit.* 272.

⁴¹ Sen, *op.cit.* 272-273.

⁴² E.g. van Parijs, *op.cit.*

are able to achieve.⁴³ They say that for persons to be free they must have the relevant capacities *and* the necessary opportunities to employ these capacities to achieve certain functionings they have reason to want to achieve.⁴⁴

As said, the idea of positive freedom underlies many of the claims that consensual exploitative transactions are wrong because the exploitees are not truly free to decide whether to consent or not. It may be thought that the arguments against the consent account that I will put forward in the next section, ignore the existence of different conceptions of freedom, or that they favour a negative understanding of freedom. I do not think that this is true. In fact, I am sympathetic towards egalitarian theories of positive freedom. I also think, however, that this has no direct implications for my views on the consent account of exploitation. This is because positive (and negative) theories of freedom are essentially concerned with how to define freedom or how to 'measure' individuals' level of freedom. Yet this is a different issue than questions such as:

- (a) To what extent should a state be concerned about the level of people's freedom; that is, to what extent should a state see it as its task to protect or promote individuals' freedom (and by what means);
- (b) To what extent should individuals be held responsible (morally or legally) for choices made in situations of different 'types' or 'degrees' of (un)freedom (e.g. negative unfreedom caused by coercion and positive unfreedom caused by poverty). And following from this: to what extent should individuals' consent given in different degrees of (un)freedom be considered valid;
- (c) To what extent should *other* individuals transacting with persons in certain degrees of unfreedom be held responsible for alleviating the causes of their unfreedom.

⁴³ A Sen, *Rationality and Freedom* (Harvard University Press, 2002) 5-9.

⁴⁴ JM Alexander, *Capabilities and Social Justice, The Political Philosophy of Amartya Sen and Martha Nussbaum* (Ashgate, 2008) 151.

Questions (b) and (c) have most bearing on the debate on exploitation and on my assertion that invalidity of exploiters' consent is not what makes exploitation wrong.⁴⁵ They are, however, to a certain extent independent from the issue of how to define or measure freedom. To some extent, they are related to this issue, in the sense that if we support a negative view of freedom, there will be fewer situations that count as a situation of unfreedom for which the questions are relevant, than if we support a positive view of freedom. For example: if we define freedom merely as the absence of coercion, the question of to what extent individuals should be held responsible for alleviating the causes of unfreedom, is applicable to a much narrower range of cases than if we were to define freedom as the absence of coercion *and* the presence of sufficient resources. Yet the above questions are also to a certain extent independent from the issue of how to measure someone's level of freedom. To start with question (c), even if we agree on the correctness of, say, the capability-based view of freedom, this itself does not imply anything about the extent to which persons who engage in a transaction with others (as opposed to society at large or the state) should be held morally or legally responsible for compensating the other's unfreedom. This is a question that cannot be answered by theories of freedom alone. We also need a theory of responsibility for compensating poverty or distributive injustice (or, in other words, 'positive unfreedom'). Such theories will be discussed in sections 2.3 and 2.4, where I analyse the needs account and injustice account of exploitation.

The same is true for question (b): even if we support a capability-based view of freedom, this does not automatically imply that consent given in a situation of limited positive freedom, such as poverty, is not valid, or that people should not be held responsible for their consent. That claim requires a separate argument, that justifies why people's consent should only be considered voluntary or valid when they have a certain 'level' of positive freedom, such as a

⁴⁵ Considering question (a), most theories of freedom maintain or assume that protecting or promoting individuals' freedom is important, and many also argue that it should be a key goal for states. Yet it is still a separate question from the question of what freedom consists in, and some people will think that it is equally or more important for the state to promote other values, such as wealth, wellbeing, equality, or economic growth.

certain level of wealth, or, perhaps, a certain number of appealing choices. And I will argue in the next section that I think it is problematic to make this argument.

2.2.2 Problems with the consent account of exploitation

Proponents of the consent account of exploitation say that when someone is in such bad circumstances that she has no better choice than to consent to an exploitative transaction, her consent cannot be called truly consensual. They argue that such a person is, in effect, forced by her bad circumstances, because she would never have agreed to the (terms of the) transaction if it were not for her circumstances. I will start my objection to this account of exploitation with an example. Suppose a just-graduated legal theory student (W) is looking for a job. After a year, she still has not found any work in her area of expertise. She cannot afford to pay her rent any longer, and is in desperate need of an income. She therefore accepts employer A's offer to work in A's shoe factory for an extremely low wage. W later remarks that she would rather not have accepted the job, but that her circumstances coerced her to do so. But what does it mean to say that W's circumstances coerced her to accept the offer? And does that make her consent invalid?

It is true that W's circumstances 'coerced' her to accept the offer, in the sense that her circumstances are such that if she had not accepted the job, she would probably be worse off than if she had opted for another choice (maybe she could also, for instance, have chosen to become homeless for a while, or to move in with a friend or family, which she apparently liked less than accepting the job). However, the fact that within certain circumstances one of our options is most attractive does not necessarily mean that we are coerced to choose that option. This is so for at least two reasons.

First of all, coercing is commonly defined as trying to get someone to do something she would otherwise not do (say, X) by threatening to make her

worse off in comparison with some baseline if she does not do X.⁴⁶ This baseline could be the status quo, but also some moral baseline: the situation in which people act in accordance with their moral duties. The difference between the two types of baselines is famously illustrated in Robert Nozick's 'drowning case':⁴⁷ A comes upon B, who is drowning. A knows that there are no other potential rescuers and proposes to rescue B if B agrees to pay A \$10,000. In comparison with the status quo (B is drowning), A's proposal benefits B and is thus an offer instead of a threat. Yet if we compare the proposal with a moral baseline, whether the proposal is an offer or a threat depends on whether we believe that A has a moral duty to rescue B. If so, the offer is coercive, because it makes B worse off in comparison with the situation in which A acts in accordance with this duty.

Now let us assume—for the moment—that employer A in the previous example does not have a duty to help W to find a better-paying job or to offer her higher wages. If this is so, then A's job offer proposes to make W better off if she accepts his proposition, instead of threatening to make her worse off. It thus actually increases her set of choices, and is not coercive.

Second, if we hold that W is coerced to consent because her circumstances leave her no better choice, the term 'coercion' loses all its moral force. It would mean that everyone is *always* coerced by their circumstances, because everyone always chooses the option that seems, in their circumstances, the best choice. Suppose, for example, that a commercial law student (C) is offered five interesting and well-paid jobs right after her graduation. She finds all five jobs appealing, but likes job X the most. In this case, it seems very strange to say that

⁴⁶ See e.g. JS Hawkins and EJ Emanuel, 'Clarifying Confusions About Coercion' (2005) 35(5) *Hastings Center Report* 16-19, 17; and A Wertheimer, 'Coercion' in LC Becker and CB Becker (eds), *Encyclopedia of Ethics* (2nd ed, Routledge, 2001) 245-248, 247. Another form of coercion often recognized is when the offer by one person (A) makes another person (B) better off, but the reason that B is in the unfortunate situation where A's offer will make her better off is created by A. For example, if we are on a boat and I push you overboard, and subsequently offer to rescue you in return for £1,000, this is a coercive offer. See e.g. J Feinberg, *Harm to Self: The Moral Limits of the Criminal Law* (vol 3, Oxford University Press, 1986) 244; D Zimmerman, 'Coercive Wage Offers' (1981) 10 *Philosophy & Public Affairs* 121-145, 133.

⁴⁷ R Nozick, 'Coercion' in S Morgenbesser, P Suppes and M White (eds), *Philosophy, Science and Method: Essays in Honor of Ernest Nagel* (St. Martin's Press, 1969) 440-472, 447.

the circumstances *coerced* C to accept job X simply because within her circumstances job X was her best option—if ‘coerced’ is meant as a morally relevant term. Yet this is exactly what we do in the case of student W, if we accept that she was coerced by her circumstances to choose the job at the shoe factory.

It may be objected that the two examples are not similar, because for student C all options are appealing, whereas to W all her options seem awful. It might thus be thought that C’s choice is ultimately driven by desire—which job she likes most—while W’s choice is driven by need: her poverty and need to earn an income as soon as possible. I accept that poverty and need might influence what society owes to W, or perhaps even create a duty for particular people to help W, which is the line of argument discussed in section 2.3 on the needs account of exploitation. Yet this is different from accepting that the fact that W’s options are unappealing automatically implies that it is impossible for her to make a valid choice amongst these options. My argument is that we have to make a distinction between the attractiveness of the *content* of someone’s set of choices and whether someone is free or coerced to choose a certain option from within this set.⁴⁸ One way of seeing this is by imagining that the shoe factory owner in the example decides to fire W, but that, luckily, W suddenly gets another job offer, to work as a lecturer at a prestigious university. W’s choices are still as limited as they were before: before, she had to choose between becoming homeless and working in the shoe factory; now her choice is between becoming homeless and working as a university lecturer. W does not feel any doubt or grievance about this though, because she very much likes to work as a lecturer. Would we say that her consent to become a lecturer instead of becoming homeless is in some way invalid or not truly voluntary? I do not think so. Yet her situation is almost the same as before: she desperately needs a job and has only one job offer. It therefore seems that when we say that someone is forced by her circumstances to consent to a certain transaction, what we really mean is that the options someone can choose from are unappealing or horrible.

⁴⁸ See for a similar argument Hawkins and Emanuel, *op.cit.* 16-19.

It might be that there is something wrong with the unappealing offers someone receives; in the above example, there might be something wrong with the extremely low wage offered by the shoe factory owner. And it might be that there is something morally problematic about the reason that someone only has unappealing offers to choose from. Or, in other words, something may be morally problematic about the circumstances in which people make choices. For example, perhaps the reason *W* cannot easily find a job is that people of her skin colour or gender are discriminated against. It might also be that the state or certain individuals are under a moral obligation to rectify these issues. Yet whatever is wrong about such cases of consensual exploitation, I believe, it is not a lack of valid consent.

To give another example, consider one of the typical instances of exploitation discussed before: sweatshop labour. The consent account says that sweatshop labour is exploitative because of the coercion or involuntariness involved: because the employees' bleak circumstances leave them no better choice than to consent to working in a sweatshop. But now consider a second example: a fair trade organization decides to set up a factory in an impoverished region in a developing country, in order to provide people in the region with a stable source of income. The organization provides all workers with generous wages and safe working conditions, plus free healthcare and free education for their children. Even in this second example, the employees may have no better choice than to work in the factory, or no other employment opportunity at all, and they may have lived in conditions of terrible poverty before they started working for the company. They are thus, following the argument of the consent account, coerced by their dreadful circumstances to work in the factory. Hence, if we follow the argument of the consent account—that the fact that people's circumstances leave them no better choice than to consent to working somewhere is what makes the employees' consent invalid—we should also think that people's choice to work for the fair trade organization is not really voluntary. Yet I think that not many people would consider this to be the case.

Still, one might insist that it is the case; that employees' consent to work for the fair trade factory is also not truly voluntary. However, if so, the term

'voluntary' becomes morally meaningless in the context of exploitation, in the sense that it cannot be used to distinguish transactions in which the offer of one of the parties is morally problematic or exploitative, from transactions in which no morally problematic or exploitative offer is made. This is why I contend that the consent account is mistaken, both in its idea that circumstances can coerce, and in its view of what is wrong with exploitation.

I will finish this section by returning to the possible objection mentioned in the previous section, based on the idea of positive freedom. Recall that positive accounts of freedom measure and define freedom not on the basis of what others prevent us from doing, but on the basis of what we can actually choose to do, given the resources available to us. I have tried to show in this section that what we can actually choose to do—the options available to us—is a different matter than whether we can validly consent to the options that are available to us. Moreover, whether we are coerced, or can validly consent to the options available to us, is a different matter than whether we find the options available to us appealing. In the above example of *W* and employer *A*, *W*'s positive freedom might be considered rather limited: she is poor, unemployed, and although she has a good education, she cannot manage to find any job, apart from working in *A*'s shoe factory. Still, I have tried to show that her consent to work in the shoe factory is not therefore necessarily involuntary or invalid. I gave a second example, in which *W* is not offered a job in a shoe factory, but is offered a lectureship at a prestigious university; a job she very much likes to do. I doubt that many would consider *W*'s consent to accept the lecturer position involuntary, or the job offer necessarily exploitative. Yet her positive freedom is as limited as it was before: she is still equally poor, unemployed, and can only find one job. The sole difference is that it is a job *W* actually likes to do. It is thus not the validity of *W*'s consent that is morally problematic in the shoe factory example, but something about *A*'s unappealing offer. This might be construed in terms of positive freedom. It might be thought, for example, that society has a moral duty to help alleviate *W*'s poverty and so to meet her needs and increase her level of positive freedom and the options available to her. It might even be

thought that employer A has an individual duty to help W, by offering her higher wages. Yet we should not conflate questions of positive freedom—which options are actually available to people—with the question of whether people are coerced or can voluntarily and validly choose between the options available to them.

A similar view is put forward by a number of proponents of other accounts of exploitation.⁴⁹ Some of them argue that the consent account confuses the (in)justice of a transaction with the (in)justice of the ‘background circumstances’ in which that transaction takes place. Even though the circumstances in which someone consents to a transaction are dreadful, they argue, this does not necessarily mean that every transaction within such circumstances is wrong, just like, conversely, not every transaction within a just background system is automatically just. Moreover, conflating problems in the background situation of a transaction with problems of the exploitee’s consent may not only be flawed, it might also be considered insulting for people in dreadful circumstances to claim that they cannot make valid decisions, while other people can. As Wertheimer puts it: ‘if we are to show appropriate respect for individual autonomy, then we must show respect for the choices that people make within their situations, bad though those situations may be’.⁵⁰

Still, an important possible objection remains. In the beginning of this section, I said that coercion is commonly defined as trying to get someone to do something she would otherwise not do, by threatening to make her worse off in comparison with some baseline. I also said that this baseline can be the status quo, but also some moral baseline: the situation in which people act in accordance with their moral duties. Hence, if someone has a moral duty to help another in need (say, a drowning person), but makes the help conditional on

⁴⁹ See e.g. JS Hawkins, ‘Research Ethics, Developing Countries, and Exploitation: A Primer’ in JS Hawkins and EJ Emanuel, *Exploitation and Developing Countries, The Ethics of Clinical Research* (Princeton University Press, 2008) 21-54; A Wertheimer, *Exploitation* (Princeton University Press, 1996) 270.

⁵⁰ Wertheimer, *Exploitation, op.cit.* 271. For similar arguments see e.g. TL Beauchamp, ‘Autonomy and Consent’ in F Miller and A Wertheimer (eds), *The Ethics of Consent, Theory and Practice* (Oxford University Press, 2010) 55-78; and R Bigwood, *Exploitative Contracts* (Oxford University Press, 2003) 65.

some offer (say, paying £10,000), the consent to this offer is not truly free or valid. This is a compelling possible objection, and I will therefore moderate my earlier statement about the need to separate issues with people's consent from issues in the 'background circumstances' in which they make their consent. In a situation where A offers to help B but only on a certain condition, we can say that *if* the background circumstances in which the offer is made give A the moral duty to help B without further conditions, then A's offer may well be coercive, or B's consent invalid. In other words: *if* we think there is a moral duty to save drowning people without further conditions, then asking £10,000 to a drowning person may be called coercive. Whether someone's circumstances influence the validity of her consent, thus depend on whether these circumstances give rise to a moral obligation to help the other without further conditions. The existence of this duty may be relatively uncontroversial in the case of a drowning person. But do we also have a moral duty to help people in need when the need is less immediate and urgent? If so, this objection can be raised against my earlier examples.

For instance, in the example of student W and shoe factory owner A, it might be objected that in determining whether W is being coerced, I should not have compared A's offer with W's status quo, but with a moral baseline: the situation in which A would act in accordance with her moral duties. And it might be argued that one such duty is to help people in serious need, like W, or to compensate for distributive injustices, or to offer people fair wages. In other words: while I assumed in the example that employer A does not have a moral duty to offer higher wages, it might be thought that A does have this moral duty. The existence of such a duty is what is contended by the three other accounts of exploitation that will be discussed in the next two sections and the next chapter. Hence, it might be said that if one of them is true, in a sense the consent account of exploitation is also true, because it would mean that exploiters' offers make exploitees worse off, compared with the situation in which the exploiters act in accordance with their moral duty. I will argue, however, that the other accounts are not true. In the next section, I begin by discussing the needs account of exploitation.

2.3 The needs account of exploitation

Proponents of the needs account of exploitation argue that exploitation is wrong because exploiters neglect a moral duty to help people in need. Exploiters typically interact with people in need, but instead of helping them, they take advantage of their need for their own benefit. Different authors advancing this view offer different justifications for the existence of a duty to help people in need. In this section, I will discuss the two most prevalent justifications. The first one is based on a Kantian duty of beneficence (section 2.3.1), the second one on the idea that dependency creates special obligations (section 2.3.2). I will argue that both these arguments are problematic, and that the needs account cannot adequately explain what is wrong with consensual exploitation (section 2.3.3).

It should first be noted, however, that when talking about people in need, the discussion is generally not about people who are nearby and whose life is in imminent danger, such as the earlier example of a person coming across someone who is drowning. That people have a moral duty to help others in such a situation is relatively widely accepted, as is the belief that trying to exploit someone in such a situation is morally wrong (say, by offering to rescue someone who is drowning on the condition that she pays £10,000). Such exploitation is generally not seen as consensual exploitation, but as a form of coercive exploitation, as was discussed in the previous section. It is not the type of transaction I will focus on in this section, and in this thesis; and most discussions about consensual exploitation do not focus on this type of case either, but on situations in which the allegedly exploited person is either physically far away from us, or has a need less serious than imminent danger of death. (Potential) sweatshop employees, for example, are typically far away from the company or person who is considering opening a factory in a developing country. Their lives are also typically not in immediate danger, and they frequently do have other options to stay alive, such as subsistence

agriculture, day labour, or scavenging,⁵¹ although these options are often considered worse than working in a sweatshop. Proponents of what I call the needs account of exploitation try to show how in such situations, where someone's life is not in immediate danger, or someone is not initially physically nearby, alleged exploiters still have a moral duty to help to meet people's needs.

2.3.1 Duty of beneficence

One argument underlying the needs account of exploitation refers to a Kantian duty to help people in need; a duty of beneficence. Kant argued that you have to act so that 'you use humanity, whether in your own person or in the person of any other, always at the same time as an end, never merely as a means.'⁵² This is usually interpreted as giving rise to duties of non-interference with other people's autonomy. If we coerce or deceive someone, we are using her will for our own ends, instead of respecting her as an autonomous person. Yet on the view discussed in this section, the requirement to treat others as ends in themselves is seen as also giving rise to a positive duty to enable others to act autonomously. Humans have certain basic needs, such as food, drink, and shelter, and if these needs are not met, it is argued, this will impede their ability to truly act autonomously, and flourish as a human being. Therefore, it is said, if we fail to help others to meet their basic needs, we fail to adequately respect them as persons. And this, proponents of the needs account argue,⁵³ is exactly what exploiters do: they engage in a transaction with people who have difficulties in meeting some basic need, but instead of helping them to meet their needs, they take advantage of them. Think of some of the classic examples of exploitation mentioned earlier: sweatshop factories, loan sharks, and passersby who offer help to stranded people for a very high price. In all these

⁵¹ R Mayer, 'Sweatshops, Exploitation, and Moral Responsibility' (2007) 38(4) *Journal of Social Philosophy* 605-619, 609.

⁵² I Kant, *Groundwork of the Metaphysics of Morals* (1785), translated by MJ Gregor (Cambridge University Press, 1998) 36.

⁵³ See e.g. Sample, *op.cit.* 57; Siegel, *op.cit.* 175-205; Snyder, 'Needs Exploitation', *op.cit.* 389-405, and JC Snyder 'Exploitation and Sweatshop Labor: Perspectives and Issues' (2010) 20(2) *Business Ethics Quarterly* 187-213.

situations, the exploitees are in need of help or money to meet some basic need, and the exploiters take advantage of that for their own benefit.

'Basic needs' can, of course, be interpreted in different ways. I have mentioned food, drink and shelter, but most authors use a broader interpretation, such as 'minimum welfare'; both biological and psychological needs;⁵⁴ or 'not only those objects necessary for physical survival, but also conditions of purposeful employment, the prerequisites of psychological well-being, and constraints on interaction that are necessary for self-respect.'⁵⁵ Nevertheless, however 'basic needs' is interpreted, the idea is the same: we have a moral duty to help people who cannot meet their basic needs, and what exploiters do wrong is taking advantage of such people instead of helping them.

One question for this understanding of the wrong in exploitation is: if we have a moral duty to help people in need, why is this dependent on whether we transact with someone? It seems that if we have a duty to help people in need, to whom we should direct our help is dependent on who cannot meet their basic needs, and not on with whom we transact. Hence, we would have this duty towards everyone who (we know) is in need. The needs-based argument therefore seems problematic in explaining the wrong in exploitation, because while exploiters may indeed fail to meet the needs of people with whom they transact, they may equally fail to meet the needs of all other people in need. And, likewise, other affluent people who do not transact with someone in need may be equally violating the duty to help people in need. Hence, a general duty to help people in need seems unable to explain what is wrong about exploitation in particular. Rather than basing the wrong in exploitation on a general duty to help people in need, authors advancing this view therefore generally try to argue for the existence of special obligations towards people with whom we interact.

One way of doing this is arguing, as Kant did, that the duty to help people in need is an 'imperfect duty'. Imperfect duties are not duties to perform a

⁵⁴ Snyder, 'Needs Exploitation', *op.cit.* 395.

⁵⁵ Sample, *op.cit.* 74.

certain act, but duties to adopt a certain maxim. This means that we have a duty to adopt the general goal or rule to help others in need, but that we have some leeway in deciding exactly when and how to accomplish this goal. Hence, we do not have to sacrifice all of our interests in order to help everyone in need, but we do need to adopt the general goal of helping others in need when we can. This idea of an imperfect duty of beneficence is used to explain the wrong in exploitation, because it is argued that although we have leeway in deciding exactly how and when to use our resources to help others in need, when we directly engage in a transaction with someone who is in need, we cannot possibly refuse to help her and still claim that we have adopted the maxim to help others in need. Ruth Sample, for instance, says:

‘When I am considering interaction with a person that would benefit her to some degree but nonetheless would ignore her basic needs, then I must ask whether the maxim of my action would pass the test of the categorical imperative. ... No one could plausibly claim to have adopted the maxim of beneficence if he interacted with vulnerable others on the terms just described. Such interaction would call into question one’s commitment to the principle for respect for persons more than would simple noninteraction.’⁵⁶

The appeal to imperfect duties does appear to explain better what is specifically wrong about exploitation than a general duty of beneficence. Yet it also gives rise to a new question. If we are not required to always help people in need and have some leeway in deciding who and when to help, it needs to be justified why we ought to do so when we engage in a commercial transaction with someone. In other words: why the imperfect duty turns into a perfect duty. Sample argues that this is because we cannot claim to have genuinely adopted the maxim of helping people in need if we, when transacting with someone in need, refuse to do so. This is so, she says, because even though we have leeway in deciding who and when to help, failing to help someone with whom we interact calls into question our commitment to helping others more than choosing not to interact, and (apparently) than choosing not to help others

⁵⁶ Sample, *op.cit.* 70-72.

whom we know are in need, but do not transact with. This argument is not unproblematic, however. As said, if we indeed have a moral duty to strive towards helping people in need, and indeed have some leeway in choosing whom to help, it seems to follow logically that there is nothing wrong with, say, choosing to help five people in a community to meet their basic needs, and engage in a commercial transaction with a sixth person, while not helping her to meet her needs. Sample responds to this objection that 'flouting a requirement seems worse than neglecting it' because '[i]t is easier to lose sight of the value of other valuable beings when we do not interact with them'.⁵⁷ Yet, as Wertheimer rightly objects, 'out of sight, out of mind' is not a moral argument:⁵⁸ the fact that we are more likely to lose sight of the value of others when we neglect them does not itself show that flouting a requirement is worse than neglecting one. Trying to justify a perfect duty not to exploit with an imperfect duty of beneficence can therefore lead to counterintuitive results, as Jeremy Snyder points out:

It runs contrary to the ordinary use of 'exploitation' to think that, because an employer makes an unrelated donation to a charity or engages in other unrelated charitable acts, that she would be excused, morally, for offering her employees wages insufficient to support their distinctly human capacities. That is, these unrelated, beneficent acts would seem to do little to assuage the intuition that the employer is improperly using or taking advantage of *these* workers specifically, especially if she has the opportunity to offer a higher wage.⁵⁹

There are several other problems with this version of the needs account of exploitation. I will discuss these in section 2.3.3. First, I will discuss another justification for the existence of special obligations towards people with whom we transact, and thus for the wrong in exploitation. This is the argument that our obligation to help others is determined by other people's dependency on us.

⁵⁷ Sample, *op.cit.* 68.

⁵⁸ Wertheimer, 'Book Review Ruth J. Sample', *op.cit.* 260.

⁵⁹ JC Snyder, 'Exploitation and Sweatshop Labor: Perspectives and Issues' (2010) 20(2) *Business Ethics Quarterly* 187-213, 198. Snyder does follow Sample's argument to a large extent, however.

2.3.2 Dependency

The idea that our obligation to help people in need is contingent on their dependency on us is sometimes combined with the Kantian notion of an imperfect duty of beneficence, and sometimes not.

A prominent example of the latter is Robert Goodin's argument that all special obligations we have towards certain others flow from their dependency on us, instead of from promises, contracts or other voluntary choices.⁶⁰ For example, according to Goodin, the obligations parents have towards their children do not follow (partly) from the fact that they chose to have children, but from the fact that children are particularly dependent on their parents for meeting their needs. The dependency that gives rise to obligations is, according to Goodin, a combination of a special need of one party, and a special ability to help of another party.⁶¹ The ground of moral obligations towards particular people in need is thus according to him being in a particularly good position to help them. Goodin also emphasizes that dependency only occurs when something is truly needed, and not merely desired.⁶² He uses this general theory of obligations as the basis for his theory of exploitation. Exploitees are dependent on exploiters in the sense that, on the one hand, the exploitees have some need, and on the other, the exploiters are in a particularly good position to help them to meet this need. Exploiters therefore have a special obligation to help the person in need who is dependent on them, yet they violate that duty,

⁶⁰ See R Goodin, *Protecting the Vulnerable: A Reanalysis of our Social Responsibilities* (University of Chicago Press, 1985) and R Goodin, 'Exploiting a Situation and Exploiting a Person' in A Reeve (ed), *Modern Theories of Exploitation* (Sage, 1987) 166-200.

⁶¹ Goodin, *Protecting the Vulnerable*, *op.cit.* 34. Although Goodin's work is called 'Protecting the Vulnerable', it is important to note that Goodin means something slightly different with 'vulnerability' than the argument discussed in the first section of this chapter. People's vulnerability, on Goodin's theory, is not defined by the fact that others can take advantage of them (although that may also be the case), but by the fact that others are in a position to *help* them. I therefore eschew using the term 'vulnerability' in describing Goodin's theory, in order to avoid confusion with the argument discussed in the first section of this chapter. Goodin uses the terms 'dependency' and 'vulnerability' interchangeably, both meaning that a) a person has some serious need, and b) another person is especially well placed to help her. Consequently, as Sample notes (*op.cit.* 37), the title of his book is misleading because, on his theory, we do not merely have an obligation to protect the vulnerable, but also to *provide* for them insofar as they are unable to meet their own needs.

⁶² Goodin, 'Exploiting a Situation and Exploiting a Person', *op.cit.* 199.

instead 'playing for advantage'.⁶³ The wrong in exploitation is therefore according to Goodin a violation of the duty to help people in need who are dependent on us for meeting their needs.

Jeremy Snyder, on the other hand, follows Sample in appealing to the notion of an imperfect duty to help people in need, but combines this with the idea that our obligations towards others are contingent on their dependency on us. He argues that the imperfect duty to help people in need as described by Sample, should be limited by two factors. These are, first, what is possible while still remaining competitive (in the case of employers, which is his main focus) and while still earning enough to live a flourishing life oneself; and second, by the extent to which someone is dependent on another:

The perfect form of the duty of beneficence relies, I am claiming, on connections to particular others through our roles and relationships, where a general disregard for the needs of humanity becomes a disregard for the needs of particular others. ... We can limit the degree to which an interaction must benefit another by certain measures of what it is reasonable to expect from the relationship. The first measure relevant to determining reasonability, I would like to argue, is the prospective dependence of person B on A for some need X. ... This dependence will be determined in large part by the kind and duration of the relationship within its contextual setting. For example, Carl might provide for all of Diana's material needs through the relationship (e.g. Carl is a full-time employer where the state provides no support), share provision with others (e.g. Carl is a part-time employer), or provide no direct provision (e.g. Carl is an employer where the state meets all basic needs through corporate taxes).⁶⁴

I will not go into issues to do with the general legitimacy of the mentioned dependency theories, such as whether, as Goodin says, all our obligations can really be based on dependency,⁶⁵ or why exactly, on Snyder's theory, dependency is morally relevant. Instead, I want to argue that even if we grant that dependencies create special obligations to help people in need who are

⁶³ Goodin, 'Exploiting a Situation and Exploiting a Person', *op.cit.* 184.

⁶⁴ Snyder, 'Needs Exploitation', *op.cit.* 396-397.

⁶⁵ But for an extensive discussion and criticism see Sample, *op.cit.* chapter 2.

dependent on us, there are still a number of other problems with explaining the wrong in exploitation with a duty to help people in need.

2.3.3 Problems with the needs account of exploitation

In this section I will discuss some problems that I think affect both versions of the needs account of exploitation (the first based on a Kantian duty of beneficence, the second on dependency). I will argue that, as a consequence, this account cannot satisfactorily explain the wrong in exploitation.

The first potential problem is that even if we have a moral duty to help people to meet their basic needs, this does not exclude the possibility that we exploit someone while also helping her to meet her basic needs. For example, if a man is in desperate need of an income, and an employer offers him a job with extremely long working hours and a very low wage, this employer may still be helping him just enough to meet his basic needs. Yet this seems to be a classic instance of exploitation. Likewise, if a student is in need of accommodation, and a landlord offers her a very small room for a very high rent, he may be exploiting her while at the same time meeting her need for accommodation.⁶⁶

Second, on the needs account of exploitation people can only be exploited when they lack a basic need, because the wrong in exploitation is a failure to meet someone's needs. As Ruth Sample says: 'A person whose basic needs are met, and who nonetheless chooses to transact in a way that would violate a putative restriction on exchange, is not exploited.'⁶⁷ I believe, however, that people can also be exploited even when their basic needs are met. For example, in one of the examples mentioned earlier, in which a passerby offers to

⁶⁶ It might be objected that this depends on how one defines 'needs'. For instance, instead of saying that the man has a basic need for income or employment, we could say that he has a basic need for employment that offers reasonable working hours and income. And instead of saying that the student has a basic need for accommodation, we could say that she has a basic need for reasonably priced accommodation. However, this reply ultimately defines 'basic needs' as whatever one considers non-exploitative: what we would actually be saying is that the man has a basic need for non-exploitative employment, and the student has a basic need for non-exploitative accommodation. This would make the argument of the needs account of exploitation circular, because one would be defining exploitation as taking advantage of a basic need, while defining basic needs in terms of not being exploited.

⁶⁷ Sample, *op.cit.* 83.

give a stranded person a lift for £1,000, the stranded person is not necessarily lacking in her basic needs. She may have sufficient income, food, and drink; she may be very able to afford paying the £1,000; and we could assume that if she refuses the offer she will not suffer serious harm, but merely need to walk for many hours. In my view, however, that would not change the fact that the passerby making the offer is trying to exploit her. I think that most people would agree, and that the common use of the term exploitation includes such transactions. Hence, it appears that people cannot merely exploit others' basic needs, but also their less urgent needs or desires, however the distinction between basic needs, non-basic needs, and desires is made.⁶⁸

Proponents of the needs account could reply that the above example is not exploitative. They could say that if people intuitively or commonly do find such a transaction exploitative, their intuitions or the common use of the term exploitation is simply mistaken. They could insist that we can only wrongfully exploit people's needs, and cannot explain why transactions in which no basic needs are being neglected are wrong. I disagree, and think that the common use of the term exploitation is right, and that we *can* explain what is wrong in this type of transactions, as I will show in chapter 4. It therefore seems to me that limiting which types of transactions can rightfully be called exploitative in the way the needs account does, unnecessarily leads to a counterintuitive theory of exploitation.

A third problem with the needs account of exploitation is that it leads to counterintuitive results about what it *does* see as exploitative transactions. This

⁶⁸ It might also be noted that we can exploit not merely people's needs, desires, or unfortunate circumstances, but also, amongst others, their generosity or sense of moral duty. For example, Tea Logar describes the following situation: 'John's uncle has promised his sister—John's mother—on her deathbed to make sure John never ends up on the street. John has now graduated from college, but does not have a job or a place to stay. His uncle offers for John to move in with him. John accepts the offer, and doesn't seem to be looking for a job any longer. Despite feeling used, John's uncle believes that it is his moral duty to keep his promise, as well as to make sure none of his relatives end up on the street; he therefore keeps financially supporting John.' (T Logar, 'Exploitation as Wrongful Use: Beyond Taking Advantage of Vulnerabilities' (2010) 25 *Acta Analytica* 329-346, 341.) In this example, John's uncle is not lacking any basic needs, and we cannot say that John is violating a duty to help someone in need. What John is exploiting is his uncle's sense of duty, not his uncle's needs. However, exploiting someone's sense of duty or generosity typically happens in exploitation in personal interactions instead of in commercial transactions, which are the focus of this thesis.

is because intuitively, it seems possible to engage in non-exploitative transactions with someone in need without meeting her needs. Suppose, for example, that a wealthy tourist in a developing country buys a drink from a very poor orphan who sells drinks for a living. The child asks \$1 for a drink, but the tourist feels sorry for the child and decides to give her \$100 instead to help her a little. Would this transaction, on the needs account, still be exploitative if the child needs more than \$100 to cover her basic needs? I doubt that even proponents of the needs account would want to say so. Yet if what makes a transaction exploitative is the neglect of a duty to help others to satisfy their basic needs, it seems to follow that the extent of this duty depends on what is necessary to help others, and not on something as 'arbitrary' as the value of the goods transacted. This objection applies as well to Goodin's view, according to which our duty to help people in need is contingent on their dependency on us for meeting their needs. If, for example, the orphan has no other source of income or support, and hardly any customers, she clearly *is* to a large extent dependent on the tourist to meet her needs. Yet it seems counterintuitive to say that the tourist is exploiting the child.

On Snyders' version of the needs account, on the other hand, my objection seems not to hold. As described above, Snyder argues that the extent to which we ought to help another to meet her needs is limited by the level of her dependence on us, such as whether a transaction is a one-off transaction, a part-time employment, or a full-time employment; in addition to whether we can reasonably help another without harming our own flourishing or becoming uncompetitive. Thus on Snyder's theory, the tourist would not have a duty to meet all the child's basic needs, because they are merely engaging in a one-off transaction. Nevertheless, I think the objection may be applied to Snyder's theory as well.

To illustrate this, imagine a hotel owner, person A, with many employees. One of those employees is a part-time worker, B, whose job is to clean the swimming pool, for which she has a contract of 10 hours per week. This is not enough for B to meet her basic needs, but she cannot get a job anywhere else, and A cannot give her more hours or another job without making one of the

other employees redundant. A feels sorry for B, however, and pays her very generously, the equivalent of 20 hours of work, although this is still not enough to meet all of B's basic needs. The hotel owner in this example does not seem to be exploiting B. Yet she may meet all of Snyder's criteria: First, we could assume that the hotel owner is making enough money to be able to pay the employee more without making a loss, or without harming her own flourishing, in the same way as that she could give an amount to a charity every month without making a loss. And second, the employee *is* fully dependent on the hotel owner for meeting her needs even though she only has a part-time contract, because she has no other possible source of income.

This example and the earlier example above show two things. First, whether someone is dependent on us to meet her needs does not only depend on the duration or intensity of our transaction—on whether it is a one-off transaction, a part-time employment, or a full-time employment—but depends to a large extent on what her other options are. Someone may transact with us only once, but still be completely dependent on our help to meet her needs, if she has absolutely no other options.

Second, the above examples illustrate that the requirements of others' needs or dependency are unrelated to the 'size' of the transaction. If we have a moral duty to help others in meeting their basic needs, or to help those who are dependent on us to meet their needs, it follows that the extent of this duty depends on what is necessary to help others, and not on the value of the goods or services transacted, or the duration of our contract with them. In other words: it does not depend on the particularities of the transaction we engage in. Yet when criticizing a transaction as exploitative, we do want to criticize something about that particular transaction. As a consequence, using a duty to help people in need as the explanation for what is wrong with exploitation, can lead to counterintuitive results, such as the claim that a tourist who gives \$100 to a child for a drink is exploiting her. I am not denying that we may indeed have a moral duty to meet the needs of people in need. We may even want to say that the tourist in the above example ought to give more than \$100 so the child can

meet her basic needs. Yet we cannot rightly say that the tourist is exploiting the child in that transaction.

To avoid misunderstanding, I want to emphasize which argument I am *not* making. A common objection to the needs account of exploitation is that the duty to help people in need is a duty shared by all affluent members of societies, and that we should not hold people who engage in transactions with people in need disproportionately responsible for what is a shared responsibility of society as a whole, or for the fact that society as a whole does not meet the demands of a shared duty. My argument does not depend on this objection, and a valid reply to this objection might be that even if it is true that duties to help others in needs are shared by many people, this does not necessarily discharge individuals of the duty.

Some writers⁶⁹ argue that if other people in society do not comply with the demands of a certain duty of beneficence, every member of society is left with an individual duty of beneficence of the level that they would need to contribute if everyone was complying. Thus, imagine a group of eleven people, ten of whom are equally affluent, and one of them, person B, who is much poorer and in serious need. In order to sufficiently help person B, the ten affluent people all need to contribute £100, giving B £1,000 in total. Suppose, however, that five people refuse to contribute the £100. According to the writers discussed here, the remaining five people would still be under a moral obligation to each contribute 'their' £100. The fact that some people fail to take up their part in a shared moral duty to help others does not make it acceptable for others to do so as well, they argue. Yet it also does not increase the amount that the remaining people morally ought to contribute, because asking them to also pay for others' share would be unfair.

Other writers, in contrast, argue that if the reality is that other people in society are not doing their part in a shared obligation to help others, the moral burden on everyone else who has the power to help becomes *larger*, because if we are able to help people to meet their needs without thereby sacrificing

⁶⁹ See e.g. KA Appiah, *Cosmopolitanism* (Norton, 2006); LB Murphy, *Moral Demands in Nonideal Theory* (Oxford University Press, 2000).

something of equal importance to us, we ought to help them as much as is necessary.⁷⁰ Thus, in the above example, these writers would argue that if five people refuse to contribute their £100, the remaining five people ought, morally, to pay £200 each instead of £100, in order to provide person B with her needed £1,000. And if nine people refuse to pay their £100, the tenth person will, morally, have to pay the needed £1,000 all by herself. The idea is that while the fact that other people fail to pay their share is bad, and while it may be unfair for us if we have to contribute more, this does not change the fact that there are people in serious need, and this fact is more important than whether we contribute our fair share.

I sympathize with the argument that even if a duty to help others in need is a shared duty, and even if society as a whole is not adequately fulfilling the duty, this does not discharge individuals from the duty. My argument is therefore not based on the objection that the duty to help people in need is a shared duty. My point is that even if we admit that we have an individual duty to help people in need, this duty is unrelated to whether we want to call a specific transaction exploitative. It seems that if we give \$100 to a child for a drink, or generously pay a 20-hours salary to an employee who only works 10 hours, these are not exploitative transactions, even though we may *also*, at the same time, have an individual obligation to contribute to meeting those people's needs.

To conclude, while we may have a shared duty to help people in need, or may even have an individual duty to help people in need, I have tried to show in this section that what such a duty would demand from us depends on the degree to which we can help others to meet their needs, and not on whether and what we transact with them. Therefore, I have argued, the needs account of exploitation cannot satisfactorily explain what is wrong with exploitative transactions, and we can engage in exploitative transactions with people in need *while* meeting

⁷⁰ See e.g. RJ Arneson, 'Moral Limits on the Demands of Beneficence?' in DK Chatterjee (ed), *The Ethics of Assistance: Morality and the Distant Needy* (Cambridge University Press, 2005) 33-58, 35-39; and P Singer, *The Life You Can Save: Acting Now to End World Poverty* (Random House, 2009).

their needs; engage in exploitative transactions with people who do not lack any basic needs; and engage in *non-exploitative* transactions with people who do lack basic needs, without meeting those needs.

Nevertheless, I do share an intuition that corresponds to the needs account of exploitation, which is that exploiting someone is worse when she cannot meet her basic needs. I will explain this in chapter 4, in which I set out my own answer to the question of what is wrong with exploitation. There, I will also show that the idea of imperfect duties that I discussed in this section bears some resemblance to my account of exploitation. In the next section, however, I will discuss another understanding of the wrong in exploitation, the last of this chapter, which I call the injustice account of exploitation.

2.4 The injustice account of exploitation

Proponents of the injustice account of exploitation argue that the wrong in consensual exploitative transactions is a matter of injustice. The simple version of this argument is as follows. The unequal distribution of wealth, opportunities, or means of production that exists in many societies is unjust. This difference enables people who are better off to take advantage of people who are less well off, by extracting large profits from them. This can be seen in classical examples of exploitation, such as the practices of sweatshop factories and loan sharks. Since the difference in wealth that enables such exploitation is unjust, the exploitation is unjust as well.

Although this idea may adequately describe the general working of economic systems, or how societal injustices enable exploitation, it seems unfit to explain what makes individual exploitative transactions wrong. Distributive justice is generally seen as a macro-principle, and a responsibility of society as a whole. The argument that individual transactions are wrong because of a societal injustice is therefore criticized for making particular individuals

responsible for something that is in fact a societal responsibility.⁷¹ Consequently, as mentioned before, many agree that we should distinguish between the injustice of the background circumstances in which a transaction takes place, and whether or not the transaction itself is unjust or exploitative.

Nevertheless, there are some less simple versions of the injustice argument that aim to explain how individual exploitative transactions are wrong because of injustice. I will discuss two related but slightly different arguments. The first says that principles of justice should also be applied to private transactions, and that exploitation is wrong because exploiters fail to do so. The second says that exploitation is wrong because exploiters take advantage of prior rights violations or injustices. In sections 2.4.1 and 2.4.2, I will discuss, respectively, the first argument, and why the first argument is problematic. In sections 2.4.3 and 2.4.4, I discuss the second argument and why I think this argument does not work either, and argue that the injustice account of exploitation cannot satisfactorily explain the wrong in exploitation.

2.4.1 Distributive justice in private transactions

The first argument I will discuss says that advancing distributive justice is not only a task for society as a whole, to be carried out with institutions such as redistributive taxation, but also something that individuals should implement in their private transactions. If this is true, it may be argued that what exploiters do wrong is violating the requirements of distributive justice in their transactions with disadvantaged people.

Gerald Cohen is possibly the best-known proponent of this view of distributive justice. He criticizes John Rawls' distinction between the coercive 'basic structure' of societies, and the private economic life of individuals, and criticizes Rawls' contention that the principles of distributive justice, including

⁷¹ See e.g. B Powell and M Zwolinski, 'The Ethical and Economic Case Against Sweatshop Labor: A Critical Assessment' (2011) 107(4) *Journal of Business Ethics* 449-472, 467-468; and Wertheimer, *Exploitation, op.cit.* 216.

the difference principle,⁷² apply to the basic structure only. Cohen objects that there is an inconsistency in this view: if people truly want to choose a just society, they will have no reason to limit the application of justice criteria to the basic structure, as Rawls does, because societies will be more just when individuals also apply those criteria in their private choices. Cohen therefore argues that 'justice cannot be a matter only of the state-legislated structure in which people act but is also a matter of the acts they choose within that structure, the personal choices within their daily lives.'⁷³ A just society, he says, requires not merely just rules, but also that its members possess an 'ethos' of justice that informs their choices. 'In the absence of such an ethos,' he argues, 'inequalities will obtain that are not necessary to enhance the condition of the worst off: the required ethos promotes a distribution more just than what the rules of the economic game by themselves can secure.'⁷⁴

Hence, Cohen holds that irrespective of whether a society's basic structure is just, individuals should also apply the principles of distributive justice in their individual economic choices. What are the principles of distributive justice? Cohen says that injustice in distribution exists if an inequality of goods is not the result of a difference in people's preferences and choices with respect to income and leisure, or of a difference in arduousness of people's labours, but the result of differences in lucky and unlucky circumstances.⁷⁵ He also says that the difference principle—differences in wealth should benefit the least well-off—ought to be adopted in individual economic decisions: 'In such a society [a just society], the difference principle affects the motivation of citizens in economic life. It controls their expectations about remuneration, that is, what they will regard as acceptable pay for the posts they are invited to fill. ... [I]n a society of whole-hearted commitment to the principle, there cannot be so stark a contrast between public and private

⁷² 'Social and economic inequalities ... are to be to the greatest benefit of the least advantaged members of society.' J Rawls, *Political Liberalism* (Columbia University Press, 1993) 6.

⁷³ GA Cohen, *If You're an Egalitarian, How Come You're So Rich?* (Harvard University Press, 2001) 122.

⁷⁴ Cohen, *op.cit.* 128.

⁷⁵ Cohen, *op.cit.* 130.

choice. Instead, citizens want their own economic behavior to satisfy the principle'.⁷⁶

This requirement is limited, Cohen notes, by a 'personal prerogative' that people have to pursue their own aims and projects, because people do have the right to lead their own lives and be something other than an 'engine' for other people's welfare.⁷⁷ This does not mean that they can ignore the principles of justice in their everyday lives, but means that they have to strike a balance between the claims of justice and their own legitimate concerns.⁷⁸

Cohen is not alone in the idea that principles of distributive justice should also be applied to individuals' private economic choices.⁷⁹ And this idea may be used to explain what is wrong with exploitative transactions. Consider the example of sweatshop work. The difference in wealth between Western owners of sweatshop factories and the people working in their factories is probably at least partly the result of global distributive injustices. According to Cohen's theory, the sweatshop owners thus have to apply the principles of justice when they form contracts with their employees, instead of ignoring the employees' unjust disadvantage and offering them very little pay for long working hours. However, I will argue that there are some problems with the claim that principles of distributive justice should be applied to private transactions, and even more problems with using this claim to explain why exploitation is wrong.

2.4.2 Problems with distributive justice in private transactions

A first difficulty with the idea of applying the principles of justice in one's private transactions is that it is not clear what this involves. As mentioned

⁷⁶ GA Cohen, *Rescuing Justice and Equality* (Harvard University Press, 2008) 69-70.

⁷⁷ Cohen, *Rescuing Justice and Equality*, *op.cit.* 10.

⁷⁸ Cohen, *Rescuing Justice and Equality*, *op.cit.* 10.

⁷⁹ See e.g. RJ Arneson, 'Justice is not Equality' (2008) 21 *Ratio* 371-391, 372. It might even be argued that Rawls himself thought that individuals' choices ought to be informed by principles of distributive justice. For an interpretation of Rawls along these lines, and a criticism of Cohen's interpretation of Rawls, see S Scheffler, 'Is the Basic Structure Basic?' in C Sypnowich, *The Egalitarian Conscience: Essays in Honour of G. A. Cohen* (Oxford University Press, 2006) 102-129.

above, Cohen says two things about what distributive justice requires. First, that differences in wealth are only just if they result from differences in choice, fault or desert and not from (un)lucky circumstances. Second, that differences in wealth are only just if they correspond to the difference principle; that is, if they benefit the worst-off members of society. Cohen says very little, however, on how these principles ought to be applied in people's private economic choices; on how to determine whether someone's choices indeed correspond to the principles of justice.

One problem with this is that the above two principles do not necessarily lead to the same conclusions about the justness of particular situations. An existing distribution of wealth can benefit the worst-off (i.e.: correspond to the difference principle), while not resulting merely from different choices or merit, but also partly from luck. And vice versa: an existing distribution of wealth may not benefit the worst-off, while it does result only from differences in choice, fault or desert instead of luck.

I will focus, however, on a for my purposes more important possible problem with applying principles of justice to private economic choices. This is not, as Cohen himself recognizes,⁸⁰ the problem of how to balance in a particular case the requirements of justice with people's personal prerogative to advance their own legitimate interests. Nor is it the problem that in real-life private interactions, it is very hard to determine to what extent the relative wealth of the persons involved is the consequence of merit or luck. Instead, there is an even larger possible problem: that applying principles of distributive justice to private choices may be in violation with those principles.

Cohen argues that if people truly want a just society, they have no reason to limit the application of justice criteria to the basic structure, because societies will be more just when individuals also apply those criteria in their private choices. Rawls, by not wanting to apply the principles of justice to individuals' choices, seems to favour motives of liberty or economic productivity over the possibility of maximizing justice. It might be argued, however, that if we want a just society, we may have very good reasons for not applying Cohen's justice

⁸⁰ Cohen, *Rescuing Justice and Equality*, *op.cit.* 10.

criteria to individual economic choices. And these reasons are not based on motives of liberty or economic productivity, but on Cohen's criteria of distributive justice themselves.

Assuming that justice means, as Cohen says, that differences in wealth are only just to the extent that they result from differences in choice or desert instead of from (un)lucky circumstances, or that differences are only just to the extent that they benefit the worst-off, what would this mean if applied to individual transactions? Suppose two people, Anna and Barbara, meet to talk about selling Barbara's bike to Anna. Barbara is much less wealthy than Anna, through no real fault or choice of either of them, but mainly because Anna has grown up in much more 'lucky' circumstances. They agree that Anna will pay £50 for the bike. What would it mean for Anna to apply the principles of distributive justice in this transaction? If justice implies that Barbara should have as much opportunities as Anna and that this difference in wealth should be compensated by transferring some wealth from Anna to Barbara, does that mean that Anna should pay, say, £50,000 for the bike instead of £50?

As this rather odd conclusion shows, there is no reason why the amount we owe to others according to the requirements of distributive justice is dependent on whether we transact with someone or on the value of the goods we buy from or sell to them. It might be, in the above example, that Anna indeed ought to give Barbara £50,000 according to the requirements of justice, but that will have nothing to do with the fact that she wants to buy Barbara's bike. There is also no reason why the question of who ought to give wealth to whom, according to the requirements of distributive justice, is related to the issue of with whom we engage in a transaction. It may be, for example, that even though Barbara has much less wealth and opportunities than Anna, she does have much *more* wealth and opportunities than most other people in society. In that case, the principles of justice would not require Anna to give Barbara anything to compensate her unjust level of wealth, but instead require both of them to give to other, less well-off, people in society.

In short: the principles of distributive justice are about a just distribution of benefits *and* burdens. And as these examples show, placing the burden of

correcting differences in wealth on whichever person happens to transact with another, would not necessarily make for a just distribution of benefits and burdens at all.

There are some possible objections to this argument. One is that what Cohen and others have in mind when saying that people should apply the principles of justice to their private economic transactions is not that Anna, when buying something from Barbara, should completely compensate for Barbara's disadvantaged position, but something much less demanding: that she should pay a reasonably good price. So if, for example, £200 would be seen as a normal or good price for the bike, Anna ought to offer Barbara £200, and not £50, but also not £50,000.

This seems a more reasonable demand, but it is unclear how this demand follows from applying the principles of justice. If justice requires that we compensate inequality in wealth that results from differences in luck instead of from choice or desert, how does this lead to the conclusion that Anna ought to pay a good price for a bike? According to the principles of justice, if differences in wealth are unjust, they need to be compensated for. And the amount of wealth one person ought to give to others is dependent on the size of their (unjust) difference in wealth. Saying that Anna ought to give Barbara £200 for the bike does not follow from this but seems, from the point of view of justice, a completely arbitrary sum.

Another way to look at this is by reversing the situation: suppose Barbara, being much less wealthy than Anna, buys a bike from Anna instead of the other way around. What would a 'good' or non-exploitative price for the bike be in this situation? £50? Or £5? Or should Anna give Barbara the bike for free and add £150 on top, in order for the transaction to be non-exploitative? It might be that, all things considered, Anna indeed ought to give Barbara (and perhaps all other badly-off people) £150, according to the requirements of justice. Yet this would also be the case if she was selling or buying a pair of socks instead of a bike, or if she was buying nothing at all. What we find a reasonable or a non-exploitative price for a good, is thus unconnected to the requirements

of distributive justice. It might be replied that the requirement to apply the principles of justice in private transactions means that we should at least not *increase* already existing justice. Thus, if we meet a poor person who sells her bike because she desperately needs money, we should not take advantage of this situation by offering a low price, thereby making the difference in wealth between us even larger. I will discuss this objection in section 2.4.4 below.

A related possible objection to my view is that what Cohen and others have in mind when saying that people should apply the principles of justice to their private transactions is that people should pay a *fair* price. This would lead to a similar problem, however. I will argue in the next chapter that when we say that people need to pay a fair price, we do not only need to determine what a fair price is, but more importantly, we make a moral statement: we say that it is morally wrong to pay a lower or ask a higher price. We thus need to explain why it is wrong to pay a lower price than the price we have specified as the fair price. Assumedly, this might be done by appealing to the principles of justice: we should not pay a lower price because this is unjust; that is, because justice requires us to compensate for unjust differences in wealth. Yet with this step we encounter the same problem as before: if justice requires us to compensate for unjust differences in wealth, the scope of this requirement is not related to the value of the goods we buy or sell. What is a 'fair' price for a certain good can thus not be deduced from the requirements of justice.

A third possible objection to my arguments is that in making these arguments, I am again seeing distributive justice as a macro principle, that looks at the distribution of wealth in society as a whole, whereas Cohen's idea was that the principles of justice should also apply to individual choices. Hence, even though when looking at society as a whole, Barbara's disadvantaged position should be compensated by all affluent members of society, and not by Anna alone, the point is that if this does not sufficiently happen, Barbara should *also* apply them to her private transactions. The idea could be that even though justice will be better served if all affluent people equally contribute to compensating all disadvantaged people, given that this does not happen, it is

still better if at least the difference in wealth between Anna and Barbara is made smaller (and between everyone else who happen to transact together).

By making this objection, however, the principles of distributive justice seem to collapse in a sort of duty of beneficence, as discussed in section 2.3 on the needs account of exploitation. It amounts to saying that everyone has an individual duty to help people whose level of wealth is unjustly low, even if others fail to contribute to this. This might be a very demanding duty of beneficence in the sense proposed by Singer⁸¹ (see section 2.3.3), which requires us to benefit people as much as needed to compensate their injustice, insofar as possible for us without sacrificing something of equal importance. Or it might be a less demanding duty in the sense advocated by Murphy⁸² and Appiah⁸³ (see section 2.3.3), which requires us to help people with an unjustly low level of wealth only up to what is our 'fair' share of the shared obligation: the amount with which, if everyone would contribute the same amount, their injustice would be compensated.

In both cases, the duty may go much further than the duties of beneficence described in section 2.3, because those duties only applied to people who could not meet their basic needs, and only required to benefit people as much as was necessary to provide them with their basic needs. In contrast, the 'individual duty of justice' described here, means that we are required to provide people with as much as is necessary to remove unjust differences in wealth; if necessary perhaps even up to the point where our own level of wealth becomes the same as theirs.

Hence, this move would make the requirements of justice highly demanding. That does not necessarily make it wrong, and it is not my main objection to it. More problematic is that, as with the duties of beneficence discussed in section 2.3, it is still the case that what the requirements of justice ask us to give to others is not dependent on what we are transacting. And this is so on the terms of justice themselves: if those terms applied to individuals mean

⁸¹ P Singer, *The Life You Can Save: Acting Now to End World Poverty* (Random House, 2009).

⁸² LB Murphy, *Moral Demands in Nonideal Theory* (Oxford University Press, 2000).

⁸³ KA Appiah, *Cosmopolitanism* (Norton, 2006),

that we morally ought to compensate people whose level of wealth is unjustly lower than ours, then what determines whether and how much we ought to give to them is how much others are (unjustly) less wealthy than we are, and not what we are selling to or buying from them. Hence, the objection behind the above example of Anna buying Barbara's bike still stands: even if we would agree that Anna has an individual duty of justice to compensate for Barbara's lack of wealth, this is not related to what is a non-exploitative price to pay for the bike. Thus, similarly to the argument in section 2.3, we could imagine that Anna feels sorry for Barbara and generously offers her £500 for the bike, which normally only costs £200. And we can imagine that at the same time, according to the requirements of distributive justice, Anna actually ought to give Barbara £50,000. Hence, it could be that Anna is violating her individual moral duty of justice, at the same time as buying Barbara's bike for a generous price. Does that mean that the transaction is exploitative? If we say that a failure to apply the principles of distributive justice is what makes exploitation wrong, this seems to be the case. Yet it seems mistaken, and counter-intuitive, to call a transaction in which someone voluntarily gives a very generous price for a good exploitative. Consequently, even if we would grant that there can be such a thing as an individual duty to apply the principles of justice, how much this duty requires us to give is not related to the value of what we are transacting, and to the price at which we find a transaction exploitative. We can thus violate this duty while at the same time engaging in non-exploitative transactions, which is why this argument seems problematic as an explanation of why exploitative transactions are morally wrong.

There are some further problems with this injustice-based argument for the wrong in exploitation. But they also apply to another injustice-based argument that I want to consider in the next section, and I will therefore discuss those problems later, in section 2.4.4.

2.4.3 Exploitation as prior injustice

A related but different argument that appeals to injustice to explain the wrong in exploitative transactions says that exploitation is wrong because exploiters take advantage of a prior injustice or rights violation. A well-known version of this argument is put forward by Hillel Steiner. His aim is to provide a liberal theory of exploitation: a theory that can explain what is wrong with consensual exploitation, while eschewing any conception of objective value or human needs,⁸⁴ and while confining oneself 'to classical liberalism's psychologically and sociologically 'thin' framework of discourse',⁸⁵ which focuses on property rights.

Steiner asks us to imagine an auction, in which Red tries to sell her week's labour, and the winning bid of \$80 comes from Blue.⁸⁶ A third party, White, would have bid \$90, but did not. Whether the transaction between Red and Blue is exploitative, Steiner argues, depends on the reason why White did not make his \$90 bid. If the reason is an injustice suffered by White, the transaction between Red and Blue is exploitative. White may, for instance, have been robbed just before the auction, or he may have been forcefully excluded from the auction, or an \$80 ceiling may have been forcibly imposed on the bidding for Red's labour. Exploitation, according to Steiner, thus involves an exchange of goods for a value higher or lower than it could have been, where that value is the outcome of a preceding injustice or rights violation. Two notable features of Steiner's model are that exploitation always involves three parties,⁸⁷ and that it is not the exploitee's rights that are violated, but the rights of a third party. These features have been criticized by a number of writers, who argue that exploitative transactions can, and often do, only involve two parties; that often the exploitee's rights are being violated instead of a third party's

⁸⁴ H Steiner, 'A Liberal Theory of Exploitation' (1984) 94(2) *Ethics* 225-241, 225.

⁸⁵ H Steiner, 'Exploitation: A Liberal Theory Amended, Defended, and Extended' in A Reeve (ed), *Modern Theories of Exploitation* (Sage, 1987) 132-148, 132.

⁸⁶ H Steiner, 'Exploitation Takes Time' in PA Samuelson and others (eds), *Economic Theory and Economic Thought: Essays in Honour of Ian Steedman* (Routledge, 2010) 20-29, 23. See also for the original example Steiner, 'A Liberal Theory of Exploitation', *op.cit.* 231.

⁸⁷ Steiner, 'A Liberal Theory of Exploitation', *op.cit.* 234.

rights; and that it is odd to see the wrong in exploitation as the violation of a third party's rights, instead of as something inflicted on the exploitee.⁸⁸

In later years, therefore, Steiner adapted his model and accepted that liberal exploitation can also occur when there are just two parties, and because the exploitee's rights have been violated:

Suppose that, prior to the auction for Red's labour, she suffered an involuntary reduction of her endowment by having been robbed. The consequent lowering of her budget constraint may well be such as to entail a reduction in her *reservation price* for a week of her labour. ... Under these circumstances, do we have sufficient reason to see a winning bid of \$70 from Blue as exploitative? The answer is 'Yes'. For had she not been robbed, she would simply not have sold her labour for less than her pre-robbery reservation price of \$75'.⁸⁹

Steiner's model of exploitation based on prior injustice can be used to explain certain instances of exploitation in the market, such as exploitation of certain types of monopoly power, insufficient information, corruption, and theft of resources. His model might also be used to explain exploitation where the prior injustice is distributive injustice. Steiner notes that exactly which restrictions actually constitute injustices, depends on which rights are assigned to individuals by a theory of distributive justice.⁹⁰ So we can imagine an argument that says, for instance, that workers in sweatshop factories are being exploited because the distributive injustice in their country prevents many other potential employers to start businesses and offer them higher wages than the sweatshops do, and/or because the workers' unjust poverty lowers their reservation price—the price for which they are willing to sell their labour.

It is important to note that on this model, the exploiter need not be the one who is responsible for the injustice that enabled exploitation. Blue, in

⁸⁸ See e.g. A Carling, 'Exploitation, Extortion and Oppression' (1987) 35(2) *Political Studies* 173-188, 184; K Hyams, 'Rights, Exploitation and Third-Party Harms: Why Background Injustice Matters to Consensual Exchange' (2012) 43(2) *Journal of Social Philosophy* 113-124; S Walt, 'Comment on Steiner's Liberal Theory of Exploitation' (1984) 94 *Ethics* 242-247.

⁸⁹ Steiner, 'Exploitation Takes Time', *op.cit.* 26.

⁹⁰ Steiner, 'Exploitation Takes Time', *op.cit.* 25. Steiner himself follows Nozick in arguing that questions of distributive justice are best approached by looking at whether initial distributions are just, instead of by focussing on end-state distributions.

Steiner's auction example, might not even have realized that White was prevented from bidding at the auction because he was robbed. Steiner's argument is merely that transactions in which the value for which goods are exchanged is the outcome of a prior injustice, are themselves unjust.

Other writers have put forward comparable arguments.⁹¹ Aditi Bagchi, for instance, argues that although distributive justice is a shared responsibility of societies, and although it would be unfair to burden particular individuals with the responsibility of raising particular others to the socioeconomic status they would occupy in a just society, it is not unfair or arbitrary to disallow them from benefitting from their unjust advantage or from others' unjust disadvantage.⁹² Bagchi, like Steiner, uses a theft analogy: 'It is one thing to say that one in a group of thieves should restore all that the group has stolen; it is another thing to maintain that the most audacious thief should retain his extra winnings because his colleagues have not been apprehended.'⁹³ She argues that if distributive injustice is wrong, transactions that are contingent upon and exacerbate the injustice are wrong as well.⁹⁴ And this, it might be argued, is exactly what happens in exploitation: exploiters take advantage of existing distributive injustice, and of their advantageous bargaining position resulting from this injustice, in order to extract as much benefit as possible from the person with whom they are transacting. The wrong in exploitation, it might be argued, is thus that exploiters take advantage of an existing injustice. In the next section, I will argue against this argument.

2.4.4 Problems with exploitation as prior injustice

In this section, I will point out some problems with the argument that exploitation is wrong because exploiters take advantage of a prior injustice.

⁹¹ See for similar arguments e.g. A Bagchi, 'Distributive Justice and Private Law' (2008) 60 *Hastings Law Journal* 105-149; Hyams, *op.cit.*; and Sample, *op.cit.* 82. (Sample was also mentioned in section 2.3 on the needs account of exploitation. In fact, she proposes three different reasons why exploitation can be wrong: because of needs, because of injustice, and because the good traded should not be commodified.)

⁹² Bagchi, *op.cit.* 126.

⁹³ Bagchi, *op.cit.* 126.

⁹⁴ Bagchi, *op.cit.* 125.

Nevertheless, most of these arguments also apply to the version of the injustice account discussed in sections 2.4.1 and 2.4.2.

A first, 'practical', problem is that it is often hard, if not impossible, to know what the principles of distributive justice require in a particular situation, or to know to what extent someone's disadvantaged position is indeed the result of a prior injustice. Of course, we first need to agree on a view of distributive justice. On, say, a libertarian view, many transactions between people with unequal wealth and opportunities will be considered just that will be considered unjust according to more egalitarian theories. But even if we agree on an egalitarian view that states, for instance, that justice requires that differences in wealth and opportunities are the result of differences in effort and choices instead of luck, it is still extremely hard to determine in particular cases to what extent the parties' difference in wealth is unjust. Suppose that an employer and an employee have made an employment contract, and that the employee is much poorer than the employer, and has a much weaker bargaining position because she cannot find any other job, whereas the employer does know plenty of other candidates for the job. How do we know the extent to which the employee's weak position is the result of her choices and effort (perhaps she had the chance to improve her perspectives on the labour market but dropped out of secondary school), and to what extent her weak position is the result of luck or background conditions? Moreover, how do we decide to what extent her choices and efforts are themselves the result of unlucky background conditions? (Perhaps a reason she did not finish secondary school is that she had to care for her sick parents, or that her parents never taught her the importance of education.) Even if someone's disadvantaged position does seem to a great extent the consequence of her own efforts and choices, the exact causes of people's situation are often more complex than it seems, and may involve more remote factors such as gender or racial discrimination, international trade regimes, barriers for new businesses to enter, or, more generally speaking, the presence or absence of 'the delicate combination of

social, political, geographic, and other factors needed for the production of wealth and economic development'.⁹⁵

Nevertheless, although it may be hard or impossible to determine the exact extent to which a disadvantage is the result of injustice, we may still agree that in certain cases, such as Western sweatshops in developing countries, injustice is very likely an important factor. A more serious problem that applies to all discussed versions of the injustice account of exploitation, is therefore the fact that they can only explain exploitative transactions that result from injustice, while there can arguably be exploitative transactions that do not originate in injustice. For example, if I am stranded with my car in the desert, and a passerby offers to give me a lift, but only if I give her £1,000, this seems a classical example of exploitation, even if the fact that I am stranded is not a matter of injustice. Yet Steiner and Bagchi deny that situations such as these are exploitative, because my disadvantaged position is not the result of any prior violation of a right or injustice.⁹⁶

Moreover, the reason why I did get stranded with my car is not necessarily relevant to whether the passerby's offer is exploitative. Even if I knew that my car was likely to break down soon, and should not have taken the risk of driving in the desert, it seems still exploitative if someone who happens to come by offers a lift on the condition that I pay £1,000. In my view, then, the earlier discussion about how to decide the extent to which a disadvantage is unjust or the result of effort or choice, is not truly relevant for exploitation. Even if an employee's bad bargaining position is not the result of injustice, but entirely the result of her own lack of effort or her own wrong choices, it seems still exploitative if an employer takes advantage of that bad bargaining position by offering a terribly low wage for extremely long working hours, while she could easily have offered better wages and working hours and still make large profits. Hence, a problem with the injustice account of exploitation is that it can only explain transactions in which someone's disadvantaged bargaining

⁹⁵ Powell and Zwolinski, *op.cit.* 467-468.

⁹⁶ Steiner, 'Exploitation: A Liberal Theory Amended, Defended, and Extended', *op.cit.* 144; Bagchi, *op.cit.* 127.

position arises out of injustice, whereas we can also exploit people whose bad bargaining position has another cause.

Nonetheless, it could still be argued that these theories can satisfactorily explain the wrong in *some* types of exploitative transactions: transactions in which the exploitation does result from injustice. I believe that they cannot. I have argued in section 2.4.2 why an argument based on Cohen's idea that principles of justice should be applied to individual transactions does not work. I now want to argue that theories that say that exploiters act wrongly because they take advantage of previous injustices do not work either. These theories say that, just as it is wrong for anyone to profit from the sale of stolen goods, it is wrong for exploiters to benefit from an injustice by using it to strike a profitable bargain. The theft analogy is not correct however. When goods are stolen, all benefits from the sale of the goods are considered unjust, even if those benefits are very small. Yet in the case of exploitative transactions, it is only the extraction of relatively large benefits from prior injustices that is considered exploitative. Imagine, for example, that vandals have scratched your car and that you need to have it repainted. The scratching of your car is clearly an injustice, but does this mean that the car painter is necessarily exploiting you? Most people will agree that the painter is not exploiting you if she asks a reasonable price for the painting, even though she benefits from the fact that your car has been scratched because it gives her an income. The same is true for cases of distributive injustice. Suppose that person A and B live in a society with large differences in wealth and almost no social security, and that, according to an agreed theory of distributive justice, it is unjust that person B, like many other people, has fewer opportunities and is much poorer than person A. As a result, B has a rather monotonous job in A's paper clip factory. A is a generous employer though, and pays B, and all other employees, a salary much above the minimum wage and/or above the wage usually paid by other employers for that type of work. A does not appear to be exploiting B, even though she benefits from B's unjust background circumstances, because they have influenced B's

decision to accept the job in A's factory, and thus help A to make a profit.⁹⁷ What these examples show is that we do not consider taking advantage of prior injustice wrong in itself, and that it is only when gaining a *large amount* of benefit from prior injustice, that we find transactions exploitative. Hence, taking advantage of prior injustice cannot, itself, be what makes exploitation wrong.

It might be objected that exploiters do not merely take advantage of existing injustices, but actually make them worse. For instance, Bagchi, in the citation in the previous section, calls transactions unjust that are contingent upon *and exacerbate* distributive justice. Do exploiters indeed make existing injustice worse? They certainly characteristically benefit a lot from the exploitative transaction, while the exploitees seemingly benefit much less. Sweatshop owners, for instance, usually receive a much larger profit from the production in their factories than their employees, while the employees typically do much more or much tougher work. The arrangement thereby makes sweatshop owners considerably richer, whereas it gives only a small income to the employees. It might be argued, then, that this is what makes exploitation wrong: exploiters actually increase injustice, because they make the people who were already rich even more rich, while benefiting the people who were already poorer considerably less.

Whether exploiters indeed aggravate existing injustices depends on the way we look at it. If we think of it in terms of people's subjective wealth or wellbeing, exploitative transactions can actually lessen unjust differences in wealth or wellbeing, compared to the situation in which there would be no transaction. This is because the exploitees often gain much more from exploitative transactions than the exploiters, since the fact that they have so much to lose is exactly what makes them vulnerable to exploitation. If I am drowning in a pond, and a passerby offers to rescue me for £1,000, I will gain

⁹⁷ Or consider another example: Bob, because he is (unjustly) relatively poor, cannot afford to spend much money on travelling, and therefore always travels with cheap but less comfortable low-cost airlines. This means that low-cost airlines are benefiting from the unjust relative poverty of Bob and people like Bob. Still, I think it is mistaken, and counter-intuitive, to say that low-cost airlines are *for that reason* necessarily exploiting people like Bob. (They might engage in other problematic or exploitative practices, such as expensive help-desk policies.)

my life by accepting the offer, which is worth much more to me than the £1,000 the passerby gains. (If it would be worth less to me than £1,000, I would not accept the offer.) The same is likely true for some instances of sweatshop labour. Someone who is poor, has a family to take care of, and lives in a country with very little social security, has a lot to lose if she does not manage to secure an income: the health and wellbeing of her entire family. If a sweatshop offers her an income, even if very low, it will thus benefit her greatly, even though the sweatshop owner benefits greatly from the transaction as well, and could easily pay a higher wage. Compared with the alternative—having no employment—sweatshop workers may thus benefit more from the transaction than sweatshop owners, because their alternative situation is so harsh. Moreover, since we are talking about justice and distribution of wealth, we should not only compare sweatshop workers' gain with the employers' gain, but with the general distribution of wealth. And compared with other people in the community who also want to work for a sweatshop factory but cannot find such a job, sweatshop workers' wealth is certainly increased. Hence, compared with the status quo, or no-transaction-baseline, we cannot say that exploiters necessarily always exacerbate injustice, because, counter-intuitive as it may seem, exploitative transactions may actually lessen the difference in wellbeing or wealth between two people, and between the wealth of the exploited person and other people.

Two objections might be raised to this. First, perhaps we should not compare people's relative gains from a transaction in terms of subjective wealth or wellbeing, but in terms of how much the parties to a transaction each gain in an objectively measurable value. Second, perhaps we should not compare people's relative gains from a transaction with the situation in which no transaction takes place.

Concerning the first objection, recall the example of Barbara, who is relatively poor, who tries to sell her bike to Anna, who is relatively well off. Imagine that Anna knows that Barbara is desperate for money, and that she uses this knowledge to make Barbara sell her bike for only £50, even though Anna knows that the bike is probably worth much more; say £200. It might be argued that in this situation Barbara gains £50, and Anna gains a bike worth

£200, meaning that the difference in wealth between the two has increased in terms of absolute value, even if the £50 actually benefits Barbara much more than the £200 bike benefits Anna in terms of subjective value. The example of a passerby offering to rescue me for £1,000 while I am drowning can also be recast in this light. Although I value my life at more than £1,000 and thus gain something worth more than £1,000 by being rescued, it might be argued that the objective value of a rescue-service (say, making one's clothes wet and an hour's worth of 'work') is much less than £1,000. The passerby therefore gains £1,000 while I gain a service that is worth much less than £1,000. Thus, it might be argued, we should not say that the exploitee often gains more from the transaction than the exploiter, because this is not the case if we look at it in terms of the objective value of the goods or services exchanged. However, the strength of this objection depends on the assumption that it is indeed possible to determine an objective value of goods and services. In the next chapter I will argue against this assumption. I will therefore leave this objection until the next chapter.⁹⁸

A second objection to my claim that exploitees frequently gain more from an exploitative transaction than exploiters, is that we should not compare people's relative gains from a transaction with the situation in which no transaction takes place. It is clear that compared with what exploiters could or perhaps should have offered, their wealth or wellbeing is much more increased by exploitative transactions than that of the exploitee, and, consequently, the existing difference in wealth between them is further increased. Sweatshop owners, for instance, could presumably offer better wages and working hours to their employees, while still keeping enough profit for themselves. Compared with that baseline, the sweatshop owners certainly gain a lot more than

⁹⁸ Though it is worth noting here that this objection seems to have more strength in certain cases of exploitation, such as sweatshop labour. There, it may be relatively straightforward to find out that the net profit added to a company by each additional employee is, say, £100, and that £90 of this profit goes to the sweatshop owners and £10 to the employees. In that case, we can thus in some way objectively measure the increase in wealth going to the alleged exploiter and the increase in wealth going to the alleged exploitee, even though this says nothing about their subjective increase in wellbeing. Still, this is by no means true for all instances of exploitation, and I would therefore still contend that an increase in 'objective' unjust differences in wealth cannot be seen as a defining feature of exploitative transactions.

sweatshop workers. Yet if we want to make this argument, and compare the relative benefits of a transaction not with the no-transaction baseline, but with the situation in which people act in accordance with their moral duty, we need to make clear why such a moral duty exists. That is: why passersby ought to rescue drowning people for no more than a reasonable compensation, and why employers ought to offer reasonable wages. As mentioned before, justifying the existence of such a duty might not be too hard in the former case. Yet in the case of employers and possible employees whose life is not necessarily in immediate danger, this is not so straightforward, as I have tried to show in the different sections of this chapter. The accounts of exploitation discussed in this chapter and in the next try to justify exactly such a duty to offer reasonable wages or prices—a duty not to exploit—whether based on consent, vulnerability, needs, justice, or fairness. And my main argument of this chapter, and the next chapter on fairness, is that all these accounts are unsuccessful in justifying such a moral duty. Yet if I am right that we cannot justify a duty to offer reasonable or ‘fair’ wages or prices, we can also not decide whether a transaction has increased existing injustices by comparing the outcome of the transaction with the baseline ‘reasonable price’ or ‘fair price’. Hence, the argument that exploitative transactions are wrong because they increase unjust differences in wealth or wellbeing is problematic, because exploitative transactions often actually improve exploitates’ relative wealth or wellbeing compared with the no-transaction baseline, and if we want to compare them with a moral baseline, we have to justify why there is a moral duty to offer reasonable or ‘fair’ prices, which, I have argued and will further argue in the next chapter, is problematic.

A final problem with the argument that exploitation is wrong because exploiters increase injustice, is that, as said before, people can also be exploited if they have not suffered injustice. Recall the example of the stranded person and the passerby offering help for £1,000. The stranded person might be considerably richer than the passerby, in which case the payment of £1,000 may actually *reduce* the overall unjust distribution of resources. Still, many people would consider this an exploitative offer. Hence, this shows that whether we consider a transaction (non-)exploitative, is not necessarily the same as

whether we think that the injustice in the distribution of resources has been increased.

A related possible objection to my rejection of the injustice account is that the theories I described do not mean that benefitting from injustice is always unjust, but that it is unjust to positively use an existing injustice to get as beneficial a price as possible. Or in other words: to get others to agree on a price that they would not have agreed on if the injustice had not existed. Following this view, we can avoid exploiting people who are in an unjustly disadvantaged position by offering the price they would have accepted if the injustice did not exist.

Note that by making this argument, we are no longer saying that benefitting from a prior injustice is wrong in itself, but only benefitting from a prior injustice *by a certain amount*: the amount made possible by the injustice. This is an argument made also by some proponents of the unfairness account of exploitation, who say that taking an unfairly large advantage is what makes exploitation wrong, and will be discussed in the next chapter. For now, I will merely point out that calculating which price would be agreed upon if someone had not suffered an injustice is often impossible, because in many cases, if there had been no prior injustice, there would have been no transaction at all. Think, for instance, of the earlier mentioned example of person B who works in person A's paper clip factory, because she—unjustly—has fewer opportunities and wealth than A and many others. If we were to imagine away this injustice, and imagine that B has equal opportunities and is equally wealthy as everyone else in society, it is highly unlikely that she would still choose the monotonous job in A's paper clip factory and would not choose to pursue a more interesting career.

Moreover, if the argument is that we should imagine the price that would be agreed upon if the transaction *would* take place if there were no injustice, the requirement for a price to be non-exploitative seems far too demanding. For B to be willing to work in A's paper clip factory when she has equally good opportunities to pursue a more interesting career as everyone else, A would likely have to offer B an extraordinary high wage to make up for the monotonous work; a wage higher than the wage for jobs B finds more

appealing, such as an airplane pilot or a lawyer. Still, in the original situation, in which B does have a disadvantaged position, and she does work in A's paperclip factory, I doubt that we would find any wage that is lower than an extraordinarily high wage exploitative. If A offers B a good wage, not higher than the wage of an airplane pilot, but nonetheless a generous wage for reasonable working hours in good working conditions, I do not think we would consider this exploitative.

Snyder makes a similar comment about a classical example of consensual exploitation—sweatshop factories: 'If a particular worker were given the wider array of opportunities and resources that, arguably, would be available to her in a fully just world, it is unlikely that she would be willing to engage in fairly monotonous and unrewarding factory labour for anything less than an exceptionally high wage and in particularly enjoyable working conditions.'⁹⁹ Yet going as far as offering an 'exceptionally high wage' and 'particularly enjoyable working conditions' for factory labour is not necessary to avoid being considered exploitative. If factory owners offer their employees good working conditions and good wages, it does not seem exploitative, even if the wages are not exceptionally high or the working conditions not exceptionally enjoyable. Hence, my point here is not that the low wages and bad working conditions offered by sweatshop factories are not exploitative, nor that there is no criterion to decide whether an offer is exploitative. My argument is that the hypothetical price that people would accept if it were not for their unjust circumstances, is not a good criterion to decide this, because it does not correspond to the price at which we start finding transactions non-exploitative.

Consequently, it thus seems, again, that the price at which we find a certain offer exploitative or non-exploitative, is not necessarily related to the background injustice of the transaction. And it seems again that it is not so much the taking advantage of someone's unjust circumstances that makes a transaction exploitative, but doing so in an excessive way. When we acknowledge that, and allow that, for instance, factory owner A is only

⁹⁹ Snyder, 'Needs Exploitation', *op.cit.* 393.

exploiting B if she takes advantage of B's background injustice in an excessive way—by paying her very little, or asking very much of her—the argument we are making about the wrong in exploitation is no longer about injustice. This is because the amount with which A has to benefit B in order for the transaction not to be exploitative, is not necessarily related to B's injustice—neither to what is necessary to compensate for B's injustice, nor to what B would have accepted if she would not have been in her unjust situation. A more promising understanding of exploitation seems therefore the argument that exploitation is wrong because exploiters take an unfairly large advantage, which will be discussed in the next chapter.

To conclude, in this section, I have discussed the idea that exploitative transactions are wrong because of injustice. I have tried to show why this account of exploitation cannot adequately explain what is wrong with exploitation, both when based on the argument that principles of distributive justice should be applied to individual transactions, and when based on the argument that benefiting from prior injustices is itself unjust. I have argued that distributive justice is a matter of a just division of both benefits and burdens, and that, therefore, making particular individuals disproportionately responsible for correcting background injustices, seems to go against the demands of justice. I have argued that even if we deny the importance of this and grant that particular individuals can be held responsible for compensating background or prior injustices, there are the further problems that taking advantage of someone's background injustice is not wrong in itself; that exploiters do not necessarily increase injustice, that the amount that we are required to give or ask to compensate for existing injustices is unrelated to the value of what is being transacted; and that, consequently, this amount is unrelated to the amount at which we find a transaction exploitative. Moreover, I have argued that we cannot only exploit people who are in unjust circumstances, but people in just circumstances as well.

In other words, I have tried to show that we can engage in exploitative transactions without taking advantage of injustice, that we can engage in *non-*

exploitative transactions while taking advantage of people's unjust circumstances, and that when we do engage in exploitative transactions with people who are in unjust circumstances, what is required to make the transaction non-exploitative is not dependent on this injustice. This is why the injustice account of exploitation cannot satisfactorily explain what is wrong with consensual exploitation.

2.5 Taking stock: The problem of consensual exploitation

In this chapter, I have discussed four different answers to the question of why consensual exploitative transactions are wrong, and pointed out a number of problems with each of these answers. In short, the vulnerability account of exploitation is problematic because, even though using someone's vulnerability for one's own gain is a characteristic feature of exploitative transactions, this feature does not itself explain what makes exploitation wrong, because we can also use people's vulnerability in ways that are not exploitative. The main problem with the consent account, needs account, and injustice account, on the other hand, is that they ultimately cannot escape conflating the wrongness or injustice of a certain transaction and the wrongness or injustice of the circumstances or system in which that transaction takes place. This is problematic because, although exploiters might have individual moral duties towards people with whom they transact that follow from shared responsibilities to help people in grim circumstances, what is required for such duties is not dependent on the particularities of the transaction, such as the value of the goods transacted. Consequently, the requirements of such duties are not related to whether and when we regard transactions as exploitative.

It thus appears that in order to solve the problem of consensual exploitation, the wrongness of exploitative transactions cannot be explained by appealing to something in the 'background circumstances' of the transaction, such as societal distributive injustices or the dire situation in which one of the parties finds herself, and with a corresponding duty to compensate distributive

injustices or to help people in need. Since such duties are based on characteristics that are unrelated to the transaction, such as desert, dependency or need, they will give rise to duties that are unrelated to the transaction as well—and hence unrelated to whether we find a particular transaction exploitative.

The ‘unfairness account’ of exploitation seems to solve this problem by locating the wrong in exploitative transactions not in something in the background circumstances of transactions, but in the transactions themselves: it says that the wrong in exploitation is unfairness in the division of benefits and burdens in the transaction. This argument, which is currently probably the most common understanding of exploitation, will be discussed in the next chapter.

CHAPTER 3 – UNFAIRNESS

The previous chapter discussed four competing answers to the question of what is wrong with consensual exploitation, and tried to show why all of them are unsuccessful in explaining the wrong in exploitation. This chapter discusses a fifth answer, which says that exploitation is a matter of unfairness, and which I will call the unfairness account of exploitation. The first section gives an outline of this account, and of the concept of fairness. The following six sections discuss the three most common views of how to determine when consensual exchanges are fair or unfair, and a number of possible justifications for why this is so. I will argue that all these views and justifications are problematic, and in section 3.8, I will conclude that while the unfairness account may give an accurate description of which transactions we find exploitative, it cannot justify why they are morally wrong.

3.1 The unfairness account of exploitation

The canonical expression of the unfairness account of exploitation is Alan Wertheimer's 1996 *Exploitation*. Wertheimer argues that examples of intuitively exploitative transactions do not strike us as exploitative anymore once we remove the unfair division of benefits in those transactions, and vice versa: we *do* find transactions exploitative if one of the parties receives an unfair share of benefits or burdens. Recall, for instance, the case described in chapter 2 of a grocery store owner in a remote town, who could ask exceptionally high prices for her goods because of her monopoly position. If she does so, Wertheimer would argue, it would strike us as exploitative. Yet if she decides not to do so, but to ask prices similar to most other grocery stores, we would not find it exploitative, even though all other circumstances are the same: she still uses people's needs or vulnerability for her own gain, and people still have no better alternative than to buy their groceries in her shop.

After Wertheimer, many other writers¹⁰⁰ have expressed the same view: the wrong in exploitation is a matter of unfairness, and we can avoid exploiting others by asking or offering a fair price when we transact with them. In line with the criticism on the other accounts mentioned in the previous chapter, we should note that when talking about 'fairness' these writers often refer to 'transaction-specific fairness',¹⁰¹ and not to something unfair in the background circumstances of the transaction. As Wertheimer remarks:

I believe [...] that we should distinguish between fairness as a principle for the distribution of social resources and fairness as a principle for transactions and that principles of fair transactions should bracket information that might be relevant to other moral purposes, such as justifying aid or redistribution. So [...] we deliberately abstract from certain elements in their background situations, such as the parties' overall welfare.¹⁰²

If the wrong in exploitative transactions is unfairness, the crucial question for this understanding of exploitation is: what makes a consensual exchange (un)fair?

Perhaps surprisingly, several writers advocating the unfairness account of exploitation do not address this question, or answer it by saying that whether a transaction is fair depends on the circumstances or on which view of fairness one holds as true.¹⁰³ This may reflect a more general lack of attention in the field of moral philosophy to analysing the concept of fairness and understanding

¹⁰⁰ See e.g. RJ Arneson, 'Exploitation' in LC Becker and CB Becker (eds), *Encyclopedia of Ethics* (2nd ed, Routledge, 2001) 515-517; TL Beauchamp, 'Autonomy and Consent' in F Miller and A Wertheimer (eds), *The Ethics of Consent, Theory and Practice* (Oxford University Press, 2010) 55-78; E Emanuel, 'Addressing Exploitation: Reasonable Availability v Fair Benefits' in JS Hawkins and E Emanuel (eds), *Exploitation and Developing Countries: The Ethics of Clinical Research* (Princeton University Press, 2008) 286-314; S Gbadegesin and D Wendler, 'Protecting Communities in Health Research from Exploitation' (2006) 20(5) *Bioethics* 248-253; R Mayer, 'What's Wrong With Exploitation?' (2007) 24(2) *Journal of Applied Philosophy* 137-150; C Meyers, 'Wrongful Beneficence: Exploitation and Third World Sweatshops' (2004) 35(3) *Journal of Social Philosophy* 319-333; and DB Resnik, 'Exploitation in Biomedical Research' (2003) 24 *Theoretical Medicine* 233-259.

¹⁰¹ A Wertheimer, *Exploitation* (Princeton University Press, 1996) 216.

¹⁰² Wertheimer, *Exploitation, op.cit.* 216.

¹⁰³ See e.g. RJ Arneson, 'Exploitation', *op.cit.* 515-517; JS Hawkins, 'Exploitation and Placebo Controls' in JS Hawkins and EJ Emanuel, *Exploitation and Developing Countries, The Ethics of Clinical Research* (Princeton University Press, 2008) 246-285; and Gbadegesin and Wendler, *op.cit.* 248-253.

what it means to be fair,¹⁰⁴ even though the concept of fairness does play a significant role in our moral thinking, and has been widely used in theories of, for instance, political obligation¹⁰⁵ and justice.¹⁰⁶

In general terms, fairness refers to the correct ordering of the distribution of benefits and burdens (such as goods, effort, income, punishments, rights, and victory),¹⁰⁷ and a fair transaction is a transaction in which every party gets their 'due share'.¹⁰⁸ Which division of benefits and burdens is fair thus depends on what share one is due. John Broome, who has set out what is perhaps the best-known theory of fairness, describes this in terms of claims that the respective parties have to a good.¹⁰⁹ These claims may be based on many different principles, such as equality (e.g. both parties should receive an equal share); desert (one party has made more effort towards the good and thus should receive a larger share, in proportion to her effort); agreements (if a party has been promised a certain share of benefits or burdens, fairness requires that this agreement should be honoured); rights (one party has a right to the good and thus fairness requires that she can decide whether and how to divide the good); or needs (one party has more need for the good and fairness requires that the good will be distributed according to need). People will frequently disagree, though, about which principles can ground valid fairness claims, about which principle(s) to apply in particular situations, and/or about which principle takes precedence in particular situations. As a consequence, people will disagree on what fairness means or requires in specific situations.

Confusion may also arise because like the concept of exploitation, the concept of fairness is used in both a non-moral and a moral sense. In its non-moral sense, the word 'fair' is used, for example, to indicate that some action is

¹⁰⁴ CL Carr, *On Fairness* (Ashgate, 2000) 1; B Saunders, 'Fairness Between Competing Claims' (2010) 16 *Res Publica* 41-55, 42; MM Pillutla and JK Murnighan, 'Fairness in Bargaining' (2003) 16(3) *Social Justice Research* 241-262, 242; Wertheimer, *Exploitation*, *op.cit.* 218.

¹⁰⁵ See e.g. DA Richards, *A Theory of Reasons for Action* (Oxford University Press, 1971).

¹⁰⁶ E.g. J Rawls, 'Justice as Fairness: A Restatement' (1958) 67 *Philosophical Review* 164-194.

¹⁰⁷ AJ Simmons, 'Fairness' in LC Becker and CB Becker (eds), *Encyclopedia of Ethics* (2nd ed, Routledge, 2001) 520-522, 521.

¹⁰⁸ N Rescher, *Fairness, Theory and Practice of Distributive Justice* (Transaction Publishers, 2002) xii.

¹⁰⁹ J Broome, 'Fairness' (1991) 91 *Proceedings of the Aristotelian Society* 87-101, 92.

appropriate or understandable ('fair enough'), or to indicate the absence of blemish ('fair weather', 'fair skin').¹¹⁰ In its moral sense, in contrast, to say that something is fair indicates a moral approval, and entails saying that there are moral reasons why things should be like that. Conversely, to say that something, in particular a distribution, is unfair, means to utter a moral condemnation and to say that, for some moral reason, the distribution ought to be different.

When proponents of the unfairness account say that exploitation is wrong because it involves the unfair division of benefits and burdens, they use the concept of fairness in its moral sense. After all, they invoke the concept of (un)fairness to explain what makes exploitation morally wrong. For that reason, it seems surprising that, as said before, several writers who propose a version of the unfairness account of exploitation do not address the question of what makes a consensual transaction unfair. This is because if, as they do, we say that exploitative transactions are wrong because they are unfair, specifying when and why transactions are unfair is not merely a further elaboration or application of a fairness theory of exploitation, but is its 'moral core': it is the part that actually answers the question 'what is wrong with exploitation?'. If we say that exploitative transactions are wrong because the distribution of benefits and burdens in those transactions are unfair, we say that the distribution of benefits and burdens ought, for some moral reason, to be different. Conversely, if we say that a certain distribution of benefits and burdens—say, a certain price—is fair and non-exploitative, we say that one morally ought to pay this price. We then thus have to explain why one morally ought to do so, and why it would be wrong to offer or ask a lower or higher price. If one does not explain this, the unfairness account of exploitation does not explain why exploitation is morally *wrong*, but merely describes what exploitation *is* in different terms. It says that exploitation is taking advantage in an unfair manner and that whether taking advantage is unfair depends on one's view of unfair exchanges, which brings us not much further than where we started: exploitation is taking advantage in a wrongful manner, but exactly which wrongful manner is debated.

¹¹⁰ See Carr, *op.cit.* 8.

To avoid misunderstanding: I do not mean to argue that there can be only one standard of fairness, and one justification for this standard, that applies to all instances of exploitation. It might be that in certain situations, fairness requires that benefits and burdens are divided on the basis of a certain principle, and in other situations on the basis of another principle. But the fact that we might need different explanations for the requirements of fairness for different situations, does not change the fact that we do need such explanations if we use the term 'unfair' to explain the moral wrong in exploitation.

Consequently, I believe that the unfairness account of exploitation needs to answer two questions: 1. When is a consensual exchange (un)fair? (and thus (non-)exploitative); and 2. Why is this so? That is: Why is it morally wrong for us to ask a higher or pay a lower price, especially if the other is willing to accept this price? The answers to these two questions are of course often based on the same principles, but this is not necessarily so, as I will show in this chapter. In the following sections, I will set out the three most common answers to the first question that can be found in the literature on exploitation. In explaining when exchanges are fair, and thus non-exploitative, these three answers refer, respectively, to production costs (section 3.2), to competitive market prices (section 3.4) and to bargaining disadvantages (section 3.6). As I will show, all three theories are mainly concerned with the first question: how to determine when a transaction is fair. They give much less attention to the second question: why is this so; that is, why is it morally wrong not to offer this price. Nevertheless, I will distinguish some possible answers to the second question for each of the three theories. For the fairness theory based on production costs, I discuss two possible answers, one based on productivity, and one based on needs (in section 3.3). For the fairness theory based on the competitive market price, I discuss a possible justification based on consent (section 3.5). And for the fairness theory based on bargaining disadvantages, I discuss two possible justifications, one based on vulnerability and one based on injustice (section 3.7). Although I discuss each possible justification for why a certain price is fair in relation to a particular view of when a price is fair, with which it fits most logically, some of the justifications may perhaps also be used to justify other

views of when a price is fair. For instance, the argument about vulnerability that I will discuss in relation to the fairness theory based on bargaining advantages, might perhaps also be used to justify the fairness theory based on the competitive market price. This, I think, is not of great importance for my argument, because I will eventually argue both that the three methods of determining the fair price are problematic, and that all five possible justifications are problematic, for whichever of the three methods they are used.

3.2 Fairness and production costs

One reason why liberal theorists have problems in explaining why exploitation is wrong, or unfair, is that they typically deny that all goods have an objective or intrinsic value. In their view, goods have a use-value, which depends on how much benefit or usefulness a good has for a particular person and which therefore differs from person to person; and goods have a market value or exchange value, which depends on how much people are willing to pay for the good, which in turn depends on the good's use value, and the supply and demand for the good. They generally do not think that goods have an intrinsic or objective value that is distinct from their use or market value, and can be independently measured. This view seems to make sense, when we think of the way in which the value that people attach to certain goods differs over time, and differs from person to person. For example, when Apple released its Iphone 5, and priced it at £529, many people were willing to buy the Iphone for this price, so apparently, the Iphone 5 was worth at least £529 for those people. Other people, on the other hand, were not willing to pay this, even if they did have £529 to spare, so apparently the Iphone 5 was not worth £529 for them. Similarly, if you have an Iphone 5 and look at the common price for which second-hand Iphone 5s are sold on the internet, then you might find out that the market-value of your (second-hand) Iphone 5 is around £400, but if Apple tomorrow announces the release of an Iphone 6, you will probably see the market-value of your Iphone 5 decreasing, even though its use value is still the

same for you. If, on the other hand, someone were to give you an Iphone 6 as a birthday present, the use-value that your Iphone 5 has for you might decrease to almost zero. As a consequence, it seems strange to say that your Iphone 5 has an intrinsic value, because the value that both you and other people attach to it, can vary considerably with different circumstances. The same seems true for all goods and services.

The idea that the value of goods is a subjective quality is widespread, but it makes it more difficult to explain how exploitative transactions can be unfair. This is because, as mentioned in the previous chapter, if we think in terms of use-value, the exploited party in a transaction typically receives as much value as, or even more value than, the exploiting party, because the fact that she has so much to gain from the transaction, is exactly what makes her susceptible to exploitation. And if we think of the value of goods in terms of market value, there are numerous examples of transactions in which one of the parties receives the market value for the good or service she provides, but in which she is nonetheless exploited. Think for example of many instances of sweatshop labour.

The first possible version of the unfairness account that I will discuss solves this problem by arguing that goods do have an objective value that can be measured, and by saying that it is unfair if, in a transaction between person A and B, the value that is given by A to B is smaller than the value given by B to A. In order to ensure that a transaction is fair and non-exploitative, we thus, on this view, have to ensure that the value of the goods or services that one party receives, does not outweigh the value of the goods or services the other party receives. A key question is therefore: if goods and services have an objective value, how can it be determined or measured? Although other options might exist,¹¹¹ the most feasible answer for a theory of exploitation is that the

¹¹¹ One option might be to argue that goods have an objective value that depends on the extent to which they contribute to a valuable life, according to some objective conception of what it means to live a valuable life. Thus, a Louis Vuitton key ring, on such a view, will be thought to have very little objective value (and the fact that it costs £300 may therefore be seen as unfair), whereas goods such as healthy food, education, and books, will be thought to have a high objective value. However, such a conception of the value of goods would not be suitable to justify a theory of exploitation as unfairness, because it leads to counterintuitive conclusions,

objective value of goods can be measured on the basis of the costs that were needed to produce the good.

3.2.1 Production costs-based theories of value

Probably the best-known version of production costs-based theories of value is Karl Marx's labour theory of value.¹¹² Simply put, this theory says that the value of goods is determined by the labour time, or labour power, socially necessary to produce them. The value of labour power itself, in turn, also is determined by what is required to produce it, and this is identical with what is required to produce the means of subsistence of the worker, because the worker's labour is only produced if the worker herself is 'produced'.¹¹³ Although Marx did not express the wrong in exploitation in terms of unfairness,¹¹⁴ and his theory is primarily concerned with exploitation as a systematic phenomenon, occurring on a societal level between a capitalist class and a working class, one might want to use the labour theory of value to specify the requirements of fairness in individual exchanges as well. If so, an exchange would be fair and non-exploitative, if the value of a good or service exchanged (which depends on the socially necessary labour time to produce it) is equal to the value of the good or service received in return, or the price paid for that good.

The labour theory of value has, however, several flaws, and is widely rejected both as an economic and as a moral thesis, even by many (neo-)Marxist theorists.¹¹⁵ One problem is that, quite obviously, labour is usually not the only

such as that it is fair (that is: corresponding to the good's intrinsic value) to ask a very high price for life's most essential needs, such as food and shelter. In other words, accusations of exploitation often involve people who need goods that are essential for them living a valuable life, because their need of something important is part of what makes them more easily exploitable. Yet on this conception of objective value, such essential goods are exactly the type of goods that would have a high objective value, and thus the type of goods for which we would be allowed to ask a high price.

¹¹² See K Marx, *Das Kapital: Kritik der Politischen Ökonomie* (vol 1, 1867).

¹¹³ Marx, *op.cit.* 139.

¹¹⁴ In fact, Marx did not explicitly state that exploitation is morally wrong at all. The explicit discussion of exploitation as a type of wrong only started after Marx.

¹¹⁵ See e.g. GA Cohen, 'The Labor Theory of Value and the Concept of Exploitation' (1979) 8 *Philosophy and Public Affairs* 338-360; MW Macy, 'Value Theory and the "Golden Eggs": Appropriating the Magic of Accumulation' (1988) 6(2) *Sociological Theory* 131-152; JE Roemer, 'R. P. Wolff's Reinterpretation of Marx's Labor Theory of Value: Comment' (1983) 12(1)

factor that contributes to the production of goods and thus to their value. For instance, machinery, risk taking, research, land, storage, transportation, marketing, and finance, all add to the value of goods as well (although some of these might be expressed in terms of labour power). Marxist theorists might respond that this is true, but that capitalist property of means of production such as machinery and land is itself theft, so that this contribution to the production is something that should not be taken into account.¹¹⁶ Nevertheless, there are few people who would maintain that for all goods that are being produced and transacted, labour is the only legitimate factor that has contributed to their value.

There are several other problems with the labour theory of value that are worth mentioning, yet I will first set out an alternative theory of value that is based on production costs, because I believe both theories face some of the same problems. This alternative theory takes into account all costs of production, instead of only labour costs, to determine the value of goods and the fair price. A recent and extensive articulation of this argument is put forward by Mark Reiff,¹¹⁷ and in what follows I will primarily focus on his theory. Reiff distinguishes between the value of a good and the utility of a good:

Value is something that is intrinsic to whatever is being valued, determined by whatever properties it has and how these were created, preserved, and transferred. Utility, in contrast, is a function of the nature of these properties, their level of scarcity under current conditions, the needs, wants, and desires they can satisfy (what economists call their “use value”), and the needs, wants, and desires of particular persons. ... Utility is forward-looking, focusing on use value, supply, and demand; whereas value (meaning just exchange value) is inherently backward looking, focusing on what something is and how it came to be. Used in this sense, then, value is an historical, objective measure, whereas utility is a subjective, predictive one.¹¹⁸

Philosophy and Public Affairs 70-83; J Schwartz, ‘What’s Wrong With Exploitation?’ (1995) 29(2) *Noûs* 158-188; RP Wolff, ‘A Critique and Reinterpretation of Marx’s Labor Theory of Value’ (1981) 10 (2) *Philosophy & Public Affairs* 89-120.

¹¹⁶ See GA Cohen, *History, Labour and Freedom: Themes from Marx* (Clarendon Press, 1988) 227.

¹¹⁷ MR Reiff, *Exploitation and Economic Justice in the Liberal Capitalist State* (Oxford University Press, 2013).

¹¹⁸ Reiff, *op.cit.* 102.

Reiff criticizes the common view of the just price as based on market value, saying that while the market price may be an accurate measure of the utility of a good, it is not a good measure of its value, and it is value that the just price should measure:

[M]arket price is not *dispositive* when it comes to determining the just price, it is merely *suggestive* of the just price, and how suggestive it is depends very much on the surrounding circumstances. When these circumstances indicate that the market price does not accurately reflect costs the seller has actually incurred, we are unwilling to pay it. ... Despite the fact that many people purport to rely on the market forces of supply and demand to determine the just price, the true measure of the just price is and really always has been the cost of production.¹¹⁹

If production costs determine the true value of goods and thus the just, or fair, price of goods, what are the relevant production costs? Reiff argues that we should take into account not only labour costs, but all types of production factors, and says that a price is just only when it is equivalent to the fully allocated social cost (also called the average total social cost) of production of a specific good.¹²⁰ How are the fully allocated social costs to be calculated? Reiff does not address this for all production factors, such as machinery or risk, but only describes how to calculate the fully allocated social costs of individual labour. These costs are comprised of several elements, he says, such as the costs of education and training, of acquiring and developing a reputation, of networking,¹²¹ and the costs of healthcare and of raising a family, because '[c]apitalism can only succeed when there is a steady supply of able and willing workers, and such a supply can exist only if workers are able to maintain their health and reproduce'.¹²² However, the most important element of the costs of individual labour is the cost of subsistence of the worker, because if the worker did not exist, her labour would not exist either. This cost of subsistence, Reiff argues, is not the absolute minimum to keep workers alive and able to work, but 'an amount that will enable them to be both physically and psychologically

¹¹⁹ Reiff, *op.cit.* 107.

¹²⁰ Reiff, *op.cit.* chapter 4.

¹²¹ Reiff, *op.cit.* 127.

¹²² Reiff, *op.cit.* 128-129.

capable of working to the best of their abilities, for that is what a capitalist economy wants and needs from its workers if it is to be maximally productive'.¹²³ To enable people to work as productively as they can, Reiff says, they must feel that they are a valued part of their society, which means that their wages must do more than merely satisfying their basic needs.

Hence, on this view, if we buy or sell a good or service and want to know what the just or fair price is, we have to look at the fully allocated social costs required for the production of that good, which exists of the costs for all production factors, including a decent wage for the labour that contributed to the production. And if labour itself is the good that is sold, and we want to know what constitutes a fair wage, we have to look at which wage level is needed to cover the costs of a decent living standard, raising a family, education, etcetera.

The production costs theory of value has a clear advantage over the labour theory of value in that it more accurately describes all factors that might add to the creation of goods and of their value. Reiff's theory, like Marx's, is mainly concerned with describing fair exchanges in the labour market, between employers and employees, but it seems also suited to explain other examples of exploitation that I have discussed, such as loan sharks or passersby who offer stranded passengers a lift for an exorbitant price. The costs which the loan sharks and passersby incur are clearly much less than the prices they ask for their services, which makes a production costs-based theory of value and fairness seem well-matched to our intuitions of what makes exploitative transactions unfair. Nevertheless, any view that bases the value of goods on production costs—whether on all production costs or solely on labour—faces some serious problems, which I will discuss in the next section.

3.2.2 Problems with production costs-based theories of value and fairness

One problem with basing the value of goods or services on their production costs is that not everything that adds costs to the creation of a good or service, also adds value to it. For example, it seems strange to say that we can increase

¹²³ Reiff, *op.cit.* 128.

the value of a good or service by producing it less efficiently, with more labour costs or other costs, unless producing the good less efficiently increases its quality. Likewise, it seems wrong to say that the fair price to ask for a good is higher the more inefficiently we produce it, even if its quality does not change. If fairness requires that goods exchanged are of equal value, it seems wrong—unfair, in fact—if a buyer has to pay more because the seller added extra costs to the good’s production which added nothing to the quality or usefulness of the good.¹²⁴

It might be responded that this objection is only valid when we see the production costs theory of value (or labour theory of value) as referring to the actual costs made at the time a good was produced. It might be said that we should, instead, see the theory as referring to the average costs that would be necessary to produce a good at the time of measuring its value. Thus, according to this response, if a vacuum cleaner was produced two months ago, but a technical innovation last month enabled much cheaper production of vacuum cleaners from that moment on, and we now want to measure the value of the vacuum cleaner that was produced two months ago, we should look at the production costs for making the vacuum cleaner now, after the technical innovation, and not at the time of its making. Hence, according to this response, the value of the original vacuum cleaner would be decreased by the technical innovation, even though it cost more to produce than similar vacuum cleaners produced after the innovation. To give another example, suppose the production costs for handmade chocolate cakes are typically around £20 (taking into account a reasonable hourly wage), but one baker is very slow or frequently drops cakes on the floor. In this case, it would be argued, we should not determine the value of the baker’s cakes by looking at the actual costs, pricing them at, say, £50, but by ignoring the extra costs created by the baker’s incompetence, and looking at the typical costs necessary to make a cake: £20. The labour theory of value has been interpreted to mean both things: that we should look at the actual costs incurred to create a good at the time it was

¹²⁴ See for an argument along these lines JM Elegido, ‘The Just Price: Three Insights from the Salamanca School’ (2009) 90 *Journal of Business Ethics* 29-46, 34.

produced, and that we should look at the costs we would typically need at the time of measuring the value.¹²⁵ As far as the broader production theory of value is concerned, it seems that Reiff means the former;¹²⁶ that we should look at the actual costs made to produce a good, but one might try to argue for the latter, in order to overcome the problems the former view causes.

However, calculating the value of goods on the basis of the typical costs necessary to produce a good is problematic as well. For one thing, we can no longer say that production costs *create* the value of goods, and, as Reiff does, that value is objective and backward looking, and ‘something that is intrinsic to whatever is being valued, determined by whatever properties it has and *how these were created*, preserved, and transferred’.¹²⁷ The value of a good is no longer an intrinsic characteristic of the good, but instead merely an indicator of the average or common production costs at a given point in time. And if the value of a good is not an intrinsic value, depending on the specific good in question, but merely an indicator of the average production costs of a good at a certain time, other problems arise as well.

For instance, one point that becomes problematic is Reiff’s requirement, a version of which is also present in Marx’s theory of value, that wages need to be sufficient to enable workers to have a decent standard of living. This requirement is independent of the productivity of workers, or of which good they are producing. This, however, is arguably unfair to the employer, who may have to pay her employees more than they actually produce in value and profit, and thus make a loss. It could be objected that, on a production costs theory of value, it is impossible that employers have to pay their employees more than what the employees create in value, because on such a theory the value of products depends on their production costs. This means that if wages and thus production costs rise, the value of the produced goods also rises. Yet if, as said above, the value of goods and the fair price cannot be calculated on the basis of

¹²⁵ For a discussion of these two meanings, and a criticism on each of them, see Cohen, ‘The Labor Theory of Value and the Concept of Exploitation’, *op.cit.* 338-360.

¹²⁶ This is implied by his earlier cited claim that the value of a good is inherently backward looking and ‘determined by whatever properties it has and *how these were created*, preserved, and transferred’ (emphasis added). Reiff, *op.cit.* 102.

¹²⁷ Reiff, *op.cit.* 102, emphasis added.

the actual costs incurred to produce a good, but should be determined by the common costs necessary to make that product, the fair price of a product is more or less fixed if there are numerous producers, and any particular producer will not be able to increase the price if she incurs extra costs by having an inefficient employee. Hence, if such an employer is under an obligation to pay good wages, no matter the productivity of her employees, this will force her to make a loss, which is arguably unfair on her. A further and related possible objection, therefore, is that a production costs theory of fairness that incorporates a requirement of a certain wage level, may not leave enough room for rewarding effort and penalizing laziness, while rewarding people at least partially in proportion to their efforts may be considered important for fair distributions.

It might be replied that although Reiff's version of the production costs theory of value may be problematic, we could also determine the value of goods on the basis of their actual production costs instead of on the basis of the 'fully allocated social costs' that include a considerable wage for all labour. This, however, would not avoid some of the further problems discussed below. Moreover, it is unclear how we would then decide what constitutes a fair price for labour. If fair wages are to be decided on the basis of the actual costs of labour, this makes for a theory of fairness that says that fair wages are whatever actual wages people receive. Such a theory would consequently not be suitable to justify a number of claims of unfairness and exploitation, such as the claim that it is unfair and exploitative that some workers work very long hours and receive very low wages.

Another possible objection to production costs-based theories of value is illustrated in an example by Juan Manuel Elegido. He tells us to imagine a person who finds a coin worth \$1 million on the market, and wants to sell it. The fair price to sell the coin, according to a production cost theory of value, is not \$1 million, but, say, \$20. But what, Elegido asks, if the buyer of the coin is Bill Gates? It seems weird to say that Bill Gates, who certainly does not need a gift of

\$999,980, has more right to this added value than the person who found the coin.¹²⁸

A possible response may be that according to a production costs theory of value, the coin really is only worth the production costs (\$20 in this case), and should not be worth \$1 million on the market, and that, thus, Bill Gates would not receive a gift of \$999,980, because he would not be able to sell it for any more than \$20. This response ignores the fact that in the actual world, people are frequently willing to pay more for certain goods than their production costs, and that someone will receive this added value. And it might be thought that a theory of fairness should specify to whom such added value ought to be allocated. We may also wonder how we would calculate the production costs of finding the coin, which in this example was assumed to be \$20. Determining the production costs may be easy if we look at the actual costs the person incurred to find the coin, but if, as indicated above, this is a problematic conception of the production costs theory of value, and we should look instead at the average or typical costs, this may not be possible for rare goods such as the coin.

Another response to the Bill Gates example could be that while it indeed seems unreasonable to say that fairness requires that Bill Gates receives a gift of \$999,980, it is a very improbable hypothetical example, and the only reason that the example works is that Bill Gates is extremely rich. It might be argued that in many other situations in which people 'find' something that can be sold on the market for a price much higher than the production costs, we indeed think that doing so is unfair. For example, it might be argued, if a pharmaceutical company invents a life-saving drug, patents it, and sells it for a price much higher than the costs of production and research, this seems unfair. This possible response is correct, I think, in saying that many examples of selling above the production costs appear unfair, and that the main reason why the Bill Gates example does not seem unfair is that Bill Gates is much richer than the person who found the coin. Yet what this shows is that production costs alone may not be sufficient for explaining when a transaction is considered fair, and that other factors such as people's relative needs and affluence also play a role.

¹²⁸ Elegido, *op.cit.* 37.

Finally, if a just transaction is a transaction in which goods of equal value are exchanged, where their value is dependent on their production costs, this may lead to counterintuitive results about which transactions are unfair for another reason as well. Suppose that I collect books about the North Pole, and I have an acquaintance who collects books about rabbits. I happen to have a 19th century book about rabbits, and my acquaintance happens to have a 19th century book about the North Pole, and I offer to swap the books. The books are equal in quality and length, and both not very rare, and not at all valuable on the market. Yet the production costs of the book about the North Pole were much higher than the production costs of the book about rabbits, and even if someone were to write the book again in this century, the costs of writing the North Pole book would be much higher. My acquaintance and I are both happy with the exchange, though, because I do not care for books about rabbits and she does not care for books about the North Pole, and we both could not sell the books for much money to anyone else. In sum, we both think our exchange is a fair exchange, which leaves us both equally satisfied. Yet according to a production costs theory of value, the North Pole book is worth much more, and thus the exchange is unfair.

It might be objected that this exchange is not unfair even on a production costs theory of value, because both parties voluntarily choose to swap the books that are really of different value. Yet a proponent of production costs theories of value could not make this reply, because it would mean that she is acknowledging that the fairness of transactions does not depend on some objective value of the goods, but on the use-value that the goods have for the parties and the voluntariness of the exchange—which is what the production costs view of fairness is trying to deny.

In sum, I believe that any theory of value that is based on production costs cannot adequately explain when exchanges or prices are fair because, on the one hand, production costs do not create the intrinsic value of goods, if this exists at all, but are at most an indicator of their value; and on the other hand, even as an indicator of the value of goods and the fair price, production costs

are a problematic measure that can lead to counterintuitive conclusions about which exchanges are fair and unfair.

3.3 Why do production costs make for a fair price?

In the introduction to this chapter I distinguished two questions that are important for the unfairness account of exploitation. First, when is an exchange unfair? Second, why is this so? That is: why should we, morally, pay this price, and why is it morally wrong for us to ask a higher or pay a lower price? So far, I have only discussed what fairness theories based on production costs say about the first question. In this section, I discuss what they may say about the second question: why is it morally wrong not to offer a price that is equal to the value of a good's (socially allocated) production costs, taking particular account of the fact that these costs include wages that are high enough to enable people to lead a reasonably good life. This I will split into two different questions. The first question is the general question of why people who sell (or buy) goods ought not to ask a price for their goods that is higher (or lower) than the production costs. The second question is why employers should always pay wages that are high enough to enable people to lead a reasonably good life. I will start with the second question, and discuss two arguments for it, one based on productivity, and one based on needs.

3.3.1 Productivity and fair wages

As discussed in section 3.2, Reiff justifies why employers ought to pay living wages by saying that this is what the capitalist economy wants and needs, because only with decent wages can people be capable and motivated enough to work as productively as possible. Similarly, only when people have enough money to have children and raise and educate them, will there be enough people to work in the future.

What a capitalist system or companies in that system need to operate as productively as possible seems, however, a problematic moral justification for

why it is morally wrong not to pay a certain wage level. For one thing, if what a capitalist system needs to work as productively as possible is what ultimately justifies why paying a certain wage is morally required, we need a justification of why it is *morally* important that the capitalist system produces as productively as possible. And arguably, although it may be desirable that the capitalist economy works productively enough to bring a certain level of wealth to a society, it is not morally pivotal that the capitalist economy works as productively as possible.

Secondly, even if we would admit that what the capitalist economy needs to work as productively as possible is of moral importance, it is not at all clear that this necessarily leads to the conclusion that employers ought to pay all employees considerable wages. Suppose that in a certain economic system most employees would still work quite productively and motivated if they receive very low wages, because they are afraid to lose their job, since not many jobs are available. And suppose that companies could, all things considered, produce more cost-effectively by giving their employees very low wages in return for work that is only slightly less productive than if the employees were to receive much higher wages, because it enables them to hire more employees. If the productiveness of a capitalist economy is what determines why a certain wage level is fair, then it seems that such low wages would also have to be considered fair. Moreover, this is not merely an unrealistic hypothetical example. The current global economic system, and the existence of many sweatshop factories in developing countries which offer their employees very low wages, indicates that such companies and the global economy might indeed function all things considered as productively and cost-effectively as possible by offering low wages, especially given the large number of impoverished people with no better alternative than to work in a sweatshop factory. Hence, even if we could use “what the capitalist economy needs or wants” as a moral justification for why a certain wage level is required, it does not automatically lead to the considerable wage level that Reiff is advocating.

3.3.2 Needs and fair wages

Although I have argued that Reiff's justification for the requirement that employers offer substantial living wages to all employees is problematic, there may be other reasons for why this is morally required. One possible reason that readily comes to mind is that employers ought to offer substantial living wages because they ought to help people in need with whom they interact to meet their needs and to live a meaningful life.

Note that by making this argument, we are back at the argument discussed in chapter 2, section 3, on the needs account of exploitation. That account argues that in all exploitative transactions one party in the exchange has a serious need to be met, and the other party, who is much better off, has a moral duty to help her in meeting her needs. The wrong in exploitation, according to that account, is that the exploiting party violates the moral duty to help the other to meet her needs, and instead takes advantage of the other's situation. In chapter 2, I tried to show that this needs argument cannot adequately explain why exploitative transactions are wrong. One reason for this, it was argued, are problems in the claim that we have a moral duty to help all individuals with whom we transact to fully meet their needs; whether based on a Kantian duty of beneficence or on the moral importance of people's dependency on us. The same problems would resurface if we were to argue for the claim that fair wages are generous living wages, and that employers ought to pay them because they have a moral duty to help their employees to meet their needs and live a decent life. This seems too demanding a requirement for particular employers, especially if we think of situations in which a certain employee does not work enough, or efficiently enough, to actually earn back such a wage, which would mean that we are obliging the employer to make a loss.

Moreover, as was argued in chapter 2, even if we would deny that this is too demanding, and argue that employers, like everyone else, do have an individual moral duty to benefit people in this way if they are able to, that requirement is not related to whether we consider a particular transaction

exploitative, or unfair. For example, suppose, as was said in chapter 2, that an employer voluntarily pays a very generous wage to an employee. This wage is much higher than what is commonly paid for work of that type, and actually brings a loss to the employer, but at the same time this wage still does not amount to a full living wage. I do not think that many would consider such a wage unfairly low, or exploitative, even if we, at the same time, may think that the employer, like all other affluent people, has an individual moral duty to help to meet the employee's needs and enable her to live a decent life. Hence, even if affluent people do have an individual moral duty to help others to meet their needs, or to benefit others in order to help them to live a decent life, the requirements of this duty are not related to whether we find a particular transaction in which someone is engaged exploitative or unfair. Therefore, such a moral duty cannot explain why certain transactions are exploitative or unfair. Likewise, it cannot be used to justify why a certain wage level is unfair and exploitative, as the transaction costs theory of fairness argues.

There may be other arguments to justify the claim that employers ought to offer wages that provide a decent standard of living to all employees, and why it is unfair not to do so. Perhaps we can base this claim on the principle of justice, for instance. The justice-based argument for fairness will be discussed in section 3.7.2, as a justification for the idea that unfair prices should be calculated by referring to bargaining disadvantages, but that discussion might be seen as a possible justification for the production costs-based view of fairness as well. However, in section 3.7.2 I will argue against justice-based arguments for why we ought to pay the fair price, on whatever view of what the fair price involves.

3.3.3 Production costs and fair prices

So far I have only discussed possible arguments for why we ought to calculate the costs of labour on the basis of substantial living wages, and why employers ought to pay such wages to all their employees. I will now turn to the more general argument of production costs-based theories of fairness, which is that

fair prices are prices that reflect the production costs of goods, and that if we sell or buy a good, we ought not to offer prices that are much higher or lower than the costs incurred to produce the good (including a decent wage). What could be an argument for this claim? Why ought we, morally, not to ask prices that are much higher than the production costs? As I have tried to show in section 3.2, there is no reason to assume that production costs create the 'inherent' or 'objective' value of goods, if such a value exists. Why then, would it be morally wrong to ask a price for a good that is much higher than its production costs? Presumably, this is because it means that the seller would be making a lot of profit, at the expense of the buyer, who is paying a lot more money than she could have. Why, then, is this always morally wrong? And is it always exploitative? In the next chapter, in which I set out my own view of what is wrong with exploitation, I will explain that, in my view, this is frequently morally wrong if and because it is greedy. But it is not always morally wrong, or greedy, and it is certainly not always exploitative. For instance, in the earlier example of a person who finds a rare coin worth \$1 million on the market, who tries to sell this coin to Bill Gates for \$1 million, I do not think the person is acting wrongly, greedily, or exploitatively towards Bill Gates. This is amongst other things because Bill Gates is assumedly much richer than the person, and does not seriously need the coin, or the \$1 million. Likewise, if someone makes a living by creating paintings, or poems, or computer games, and making a painting, poem, or game costs her almost nothing in terms of materials, time, and effort, it seems not necessarily wrong or exploitative if she asks a price that is much higher than her production costs, or a price that would give her a higher income than a basic living wage. Hence, asking more than the production costs, and making a substantial profit is not necessarily always wrong or exploitative, and the fact that someone makes a large profit can thus not in itself explain when and why a consensual transaction is unfair and exploitative.

In sum, I have tried to argue in this section and the previous section why production costs-based theories of value cannot fully satisfactorily explain how to decide when transactions are fair, or why this is so—why we should ask and

offer prices that correspond to the production costs. Such theories can therefore not be used as a basis for the view that exploitation is wrong because it is unfair. In the next two sections I will discuss two alternative versions of the unfairness account of exploitation. In contrast with production costs theories of value, both assume that goods do not have an objective value, and try to explain in another way how consensual transactions can be unfair. The first argument, which I will discuss in the next two sections, says that we can determine the fairness of a price in consensual transactions by comparing it with the competitive market price.

3.4 Fairness and the competitive market price

3.4.1 The fair price as the competitive market price

A popular view of what fairness requires in consensual commercial transactions sees the just or fair price as some form of the 'common market price', a notion that goes back at least to Aristotle, and is also famously discussed by Aquinas and other Scholastics.¹²⁹ According to them, a price is just if it broadly corresponds to the price at which an article is commonly sold on an open market with no fraud, deceit, or coercion. More recently, Wertheimer proposed a similar view of the fair price in his theory of exploitation. He says that a price is fair and non-exploitative if it corresponds to the 'competitive market price' or the 'hypothetical market price':¹³⁰ the price upon which a well-informed and unpressured buyer and seller would agree if the transaction took place in a competitive market with multiple buyers and sellers. Thus, imagine that the common market price for a taxi ride to a certain destination is £20, but that there is a national rail and bus strike, which enables taxi drivers to ask £100 instead. In such a situation, it is argued, we can calculate what the fair and non-

¹²⁹ Aristotle, *Nicomachean Ethics* V.8, 1132b33-1133b29; Thomas Aquinas, *Summa Theologica* II-II Q7. See for a discussion of the just price theory in Aristotelian and Scholastic thinking JB Murphy, 'Equality in Exchange' (2002) 47 *The American Journal of Jurisprudence* 85-121, 90; ES Noel, 'Bargaining, Consent and the Just Wage in the Sources of Scholastic Economic Thought' (1998) 20(4) *Journal of the History of Economic Thought* 467-478, 467.

¹³⁰ Wertheimer, *Exploitation*, *op.cit.* 230.

exploitative price is by imagining the price that would be agreed upon in a competitive market—a market in which many other taxi drivers would enter the market to cater for the increased demand for taxis—which would likely be £20.

A fairly similar conception of what makes transactions fair can be found in Mikhail Valdman's theory of exploitation. Valdman argues that 'a non-exploitative price is one that an informed buyer would get from an informed seller in a competitive market if either could reasonably refuse the other's offer.'¹³¹ On this view, if I desperately need a taxi during the strike, and the only available taxi driver asks £100, we can determine what price would be fair by considering on what price we would agree in a competitive market, where I could refuse the taxi driver's offer because I could find other taxi drivers, which would also probably be £20.

This view of how to determine when a price is unfair and non-exploitative matches quite well, I think, with common intuitions about when transactions are unfair. If taxi drivers in a competitive market always ask £20 to go to a certain destination, it seems that if we want to establish what would be a non-exploitative price in temporary situations in which they are able to ask much more, looking at what they normally ask will indeed lead to a price that is non-exploitative. Nevertheless, I will discuss two problems with the view that we can determine the fair price on the basis of the competitive market price. In section 3.5, I will next show that this view also faces problems in answering the second question I distinguished: why not offering or asking the competitive market price is morally wrong.

3.4.2 Problems with the fair price as the competitive market price

A first potential problem with the idea that the fair price is equal to the competitive market price is that this method cannot tell us what the fair price is when there is no common market price for a good, and we cannot imagine what the hypothetical market price would be. This can be the case, for instance, with

¹³¹ M Valdman, 'A Theory of Wrongful Exploitation' (2009) 9(6) *Philosophers' Imprint* 1-14, 12.

newly invented products and rare works of art.¹³² When, for example, the first mobile phone was invented, there was no competitive market price on basis of which to determine what would be a fair price, and we could not imagine what the hypothetical competitive market price would be.

A second and more serious problem is that it is not clear why a competitive market price is necessarily fair, because there are situations in which the competitive market price seems, intuitively, unfair and exploitative. For instance, the extremely low wages in sweatshop factories in developing countries may well equal the competitive market wages in those countries. Yet far from seeing these wages as fair and non-exploitative, many people consider sweatshop labour a classic example of unfairness, and of exploitation. Hence, while the competitive market price is perhaps able to account for exploitative transactions where the exploitation results from a monopoly position, it seems unable to account for some other types of transactions that are typically thought to be unfair and exploitative. This is not surprising, because competitive market prices are constituted by morally neutral factors such as supply and demand. And while the market prices that flow from these factors may be an efficient mechanism for allocating resources or resolving price negotiations, there is nothing intrinsically fair about them.¹³³ Why then, could the competitive market price be thought to be fair?

3.5 Why is the competitive market price fair?

The 'competitive market price version' of the unfairness account of exploitation says that we can determine whether a transaction is unfair and exploitative by comparing the price of the good transacted with the price of the (hypothetical) competitive market price. Why is such a competitive market price said to be fair, and why is not offering or asking this price unfair? That is: why is it thought to be morally wrong not to offer or ask this price? Wertheimer says:

¹³² Wertheimer recognizes this himself as well. Wertheimer, *Exploitation, op.cit.* 234.

¹³³ See for an extensive discussion of this point S Blount, 'Whoever Said That Markets Were Fair?' (2000) *Negotiation Journal* 237-252.

[E]ven though a competitive market price does not reflect a deep principle of justice, it does reflect a crucial moral dimension of the relationship between the parties to the transaction. The competitive market price is a price at which neither party takes *special* unfair advantage of particular defects in the other party's decision-making capacity or special vulnerabilities in the other party's situation. ... It may or may not be a "just price," all things considered, but it may well be a non-exploitative price, for neither party takes unfair advantage of the other party.¹³⁴

Hence, Wertheimer argues that the competitive market price is fair, and non-exploitative, because neither party takes 'special' unfair advantage of particular defects in the other party's decision-making capacity, or of special vulnerabilities in the other party's situation. What taking 'special' unfair advantage means, Wertheimer does not explain, nor what he means with 'particular defects in the other party's decision-making capacity' or with 'special vulnerabilities'. The 'particular defects in the other party's decision-making capacity' presumably refer to a lack of sufficient information, rational capacity or other factors that might impair someone's consent. The 'special vulnerabilities' refer, I think, to a lack of better alternatives on behalf of one of the parties. This is because the competitive market price is the hypothetical price that 'imagines away' the bargaining advantage that monopoly situations can create, so the special vulnerabilities that the competitive market price does not take advantage of, is arguably the lack of alternatives created by a monopoly situation which gives rise to a weak bargaining position. This also corresponds to what Valdman says, since for him, as mentioned above, a fair price is a price that would be agreed upon in a competitive market if both parties *could reasonably refuse the other's offer*. 'Being wrongly exploited' he says, 'is something that happens to you when you have your back to the wall, so to speak, or when you have little control over your actions and choices.'¹³⁵

Why, then, is it morally wrong to take advantage of another's lack of better options by trying to get a good price for oneself, if the other agrees to this

¹³⁴ Wertheimer, *Exploitation*, *op.cit.* 232.

¹³⁵ Valdman, *op.cit.* 10.

transaction and actually benefits from it? Neither Wertheimer nor Valdman explicitly addresses this question, but presumably, there may be thought to be something morally problematic about the exploiters' consent in such situations. That is, presumably it is thought that in such monopoly situations in which people are 'with their back to the wall' and have few or no better choices than to accept the exploiter's offer, they are not truly free to reject or accept the offer, and are, as it were, coerced.

However, this explanation for why we morally ought to pay or ask the competitive market price brings us back to the argument of the consent account of exploitation, which I discussed in chapter 2, section 2. That account sees the wrong in exploitation as the fact that the exploiter's consent is not truly valid, because she is forced by her circumstances to accept the exploiter's offer. I argued in chapter 2 that this argument for exploitation is highly problematic. I showed that coercion means trying to get someone to do something she would otherwise not do by threatening to make her worse off, in comparison with some baseline, whereas exploiters actually offer to make people better off, at least in comparison with the status quo. I also argued that the fact that within certain circumstances one of our options is the most attractive, does not necessarily mean that our choice for that option is coerced or in any other way invalid, because that would mean that our choices are always invalid, since everyone always chooses the options that seem in their circumstances the best ones. I argued that we have to make a distinction between the attractiveness of the content of someone's options, and whether she is free to make a valid decision between those choices. For example, imagine that I desperately need a taxi and that there is only one taxi driver available who asks £100 for a ride that usually costs £20. If we argue that my choice to accept the driver's offer is not truly valid because I had no better choice than to accept his expensive price, then we should say the same about situations in which there is only one taxi available, but the taxi driver asks the market price, £20. This is because in the latter situation, I would equally have no better choice than to accept the driver's offer.

Consequently, I believe that the unfairness account cannot appeal to problems in consent to explain when and why paying or asking a certain price is (un)fair. In other words: if one agrees (as Wertheimer himself does¹³⁶), that lack of valid consent cannot explain why exploitation is wrong, and if one says that the wrong in exploitation is instead a matter of unfairness, one cannot explain when and why a transactions is unfair, by referring to a lack of valid consent.

It might be objected that in exploitative transactions, people's alternatives are often so dreadful that they really do, as Valdman puts it, have their back to the wall. And, as was discussed in chapter 2, since coercion means to try to get someone to do something she would not otherwise do by threatening to make her worse off in comparison with some baseline, one might say that exploitative offers are coercive, because, in comparison with a *moral* baseline, they are making people worse off. That is: compared to the situation in which the exploiter acts in accordance with her moral duties, the exploiter's offer makes the exploitee worse off. What could this moral baseline, or moral duty, be?

One possibility is that we have a duty to help people who are in such a dreadful situation that they are with their back to the wall, and have no better alternative than to consent to an exploiter's offer in order to meet their needs. Hence, it might be thought that if, for example, people in developing countries have serious needs to be met and have no better alternative than to work in a sweatshop factory in order to meet their needs, we have a duty to help them. This argument, however, would yet again bring us back to the argument of the needs account of exploitation, that was discussed in chapter 2, and above in section 3.3.2. This argument says that the wrong in exploitation is a failure to meet a duty to help or benefit people in need, but, I hope to have shown, it does not work as a justification for the wrong in exploitative transactions, and can also not be used as a valid justification for why we ought to pay a certain fair price.¹³⁷

¹³⁶ Wertheimer, *Exploitation, op.cit.* chapter 8.

¹³⁷ Again, this is not to deny that exploiters sometimes really do have a duty to help people. Think for instance of the already mentioned example of someone passing by a lake and seeing a person drowning. It is relatively uncontroversial that the passerby in this situation does have a

Another possibility is that the moral baseline, the duty exploiters are ignoring, is not as demanding as a duty to help people to meet their needs, but a less demanding moral duty such as ‘do not take advantage of people with few options by offering an unfairly high or low price’, or ‘do not offer an unfair price when engaging in a transaction with people who have no better option than to consent’. If we have such a moral duty, then exploiters are clearly violating this duty, and thus, compared with the moral baseline in which exploiters would not violate this duty, they are making a coercive offer. Yet this solution would make the argument circular. What we are looking for is a way of justifying why not offering a competitive market price to people who have few alternative options is unfair, that is: why it is somehow morally wrong not to offer this price. The possible justification under discussion now is the fact that the competitive market price avoids taking advantage of people’s lack of better options, and that taking advantage of people’s lack of better options is morally wrong because it amounts to a form of coercion, since, compared with a moral baseline, we offer to make people worse off. This moral baseline, we are now considering, may be a moral duty to offer fair prices to people with few options. Yet the existence of this duty is exactly what we are trying to justify—a duty to offer a fair price (seen as the competitive market price) to people with few options.

Finally, it may be objected that the competitive market price as the fair price can also be justified by referring to injustice: that the competitive market price does at least not take advantage of or exacerbate injustice. The idea that justice can explain why a certain price is fair will be discussed in the next section. For now, I will merely point out that the competitive market price is not incompatible with injustice. For example, as said, sweatshop factories in developing countries may pay competitive market wages, but still be thought to exploit workers and to take advantage of their unjust circumstances.

To sum up, I have argued that a competitive market price does not offer a valid method for determining when a price is fair and non-exploitive. This is

moral duty to rescue the drowning person, and that, if she makes her rescue conditional on the payment of, say, \$10,000, this is a coercive offer. This is therefore often considered to be not an instance of consensual exploitation, which is the topic of this thesis, but of coercion, as was discussed in chapter 2.

both because there are situations in which the competitive market price does appear unfair and exploitative, and because it seems problematic to justify why it is morally wrong not to offer the competitive market price, without appealing to the arguments of either the needs account of exploitation or the consent account of exploitation, which were rejected in the previous chapter. In the next two sections, I will discuss a third and final method of determining when a price is fair, which refers to bargaining disadvantages.

3.6 Fairness and bargaining disadvantages

This section discusses a method of how to decide which price is fair that is structurally similar to the competitive market price method discussed in the previous section, because it also looks at the price that would have been agreed upon if the exploitee did not have a certain disadvantage that makes her exploitable. Yet whereas the competitive market price method only considers monopoly power as a relative disadvantage that should be ‘imagined away’, the method discussed in this section takes a broader view of what counts as relevant disadvantages. This version of the unfairness account of exploitation is proposed by Robert Mayer, who defines the wrong in exploitation as a failure to benefit others as fairness requires,¹³⁸ and argues that what fairness requires in commercial consensual exchanges can be calculated as follows:

Some initial disadvantage renders an agent exploitable. To calculate the just price in any given case, we simply imagine the same transaction without the initial disadvantage. The just price is thus the price which a nondisadvantaged party would accept or pay. [...] Just imagine a counterfactual transaction in which the relevant disadvantage is removed and we will know what the just or nonexploitative price of a good or service is.¹³⁹

On this view, the disadvantage that makes someone exploitable may be a lack of competition, but it may also be something else, such as poverty or pressing

¹³⁸ Mayer, ‘What’s Wrong With Exploitation?’, *op.cit.* 142.

¹³⁹ Mayer, ‘What’s Wrong With Exploitation?’, *op.cit.* 145.

needs. Mayer gives the example of fair trade coffee, for which the just price is measured by calculating the price that buyers should pay in order to secure a decent standard of living for agricultural labourers, because, he argues, the disadvantage that makes those people vulnerable to exploitation is the lack of a decent standard of living.¹⁴⁰ By taking into account a broader range of disadvantages than the competitive market price method discussed in the previous section, this argument avoids that method's problem of seeing as fair certain exchanges that are generally thought of as unfair, such as sweatshop labour. The 'bargaining disadvantages method' of determining the fair price also matches well, I think, with common intuitions about what is a fair price, what constitutes exploitation, and how it can be avoided.

In section 3.7, I will discuss possible answers to the second question I distinguished in section 3.1: why this method of calculating the fair price is fair. In other words: why it is morally wrong to ask a higher or offer a lower price than the price which a non-disadvantaged party would accept or pay. There I will argue that even though this method seems intuitively plausible, it contains a circularity, and consequently gives no real answer to the question of what is wrong with exploitation. For now, I would like to point out a problem with this method's answer to the first question I distinguished: how to calculate when a transaction or price is fair. This problem is identical to a problem mentioned in the discussion of the injustice account of exploitation in the previous chapter.

If we argue that we can calculate the fair and non-exploitative price of a good by imagining a counterfactual transaction in which the relevant disadvantage is removed and thereby finding out the price that a non-disadvantaged party would accept or pay, the problem is that often, if the disadvantage did not exist, there would be no transaction at all. If, for example, sweatshop workers in developing countries would not have had the disadvantage of poverty, limited alternative employment options, and/or limited education, it seems likely that they would have chosen a more interesting career, and would not have accepted to do monotonous and possibly unhealthy or dangerous sweatshop work, even if they were offered a

¹⁴⁰ Mayer, 'What's Wrong With Exploitation?', *op.cit.* 145.

good wage. Moreover, as was said in the previous chapter, if the argument is that we should imagine the price that would be agreed upon if the transaction *would* take place if the relative disadvantages did not exist, the requirement for a price to be fair and non-exploitative seems far too demanding. For example, for people to be willing to accept the monotonous and uninteresting work typical of sweatshop factories if they are equally wealthy and have equal choices as the factory owners, the factory owners would likely have to offer them an extremely high wage. That is: a wage higher than what people could earn in careers that they would find more appealing, such as being a factory owner themselves. Still, in the actual situation, in which factory workers in developing countries do have a disadvantaged position in many different respects, I doubt that we would find any wage that is lower than an extremely high wage exploitative. For instance, if factory owners in developing countries offer their workers good working conditions, free healthcare and education, and wages that enable them and their families to live a good life, I do not think many people would consider this exploitative or unfair, even if the wage is lower than what the factory workers would have accepted if their relative disadvantages had not existed.

Hence, imagining the price that a disadvantaged party would have accepted without the disadvantage, is a problematic method to determine when a price is unfair or exploitative. I also believe that this approach cannot give an adequate moral justification for why this method leads to fair prices, as I will discuss in the next section.

3.7 Why does the bargaining disadvantages method constitute a fair price?

The bargaining disadvantages method says that the price in a voluntary exchange is fair if it corresponds to the price that a non-disadvantaged party would accept or pay. Why is this so? Why is it thought to be morally wrong to ask or offer a price that is more or less than the price a non-disadvantaged party

would accept? I will discuss two possible arguments for this claim, one based on vulnerability, and one based on justice.

3.7.1 Vulnerability

Mayer does not directly address the question of why his method indeed yields fair prices, but throughout his work, he seems to have in mind the fact that by following his method, we avoid taking advantage of people's vulnerabilities. He writes, for instance: 'But we should not dismiss exploitation as a minor offense. Taking unfair advantage of others can be seriously wrong, even when it is noncoercive and mutually advantageous. ... Exploiters prey upon the vulnerable, and that is an unsavory way to enrich oneself.'¹⁴¹ Moreover, in a discussion of what distinguishes exploitation from other less-wrong forms of failing to benefit another fairly, such as being cheap, Mayer argues that cheapness 'is an abuse of discretion whereas exploitation is an abuse of vulnerability'.¹⁴² It might be that such a vulnerability-argument is also what really underlies Wertheimer's view of why the competitive market price is fair, instead of the consent-based argument that I discussed in section 3.5. After all, as noted in that section, Wertheimer says that offering the competitive market price is fair and non-exploitative because it avoids taking unfair advantage of 'special vulnerabilities' in the other party's situation.

However, by arguing that the fact that we take advantage of another's vulnerability is what ultimately makes a price unfair, we have come to a peculiar conclusion. As shown in chapter 2, section 1, the idea that taking advantage of people's vulnerability is what makes exploitation wrong cannot adequately account for the wrong in exploitation (and this rejection of the vulnerability account of exploitation is shared by Mayer as well¹⁴³). That section showed that although exploitation always involves using another's vulnerability, this fact itself does not explain what is wrong with exploitation, and we must make intelligible why it is wrong to take advantage of someone's

¹⁴¹ Mayer, 'What's Wrong With Exploitation?', *op.cit.* 147.

¹⁴² Mayer, 'What's Wrong With Exploitation?', *op.cit.* 143.

¹⁴³ Mayer, 'What's Wrong With Exploitation?', *op.cit.* 137.

vulnerability (or why in certain cases or in certain ways) in order to explain why these are exploitative. The unfairness account's answer to this question is that taking advantage of someone's vulnerability is wrong and exploitative if and because it is an unfair advantage. Yet if, in explaining when and why an advantage is unfair, we eventually answer that this is so if and because we take advantage of another's vulnerability, we are making a circular argument, since the starting point was that taking advantage of someone's vulnerability is itself not wrong, and that we must explain why it is wrong in certain cases or in certain ways.

In other words: this version of the unfairness account says that taking advantage of someone's vulnerability is only exploitative when unfair, but whether a transaction is unfair depends on whether someone's vulnerability is taken advantage of. This still leaves us to answer the question: what is wrong with taking advantage of someone's vulnerability? Or in other words: what is wrong with exploitation? This version of the unfairness account is therefore perhaps not incorrect, but 'empty': it does not actually answer the question of what is wrong with exploitation, but, at most, gives a description of the features of exploitative transactions.

3.7.2 Injustice

Perhaps, though, there is another argument for why fairness requires indeed what this method says it requires—that we offer a price that a non-disadvantaged party would accept or pay. It might be thought that this method does not imply that the use of *any* disadvantage to obtain a certain price makes the price unfair, but only when this disadvantage is the consequence of an injustice. Taking advantage of a disadvantage in bargaining power would then only make the agreed price exploitative if, according to some conception of justice, the difference in bargaining power is itself thought to be unjust.¹⁴⁴ For

¹⁴⁴ This idea corresponds to some writers' interpretation of Aristotle's distinction between distributive justice and 'commutative justice', which deals with fairness in private exchanges. James Gordley says, for instance: 'While the aim of distributive justice is to provide each citizen with a fair share of purchasing power, that of commutative justice is to preserve each person's

instance, in Mayer's example of fair trade coffee, it may be argued that the disadvantaged position in which poor coffee growers in developing countries find themselves, flows from global differences in wealth which are themselves unjust. Conversely, this reasoning would imply that it is not exploitative to take advantage of the weak bargaining position of, say, an incredibly rich philatelist who desperately wants to own a rare stamp, because the philatelist's weak bargaining position is (assumedly) not the consequence of an injustice, but of his own choice to collect stamps and his desire for this particular stamp.

However, this argument brings us back to the argument of the injustice account of exploitation, which was discussed in chapter 2, section 4, and which says that people ought not to take advantage of prior (distributive) injustices, and that doing so is what makes exploitation wrong. In that section, I argued that this account cannot satisfactorily explain what makes exploitation wrong, amongst others because it cannot be shown that taking advantage of an existing injustice is necessarily wrong, because we can exploit people who have not suffered an injustice, because exploiters do not necessarily exacerbate injustice, and possibly because, by locating the wrong in exploitative transactions in background injustice, we unjustly hold particular people disproportionately responsible for correcting macro-injustices, which is a responsibility of society as a whole.

It might be objected, it was said in chapter 2, that irrespective of the fact that correcting societal injustices is a societal responsibility, we may still have an individual duty to compensate for unjust differences in wealth. Yet even if we assume that this is true, it was argued, the requirement of such an individual duty is not necessarily related to whether and when we find a particular transaction exploitative. The requirement of such a duty is also not necessarily related to the price that a non-disadvantaged party in a transaction would have accepted, or in other words, to what is seen as the fair price by the bargaining disadvantages method of calculating the fair price. An individual moral duty to

share.' J Gordley, 'The Moral Foundations of Private Law' (2002) 47 *The American Journal of Jurisprudence* 1-23, 3.

compensate for macro injustices would ask us to give people with whom we transact (and other people) enough to correct their existing disadvantage in wealth or, perhaps, to give them our 'share' of what they need to correct their disadvantage (see sections 2.3.3 and 2.4.2). This amount would not be related to which good is being sold, and thus also not to the price that a non-disadvantaged party would accept or pay, or to whether we find the price in a transaction unfair, or the transaction exploitative. Hence, we cannot justify why and when transactions are unfair and exploitative by appealing to principles of distributive justice.

To conclude, I have tried to show that the bargaining disadvantage method of determining the fair price is problematic as an explanation of when transactions are unfair and why this is so. First, this method can lead to fairness requirements that are too demanding. Second, in justifying this method, we have to rely on an argument based on vulnerability or injustice, which I have rejected in the previous chapter as explanations of why exploitation is wrong.

3.8 Exploitation as unfairness: Conclusion

In this chapter I discussed what I have called the unfairness account of exploitation: the argument that the wrong in consensual exploitative transactions is an unfair division of benefits and burdens. I distinguished two questions that are important in analysing the argument that the wrong in exploitative transactions is unfairness. The first question is: when is the division of benefits and burdens—or price, for short—(un)fair? The second question is: why is this so? That is: why should we, morally, offer the price that is said to be the fair price, and why is it morally wrong to offer a lower or ask a higher price? This second question is important, I argued, because if we say that the wrong of exploitation is a matter of unfairness, we use 'unfair' as the explanation of what is morally wrong with exploitation, and are thus saying that exploiters ought, for some moral reason, not to pay an unfair price. Therefore, in describing what

makes for an (un)fair and thus exploitative transaction, we have to explain why such transactions are indeed morally wrong.

In sections 3.2, 3.4 and 3.6, I described three competing answers to the question of when a price is (un)fair: that a price is fair if it reflects the value of the good transacted, which can be measured on the basis of its production costs; that a price is fair if it corresponds to the (hypothetical) competitive market price; and that a price is fair if it corresponds to the hypothetical price that a non-disadvantaged party would accept or pay. I argued that all three views face some problems, amongst which the problem that they all lead to counterintuitive conclusions about which prices are fair and unfair.

I also discussed five possible answers to the second question: why what is said to be the fair price is indeed fair, or in other words, why it is morally wrong to pay a lower or ask a higher price. These five answers were that offering what is said to be the fair price is required for the productivity of the capitalist system (section 3.3); that doing so is morally required because we ought to help people in need (section 3.3); that doing so is morally required because we ought not to take advantage of people's invalid consent or lack of better choices (section 3.5); that doing so is morally required because we ought not to take advantage of people's vulnerability (section 3.6); and that offering what is said to be the fair price is morally required because we ought not to take advantage of distributive injustices (section 3.7). Although I discussed each of these possible justifications in relation to a particular answer to the first question—how to calculate the fair price—it was shown that some of these justifications might perhaps also be given in relation to other views of how to calculate the fair price.

I have tried to show how each of these possible justifications is problematic. The first one, I argued, simply does not give an adequate moral explanation. The other four, I have tried to show, actually bring us back to the same four arguments for the wrong in exploitation that were discussed in the previous chapter, and that were there shown not to be able to offer adequate explanations of when transactions are wrong or exploitative. Hence, in the previous chapter, I discussed four different arguments for the wrong in

exploitation that feature in the present-day philosophical debate on exploitation, and argued that none of them can explain why exploitation is wrong. In this chapter, I have tried to show that the unfairness account of exploitation, in explaining why certain transactions are unfair and exploitative, ultimately has to appeal to one of those four arguments that were rejected in the previous chapter—and that this account can therefore also not satisfactorily explain what is wrong with exploitation.

The unfairness account of exploitation seems right, and preferable over the accounts of exploitation discussed in the previous chapter, in realizing that the wrong of exploitation has to do with the fact that exploiters take an excessive benefit for themselves. Yet by saying that taking excessive benefits for oneself is wrong if and because it is unfair, the unfairness account does not bring us closer to answering the question of what is wrong with exploitation. This is because the term fairness is, by itself, ‘morally empty’. To say that some distribution is unfair is to say that it is for some reason morally wrong, and that there is a moral reason why we should offer a higher or ask a lower price. This means that a claim of (un)fairness always has to be paired with a further moral argument, the argument that explains why we indeed ought to offer a certain price; the price that is said to be the fair price. Yet once we are looking for such an argument, we are almost back where this thesis started: with the search for an argument that explains why we ought not to offer exploitatively low or high prices. It is perhaps not surprising, then, that the justifications on which a fairness argument for exploitation could try to rely in order to explain why offering a certain price is unfair, are the same justifications that are used to explain the wrong in exploitation: a moral duty not to take advantage of vulnerability, needs, injustice, or invalid consent.

The unfairness account of exploitation, therefore, may perhaps give an adequate description of which transactions we consider exploitative, but it does not help in explaining their wrongness. In chapter 1 it was said that the most general definition of exploitation is ‘taking wrongful advantage of someone’, but that the question is what makes it wrong. The unfairness account replaces the

word 'wrongful' with 'unfair', and says 'exploitation is taking unfair advantage of someone'. But without an adequate explanation of when a transaction is unfair, and at least as importantly, why this is so, we are no closer to explaining the wrong in consensual exploitation. Rather than saying that the unfairness account gives an incorrect answer to the question of what is wrong with exploitation, as I have argued for the accounts of exploitation set out in the previous chapter, I would therefore say that it gives *no* answer to this question, since it is completely dependent on other theories to be able to explain why transactions are unfair and thus exploitative. And if one of those theories, such as the ones set out in the previous chapter, could adequately explain why we ought to offer a certain price in certain situations, and why not doing so would be unfair and thus exploitative, that theory would be doing all the 'moral work', and would also be able to explain what is wrong with exploitation without using the term unfairness.

Yet, I have tried to argue in the previous chapter that those theories cannot adequately explain why we ought not to exploit someone and why consensual exploitation is wrong. Therefore, looking at all the discussed theories of exploitation, I believe that it might be impossible to justify a moral duty not to exploit. This does not mean that I think that there is nothing morally problematic about consensual exploitation. What I want to argue is that the wrongness of exploitation can best be understood not as the violation of some moral duty, as all discussed accounts do, but as a failure of virtue. I will set out this argument in the next chapter.

CHAPTER 4 – EXPLOITATION AS GREED

In the previous chapters, I discussed five different views of what makes consensual exploitation morally wrong, and argued that all those views are problematic. In this chapter, I will put forward my own, alternative, view, which is that what exploiters do wrong can best be understood as a failure of virtue. More specifically, I believe that the wrong in exploitation is a matter of greediness, which is a failure of the virtue of generosity.

To avoid misunderstanding: I hope it is clear that I do not intend to say that all cases of being greedy are exploitative. We can be greedy without exploiting anyone, for instance by giving very cheap birthday presents to our friends. Or, for example, we may consider managers who accept or award themselves extremely high bonuses greedy, without thinking that they necessarily exploit anyone. As said in chapter 1, it is generally agreed that exploitation means taking advantage of someone in a wrongful way, although in the case of consensual exploitation, people disagree about what this wrongful way is—why it is wrong. My answer is that what exploiters do wrong is acting greedily, but this does not mean that all greedy behaviour is exploitative. Nonetheless, I believe that our feelings about cases such as managers who accept large bonuses, do have something in common with our feelings about cases of exploitation, because they are all instances of greediness.

I will start setting out my understanding of exploitation by explaining the concept of virtue in general terms in section 4.1, and the role virtue plays in moral theory in section 4.2. This is followed by a discussion of the virtue of generosity and the vice of greediness, and their relation to exploitation, in section 4.3. The next two sections discuss some important features of virtues, and their significance for my view of exploitation as greediness: the context-dependence of virtues (section 4.4), and the role of perception, emotion and responsiveness (section 4.5). The chapter closes in section 4.6 with a discussion of some possible objections to my account of exploitation: that virtue approaches are self-centred; that the unfortunate circumstances that are

typically part of exploitation should play a role in the explanation of what makes it wrong; that my view seems ultimately very similar to the unfairness account of exploitation; that my view is similar to Ruth Sample's version of the needs account of exploitation (discussed in chapter 2); that a virtue-based approach to explaining the wrong in exploitation is ultimately not that different from a duty-based approach; and that being greedy, although not praiseworthy, is not a very serious wrong.

4.1 Virtue

In order to explain my argument that the wrong in exploitation is greediness, a failure of the virtue of generosity, I will start by discussing in this section some general characteristics of virtues and vices. Simply put, a virtue is a good, excellent, or admirable¹⁴⁵ character trait. Some such character traits mainly¹⁴⁶ relate to oneself and one's own wellbeing, such as industriousness, temperance, courage, or patience; while other virtues involve one's attitude towards other people, such as honesty, kindness, forgiveness, or generosity. Virtues are opposed to vices—bad character traits—such as gluttony, laziness, impatience, dishonesty, callousness, anger, or greediness. Philippa Foot usefully describes virtues as 'correctives' to temptations or flaws of motivation that humans typically face.¹⁴⁷ The virtue of industriousness, for example, only exists because people are often tempted not to work by a desire for leisure or to do other things they find more enjoyable. Likewise, there would be no need for a virtue

¹⁴⁵ There is of course a difference between something being an admirable character trait and a good character trait, as the former is more subjective. While most writers describe virtues as good or excellent traits, some, notably Michael Slote, prefer to describe them as admirable character traits (see his *Morals from Motives* (Oxford University Press, 2001).

¹⁴⁶ Mainly, but not solely, because all virtues affect both ourselves and others. While people sometimes make a distinction between self-regarding virtues (such as prudence and patience) and other-regarding virtues, such as kindness, justice, loyalty and generosity, this is in a sense mistaken. On the one hand, because other-regarding virtues like loyalty and generosity *do* benefit their possessors, as will be discussed later; on the other hand because, since people are social beings living in communities, 'self-regarding' virtues also benefit people around them. People who are imprudent or impatient, for instance, can bring much burden, nuisance or pain to their family, friends, or to other people close to them. See R Hursthouse, 'Virtue Ethics' in EN Zalta (ed), *Stanford Encyclopedia of Philosophy* (Spring 2013 Edition) 19.

¹⁴⁷ P Foot, *Virtues and Vices: And Other Essays in Moral Philosophy* (Clarendon Press, 2002) 8-9.

of generosity if people were not tempted by a desire to maximize their wealth or if they were not more attached to their own wellbeing than to the wellbeing of others. As correctives to temptations, virtues are undoubtedly beneficial, both for their possessors and for other people around them. We will not achieve much if we have no perseverance, courage, curiosity or temperance, and we will not get on well with others if we possess no kindness, honesty, forgiveness, or tolerance. Moreover, many people will all in all be better off living in a society instilled with justice, charity, or generosity, than in a society that lacks such virtues.¹⁴⁸

Although virtues have for a large part been ignored by 20th century moral philosophy, they do seem to play a significant role in our day-to-day moral and ethical thinking. Most of us admire someone we know for being diligent and hard working, or for showing perseverance and discipline in sticking to a degree programme, an exercise programme, or a diet. Or we praise (perhaps only in our minds) a friend or family member for being helpful, honest, kind, patient or generous, or are annoyed by a colleague we find lazy, a shopkeeper we find unfriendly, or a neighbour we find boastful. Hence, most of us, if not all of us, evaluate people and their behaviour not only in terms of rights and duties, but also in terms of good and bad character traits—virtues and vices.

However, the label 'virtuous' is applied both to people's character and to specific actions they perform. In the first meaning, we say that someone *is* virtuous, or *has* a particular virtue as a character trait. Seen as such character traits, virtues are not just inclinations or habits to behave in a certain way, but stable, reliable dispositions. Thus, when someone possesses the virtue of, say, friendliness, she can be expected to be friendly in many different types of situations, towards many different people, over a long period of time, even when it is difficult to do so.¹⁴⁹ Moreover, a character trait involves not only the way someone acts, but also her reasons for action and her emotions. As Rosalind Hursthouse puts it, a character trait 'goes all the way down', and '[t]o

¹⁴⁸ See Foot, *op.cit.* 2.

¹⁴⁹ See R Hursthouse, *On Virtue Ethics* (Oxford University Press, 1999) 10-12.

possess a virtue is to be a certain sort of person with a certain complex mindset.¹⁵⁰

Yet we also speak of certain *actions* as being virtuous, instead of someone's character. I might say, for example, that it is generous of you to give money to charity, or that it is honest to admit that you broke a vase in a shop even though no one noticed. As with virtue seen as a character trait, saying that a specific action is virtuous means that we are not only judging the specific deed, but also the reason for performing the act, and the emotions and perceptions that accompany it. In other words, as will be discussed in section 4.5, the virtuousness of an act depends on the action, the motivation, and the emotions and perceptions of the agent.

The two meanings of virtue—applying to character and applying to actions—are related in the sense that having a virtuous character means that one tends to perform virtuous acts and to have virtuous emotions and motivations. Yet there are two different views of the direction of this relation.¹⁵¹ According to one view, virtuous character traits are primary; they are what gives moral value to virtue, and virtuous acts (and emotions and motivations) are acts that result from such dispositions. Aristotle, for instance, said that acts only count as virtuous if they 'proceed from a firm and unchangeable character'.¹⁵² If they do not, they may be acts a virtuous person would perform, and may have a certain moral value in themselves, but they are not truly virtuous acts. According to another view, virtuous acts are primary and are where the moral value of virtue comes from, and virtuous character traits are merely the disposition to perform virtuous acts and feel virtuous emotions.¹⁵³ Thomas Hurka, for instance, argues that the value of virtuous acts issues from their underlying motivation and emotion, and rejects the view that acts can only be called truly virtuous if they are performed out of a stable character trait. He says that if a friend who normally does not act generously suddenly gives money to a homeless person (with the right motivation and emotions), there is

¹⁵⁰ Hursthouse, 'Virtue Ethics' *op.cit.* 3-4.

¹⁵¹ See T Hurka, 'Virtuous Act, Virtuous Dispositions' (2006) 66(1) *Analysis* 69-76.

¹⁵² Aristotle, *Nicomachean Ethics* II.3, 1105a27-1105b12.

¹⁵³ See Hurka, *op.cit.* 70.

nothing self-contradictory about saying 'that was uncharacteristically generous of you'.¹⁵⁴ He argues that there is no reason to believe that an act performed for a virtuous motive, such as another's pleasure, is less good if it does not issue from a stable character trait.¹⁵⁵

Proponents of the first view might reply that although virtuous dispositions of character are primary, perfect virtue rarely, if ever, exists. They might say that being virtuous can better be seen as a matter of degree, and that while perfectly kind, patient or generous people are hard to find, we can still say that some people are more or less kind, patient or generous than other people.¹⁵⁶ Hence, when people perform virtuous acts that do not result from a perfect and stable virtuous character trait, we might still say that their actions are valuable and that their character is more virtuous than that of other people, or that they are more 'on their way' to becoming virtuous.

I am more in sympathy with the second view of virtue, that sees virtuous acts and emotions as primary, but I think that my account of exploitation as a failure of generosity can be accepted on both views. Both views can agree that it is valuable to have a generous character, though on the first view the value lies in having such a character in itself, while on the second view it has instrumental value because someone with a generous character can be trusted to perform more generous acts¹⁵⁷ and, amongst others, not to exploit people. Yet both can also agree that it is good to perform generous acts, even if this is not part of a perfect and stable generous character, and that it is bad to fail to do so, such as by exploiting others.

Therefore, I think that on both views one could accept that, although it is best if people have a reliable generous character, when I say that the wrong in exploitative transactions is greediness, a failure of the virtue of generosity, I am not primarily talking about exploiters' overall character, but about their actions in particular exploitative transactions. I primarily mean to say that exploiters

¹⁵⁴ Hurka, *op.cit.* 72.

¹⁵⁵ Hurka, *op.cit.* 73.

¹⁵⁶ See e.g. Hursthouse, 'Virtue Ethics', *op.cit.* 4-5.

¹⁵⁷ Hurka, *op.cit.* 73.

act greedily in the particular exploitative transactions (in which 'act' also involves their motivation, emotion and attitude towards the other), and that it would be better if they acted less greedily, irrespective of whether doing so would be 'out of character', because they often act greedily in other areas of their life as well.

After having set out what is meant with 'virtue' and 'vice', I will now briefly illustrate the role virtues and vices play in moral theory, before discussing the particular virtue of generosity and the vice of greed in section 4.3.

4.2 Virtue in moral theory

It is common to distinguish between three types of moral approaches: duty-based or deontological approaches, consequentialism, and virtue ethics. Virtues and vices are most obviously associated with virtue ethics, which focuses on what it means to live a virtuous life and to have particular virtues. Most of what will be said about virtues in this chapter is therefore based on work by virtue ethicists, since they have analysed virtues, including the virtue of generosity, in greatest depth. Nevertheless, virtues can also be important in deontological or consequentialist approaches, and some deontological and consequentialist writers have indeed given substantial attention to the virtues. Therefore, although I realize that my view of exploitation as a failure of virtue is most naturally associated with virtue ethics approaches, I believe that my argument is not incompatible with some deontological and consequentialist approaches as well, and I do not mean to exclusively endorse virtue ethics, or any particular virtue ethics theory. My argument is that exploitation is a failure of the virtue of generosity, and that this virtue has certain features, and can have an important role to play in society; and I believe that this argument can be accepted by supporters of many different types of virtue ethics theories, as well as several consequentialist and deontological theories. Of course, not everyone may agree with what I describe as general features of virtues, or features of generosity or

greed. There are certainly differences in the way virtues are seen by virtue ethics, deontological, and consequentialist theories; and by different theories within those approaches. The characteristics of virtue I describe in this chapter are primarily what I consider important elements of virtues, yet I do believe that supporters of many different types of virtue-oriented views can agree on the existence and importance of these elements. In this section I therefore briefly illustrate, first, some different virtue ethics theories, and, second, the role virtue plays in certain deontological and consequentialist theories.

In simple terms, virtue ethics theories argue that moral philosophy should not just be concerned with people's choices and actions, but also with their character. This means that such theories also focus on people's 'inner state': their perception, motivations, and emotions. Instead of identifying specific rules for correct moral action, they try to describe what type of person we should be. Their answer is that we should be virtuous people; people who live virtuous lives.¹⁵⁸ Consequently, virtue ethics theories try to formulate what it means to be virtuous and what it means to have specific virtues, or in other words, what makes certain character traits virtues.

Different virtue ethics theories give different explanations of what makes certain character traits virtues, and where their goodness derives from. On many virtue ethics theories, living virtuously is necessary for *eudaimonia*, which can be translated as 'human flourishing', 'real happiness', or 'the sort of happiness worth having.'¹⁵⁹ This supposes that there is a certain type of human life that constitutes human flourishing, and that we might be mistaken about it, believing, for instance, that the good human life consists solely in physical pleasure or in opulence. As a consequence, people with different views about human life will likely disagree about what human flourishing consists in.

One view, put forward by Aristotle and certain neo-Aristotelians, starts with the idea that all things have a distinctive function, and can be evaluated as good or bad instances of their kind, according to how well they perform this

¹⁵⁸ N Athanassoulis, *Virtue Ethics* (Internet Encyclopedia of Philosophy, 2010) 6.

¹⁵⁹ Hursthouse, *On Virtue Ethics*, *op.cit.* 10.

function.¹⁶⁰ The distinctive function of humans is to use reason, it is thought, because their rational capacity is what sets them apart from all other creatures and distinguishes them as humans. Therefore, according to this view, to live well as a human being is to reason well, and to have our actions guided by reason. In other words: acting virtuously (patiently, courageously, kindly, etcetera) means to act in line with reason, and acting in line with reason will lead to human flourishing.

On this 'eudaimonist' view, virtues are not just beneficial for other people (see section 4.6.1), but are also necessarily beneficial for the person possessing the virtues, except perhaps in situations of bad luck.¹⁶¹ This is because on this view, human flourishing or real happiness *consists in* living according to virtue (living patiently, courageously, kindly, etcetera). Hence, while on some moral theories the demands of morality might go against our self-interest, on this virtue ethics understanding that is not the case: what is required for morality and what is good for ourselves is identical.

Others have made the connection between the good human life and virtues in fairly similar ways, yet reject the 'eudaimonist' implication that virtues are necessarily beneficial for their possessor. Philippa Foot, for example, describes the goodness of virtues as a matter of practical rationality, related to human nature.¹⁶² Birds need to build nests and wolves need to hunt in packs, which indicates that what it is for a particular species to be as they should be and to do what they should do, is determined by what that particular species needs. The same is true for humans, Foot argues. And this does not just explain virtues such as courage or temperance, which are clearly beneficial for oneself, but also virtues such as kindness, honesty and generosity, since humans are social animals, who depend on each other and need cooperation.¹⁶³ Quite comparable, Alasdair MacIntyre's theory of virtues is based on the fact that

¹⁶⁰ Aristotle, *Nicomachean Ethics* I.6, 1097b22-1098a20. See also e.g. Hursthouse, *On Virtue Ethics*, *op.cit.* part III.

¹⁶¹ The idea is that while living virtuously generally leads to human flourishing, there are certain things outside of our control that will negatively influence our happiness or flourishing, such as, for instance, the death of one's children. See Aristotle, *Nicomachean Ethics* I.9, 1099a32-1099b9.

¹⁶² P Foot, *Natural Goodness* (Clarendon Press, 2001) 15.

¹⁶³ Foot, *Natural Goodness*, *op.cit.* 16.

humans are dependent on help from other humans throughout their lives.¹⁶⁴ In contrast with eudaimonist theories, however, these writers believe that although virtues are overall beneficial for humans, they are not necessarily beneficial for every individual in every case.¹⁶⁵

Rather different accounts of virtues are presented, for example, in Michael Slote's 'sentimentalist' virtue ethics theory and Christine Swanton's 'pluralist' virtue ethics theory. Slote proposes what he calls an 'agent-based', 'sentimentalist' virtue ethics inspired by Martineau, Sidgwick, Hume and ethics of care theorists, in which the value of virtuous acts derives from the motives those acts express.¹⁶⁶ Particularly admirable motives are 'caring' motives; motives that express concern for the welfare of particular others, such as benevolence and compassion.¹⁶⁷ Swanton, on the other hand, defines a virtue as a disposition to respond well to 'items within its field',¹⁶⁸ such as other people, oneself, objects, and animals. She argues that how we ought to respond to those 'demands of the world'¹⁶⁹ depends on their value, their good (if they have a good), their status, and the bonds between them and ourselves.¹⁷⁰ The moral goodness of virtues, in Swanton's view, lies in being thus appropriately responsive to other people and other 'items' in our world. Appropriate modes of responsiveness, which are present in all virtues, she says, are love, respect, and creativity.

Supporters of virtue ethics theories have often criticized deontological and consequentialist approaches for failing to see the importance of virtue, character, perception, emotion and upbringing. Although this is may be true for

¹⁶⁴ A MacIntyre, *Dependent Rational Animals: Why Human Beings Need the Virtues* (Duckworth, 1999).

¹⁶⁵ For example, it may be that when someone has cheated on his wife, being honest about this will damage his flourishing because it leads him to lose his wife and his children. Yet this does not negate the fact that honesty is generally good for humans, or that being honest is the correct thing to do in this situation.

¹⁶⁶ Slote, *op.cit.*

¹⁶⁷ Slote, *op.cit.*

¹⁶⁸ C Swanton, *Virtue Ethics: A Pluralistic View* (Oxford University Press, 2003) 19.

¹⁶⁹ Swanton, *op.cit.* 21.

¹⁷⁰ Swanton, *op.cit.* 41-42.

the work of many twentieth-century deontological and consequentialist theorists, it is not true for deontological and consequentialist approaches per se.

For instance, while Immanuel Kant's philosophy, which is central to most deontological theories, is often regarded as solely concerned with duty, Kant does have a theory of virtue,¹⁷¹ which has an important role in his philosophy. Therefore, as Martha Nussbaum argues, it is mistaken to think of Kant's view as obsessed with duty and principle to the exclusion of character-formation. Kant offers both a general account of virtue, and detailed analyses of some specific virtues and vices, including the vice of greediness. Although Kant's account does differ from the classical Greek theories that most virtue ethics theories get their inspiration from, especially in its non-cognitive account of emotion (see section 4.5.2), it is, Nussbaum argues, a theory about the same things, which covers most of the same topics, and bears substantial comparison with those theories.¹⁷²

For Kant, virtues are a strength of will, or 'the moral capacity to constrain oneself'¹⁷³ in light of our inclinations to do things that oppose moral requirements, such as selfishness, laziness or greed. His doctrine of virtue is related to the distinction he makes between perfect and imperfect duties. Perfect duties tell us which acts we should not do, such as killing or lying. Imperfect duties tell us what is required, but they do not tell us which *acts* are required, but which *ends* or maxims we should adopt. Kant distinguishes two broad imperfect duties we should adopt as ends: to develop our talents, and to make other people's ends our own.¹⁷⁴ From these, more specific 'duties of virtue' derive, such as kindness, compassion, beneficence, hospitality, and self-

¹⁷¹ Mainly discussed in his later writings; most notably in the 'Doctrine of Virtue', in the second part of his *Metaphysics of Morals* (1797), but also in his *Anthropology from a Pragmatic Point of View* (1798) and his *Religion within the Boundaries of Mere Reason* (1793).

¹⁷² MC Nussbaum, 'Virtue Ethics: A Misleading Category?' (1999) 3(3) *The Journal of Ethics* 163-201, 165. See also N Sherman, *Making Necessity a Virtue: Aristotle and Kant on Virtue* (Cambridge University Press, 1997).

¹⁷³ I Kant, *Metaphysics of Morals* (1797) [6: 394], cited in M Betzler, 'Kant's Ethics of Virtue: An Introduction' in M Betzler, *Kant's Ethics of Virtue* (Walter de Gruyter, 2008) 10.

¹⁷⁴ In his *Groundwork of the Metaphysics of Morals* (1785), cited in PS Lake, 'Being Virtuous and the Virtues: Two Aspects of Kant's *Doctrine of Virtue*' in M Betzler (ed), *Kant's Ethics of Virtue* (Walter de Gruyter, 2008) 107.

control. Hence, for Kant, virtues are dispositions to act from imperfect duties; that is, to act from the fact that we have made imperfect duties our end.¹⁷⁵

The fact that imperfect duties are ends to strive towards, means that people have a certain discretion in exactly how to do so. For example, having adopted the end to be compassionate to other people does not require giving away everything we own to help others, and having adopted the end to learn a foreign language does not mean that we have to spend all our time doing so. At the same time, if we never help anyone, or never spend any time studying vocabulary or grammar, we have clearly not adopted the end to be compassionate or to learn a language. What duties of virtue require, Onora O'Neill says, is that we ask ourselves questions such as, "What must I do if I am not to be indifferent to others' happiness?", or "In the situation in which I find myself, what could I do if I am not to neglect to develop my talents?", or "What does kindness (or honesty or gratitude) require here?"¹⁷⁶ Because on Kant's theory duties of virtue require us to adopt certain ends, it is not just our actions that matter for virtue, but our motives as well, as it is in virtue ethics theories. For example, the virtue of beneficence that Kant describes tells us not merely to help others, but to do so *from* the duty to make others' ends our own. That is, to help others because we have a true concern for the needs and interests of others and want to advance them.¹⁷⁷

Hence, virtues and vices, including the virtue of generosity and the vice of greed, are regarded as important in Kant's moral philosophy. Several consequentialist theorists emphasize the significance of virtue as well. Consequentialism is the view that normative properties depend exclusively on future consequences.¹⁷⁸ Numerous different types of consequentialist theories exist, amongst which, most prominently, utilitarianism. Crudely put, utilitarians argue that acts are

¹⁷⁵ It might be objected that this comes close to the argument in Ruth Sample's theory of exploitation that I rejected in chapter 2. I will discuss this objection in section 4.6.4 below.

¹⁷⁶ O'Neill, 'Kant's Virtues' in R Crisp (ed), *How Should One Live?* (Oxford University Press, 1996) 77-97, 94-95.

¹⁷⁷ See Lake, *op.cit.* 113-114.

¹⁷⁸ W Sinnott-Armstrong, 'What is Consequentialism? A Reply to Howard-Snyder' (2001) *Utilitas* 342-349, 345.

morally right if they maximize the good; that is, if the total amount of good minus the total amount of bad caused by an act is greater than for any other available act.¹⁷⁹ Classical utilitarians combine this with hedonism, the idea that pleasure and pain are the only intrinsically good and bad attributes, which leads to the claim that an act is morally right if it causes the greatest happiness for the greatest number. And it has often been argued that in order to achieve the greatest happiness for the greatest number, we may need virtue. This is so for several reasons.

First, virtuous behaviour will bring good consequences, both for oneself and for others. This is, as said before,¹⁸⁰ true for both 'self-regarding' virtues such as prudence, industriousness and patience, and for other-regarding virtues such as honesty and generosity. Therefore, although virtue will sometimes require people to sacrifice their pleasure or interests, overall, having a society of virtuous people is likely to maximize everyone's happiness.¹⁸¹

Second, the sacrifices of one's interests that are required by virtue may not actually be perceived as unpleasant. Some argue in an Aristotelian fashion, as John Stuart Mill did in his *Utilitarianism*, that pleasure comes in different kinds, and that we may make a distinction between 'higher' and 'lower' pleasures.¹⁸² It might be argued that being virtuous and acting virtuously may bring about a 'higher' type of pleasure, because acting virtuously can itself be considered pleasurable.¹⁸³

Third, having a society of virtuous people is likely to have an added benefit that follows from the fact that virtue guarantees certain conduct.¹⁸⁴ If we know that we can rely on other people to act honestly, justly, courageously, generously, etcetera, and if other people can rely on us to do the same, everyone will be more willing to cooperate with each other to achieve mutual benefits,

¹⁷⁹ W Sinnott-Armstrong, 'Consequentialism' in EN Zalta (ed), *Stanford Encyclopedia of Philosophy* (Spring 2013 Edition) 1.

¹⁸⁰ See note 139.

¹⁸¹ For a consequentialist virtue theory along these lines see J Driver, *Uneasy Virtue* (Cambridge University Press, 2001).

¹⁸² JS Mill, *Utilitarianism* (1863) (Hackett Publishing, 2001) chapter 2.

¹⁸³ For a discussion of this point in Mill's work, see R Crisp, 'Utilitarianism and the Life of Virtue' (1992) 42(167) *The Philosophical Quarterly* 139-160, 155-156.

¹⁸⁴ See J Kilcullen, 'Utilitarianism and Virtue' (1983) 93(3) *Ethics* 451-466.

and everyone will be more willing to benefit others in ways that would be too risky if others' behaviour cannot be predicted. Moreover, the sense of trust, security and friendship created by the guarantee that virtue provides can itself contribute to our pleasure or happiness.¹⁸⁵ One might object that in order to achieve such benefits of trust, we do not actually need to be virtuous, but merely need to pretend that we are. Yet, some argue, to truly win the trust or friendship of other people, who may be good judges of character, it is overall best to be actually committed to virtue for its own sake, and even act virtuously in the occasional situation where a non-virtuous act would give us a better result.¹⁸⁶

In sum, there are different ways in which consequentialism, like deontology, can and does incorporate virtues and vices.¹⁸⁷ I realize that this may not be true for all deontological and consequentialist theories, and that I have also not given an exhaustive overview of all the ways in which different deontological and consequentialist theories do incorporate virtues. I have merely intended to show that the importance of virtues and vices is not only recognized by virtue ethics theories, but can also be acknowledged by consequentialist and deontological approaches.¹⁸⁸

Now that I have set out in general terms what is meant by 'virtue', and what role virtues play in a number of different moral theories, I will next discuss the virtue of generosity and the vice of greed.

¹⁸⁵ Kilcullen, *op.cit.* 452-453.

¹⁸⁶ Kilcullen, *op.cit.* 455. See also M Baurmann, *The Market of Virtue, Morality and Commitment in a Liberal Society* (Kluwer Law International, 1996) chapter 3, for a similar argument applied specifically to liberal market-states.

¹⁸⁷ For a recent consequentialist virtue theory, in which virtues are understood as intrinsically good, and vices as intrinsically bad, see T Hurka, *Virtue, Vice and Value* (Oxford University Press, 2001) chapter 1.

¹⁸⁸ Because deontic and consequentialist theories can recognize as well that virtues are important for our moral lives, some argue that virtue ethics is not a genuinely distinctive moral approach (e.g. Nussbaum, 'Virtue Ethics: A Misleading Category?', *op.cit.* 165). I do not think this issue is of great importance for my argument, and do not want to take a stance on it here. Even if it is true, it does not mean that insights from virtue ethics are not valuable or that virtues are not important, but the opposite: that insights from virtue ethics can be recognized as important on all moral approaches. And if it is not true, and virtue ethics does have some characteristic that is not shared with the other approaches, this does not change the fact that virtues can and do have an important place in other moral approaches as well.

4.3 Generosity and greed

4.3.1 Generosity

The virtue of generosity is the character trait that disposes us to benefit other people by giving them some of our own wealth or possessions.¹⁸⁹ Not all types of voluntary giving to others count as generous, but only when it is done with the right motive.¹⁹⁰ When we give something merely because of some duty, for example, we are not acting generously. I am not being generous by paying my taxes, or by giving my cousin a birthday present because I feel a social obligation to do so. Similarly, if we give to someone because we think she deserves it for some reason, we are not being generous, but just. For example, we do not consider generous a teacher who rewards an A+ to a student for an outstanding essay, or an employment manager who gives a job to the most suitable applicant.¹⁹¹ Likewise, if we give someone money because we are buying something, or if we give someone money with the hope that she or others will think well of us, we are not being generous, but merely want to acquire something for ourselves: a product or a reputation. In short, giving something to someone is only generous if our motive for giving is to promote the other's good—her interests, wellbeing or happiness. Nevertheless, we may give for reasons such as the ones described above, and still be generous, if what we give is partly motivated by a desire to benefit the other. For example, I may feel I am under a social obligation to give a birthday present to my cousin, but choose to give her an exceptionally expensive present because I know she will love that particular present. Or I may give a bartender money because I am buying a cocktail, but choose to give her a large tip as well. Or I may pay

¹⁸⁹ Generosity is usually discussed in terms of money or wealth, yet might also be thought of in terms of other goods, such as time or attention.

¹⁹⁰ See for an extensive discussion of this point LH Hunt, 'Generosity' (1975) 12(3) *American Philosophical Quarterly* 235-244, 235-238.

¹⁹¹ In fact, if we *do* call a teacher generous for giving an A+, or a manager for giving someone a job, this implies that the student or applicant does not really deserve the grade or the job, and that, quite likely, the teacher or manager is being unjust towards other students or applicants. Generosity and justice thus seem to conflict in a way, although some might say that these are not cases of true generosity, but a distorted version of generosity. See section 4.4.

someone because I want her to fix my computer, or clean my house, or work for my company, but choose to pay her more for it than what I could get her to agree on.

Generosity is often regarded as falling in the same family of virtues as kindness and compassion, which might all be called virtues of benevolence. Of these virtues, kindness is the most comprehensive one. We can be kind in many different ways, and one of those ways is by being generous—by giving another something for their benefit. Compassion, like kindness, differs from generosity in that it does not necessarily involve giving another something, or at least not something material. Yet it also differs from generosity in that it seems to imply that the person we want to help is somehow to be pitied, is in some bad state of affairs, whereas this is not necessarily true for generosity. It is quite possible to be generous to someone who is not at all in a bad state, as is the case when we want to make someone who is reasonably well-off and happy even more happy by giving her an expensive present. Nevertheless, in many situations we may be generous to someone who *is* in some bad state of affairs, and our generosity may be aimed at helping them. In that case, we may be generous and compassionate at the same time, or perhaps more precisely, we may be acting compassionately *by* acting generously. Despite their differences, the virtues of kindness, compassion, and generosity do have a lot in common, which lies mainly in the fact that they all involve a concern for the good or wellbeing of others, and all involve being moved to promote others' wellbeing. Much of what will be said about the virtue of generosity in this chapter will therefore equally apply to compassion and kindness. Related, although the vice of greediness is most directly opposed to generosity, if we act greedily, we are certainly also not being kind. And if we act greedily towards someone who is somehow to be pitied, we are likely failing not only in generosity and kindness, but also in compassion.

As was described in the previous section, different virtue theorists have different views of what makes certain character traits virtues, or, in other words, why those character traits are good. This also holds for the virtue of

generosity. Nevertheless, although different theories ground the goodness of the virtue of generosity in different ways, it seems generally accepted that generosity is a virtue, and that greed is a vice. There is also a certain amount of agreement on different aspects of its goodness, although some theorists emphasize certain aspects more than others. As said before, most virtue ethics theorists agree that virtues are good both for the person possessing them and for other people, although they may disagree on whether virtues are in every instance beneficial for the possessor of a virtue. Likewise, most theorists agree that the virtue of generosity is beneficial both for the generous person and for other people. (Neo-)Aristotelian virtue theories will emphasize the benefits for the generous person more than some other views that mainly focus on the relational aspect of generosity and the benefits for other people, but both types of benefit are recognized by all of them. I will close this section by briefly discussing some reasons why generosity is traditionally thought to be good for its possessors. In section 4.6.1, I will discuss more extensively how generosity is good for other people.

Being generous towards people to whom we are close, or being generous in small communities, has clear advantages to ourselves, because in such situations our reputation matters and by being generous we may build up trust, encourage cooperation, and encourage others to reciprocate our generosity at some time in the future. Yet in economic transactions with people we do not know well, people we might never see again, or people with whom our reputation is not very important, those advantages do not exist. How can being generous be beneficial for the generous person in these situations?

Aristotle mentions several reasons why the virtue of generosity is beneficial to its possessors, or, in his terms, is rational for its possessors, and can contribute to a flourishing life. A first possible benefit relates to one's safety and society's stability. An important cause of crime, conflict, and revolution in a society is poverty, Aristotle says.¹⁹² Giving away part of our wealth to other people can therefore help reduce the level of crime and instability in our society.

¹⁹² Aristotle, *Politics* 5.

Consequently, it can be rational to give away part of our wealth if we think that reducing other people's poverty may ultimately protect our safety and wellbeing much better than spending our wealth more directly on ourselves.¹⁹³

A wider, but similarly 'consequentialist' argument put forward by Aristotle, is that by donating some of our wealth to poorer people we might not only prevent crime and instability, but may also help others to become self-sufficient and free to live reasonably or virtuously. And, he says, we have good reason to want to live in a society in which as many other people as possible live reasonably or virtuously, because such a society is much better to live in than a society full of ignorant or vicious people.¹⁹⁴

Nevertheless, in Aristotle's view, even if there is no prospect that being generous will contribute to a safe, stable, or virtuous society, generosity has other benefits for its possessors as well. First, there is the pleasure of giving. Giving to others is rewarding, he argues, in the sense that it generates pleasant and friendly feelings: 'Those who have done a service to others feel friendship and love for those they have served, even if these are not of any use to them and never will be'.¹⁹⁵ That giving is often pleasurable, especially when the receiver is very happy with one's gift, is an often-recognized fact, and is well documented in psychological and sociological research.¹⁹⁶ This pleasure of giving is related to the pleasure that one's gift brings to others, which means that this benefit for the generous person, like the first two mentioned benefits, is dependent on the benefits generosity has for others.

Aristotle hints at two other benefits of being generous, but they are mainly applicable to people who are very wealthy, whereas someone who is not

¹⁹³ See JA Swanson, 'Aristotle on Liberality: Its Relation to Justice and Its Public and Private Practice' (1994) 27(1) *Polity* 3-23, 7.

¹⁹⁴ More precisely, on Aristotle's view, which bases virtue on reason, what one wants is to be able to live a life as reasonably and intellectually engaged as possible. This means, he argues, that we should want to promote the moral and intellectual conditions for such a life, which includes having as many other reasonable human beings around us as possible. Nevertheless, we might interpret or stretch his argument more broadly, and think that, even if we do not equate virtue with reason, it is better or more pleasant for us to live in a society where other people live according to the virtues.

¹⁹⁵ Aristotle, *Nicomachean Ethics* IX.7, 1167b31-1167b33. Cited in Swanson, *op.cit.* 8.

¹⁹⁶ See e.g. D Cheal, 'Moral Economy' in AE Komter (ed), *The Gift: An Interdisciplinary Perspective* (Amsterdam University Press, 1996) 81-94; and JT Godbout, 'The Moral of the Gift' (1998) 27(4) *Journal of Socio-Economics* 557-570.

very wealthy can still be generous. The first argument says that it is good to give wealth away to free ourselves of the burden of safeguarding and managing our wealth, which great amounts of wealth necessitate.¹⁹⁷ The second argument is that when we are very wealthy, it is good to give away some of our wealth in order to affirm or cultivate indifference to great wealth, because the purpose of wealth is to spend it and not to gather it, and the 'well-ordered human soul' should be indifferent to such wealth.¹⁹⁸

In short, there are different reasons why generosity can be seen as beneficial to persons possessing the virtue, some of which all virtue ethics theorists can agree upon. They will also agree, as said, that the virtue of generosity is beneficial for other people. That the virtue of generosity is good for others seems rather self-evident. Being generous means giving something to another in order to benefit her; giving something to another who needs, wants or enjoys that something. Hence, generosity is clearly beneficial for others because they will receive what they need, want or enjoy. Nevertheless, more will be said about how generosity is aimed at the benefit of others in section 4.6.1. In the next section, however, I will discuss the vice that is directly opposed to generosity: greed.

4.3.2 Greed

Greed is generally defined as having an excessive and selfish desire for something. This something might be food, in which case the term is synonymous with gluttony, but in the context of this thesis, greed is meant as an excessive desire for money or wealth. As such, I think that greed can manifest itself both in one's spending and in one's acquiring tendencies, and can therefore take several different shapes (that may or may not be found alongside each other in one person):

¹⁹⁷ Aristotle, *Politics* IV, 1320a27-1320a28. See Swanson, *op.cit.* 8.

¹⁹⁸ Aristotle, *Nicomachean Ethics* I.4, 1096a6-1096a7; and IV.3, 1120b15-1120b17. See Swanson, *op.cit.* 7-8.

(a) Regarding one's spending tendencies, the term greed can refer to what may perhaps better be called parsimony or miserliness: wanting to spend as little money (or give away as few goods) as possible, either on oneself or on others, in order to keep as much money (or goods) as possible. Not liking to spend money is not necessarily a vice. Someone who does not have much money, or who is saving for some future spending, is simply being prudent by trying to spend as little as possible. The desire not to spend is only greedy when it is excessive: when one desires to keep as much money as possible for its own sake, not because of need but because one simply desires to have a lot of money. Think, for instance, of Disney's Scrooge McDuck.

(b) Second, the term greedy might refer to people who do not dislike spending money per se, but who try to spend as little as possible on *others*. Think, for example, of someone who is wealthy, and who likes to buy herself expensive clothes, cars, holidays, and restaurant meals, but who always gives very cheap birthday presents, and when on holiday or in a restaurant, never leaves a tip.

(c) Regarding people's acquiring tendencies, the term greedy is sometimes used to describe people who want to buy many or very expensive goods, much more than what they could possibly need. Trying to buy many or expensive goods is not per se problematic. Everyone wants to be able to live a pleasant life, which involves, for many people, spending money on things such as a comfortable house in a nice location, hobbies, travelling, and eating well. It is only regarded problematic and greedy when the desire to buy many or very expensive goods is excessive, in the sense of desiring to acquire expensive things for the sake of acquiring them, instead of because one needs them or enjoys them for their purpose. M Hirsch Goldberg gives many extreme examples of such behaviour, including an opulent dinner party given to celebrate the host's dog's birthday, at which the dog received a \$15,000 diamond collar; and Imelda Marcos, Filipino politician and widow of former dictator Ferdinand Marcos, who owns 2,700 pairs of shoes.¹⁹⁹

¹⁹⁹ M Hirsch Goldberg, *The Complete Book of Greed: The Strange and Amazing History of Human Excess* (William Morrow & Co, 1994).

(d) Finally, greed can manifest itself in a desire to earn as much money as possible, often, though not necessarily, combined with and required for (c). Again, desiring to earn a lot of money is not always problematic. Almost everyone wants to earn enough money to be able to live a pleasant life and to provide for people they care about. This may even be an important factor in the development of civilizations.²⁰⁰ Without the desire for easier and better lives, people would have little incentive for self-improvement and to invent or create new things, and societies would have much less overall wealth, health, education, technology and art. Wanting to earn more is only considered greedy when excessive, in the sense of more than one reasonably needs and at the expense of other things that are important. For instance, when someone is so obsessed with earning money and working that she has no time for other important things in her life such as her family; or when trying to earn as much as possible requires damaging the environment, or damaging other people's health; or when trying to earn more than one reasonably needs sacrifices what other people are able to have or earn, such as public officers receiving extraordinary bonuses or salaries from tax payers' money, or managers or shareholders receiving extraordinary bonuses or salaries, while most employees receive minimum wage.

As James Child notes,²⁰¹ the excessive element in greed is not simply an excess in desire for wealth, but this excessive desire also implies an excess in self-concern, or an excessive self-aggrandizement. Greedy people want to acquire or keep as much money or goods as possible for *themselves*, even if that wealth could much better be spent in different ways, without them suffering any real harm. This is true for all of the above manifestations of greed; for misers who hoard money or possessions (a), for affluent people who don't mind spending much on themselves but hate spending anything on others (b), for people who want to buy excessively luxurious goods they do not really need (c), and for people who want to earn as much as possible, irrespective of the negative consequences for others or for other important things (d). In the

²⁰⁰ See e.g. R Girling, *Greed* (Doubleday, 2009) 20-21.

²⁰¹ JM Childs, *Greed: Economics and Ethics in Conflict* (Fortress Press, 2000) 2.

previous section it was said that generosity exists in giving others some of our own wealth or possessions with the aim of benefiting them, which means that it involves a concern for the good or wellbeing of others. Greed is the exact opposite of generosity, in that it involves trying to acquire or keep as much wealth for oneself and, thereby, showing no or limited concern for the good or wellbeing of others. The problem with greed is therefore not just, as Aristotle pointed out, a matter of caring too much about what we ought not to care about—wealth *an sich*— and forgetting that the purpose of wealth is to use or enjoy it instead of to gather it.²⁰² The wrongness of greed is partly this: an ‘inappropriate overvaluation of material objects’,²⁰³ yet it is also, and, I think, primarily, the other side of this coin: the lack of care and concern for other people—the inappropriate undervaluation of other people’s wellbeing. This will be further discussed in section 4.5.

The greediness involved in exploitation is a combination of (b) and (d); of wanting to spend as little as possible on others, and wanting to acquire as much as possible for oneself. In exploitative transactions, exploiters try to get as much personal benefit, and give as little as possible to the other person. ‘Give’ might seem a strange term when thinking of commercial transactions. Yet all consensual commercial transactions create a certain total benefit, which the parties have to divide between them. Very simply put, an employer hiring an employee, does so with the aim of making a certain profit, which the employer and the employee have to divide between them. If the added net profit an employee creates is, say, £60,000 per year, and her salary is £30,000, the transaction brings £30,000 to the employer, and £30,000 to the employee, minus the negative value she attaches to her lost free time and the effort of working. If a taxi driver brings a stranded passenger to a destination, the total benefit created by the transaction is the value of the fact that the passenger gets where she wants to go without walking. If the passenger values not having to walk as, say, £50, and she pays £30, the net value the transaction brings her is

²⁰² *Nicomachean Ethics* 1096a6-7, 1120b15-1.

²⁰³ Nussbaum, ‘Virtue Ethics: A Misleading Category?’, *op.cit.* 186.

£20, while it brings the driver £30. Hence, when negotiating about a commercial transaction, what is at stake is how much of the created total value of a transaction each of the parties will receive. Exploiters try to give very little to the other party, so they can keep a large amount for themselves, even though they could afford giving the other more and still keep enough for themselves. Thus, exploitative employers try to give very low wages to their employees, and/or require them to work for long hours or in bad working conditions, in order to keep more profit for themselves or their company. And exploitative taxi drivers ask stranded passengers very high prices for a ride, in order to earn a lot of money. They thereby act greedily, in the senses described under (b) and (d) above: they try to spend as little as possible on others and/or try to get as much wealth for themselves, irrespective of the consequences for others, in terms of how much wealth is left for the others, or in terms of the hardship others need to suffer, such as long working hours or harsh working conditions.

The vice of greediness is opposed to the virtue of generosity, but it can also be opposed to other virtues. First, as said, it can be opposed to the virtues of kindness and compassion, if in some situation compassion or kindness requires us to give to others. Greed can also be opposed to justice, if we do not want to give someone what she deserves according to requirements of justice, or if we want to take for ourselves something that others deserve. I argued in chapter 2 that the wrong in exploitation cannot rightly be understood as a matter of injustice. Therefore, when I speak in this thesis of greed as the wrong in exploitation, I mean it as a vice that is opposed to the virtue of generosity, and thereby sometimes also to kindness and compassion.

There may, however, be a difference between acting greedily and not acting generously. For instance, if tipping ten percent of the bill in a restaurant is generally expected, some people may think it not actually generous to indeed tip ten percent, while they do not think it is greedy either. Likewise, if an employer in a country with no minimum wage laws pays the equivalent to a minimum wage in other countries, while she could have gotten her employees to accept less, but could also easily have paid more, this might be considered

neither very generous, nor very greedy. This indicates that what counts as generous and what counts as greedy is a matter of degree, on which people may disagree, and which may depend on the circumstances. This will be further discussed in the next section, on the context-dependence of virtues.

4.4 Context-dependence

In the previous two sections, I analysed what is meant with virtues and virtue ethics in general, and with the virtue of generosity and the vice of greed in particular. In this section and in the next section, I will discuss some further characteristic of virtues in general and the virtue of generosity in particular, and the relationship of these characteristics with my view of exploitation as a failure of the virtue of generosity. The feature discussed in this section is the context-dependence of virtue; in section 4.5, I discuss the role of perception, emotion, and responsiveness in virtues and vices.

4.4.1 Virtue and context-dependence

An important feature of virtue is that it is context-dependent. Character traits that are typically regarded virtuous, such as honesty, industriousness or kindness, might be seen as faults in some situations. We are too honest, for example, if we cannot resist revealing that we are organizing a surprise birthday party for a friend, are too industrious if we work so hard that we ignore the needs of our family or friends, and too kind if we spend so much time and effort helping others, that we cannot manage to properly take care of our own health or wellbeing. It thus appears that virtues do not always result in good action.

One response to this—the (neo-)Aristotelian response—is that in such situations, we do not really possess the virtues of honesty, industriousness or kindness, but a distorted form of them, because, it is said, virtues by definition

result in the proper or excellent response to different situations.²⁰⁴ Aristotle therefore famously described virtue as a ‘mean’,²⁰⁵ because the proper response to particular situations is neither too little nor too much. For example, the virtue of kindness lies in between, amongst others, unkindness or grumpiness on the one hand, and flattery or slavishness on the other. However, it is mistaken to conclude from this that virtue always involves the display of some emotion and action in a moderate degree. What is important is that it is the *proper* degree for a particular situation, and the proper degree might sometimes be a large amount.²⁰⁶ Acting virtuously thus means, in Hursthouse’s words, ‘getting things right’: giving the right response in the right situations, for the right reasons.²⁰⁷

As a consequence, proponents of Aristotelian virtue theories emphasize, virtuous people need ‘practical wisdom’. This is the ability to reason correctly about what is required in different practical situations. To have practical wisdom means, on the one hand, that one has the ability to discern which things are of value in different situations. In other words: that one knows which ends are worth striving for, and how much those particular ends are worth. On the other hand, it means that one knows how best to achieve those ends in particular situations. Practical wisdom, on this view, distinguishes true virtue from what Aristotle calls ‘natural virtue’,²⁰⁸ which is the mere tendency to be moved by virtuous impulses such as compassion, generosity or honesty. Such natural virtue is something we can see in children, and although children who act on such inclinations have good intentions, it can lead to bad results because they do not yet know what being compassionate, generous or honest in a particular situation requires. For example, a young child may feel real compassion for her goldfish who seems hungry, and try to feed the fish by putting a bar of chocolate in the fishbowl, which pollutes the water and kills the fish. Although the child’s intentions and feeling of compassion are praiseworthy, the result is clearly not, because the child lacks practical wisdom about which

²⁰⁴ See e.g. Aristotle, *Nicomachean Ethics* II.5, 1106a15-1109b25; Aquinas, *Summa Theologica* I-II Q56 A5; Hursthouse, *On Virtue Ethics*, *op.cit.* 13-14.

²⁰⁵ Aristotle, *Nicomachean Ethics* II.5, 1106a15-1109b25.

²⁰⁶ See Athanassoulis, *Virtue Ethics*, *op.cit.* 9.

²⁰⁷ Hursthouse, *On Virtue Ethics*, *op.cit.* 12.

²⁰⁸ Aristotle, *Nicomachean Ethics* VI.13, 1144b3.

sort of action compassion requires in the situation. Such ignorance may be excused in children, Aristotelian theorists say, but if an adult acts merely on inclination without considering whether her action is actually what is required in the situation, this is a failure of practical wisdom and a failure of virtue.²⁰⁹

Other people, in contrast, give a different response to the question of whether we can be virtuous 'to a fault': too virtuous, or virtuous in the wrong way, in the wrong situation or towards the wrong people.²¹⁰ On this view, which perhaps better corresponds to the way many people use virtue-terms in their daily lives, it is thought that being virtuous to a fault still constitutes real virtue, especially in the case of virtues of benevolence such as kindness, compassion and generosity.²¹¹ People with this view might agree that someone fails in the virtue of, say, kindness, if she does not actually aim at another's good but merely at what the other desires, such as when helping a recovering drug addict to buy drugs while knowing that this will harm her. Yet they think that if someone is being *too* kind, such as by spending so much time helping others that she cannot properly take care of herself, she is not failing in kindness. In such a situation, the argument is, we can say that the person is failing in another virtue like pride or justice, or maybe that she has insufficient practical wisdom, or that she did not make the best decision all things considered, but we cannot say that she is not truly kind.²¹²

²⁰⁹ See Hursthouse, 'Virtue Ethics', *op.cit.* 3-4.

²¹⁰ This is distinct from another issue: whether virtues can still be called virtues if they are directed at wrong ends. For instance, a criminal may benefit from being courageous if she wants to rob a bank, or may benefit from being industrious or patient if she wants to devise a plan to do so. Can we still call this true courage, industriousness and patience? For a discussion of this point see Foot, *Virtues and Vices*, *op.cit.* 14-18.

²¹¹ See e.g. J Wallace, *Virtues and Vices* (Cornell University Press, 1978) 142. See also for a related but slightly different argument M Slote, *The Impossibility of Perfection: Aristotle, Feminism, and the Complexities of Ethics* (Oxford University Press, 2011) 31.

²¹² For (neo-)Aristotelians who support the 'unity' or 'reciprocity' of virtue thesis this is impossible for another reason, because this thesis says that to fully possess one virtue, we need to possess all virtues. This idea follows from Aristotle's statements that people 'cannot be fully good without practical wisdom or practically wise without virtue of character' and that 'as soon as [a person] has practical wisdom, which is a single state, he has all the virtues as well.' (Aristotle, *Nicomachean Ethics* VI.13, 1144b32; 1145a2. See e.g. J Annas, *The Morality of Happiness* (Oxford University Press, 1994) 73-78; and G Watson, 'Virtues in Excess' (1984) 46 *Philosophical Studies* 57-74. This thesis has received much criticism, however. See e.g. P Foot, 'Moral Realism and Moral Dilemma' (1983) 80 *Journal of Philosophy* 396; and B Williams, *Ethics and the Limits of Philosophy* (Harvard University Press, 1985) 36.

4.4.2 Context-dependence, generosity and exploitation

What does this mean for the virtue of generosity, and my argument that the wrong in exploitation is a matter of greed and a failure of the virtue of generosity? The two different views on the extent to which virtuous action is limited by rational considerations that depend on the context, bear on the virtue of generosity and the vice of greed as well. On the (neo-)Aristotelian view, the virtue of generosity lies in between, amongst others, greediness or miserliness on the one hand, and wastefulness on the other. It involves a rational consideration of when to give, to whom to give, and how much to give.²¹³ Hence, on this view, if we give to the wrong person, it does not count as true generosity. Need for or potential use of what we give matters, and other things being equal, it is better to give to people who need our help than to people who do not. For example, if we are relatively poor, we are not being ungenerous if we do not give luxurious presents to much richer friends.²¹⁴ We also do not count as ungenerous if we refuse to give money to someone whom we know will waste it in an extravagant desire for, say, dining at Michelin-star restaurants, or who will use it to feed an addiction or to execute a criminal scheme. Likewise, on this view it matters how much we give, and it does not count as proper generosity if we give away too much or too little. We can give away too much, for example, if we give away more than the recipient needs or if we cannot actually afford what we give away. For instance, giving a thirty percent tip to a waitress for good service may be generous, but giving her your car as a tip seems generous to a fault. The reason this is so, according to Aristotle, is that the goal of generosity is to help others, and if we give away our wealth excessively and unthinkingly to certain people, we will have less left to give to others who may need it much more.²¹⁵ Thus, Hursthouse argues, '[a]ny virtue may contrast with several vices or failings, and generosity contrasts not only with meanness or selfishness but also with being prodigal, too open-handed, a sucker.'²¹⁶

²¹³ See Aristotle, *Nicomachean Ethics* IV.2, 1120a23-1121a1.

²¹⁴ See Hursthouse, *On Virtue Ethics*, *op.cit.* 12-13.

²¹⁵ Aristotle, *Nicomachean Ethics* IV.2, 1120b20-1120b24.

²¹⁶ Hursthouse, *On Virtue Ethics*, *op.cit.* 12-13.

As said, others have a different view on whether we can be virtuous to a fault, including generous to a fault. They disagree that generosity necessarily involves a certain calculation and rational consideration, and that giving away too much or to the wrong person does not count as generous. Lester Hunt, for instance, argues that although this ‘intellectualist picture’²¹⁷ makes sense when applied to the virtues of justice and prudence, it does not make sense when applied to generosity.²¹⁸ He says that there is no contradiction in saying something like ‘she shouldn’t have given away that much money because she can’t afford to, but we can’t doubt her generosity’, because in such a situation, the gift is not being criticized as failing to be generous, but as failing to be prudent.²¹⁹ He admits that virtues can balance or qualify each other, and that generosity may have to be tempered by prudence or justice or some other virtue. Yet, he says, this does not change the fact that these virtues are distinct qualities and that if someone is too generous from the perspective of prudence or justice, she is nevertheless still generous.²²⁰

I am not sure which of these views is superior. Yet irrespective of their differences, I expect that advocates of both views will at least agree that what it means to be generous is limited by contextual factors in the opposite sense: that we cannot be called greedy if we refuse to give too much (say, give a car as a tip to a waitress), or give to the wrong person (say, someone who will put it to bad use or who needs it much less than we do ourselves). Likewise, both views would agree that if there *is* a good opportunity to benefit another, when we can afford it and when we know that the other can make good use of the extra money, it is a good occasion to be generous. And this is what exploiters refuse to do. They have a very good opportunity to benefit another by offering a higher or lower price than they could get the other to agree on, they know that the other would like them to do so, and they could offer the higher or lower price while still having enough left for themselves. Yet they still choose not to do so, but to

²¹⁷ Hunt, *op.cit.* 240.

²¹⁸ Hunt, *op.cit.* 240.

²¹⁹ Hunt, *op.cit.* 241.

²²⁰ Hunt, *op.cit.* 241-242. See also e.g. CA Sanchez, ‘Generosity: Variations on a Theme from Aristotle to Levinas’ (2010) *The Heythrop Journal* 442-453, for another argument that generosity is not a matter of rational calculation.

try to keep a large benefit for themselves, leaving the other with little benefit. This is why I believe that the wrong in exploitation is a matter of greediness, and a failure of the virtue of generosity. Think of the examples set out in chapter 1 of situations that are typically found exploitative, such as employers who pay their employees dreadfully low wages; ‘rescue cases’ in which someone is stranded and a passerby offers to help her, but only in return for a high price; companies who pay nothing to their interns; or money lenders who ask exorbitant interest rates for a loan to people in urgent need of money. In all these situations, the alleged exploiters could, presumably,²²¹ easily ask less or give more to the exploitee while still having plenty left for themselves. And they know, or at least could be expected to presume, that the exploitee would like them to do so, and would benefit if they would do so. Yet they choose not to do so, but to try to get a lot of personal gain out of the situation, leaving relatively little for the other person.

The context-dependence of the virtue of generosity means that the more another needs or can make good use of some extra benefit, the more greedy it is to withhold it. Likewise, the more we actually need the extra benefit for ourselves or for other people around us, the less greedy it is not to give it away. This has some implications for what, on my view of exploitation, counts as exploitation.

First, it means that other things being equal, it is much less greedy and exploitative to try to get as good a price as possible when, for example, selling a rare painting to a multimillionaire who does not care very much about how much she pays, than it is to try to get as good a price as possible when engaging in a transaction with a very poor person who needs all the money she can get. This perhaps explains some of the appeal of the needs account of exploitation (chapter 2), which says that violating a duty to help others in need is what makes exploitation wrong, and that we can consequently only wrongfully

²²¹ We might be wrong in assuming that. It might be that, for instance, an employer who offers very low wages only does so because she would make a loss on the product if her production costs were any higher. In that case, we are mistaken to think the employer is acting greedily and to consider that particular transaction exploitative.

exploit someone if she needs help in meeting a basic need. As I argued in chapter 2, I do not agree that the violation of a duty to help others meeting their basic needs can adequately explain the wrong in exploitation, nor that we can only exploit people who have a basic need to be met. Yet the fact that what it means to act generously partly depends on the needs and desires of another, and that the more another needs or can make good use of some benefit, the more greedy it is to withhold it, does imply that it is more likely to exploit someone who has some basic need to be met.

Second, and conversely, the fact that what it means to be generous also depends on one's own needs and wealth, implies that if a poor person tries to get as much personal benefit as possible in a transaction with a relatively rich person, this is not as greedy as when a richer person tries to get as much benefit from someone who is equally well off or less well off as she is herself. For instance, if a poor child in a developing country tries to sell a rich tourist a bottle of water for \$3, while the normal price is \$0.50, this counts as much less greedy than if, say, a very wealthy person tries to pay as little as possible when hiring someone to paint her kitchen, even if the painter is not badly off herself (although, as said, it is even *more* greedy if the painter is actually quite poor, and the wealthy person knows it). As said in the previous section, trying to earn or save a lot of money is not greedy per se; it only becomes problematic if one's desire to earn or save money is excessive, in the sense of exceeding what one reasonably needs and sacrificing the needs or interests of others. A poor child who asks \$3 instead of \$0.50 is therefore not greedy if she seriously needs the money, and expects that the tourist can easily miss it.

Finally, as this discussion indicates, the context-dependence of generosity and greediness means that exploitation is a matter of degree. The fact that which behaviour is generous and which is greedy depends on one's own needs and affluence, and on other people's needs and affluence, entails that whether a transaction is exploitative is a matter of degree with no clear cut-off point. Simply speaking, as explained, if we try to get as good a price as possible in a transaction irrespective of the consequences for the other, this is clearly greedy if we are very wealthy and the other is very poor, and it is not greedy if

we are very poor and the other is very wealthy. And the wealthier we are or the poorer the other is, the greedier it is to try to get as good a price as possible. But things are not that simple. Many people who transact with each other are neither very wealthy nor very poor, which means that determining what being generous and greedy involves is not as straightforward.

Determining exactly what counts as generous, what as ungenerous, and what as greedy, is not straightforward for another reason as well. This is that it is not generally clear how much one should give to be generous, and how little one should give to count as greedy. As said, this depends on one's own wealth and needs and on the other's wealth and needs, but this does not truly answer the question. Imagine, for example, a very wealthy person who wants to hire someone to clean her house twice a week. I think we would agree that offering to pay below minimum wage would be greedy, and that offering £1,000,000 per year would be extremely generous. But where on the scale between below minimum wage and £1,000,000 lie the boundaries between what is greedy and what is non-greedy but non-generous either, and between what is non-greedy/non-generous and what is generous? People will disagree about these boundaries, or may not even be able to precisely pinpoint such boundaries. Whether a transaction is exploitative is thus a matter of degree, and although many people will be able to agree on instances of clearly exploitative transactions, such as sweatshop labour, they may disagree on 'boundary cases'.

4.5 Perception, emotion and exploitation

In the previous section, I discussed the context-dependence of virtue and vice, and its implications for what counts as exploitation on my view of exploitation. Three other important elements of virtue are perception, emotion, and responsiveness. These elements are related to each other and will each in turn be explained in this section. I will close the section with a discussion of how the three elements relate to my argument that exploitation is a matter of greediness and a failure of the virtue of generosity.

4.5.1 Virtue and perception

The first element of virtue I will discuss is perception: the way in which we see the world around us. The idea that perception is morally important can be found in the classical writings of Aristotle²²² and Aquinas,²²³ and in present-day (neo-)Aristotelian virtue ethicists,²²⁴ but it is also a key element in the work of Simone Weil,²²⁵ Iris Murdoch,²²⁶ and many authors inspired by them.²²⁷ These writers reject the idea that morality is solely about choice and action, and show that when we make a choice in a certain situation, this choice is necessarily determined by the way in which we see that situation. Moral reasoning is thus partly a matter of perception—the way in which we perceive or ‘read’ situations—and part of our moral development consists in improving the accuracy of our perception.

The notion of moral perception is an element of the idea of practical wisdom, discussed in section 4.4.1 above. Virtuous people know what to do in particular situations by perceiving the relevant features of that particular situation, and knowing how to respond to those features. An important part of what it means to see the relevant features of a situation has to do with the way we see other *people* and their needs and interests. After all, as explained before, virtues such as generosity, compassion and kindness entail that we aim to improve other people’s needs and interests, and we can only be moved to advance other people’s interests if we are properly aware of their interests.

Our perception of other people can be deficient in at least two ways. First, we can have a mistaken or distorted perception of someone. Second, we can fail to perceive someone, or someone’s needs, desires or interests to a sufficient

²²² Aristotle, *Nicomachean Ethics* II.9, 1109b13-1109b23.

²²³ Aquinas, *Summa Theologica* I Q78 A4.

²²⁴ See e.g. Hursthouse, *On Virtue Ethics*, *op.cit.* 12; J McDowell, ‘Virtue and Reason’ (1979) 62 *The Monist* 345.

²²⁵ S Weil, *Simone Weil: An Anthology* (Penguin Classics, 2005).

²²⁶ I Murdoch, *The Sovereignty of Good* (Routledge, 1970).

²²⁷ See e.g. LA Blum, *Moral Perception and Particularity* (Cambridge University Press, 1994); M Holland, ‘Touching the Weights: Moral Perception and Attention’ 38 (1998) *International Philosophical Quarterly* 299-312; and MC Nussbaum, *Love’s Knowledge: Essays on Philosophy and Literature* (Oxford University Press, 1990) 54-105.

degree—or at all. Considering the former, Iris Murdoch gives the now well-known example of a mother, M, reflecting on her daughter-in-law, D. At first, the mother finds D vulgar, undignified and tiresomely juvenile, and feels that her son has married beneath him. Yet M does not allow this opinion to appear in any way, and behaves perfectly towards D.²²⁸ Moreover, M is ‘an intelligent and well-intentioned person capable of self-criticism, capable of giving careful and just attention to an object which confronts her’²²⁹ and she tells herself: ‘I am old-fashioned and conventional. I may be prejudiced and narrow-minded. I may be snobbish. I am certainly jealous. Let me look again.’²³⁰ As a result, M’s vision of D changes after some time. She now considers her refreshingly simple instead of vulgar, spontaneous instead of undignified, delightfully youthful instead of juvenile. Murdoch’s point is that the way in which M sees D, and the mental process M undertakes in assessing and changing her perception of D, has a moral aspect, even though M’s outward behaviour towards D does not change at all. Murdoch uses this example to contest the view that only outward activities are morally significant, and to argue that moral activity also takes place in people’s mind, in the way they choose to strive for an accurate and loving²³¹ perception of other people.²³² Such an accurate perception, Murdoch argues, requires ‘unselfing’: seeing other persons and their needs and interests without letting our own interests and biases towards them cloud the way in which we see them.²³³ Things like jealousy, racism, and self-centredness can distort our perception of others, and part of our moral development consists in overcoming such biases to acquire a more accurate view of other people.

In addition to having a distorted perception of someone, we can also fail in our perception by not being sufficiently aware of the condition, needs, or

²²⁸ I Murdoch, *The Sovereignty of Good* (Routledge, 1970) 17.

²²⁹ Murdoch, *op.cit.* 17.

²³⁰ Murdoch, *op.cit.* 17.

²³¹ Murdoch argues for seeing others in an accurate *and* loving way. Yet arguably, certain situations require us not to try to see someone in the most charitable light possible. For example, if a child is bullying other children, we may try to understand the causes, but should not deny the fact that she is bullying, thinking something like ‘she’s only a little playful, she doesn’t have bad intentions’. For a criticism along these lines see C Starkey, ‘On the Category of Moral Perception’ (2006) 32(1) *Social Theory and Practice* 75-96.

²³² Murdoch, *op.cit.* 23.

²³³ Murdoch, *op.cit.* 84; Blum, *op.cit.* 12.

interests of other people around us, or by not being aware of them at all. Lawrence Blum gives the example of two people, John and Joan, who are sitting in a subway train.²³⁴ There are no empty seats and some people are standing, amongst whom a woman holding two full shopping bags. John is not paying particular attention to the woman, although he is aware of her, while Joan is distinctly aware that the woman is uncomfortable. Blum argues that the difference between what is salient for John and Joan has moral significance, because Joan perceives the standing woman's interests as a stake in a way that John does not, and thus perceives a morally relevant value in the situation in a way that John does not.²³⁵

For Blum, as for Murdoch, having accurate perception has moral value in itself, irrespective of whether it leads us to perform a certain action.²³⁶ Both would say, for instance, that it is morally better to perceive the plight of a homeless drug addict we pass on the street than to not truly notice her, even if it makes no practical difference because, for instance, we believe that giving her money is bad because she will likely spend it on drugs. Or, in relation to the above example, both would consider it morally better if John perceived the woman's discomfort, even if he had broken his leg and was unable to actually offer her his seat. Similarly, on this view having a mistaken or distorted perception of others or oneself is morally relevant, even if it does not show in our actions. For instance, if we arrogantly perceive any opinion a colleague may have to give as unworthy of consideration, even if the colleague ends up giving no opinion at all.²³⁷ Murdoch and Blum seem right that accurate perception can have moral value in itself. This becomes especially clear when thinking, for instance, of a person who always behaves very 'correctly' and politely towards others, but who has a racist attribute in the sense that, although she does not hate or avoid black people, she deep down see them as less intelligent and less civilized than white people. Or, for example, when thinking of a similarly well-behaved man who has a sexist attribute in the sense that he deep down

²³⁴ Blum, *op.cit.* 31-37.

²³⁵ Blum, *op.cit.* 32.

²³⁶ Blum, *op.cit.* 43.

²³⁷ Based on an example in Starkey, *op.cit.* 88-89.

sees women as less intelligent or rational. Even if the views of such people do not have any consequences in the way they behave, and even if they do not share their view in any way with anyone else, the fact that they perceive themselves as more intelligent, civilized or rational than black people or women, seems indeed morally blameworthy.

Some theorists may disagree that accurate perception has any intrinsic moral value. Nevertheless, virtue theorists do generally agree that perception is at least morally relevant in a more indirect way: as something that is required for and part of practical wisdom, and therefore required for and part of virtue. This is the role perception has in Aristotelian theories. Since what is required for virtuous action depends on the circumstances, we need to see in every particular situation what features are relevant, and to what degree, before we can decide which action is an appropriate response to those features. Hence, we can only be generous to people, if we actually perceive their needs, condition or interests, and are not either blind to the condition of others, or have our vision of the importance of others' condition distorted by things such as racism, sexism, jealousy or self-aggrandizement. Thus, on this view as well, accurate perception of other people and their interests is an important element of virtues, and especially of virtues of benevolence such as kindness, compassion and generosity.

4.5.2 Virtue and emotion

The previous section discussed the role of perception in virtue. Another central feature of virtue theories is the importance attributed to emotion. To be virtuous implies not just that we act correctly, but also that we *feel* correctly; that we have the correct emotions in particular situations.²³⁸ An often-made distinction, first proposed by Aristotle,²³⁹ is therefore between 'self-controlled' and fully virtuous people. Self-controlled people *act* according to virtue—do

²³⁸ See e.g. Hursthouse, *On Virtue Ethics*, *op.cit.* chapter 5; LA Kosman, 'Being Properly Affected: Virtues and Feelings in Aristotle's Ethics' in AO Rorty (ed), *Essays on Aristotle's Ethics* (University of California Press, 1980) 105; Nussbaum, *Love's Knowledge*, *op.cit.* 78.

²³⁹ Aristotle, *Nicomachean Ethics* III.4, 1111b5-1111b11.

what they should do—but have a desire to do otherwise. For example, they ‘generously’ give money away or ‘kindly’ help other people, but do so only grudgingly. Fully virtuous people, in contrast, do what they should do, and desire to do so. When they act generously or kindly, they do so without regret and with pleasure in the knowledge of how their money or kindness benefits others. According to Aristotle, being self-controlled is morally better than doing the wrong thing, but it is not as good as being fully virtuous.²⁴⁰

This might give rise to the objection that it seems much less praiseworthy if we do what we actually want to do, than if we find it difficult to do the right thing but still force ourselves to do so. However, as Foot points out, this depends on why we find it difficult to do the right thing.²⁴¹ If our circumstances somehow make it harder to do the right thing but we still manage, this is indeed more praiseworthy and may show great virtue. Yet if it is something in our character that makes it hard for us to do the right thing, it seems less praiseworthy and to show a flaw in virtue. Think for example, as Foot says, of someone who finds it difficult not to steal, but who refrains from doing so anyway. If the person is tempted to steal because she is poor, the fact that she nonetheless decides not to steal may show that she is a very honest person. Yet if she is tempted to steal not because she is poor, but simply because of something in her character, this shows that she is less honest. The same can be said about generosity. If we are tempted not to give something to another because we are not very wealthy, but we still do so, this may show that we are very generous. On the other hand, if we have plenty of wealth and are tempted not to give to another because of something in our character—because we generally want to keep as much wealth as possible for ourselves—this indicates that we are less generous.

Many virtue theories contend that although emotions do give rise to action, they do not merely have ‘instrumental’ value in bringing about action, but also their

²⁴⁰ For a discussion of this point, see e.g. Foot, *Virtues and Vices*, *op.cit.* 11-14; and Hursthouse, *On Virtue Ethics*, *op.cit.* chapter 4.

²⁴¹ Foot, *Virtues and Vices*, *op.cit.* 11-14.

own intrinsic moral value.²⁴² In other words: proper emotions are not merely that what prompts us to virtuous action, with the action being the actual realization of the virtue. Instead, the emotions themselves are an essential part of virtue, which consists of both proper emotions and proper action.²⁴³ Virtuous people feel the proper emotions, to a proper degree, towards the proper person or other object, in the proper situation, for the proper reason—and then are *also* prompted to proper action.

Behind the notion of ‘proper emotions’ lies the idea that there are many situations in which we think that a certain emotional response is appropriate, whereas others are not. If we witness or hear of a massacre, for example, an appropriate response might involve a feeling of sadness, disgust, pity, and/or indignation, whereas we would find it disturbing, to say the least, if someone admits to feel pleasure or indifference.

That emotions are important components of virtue may seem more obvious in virtue theories such as Slote’s sentimentalist virtue ethics, which bases the value of virtue on the motivation it expresses, than in the more rationalistic (neo-)Aristotelian theories. Yet proper emotional responses are considered equally important in Aristotelian virtue approaches. Which emotional response is appropriate in a certain situation can, on the Aristotelian view, be rationally assessed. This is because on this view, beliefs have a large influence on our emotions, or are even part of our emotions.²⁴⁴ To feel sad, for example, normally²⁴⁵ requires a belief that something bad has happened or will happen. Feeling the emotion of sadness, in other words, is not independent from the belief that something bad has happened, but follows from this belief. If our belief that something bad has happened changes (I might, for instance, mistakenly have thought that my grandmother died, but learn that it is not so), our sadness will also change. And since we can assess beliefs on their truth, reasonableness, or rationality, and since beliefs are constitutive of our

²⁴² Hursthouse, *On Virtue Ethics*, *op.cit.* 108.

²⁴³ Kosman, *op.cit.* 109.

²⁴⁴ For a discussion of this see MC Nussbaum, ‘Aristotle on Emotions and Rational Persuasion’ in AO Rorty (ed), *Essays on Aristotle’s Rhetoric* (University of California Press, 1996) 303-323.

²⁴⁵ Unless one suffers from a psychological illness, such as depression.

emotions, we can, on this view, also assess our emotions on their reasonableness or rationality.

Conversely, Aristotle holds that if someone does *not* feel a certain emotion, this reflects something in her beliefs or judgments.²⁴⁶ If, say, my grandmother dies and I do not feel any sadness, this has to mean that I judge my grandmother to not have been very important to me, or that I think it not bad that she died for some other reason. Similarly, it seems that if we hear of a massacre and feel pleasure or indifference, this reflects our beliefs about the importance of other people's lives or suffering. And since our emotions can be incorrect, because our beliefs can be incorrect, they can improve, on the Aristotelian view, by education of those beliefs.

In sum, emotions are an important part of virtues, and in order to assess the extent to which someone acts virtuously, we have to consider not only her actions and motivations, but also her emotional responses and attitudes. For example, being a good child to our parents does not only depend on what we do for our parents, but also on which emotions we have towards them, and how we are moved by their happiness or distress. Someone who takes care of her elderly parents, but does so grudgingly and with no feeling of affection towards them, is not considered as good a child as someone who may *do* exactly the same for her parents, but with different feelings towards them. Conversely, neglecting elderly parents who need care is, generally speaking, not only bad because we refuse to do what would be good to do for our parents, but also because it exhibits a failure to care about whom we ought to care about.²⁴⁷ Elderly parents who are neglected by their children will, rightly, not only feel upset because of the actual difficulties they have in taking care of themselves, but also, and possibly more, because it shows that their children do not truly care about them.

²⁴⁶ See Nussbaum, 'Aristotle on Emotions and Rational Persuasion', *op.cit.* 316.

²⁴⁷ See W Chiong, *A Principles Partiality: A Kantian Account of Special Obligation* (New York University, 2005) 14-15.

4.5.3 Perception and emotion: responsiveness

The two elements of virtue discussed in the previous sections, perception and emotion, are connected with each other. According to (neo-)Aristotelian virtue ethicists, perception is influenced by emotions, because emotions may alter the way in which we see things. If we love someone, we will likely see and judge her actions in a more positive light than if we hate her.²⁴⁸ Yet, as Nussbaum points out, our perception may also be partly *constituted by* emotions.²⁴⁹ Accurate perception is a full recognition or acknowledgement of the nature of a situation, she says, which means that if we observe intellectually that a friend is in need or a loved one has died, but do not feel the appropriate sympathy or grief, a part of our discernment or perception is lacking because we do not take in what has happened in a full-blooded way. We might say ‘she needs my help’, or ‘she is dead’, but do not yet fully *know* it, because the emotional part of the cognition is lacking. Thus, Nussbaum argues, intellectual knowledge also needs ‘responsiveness’ to arrive at full knowledge, or full perception.²⁵⁰

This view of the connection between emotion and perception is shared by non-Aristotelians as well. Blum, following Iris Murdoch, argues for instance that if we truly ‘see’ another person’s distress, most people will automatically have some altruistic sentiment towards that person, and feel moved to help her, because truly seeing someone involves being able to imagine her distress and to allow her distress to affect ourselves.²⁵¹ Responsiveness, Blum says, thus has both a cognitive and an affective part: we have to accurately perceive other people’s condition, and to feel an altruistic sentiment and motivation in response to it.²⁵² This is also often discussed in terms of ‘empathy’: having the feelings of another (involuntarily) aroused in ourselves.²⁵³ On most views, empathy is spurred by seeing another’s condition and does not need careful reflection about what we morally ought to do, or a conscious thought that we

²⁴⁸ Aristotle, *Rhetoric* II.1, 1377b30-1378a4.

²⁴⁹ Nussbaum, *Love’s Knowledge*, *op.cit.* 79.

²⁵⁰ Nussbaum, *Love’s Knowledge*, *op.cit.* 80-81.

²⁵¹ Blum, *op.cit.* 188-190; Murdoch, *op.cit.* See also McDowell, *op.cit.*

²⁵² Blum, *op.cit.* 189.

²⁵³ See e.g. M Slote, *The Ethics of Care and Empathy* (Routledge, 2007) 13.

ought to care for others.²⁵⁴ It can even be found in very young children, psychological literature shows;²⁵⁵ children who are too young to have a notion of rules or moral principles. All that is required for empathy is that we perceive another person's condition and feel an altruistic sentiment or motivation toward her.²⁵⁶ For instance, when Joan in the earlier mentioned subway-example sees the woman standing with two heavy bags, she may be prompted to offer her seat without thinking that that is the right thing to do, but simply because of 'feeling' the woman's discomfort and wanting to alleviate her discomfort.

As discussed before, many (neo-)Aristotelians will deny that such 'natural' empathy that can be found in young children, can generate true virtue. They will also say that if someone *never* gives any thought to the appropriateness of her emotional responses to seeing another's discomfort, this is contrary to practical wisdom and virtue. Nevertheless, they would agree that in general, empathy, or responsiveness, as the proper emotional response to another's condition, and as part of accurately perceiving another's condition, is a central component of and requirement for virtues such as compassion, concern, kindness, care, thoughtfulness, and generosity—and as such, has moral value.²⁵⁷

Although I have so far mainly spoken of responding to other people's need,

²⁵⁴ Blum, *op.cit.* 198.

²⁵⁵ See e.g. ML Hoffman, *Empathy and Moral Development: Implications for Caring and Justice* (Cambridge University Press, 2000); and Blum, *op.cit.*

²⁵⁶ Blum, *op.cit.* 197.

²⁵⁷ The moral importance of empathy is also stressed by proponents of 'ethics of care' theories. See e.g. V Held, *The Ethics of Care* (Oxford University Press, 2005) 31; N Noddings, *Caring: A Feminine Approach to Ethics and Moral Education* (University of California Press, 1986) 14-19; M Slote, *Morals from Motives* (Oxford University Press, 2001). (Carol Gilligan's *In a Different Voice* (Harvard University Press, 1982) is generally regarded as the inspiration for the surge of ethics of care writings, although it does not itself set forth an 'ethics of care' theory as such.) Whether the ethics of care is a form of virtue ethics is debated, yet there are certainly many similarities. Advocates of the ethics of care criticize traditional liberal approaches to morality for reasoning in terms of abstract principles and for viewing humans as independent and autonomous individuals, and for thereby overlooking the fact that humans are relational beings who are dependent on the care they receive from other humans at many points in their lives. An adequate morality, they say, should focus on this dependency and the importance of care, and on the conditions particular individuals are in, instead of on abstract moral principles. Caring, as Nel Noddings says, means that we are not merely focussed on another person, but are 'engrossed' in that person: open and receptive to her needs, desires, thoughts etc (Noddings, *op.cit.* 33). Advocates of ethics of care theories therefore argue for the importance of attitudes such as attentiveness, sensitivity, responsiveness to needs and empathy.

discomfort or distress, responsiveness does not necessarily involve someone being in a negative state. The important thing is that one attempts to understand and perceive another person's good, is moved by that good and acts out of regard for that good. The other person does not need to have a pressing need; we may simply be able to make her better off or happier than she already is. This is frequently the case with the virtues of kindness, thoughtfulness, and generosity. Although it may be more important to act kindly, thoughtfully or generously when someone has a pressing need, and we are thus more blameable when we fail to do so, there are also many situations in which we can be kind, thoughtful or generous to someone who is not in a particularly negative state. When I argue that exploitation is a failure of the virtue of generosity, I therefore, as said before, do not want to make a strict distinction between transactions that concern a need and transactions that concern a mere desire.

4.5.4 Perception, emotion and exploitation

The previous sections discussed the importance of perception, emotion, and responsiveness for virtues and vices. Let us now return to my argument that the wrong in exploitation can best be understood as a matter of greediness and a failure of the virtue of generosity. What does the role of perception, emotion and responsiveness in virtue imply for my argument?

First, it means that what exploiters do wrong lies not only in their actions, but also in their perception of other people: they fail to sufficiently perceive people with whom they interact as human beings with their own interests and needs that are worthy of consideration, seeing them mainly as abstract players in the market field. They either do not truly perceive the exploitees' condition, needs or interests, or they do perceive it rationally, but fail to let themselves be moved by the other's condition to actually give up some of their own interests.

Second and related, my argument that exploitation is a failure of the virtue of generosity means that exploiters fail not just in what they *do*—refusing to offer more to people with whom they transact—but also in the emotions and attitude they thereby have and show towards people. When we engage in a

transaction with someone and know that she is doing so with the aim of acquiring some benefit—say, money—and we know that she would be happy with, or perhaps even need this money, an appropriate emotional response seems to be at least acknowledgement of and sympathy with her situation and aims, if not compassion or pity, depending on the situation. Exploiters, in contrast, do not show such an attitude, but instead, by trying to get as much personal benefit irrespective of the consequences for the person they are interacting with, show an attitude of indifference, at best. And that attitude reflects that they attach little importance to the interests and wellbeing of others.

On the other hand, people who voluntarily offer a higher or lower price than they could get the other to agree on, seem to see the person they interact with in a different way, not as abstract entities in the market field, only relevant for one's own benefit, but as particular individuals in particular circumstances, with their own goals, needs and desires. By not trying to get as much personal benefit out of a situation as they can, they show an attitude of consideration for other people, which, in turn, reflects that they consider other people's wellbeing and interests as important.

Put together, this means that what exploiters do wrong is partly a matter of inadequate responsiveness to the condition of others. Think of the classic examples of exploitation mentioned in chapter 1, such as sweatshop factories or other employees who are paid exceptionally low wages for very hard work; 'rescue cases', in which someone is stranded and a passerby offers to help for an extremely high price; or money lender who offer loans for exorbitant interest rates to people in urgent need for money. My argument is that in all such cases the alleged exploiters are acting greedily. In this section I have tried to show that part of what this means is that they fail to go beyond their own interests and desires and to see the other person as someone whose interests are worthy of consideration, and that they, consequently, fail to be emotionally moved by the other's condition or interests.²⁵⁸

²⁵⁸ As mentioned before, it might of course be that some employer does perceive and is moved by an employee's condition, but is simply unable to offer any more without making a loss or

4.6 Possible objections

So far I have explained my view that the wrong in exploitation can best be understood as a matter of greediness, and a failure of the virtue of generosity. In the remainder of this chapter, I will further clarify and support my view by defending it against some possible objections. These are the objections that virtue approaches are self-centred (section 4.6.1); that unfortunate circumstances are typically part of exploitation and should play a role in the explanation of its wrongness (section 4.6.2); that my theory is rather similar to the unfairness account of exploitation (4.6.3); that it is similar to Ruth Sample's version of the needs account of exploitation (4.6.4); that a virtue-based approach is ultimately not very different from a duty-based approach (4.6.5); and that being greedy, although not praiseworthy, is not a very serious wrong (also in 4.6.5).

4.6.1 Self-centredness

It is sometimes objected to virtue approaches that they are self-centred, or even egoistic.²⁵⁹ This is because virtue ethics focuses on the development of people's character, and the ultimate purpose of developing a virtuous character seems, on many virtue theories, to be one's own flourishing. There appears to be something wrong, it is argued, with trying to be kind, just, honest, etcetera, solely because this will benefit one's own moral development. In other words, a truly relational aspect, which is considered crucial for morality, appears to be missing in virtue approaches.

A similar objection might be raised against my view of exploitation as a failure of the virtue of generosity. It is wrong, one might say, to explain what

becoming unable to make a living herself. Or it might be that a rescuer does empathize with someone's plight, but really does have very high costs in giving someone a lift. Generosity does not require us to give away everything we own, and whether someone empathizes with another's plight might not always be deducible from her actions.

²⁵⁹ See e.g. T Nagel, *The View From Nowhere* (Oxford University Press, 1986) 195-197.

exploiters do wrong in terms of a harm they do to *themselves*, instead of to the person they are exploiting. Surely, people who are being exploited will not care very much about the fact that the exploiter is not optimally developing her own character. They care about being exploited, about being offered too high or low a price for something they need or want to buy or sell.

The idea that virtues only concern people's own character and are not relational is mistaken, however. Firstly, we may note that many, if not all,²⁶⁰ virtues benefit other people around us. Think of virtues such as loyalty, kindness, honesty, generosity and justice, which often require us to give up some of our own interests for other people's benefit. Secondly, these virtues do not 'accidentally' benefit others, as if this is a lucky by-product of what really matters—the benefit they bestow upon our own character. They are virtues partly *because* they benefit others.

Think of what has been said above about the importance of motivation and emotion for virtues. To act virtuously means not only performing the right action, but performing it for the right reason and with the right emotion. For instance, if we perform a generous act, but do so only because we think it will be good for our reputation, we are not truly acting generously. To truly act generously involves performing a generous act towards someone because we are moved by her interests and have a desire to benefit her. If such a desire to help another for her own sake is not at least part of our motivation to give her something, our giving does not show generosity (or kindness, or compassion). Hence, virtues like generosity are inherently other-regarding, because they necessarily involve a true concern for another's good and a desire to benefit another for her own sake, instead of for some selfish motive.²⁶¹

²⁶⁰ As said before (see note 146), all virtues, even 'self-regarding' virtues such as prudence, industriousness, or patience benefit others, because people who are imprudent, lazy, or impatient can be a great nuisance or burden to other people.

²⁶¹ What is more, even if we act from a desire to be virtuous, this may prevent us from actually acting virtuously. This is generally referred to as the 'self-effacing' problem, which is that the reasons ethical theories give for why a certain act is valuable or right (e.g. there is a duty to perform that act, or it is virtuous to perform that act), are not always the reasons that should motivate the act, lest they lose their moral value (see M Stocker, 'The Schizophrenia of Modern Ethical Theories' (1976) 73 *Journal of Philosophy* 453-466). If we want to act generously, we should not act generously merely out of a desire to be or become a generous or good person, but

It is true that most virtue ethics theories contend that virtues benefit people's own flourishing. Yet, as said before, what is good for ourselves and what is good for others are not seen as two separate things, pulling in opposite directions. Instead, both are contained in the virtues: what is good for our own moral flourishing is acting virtuously, and what it is to act virtuously is partly defined by the needs and interests of others around us, especially in the case of virtues of benevolence such as kindness, compassion and generosity.²⁶²

The virtue of generosity involves being able to recognize situations where we should be generous, by recognizing other people's interests and needs, and being moved to help other people for their own sake. The virtue of generosity thereby limits the considerations we give to our own interests and wishes, for the benefit of those of others.²⁶³ To say that exploiters fail in the virtue of generosity is therefore not merely a criticism of their acts or character, which has nothing to do with the person who is being exploited. It *is* a criticism of exploiters' acts or character, but at the same time also of the fact that they do not take the exploitee's interest and needs as sufficiently important, or do not respond to them in an appropriate way.

The fact that virtues, including the virtue of generosity, are other-regarding, becomes even more apparent when thinking of what has been said about the role of accurate perception of others, and the role of empathy with or responsiveness to others. True perception requires that we pay careful and honest attention to other people and to other people's situation, and try to see a situation from other people's point of view. Responsiveness or empathy requires that we are emotionally moved by their situation, and moved to help

should at least partly be motivated by another's situation and interests, and want to advance her interests for her own sake.

²⁶² This other-regarding element of what it means for individuals to flourish is also reflected in the fact that virtue approaches generally understand people and human flourishing in a societal context. For Aquinas, for instance, each person is naturally part of one or more communities and involved in many different types of relationships. These different communities (such as societies, families and friendships) are thought to all benefit from the acquisition of virtue by its members (Aquinas, *Summa Theologica* II-II Q58 A5; I-II Q19 A10; and I-II Q90 A2). Similarly, Aristotle understands humans first and foremost as part of their relationships with others; as political animals (Aristotle, *Nicomachean Ethics* I.5, 1097b8-1097b12). When he describes human flourishing, he does not think of isolated individuals flourishing in a solitary life, but of what constitutes flourishing for humans as social, relational beings.

²⁶³ See C Toner, 'The Self-Centredness Objection to Virtue Ethics' (2006) 81 *Philosophy* 597.

them. This all entails what Murdoch refers to as 'unselfing':²⁶⁴ going beyond our own interests, needs, desires, and prejudices and not letting them obscure the way in which we appreciate another's situation.

4.6.2 Unfortunate circumstances

A second possible objection could be that I argue that greediness is what makes exploitation wrong, but we can be greedy in many situations, and exploitation seems typically to involve being greedy when someone else is in a disadvantaged position because of some sort of unfortunate circumstance. For instance, when taxi drivers take advantage of a bus strike by tripling their fees, or when people in developing countries are so poor²⁶⁵ that they have no better choice than to consent to work in a sweatshop factory. It might be wondered whether this 'unfortunate circumstances factor' should not also be part of the explanation of what is wrong with exploitation, because this seems intuitively the case, and this factor seems to be generally present in exploitative transactions. I agree that unfortunate circumstances play a role in the explanation of the wrong in exploitation in that, as argued before, generosity becomes more relevant the more someone needs or could use the extra benefit, which is the case in many exploitative situations. Yet I still think that if someone finds herself in some unfortunate circumstance, but is incredibly rich, it is not as greedy or exploitative for a very poor person (whose poorness might also be described as a form of unfortunate circumstances) to try to get a good price for helping the rich person, as it would be the other way around, given that the rich person does not need the extra money as much as the poor person does. Thus, it is not the unfortunate circumstances per se that make trying to get as much

²⁶⁴ Murdoch, *op.cit.* 84.

²⁶⁵ It might be objected that poverty is not a matter of mere unfortunate circumstances, but of injustice. Yet as argued in chapter 2, although poverty is often a matter of injustice, and although the concept of injustice may be able to explain wrongs in the working of entire societies or systems, it cannot explain what exploiters in particular transactions do wrong. Second, although the existence of poverty among certain groups of people may be a matter of injustice, the fact that a particular person is born into these circumstances while others are not, can arguably be described as a matter of 'bad luck' or unfortunate circumstances.

advantage as possible vicious, but the need that unfortunate circumstances often, but not always, create.

Second, I think that the reason that unfortunate circumstances are generally part of exploitation is not because they are what make exploitation wrong, but because they are what make it *possible*. Only when someone is in a truly bad bargaining position because of some type of 'bad luck' or unfortunate circumstances (widespread unemployment, being stranded, needing a loan, etc), is it possible to succeed in trying to get as much out of price or wage negotiations as one wants. If someone has an equally strong bargaining position as we do, we may offer her a greedily low or high price, but she will simply not accept it. Similarly, it is only when, due to some form of unfortunate circumstances, someone has actual need for a good, that the issue of asking a high price becomes problematic. This is because when someone does not actually need a good, she will simply not buy something if she thinks it is not worth the price.

4.6.3 Relation to the unfairness account of exploitation

A third possible objection could be directed at my statement that exploitation involves greedily trying to get a lot of personal benefit out of a transaction, leaving very little for the person with whom one is transacting. It may be objected that this sounds a lot like unfairness, while I rejected the fairness understanding of exploitation in the previous chapter.

I agree that my description of greediness in exploitative transactions resembles unfairness. Yet my argument in the previous chapter was that 'unfairness' may describe quite well which transactions we see as exploitative, but does not explain what is wrong with them, and that the fairness argument for the wrong in exploitation is parasitic upon other theories of exploitation. Hence, had I proposed a completely different theory of exploitation; for example one that said that the wrong in exploitation is coercion because exploiters extract a lot of personal benefit by taking advantage of the bad bargaining position of people who have no better choice than to consent; even then, one

could still say ‘doesn’t that sound a lot like unfairness?’. This is because, as explained in the previous chapter, the term (un)fairness has a very broad meaning, so that it can be applied to many different forms of seemingly wrongful behaviour. Yet, as I argued in the previous chapter, saying that a voluntary transaction is unfair means saying that someone should morally pay more or ask less, and thus requires that we explain why one morally ought to do so. My explanation is that not doing so is greedy and a failure of virtue. If someone still wants to describe this in terms of paying a fair price, I have no problem with that, as long as we keep in mind that the fairness label by itself does not explain why it is right or wrong, or good or bad.

For this reason I think that my account of exploitation is not necessarily incompatible with the unfairness account of exploitation. As far as I am aware, none of the proponents of a fairness understanding of exploitation does so, but the unfairness account of exploitation could be interpreted as talking about virtue, if a failure of virtue is given as the reason for why it is wrong not to pay a certain price—which is subsequently called the ‘fair’ price. Hence, if one wants to keep to the unfairness account of exploitation, one could perhaps interpret my thesis as giving an answer to what is wrong about offering or asking unfair prices; the answer being that this is greedy, instead of the answer being that we somehow have a duty to pay a fair price.²⁶⁶ I still think that this step is not necessary; that saying that exploiting is wrong because greedy and a failure of virtue is just as valid as saying that exploiting is wrong because unfair, and that being unfair is wrong because it is greedy and a failure of virtue. Or, in other words, I still think the ‘fairness’ label itself does not do any moral work, and that it is in fact a failure of virtue that can best explain the moral wrong in

²⁶⁶ While I think that this argument might perhaps be made, it is not an obvious interpretation of the unfairness account of exploitation. This is because, as spelled out in section 3.1, fairness is commonly understood in terms of which share one is due, or which claims different parties have to a good. When we understand exploitation as a matter of greediness, however, the moral wrong is not that the exploited party has a claim or right to a larger share of benefit than she receives, or does not get what she is ‘due’, but that the exploiter fails to voluntarily refrain from extracting a lot of personal benefit from a transaction, even though the exploitee has no right to it.

exploitation. Yet I also think that this means that my approach is not incompatible with an unfairness account of exploitation.

There might be another connection between exploitation seen as greediness and my discussion of the unfairness account of exploitation in the previous chapter. In that chapter, I argued that the different views of when consensual transactions are fair all fail for different reasons. One of those reasons is that the different views cannot account for all transactions we find fair or unfair, and that they can all lead to counterintuitive conclusions about which transactions are fair and unfair. For example, if we define fair transactions by using the common or hypothetical market price, this leads to the counterintuitive conclusion that sweatshop work is not unfair or exploitative. And if we define fair transactions on the basis of production costs, this leads to the counterintuitive conclusion that products become more valuable if they are produced inefficiently. Nevertheless, in some cases, looking at the competitive market price or the production costs does seem an accurate method of determining when we consider a price fair.

It may be that the fact that none of the discussed methods of determining fair prices works in all situations, has to do with the fact that how much one has to ask from or offer to another for a commercial transaction to count as greedy, depends on several factors, most importantly both parties' relative needs and wealth (see section 4.4.2). Therefore, what one has to ask or offer in order not to be considered greedy cannot be explained with a single principle such as the common market price or production costs. At the same time, as was also explained in section 4.4.2, we often do not know exactly how to determine what is a reasonable and non-greedy price to pay, especially in a transaction between two equally well-off people, and the common market price or production costs may be useful methods for providing a practical answer in such cases.

4.6.4 Relation to Ruth Sample's needs account of exploitation

A fourth possible objection is that while, in chapter 2, I criticized Ruth Sample's theory of exploitation, which is based on an imperfect duty of beneficence, the

virtue of generosity that I describe seems very similar to an imperfect duty of beneficence. To recall, the imperfect duty of beneficence described by Sample means that we have an overall duty to help others in need, but can choose ourselves when and how to implement this duty. Yet, Sample argues, if we engage in a transaction with someone in need, this provides such a good opportunity to help others, that not doing so is in violation of the duty of beneficence. In this chapter, I have argued that virtues are context-dependent, and that although generosity does not entail that we always give to others, good occasions to be generous are transactions in which we know that the other needs some extra benefit, and we can easily give it and still keep enough for ourselves. This, it might be objected, sounds rather similar to the imperfect duty of beneficence, while I rejected Sample's account of exploitation based on such a duty.

I agree that Sample's view and my view of the wrong in exploitation are to a certain extent similar, but there are also important differences. To start with the similarity, as described in section 2 of this chapter, virtues can play a role in deontological theories, and do so in Kant's virtue theory, in which virtues are dispositions to act from imperfect duties. Sample's theory is based on Kant's notion of imperfect duties, and as this notion is part of his theory of virtue, there are certainly similarities between Sample's view of exploitation as a violation of an imperfect duty to benefit others, and my view of exploitation as a failure of the virtue of generosity. Nevertheless, there are significant differences as well, which are reflected in a number of the problems with Sample's theory that I discussed in chapter 2.

First, on Sample's theory, we can only exploit people who lack some basic need, whereas I have argued that it is also possible to exploit people who do not need our help to meet their basic needs. Second, Sample uses the notion of an imperfect duty of beneficence to argue for a 'perfect' moral duty: a duty to always help people in need with whom we transact to meet their needs. And this is problematic for a number of reasons, I have argued in chapter 2. One is that even if we have a moral duty to help people to meet their needs, this does not exclude the possibility that in the process of helping someone to meet her

needs, we may also, at the same time, exploit her, if the exploitative transaction itself helps to meet someone's needs. For instance, a person who, after a natural disaster, sells food and generators for ten times the normal price, is providing people with their basic needs, but may still be considered an exploiter. Another problem with Sample's argument pointed out in chapter 2 is that it seems possible to engage in non-exploitative transactions without helping someone to meet her needs. I gave the example of a poor child in a developing country who sells drinks for \$1, and a tourist who feels sorry for the child and gives \$100 for one drink, to help the child somewhat, although the \$100 is not enough to meet the child's basic needs. This particular transaction, I argued, would not be called exploitative, even if we think that the tourist has a moral duty to meet the child's basic needs, and has not met the requirements of this duty by giving \$100. Hence, I argued, the problem with Sample's argument, and with all versions of the needs account of exploitation, is that moral duties to help others to meet their needs are ultimately dependent on factors such as what is required to meet people's needs or the extent to which we can help someone in need; factors which are not necessarily related to the particularities of the specific transactions in which people engage. Consequently, what such moral duties require us to do is not necessarily related to whether we find a particular transaction exploitative, and we may violate a moral duty to meet someone's needs but not exploit her; or obey a moral duty to meet someone's needs and still exploit her. Sample's theory of exploitation is different from mine, then, in that on my view, what exploiters do wrong is not dependent on a moral duty to help someone to meet her needs, but a matter of greediness; although, as argued, what it means to act greedily, is partly influenced by the needs of people.

Another, related, possible objection might be made. One could accept that I am right that there are differences between my account of exploitation and Sample's theory, which argues for a perfect duty to help people in need with whom we transact on the basis of a Kantian imperfect duty of beneficence. Yet, one could argue, we might also see the wrong in exploitation as a violation of a Kantian imperfect duty of beneficence, without trying to use this imperfect duty

to justify a *perfect* duty not to exploit, and without only applying it to people in serious need. On such an argument, what exploiters do morally wrong would be not using a good opportunity to benefit someone who clearly could use the benefit, thereby failing in the imperfect duty of beneficence. As described in section 2 of this chapter, imperfect duties require that we ask ourselves questions such as ‘What must I do if I am not to be indifferent to others’ happiness?’ or ‘In the situation in which I find myself, what could I do if I am to be kind, or generous?’. And it may be argued that this is exactly where exploiters fail, morally speaking.

I do not disagree with this point, but I do not see it as an objection to my argument. This is because the ‘objection’ that what exploiters do wrong can also be seen as the disregarding of an imperfect duty—of a ‘duty of virtue’ in other words—basically says that what exploiters do wrong can also be seen as a failure of virtue, on a Kantian conception of virtues. I explained in section 2 of this chapter that the virtue of generosity and the vice of greediness can play a role not just in virtue ethics, but also in consequentialist and deontological theories. If someone were to object to my view of exploitation that it could also be rephrased in terms of a Kantian conception of virtue, I think this might be a possible strengthening of, instead of an objection to, my argument that the wrong in exploitation can best be understood as a failure of virtue.

4.6.5 What is the difference between duty-based and virtue-based explanations?

Another possible doubt about my argument is somewhat related to the previous objection: one might wonder what the difference is between saying that exploitation is a failure of a certain moral duty, and saying that it is a failure of virtue. In the previous chapters, I have rejected a number of duty-based accounts of exploitation, that said, for instance, that the wrong in exploitation is injustice, or a violation of a duty of beneficence. I argued that all these accounts of exploitation are problematic, and argued instead that the wrong in exploitation can best be understood as a matter of greediness, and a failure of the virtue of generosity. I also explained that virtues such as generosity involve

wanting to benefit others for their own sake instead of for some selfish motive, and therefore to regard others as important for their own sake. It might be objected that because of this, the virtue approach that I describe ultimately sounds not very different from a Kantian argument for ‘treating people as ends in themselves’. Moreover, when I say that exploitation is a matter of greediness, it seems that I am describing this as a wrong—that I am saying that people should not act greedily. It may thus be wondered how the demand not to act greedily is different from a duty-based argument about the wrong in exploitation.

Virtue-based approaches to moral questions differ in a number of ways from approaches that answer moral questions in terms of rights and duties. First, as explained in section 4.5, our perception of people and situations, our emotions, and our motives, are important elements of virtues and vices. In order to evaluate the extent to which someone acts virtuously or viciously, we not only have to look at what someone does, but also why she does so, and with which emotions. In contrast, duty-based answers to moral questions (and consequentialist approaches, for that matter), are primarily concerned with action, with how someone acts, and less with the motives, emotions, and perceptions that accompany the act. This is not to say that deontological or consequentialist *theories* never leave room for or recognize the importance of emotions and motives.²⁶⁷ For one thing, as shown in section 4.2, there are deontological and consequentialist theories that do incorporate virtues, and thus also the emotions, motives, and perceptions that are part of virtues. My point is that *insofar as* arguments about moral questions are based on arguments about the existence of certain moral duties or consequentialist rules, they typically focus on the impermissibility, permissibility, or obligatory nature of certain acts, and not on the accompanying emotions, motivations and perceptions. A virtue-based explanation of the wrong in exploitation is therefore different from a duty-based explanation, in that it highlights

²⁶⁷ See for objections to this idea M Baron, ‘Virtue Ethics in Relation to Kantian Ethics: An Opinionated Overview and Commentary’ in L Jost and J Wuerth (eds), *Perfecting Virtue: New Essays on Kantian Ethics and Virtue Ethics* (Cambridge University Press, 2011); and Nussbaum, ‘Virtue Ethics: A Misleading Category?’, *op.cit.* 163-201.

exploiters' selfish motivations, emotional responses and attitudes towards exploitees, and sees these as part of what is morally problematic about exploitation.

A second difference between virtue-based and duty-based approaches to moral questions is also one of the reasons why I believe a virtue-based argument is more successful in explaining the wrong in consensual exploitation than duty-based arguments. This difference lies in the fact that, as explained in section 4.4, virtues and vices are context-dependent: what is involved in acting generously or greedily, depends on the specific features of a particular situation, and is thus not the same in all circumstances. Moral duties, on the other hand, are generally based on abstract and universal principles, such as equality, autonomy, needs, or rationality, and, as a consequence, are typically less sensitive to the particularities of situations, and prescribe the same actions in all circumstances. For example, the moral duties not to kill, steal or lie are deemed and meant to apply generally, to all people and at all times, although they might be outweighed by other moral duties, such as when lying or stealing something is required to save lives. The fact that duty-based approaches rely on general principles is the reason they work well if one wants to justify the existence of a universal moral rule, such as 'you shall not kill' or 'you shall not steal'. Yet it is also a reason, I believe, why duty-based arguments have difficulties in explaining what is wrong with consensual exploitation. As explained in chapter 2, when one tries to explain the wrong in exploitation with a moral duty based on a general moral principle, such as a duty to help people in need, or to compensate injustice, one encounters the problem that, put simply, such duties will be held by many people towards many people, and not just apply to people who engage in an exploitative transaction with each other. Moreover, as explained in chapter 2, if one were to succeed in justifying a duty to help others that only applies to people who engage in a transaction, this duty will still be 'general' in another sense: in the sense that how much this duty asks us to give to the other person, is dependent on the other's needs or unjust situation, and not on the particularities of the transaction, such as the value of the good sold or the price offered. And therefore it is also not related to whether or not we find

the particular transaction exploitative. As a consequence, the attempt to explain the wrong in exploitative transactions with moral duties will lead either to the conclusion that exploiters do nothing wrong; that they do nothing *more* wrong than everybody else; or that what they do wrong (violating the duty) is not related to whether we find the transaction exploitative. This is why I contend that while duty-based approaches to answering moral problems often have great value, they cannot satisfactorily explain the widespread idea that there is something morally problematic about exploiters' behaviour in consensual exploitative transactions, while a virtue-based argument can. And this is partly because virtue-based arguments pay more attention to the moral importance of people's motivations and emotions towards others and people's perceptions of others, and partly because virtue-based approaches focus not on general moral principles, but on the question of what it means to act good, or bad, in specific situations.

A third and related difference between duty-based (and consequentialist) approaches to moral issues on the one hand, and virtue-based approaches on the other, is that virtue approaches leave more room for degrees of goodness and badness. Both duty-based and consequentialist arguments typically lead to the conclusion that a certain act is either right (obligatory or permissible) or wrong (and thus impermissible); depending on what follows from applying a moral rule, or several moral rules, to the specific act.²⁶⁸ Virtue approaches, on the other hand, do not think in terms of such 'deontic'²⁶⁹ distinct

²⁶⁸ Again, this is not to say that deontological or consequentialist theories or theorists never recognize the existence of other classes of moral action than permissible, impermissible, and obligatory. As said, a number of deontological and consequentialist theories recognize the importance of virtues, and thus of degrees of goodness or badness that cannot be fitted neatly into the three classes of moral action. Moreover, some recognize the existence of 'supererogatory' acts: acts that are morally better than what is required by duty, but not morally required, and whose omission is not morally condemnable. For example, donating all of our income to charity, or sacrificing our life to save a stranger. The idea of supererogatory acts is a combination of the aretaic and deontic mode of moral evaluation, because supererogatory acts are *better* than what is minimally *permissible*. M Ferry, *Beyond Obligation: Reasons, Demands, and the Problem of Supererogation* (Proquest, 2008) 2-3. See also e.g. AM Flescher, *Heroes, Saints & Ordinary Morality* (Georgetown University Press, 2003); D Heyd, *Supererogation: Its Status in Ethical Theory* (Cambridge University Press, 1982); JO Urmson, 'Saints and Heroes' in AI Melden (ed), *Essays in Moral Philosophy* (University of Washington Press, 1958) 198-216; S Wolf, 'Moral Saints' (1982) 79(8) *The Journal of Philosophy* 419-439.

²⁶⁹ Which derives from the Greek word for necessity.

categories of right and wrong, but evaluate moral choices and questions in 'aretaic'²⁷⁰ terms, such as good, excellent, admirable, virtuous, or bad, reprehensible, and vicious. This means that on virtue-based approaches, there is no clear cut-off point between which behaviour is morally right and which morally wrong, or between which behaviour should be allowed and which prohibited. Instead, the goodness or badness of certain behaviour is seen as a matter of degree. Virtue-based evaluations of moral choices are also open-ended, because one can always act or be, for instance, more admirable, courageous, kind, or industrious; or more reprehensible, cowardly, unkind, or lazy. For example, kindness is not something that can be divided into two separate categories, with no difference within the categories. That is: it is not the case that either one meets certain specified criteria and therefore is kind, or one fails to meet the specified criteria and is unkind, and within the two categories, there is no difference between people who only just fail or meet the criteria, and people who very much fail or meet the criteria. Instead, we think of kindness as a matter of degree, and judge people to be more or less kind, or more or less unkind. The same goes for all or most virtues and vices, including the virtue of generosity and the vice of greediness. We can judge someone as very greedy, a little greedy, very generous, or a little generous, or neither generous nor greedy, or anything in between. There is no clear cut-off point between which level or type of greediness and generosity are wrong, and which are acceptable, or right, with everything that falls below the cut-off line being equally wrong, and everything that falls above it equally right. We might individually or as a society want to draw a line at a point below which we think the level of greediness becomes absolutely unacceptable to us, but this does not change the fact that this is a point on a continuum that goes from extremely generous to extremely greedy.

The fact that virtues and vices are a matter of degree also contributes to my view that virtue-based arguments are better suited than duty-based arguments to explain what is wrong with consensual exploitation. The charge of exploitation is applied to a wide range of consensual transactions, which vary

²⁷⁰ From the Greek word for virtue or excellence.

considerably in terms of seriousness. For example, the term exploitation is applied to situations like taxi drivers charging more during a railway strike; or concert halls charging very high prices for drinks because within the concert hall there is no other provider of drinks and people cannot bring their own drinks, but people do often want to drink something. On the other hand, the term exploitation is also applied to situations that appear more extreme or serious, such as factories that pay workers in developing countries extremely low wages for very long working hours and hard work; money lenders who ask 1000 percent interest rates to people in desperate need for money; or price gougers who go to areas where a natural disaster has occurred and offer food, generators and other basic necessities for exorbitant prices. All these situations are frequently called exploitative, but it is difficult to explain how they are all instances of the same kind of wrong with a duty-based argument that is based on general rules and principles, and leaves little room for degrees of wrongness. If, for example, we try to explain the wrong in exploitation with a duty to help people in need, or compensate injustice, this might work (although I argued that it does not) for the more extreme instances of exploitation, such as the sweatshop labour, the money lenders, and the price gougers. Yet it does not work for the less extreme instances of exploitation, such as the taxi drivers or concert halls. This means that duty-based approaches have to deny that the less extreme cases of exploitative transactions are exploitative, and that duty-based approaches have to maintain that the common application of the charge of exploitation to such transactions is mistaken. This is not necessarily problematic: common usage of terms can indeed be mistaken. Yet I think that a benefit of a virtue-based explanation of the wrong in exploitation is that it can also account for what people regard as wrong in less serious instances of consensual exploitation.

The fact that generosity and greed are a matter of degree, means that when I argue that the moral wrong in exploitation can best be understood as greediness, this does not in itself indicate *how* bad this is. My argument is that when a certain transaction is criticized for being exploitative, what is morally problematic in the transaction is the greedy behaviour of one of the parties.

Exactly how greedy the behaviour is, or how serious or reprehensible the greediness is, depends, I argued in section 4.4.2, on the relative needs of the parties, and on their relative wealth. This means that in some cases, such as the sweatshop example, the greediness in and the wrong of exploitation is more serious than in other cases, such as the concert hall example.

It could be that one disagrees that the concert hall example is an example of exploitation, and that one thinks that the concert hall owner is merely doing smart business. People will likely disagree on whether this is so. Yet my argument is that whether one thinks this is an example of an exploitative transaction, depends on whether one thinks that concert hall owners are acting greedily in the way they use their monopoly position within the concert halls. If we think that they are exploiting people, then we think that they are acting greedily; if we think that they are not exploiting people, then we think that they are not acting greedily but merely doing smart business.

This brings me to a final possible objection to mention. An objection to my view of exploitation as greediness might be that while acting greedily is not praiseworthy, it is not a very serious wrong either. I hope it is clear now that in my view, this is not necessarily true, and depends on the situation. Sometimes, such as when not giving a tip in a restaurant, acting greedily seems indeed not among the most serious moral failures. Yet at other times acting greedily is a more serious moral failure, such as when a very wealthy person employs a very poor and hardworking person and negotiates an extremely low wage for long working hours and hard work, while the wealthy person could easily have afforded to offer better payment and conditions.

Moreover, this may not be any different from duty-based or consequentialist approaches. For example, although I cannot here adequately support this claim, to me, and I think many people will agree, violating the moral duty not to steal is a more serious moral failure when stealing the only source of income from a poor family, than when stealing a cheap pen from an academic conference (of course, deontologists may disagree with this). Furthermore, I also do not think that failures of virtue are necessarily less serious than violations of moral duties. It is perhaps difficult or even impossible

to compare failures of virtue and violations of duty in terms of 'seriousness', and again, it goes beyond the scope of my thesis to properly substantiate this claim. But, for example, the very rich person who employs a very poor and hardworking person for an extremely low wage and long working hours while she could easily have afforded differently, seems in my view to be failing more seriously, morally speaking, than the person who violated the moral duty not to steal by stealing a pen from a conference.

To sum up this section, saying that the wrong in consensual exploitation is a matter of greediness differs from saying that it is a violation of a moral duty in at least three ways. First, it highlights that what exploiters do wrong lies not merely in their actions, but also in their motive, emotions and perception: a selfish motive, lack of empathy, and disregard of the people with whom they interact. Second, virtue-based arguments do not focus on universally applicable moral principles, but on what counts as good or bad behaviour in particular situations. Third, virtue-based arguments leave more room for degrees of goodness and badness, instead of categorizing actions as either right or wrong. These three differences help to explain, I have argued, why a virtue-based argument is better suited to explain the wrong in consensual exploitation than duty-based arguments.

In this chapter, I have set out my view on what makes consensual exploitation wrong, and defended it against some possible objections. I have argued that the wrong in exploitation can best be understood as a matter of greediness, and a failure of the virtue of generosity. I have also argued that what counts as greedy and exploitative is context-dependent, and that part of the wrongness of being greedy is failing to accurately perceive other people's needs or condition, or to be emotionally moved by their condition. In the next chapter I will return to the second research question of my thesis set out in chapter 1: if I am right that the wrong in exploitation can best be understood as greediness, and a failure of the virtue of generosity, what implications does this have for the legal restriction of consensual transactions that are considered exploitative in present-day liberal societies?

CHAPTER 5 – EXPLOITATION AND THE LAW

In chapter 1, the two main research questions of this thesis were put forward: 1. What is wrong with consensual exploitation? 2. What implications may the answer to this question have for the legal restriction of certain consensual transactions that are regarded exploitative in present-day liberal societies? Chapters 2, 3, and 4 addressed the first question. In the previous chapter, chapter 4, I argued that exploitation can best be understood as a matter of greediness; a failure of the virtue of generosity. I also argued that an important element of this virtue is responsiveness to other people's needs or interests, which requires an accurate perception of other people and their situation, and a proper emotional response to their situation. In this chapter, I will turn to the second research question, and discuss which implications I believe my view of exploitation has for the legal restriction of exploitative transactions.

Section 5.1 argues that legal restriction of exploitative transactions may be justified as a means to curb certain greedy acts, and to promote a certain perception of and responsiveness to other people in society. Section 5.2 shows how such other-regardingness can be seen as an important good for societies on many different political theories. Section 5.3 discusses the possible objection that law should only be used to regulate 'right' and 'wrong' actions, and not to promote virtuous or excellent behaviour. It argues that while we have good reasons to be hesitant about allowing too much state interference, we cannot justify making an absolute distinction between 'arguments for the right' and 'arguments for the good' when debating which types of regulation to allow. Instead, the desirability of certain regulations, including anti-exploitation laws, has to be decided on a case-by-case basis, weighing their disadvantages against the goods they aim to achieve. Section 5.4 concludes by further illustrating my view of exploitation with two examples: minimum wage laws and legal restrictions on payday loans.

5.1 Exploitation, greediness and the law

In the previous chapter, I argued that the wrong in exploitation can best be understood as greediness, and a failure of the virtue of generosity. I also argued that key elements of virtues like generosity, kindness and compassion are the motivation to promote others' interests, an accurate moral perception of the condition of others, and responsiveness to or empathy with the condition of others. Throughout this chapter I will refer to these features together as 'other-regardingness'. In this section I will argue that laws restricting consensual exploitative transactions can be justified as means to prevent certain greedy behaviour, and to try to promote other-regardingness. It should be noted from the outset, however, that my goal is not to argue that all societies should introduce anti-exploitation laws, or should try to curb greedy behaviour or promote other-regardingness. As stated in chapter 1, my aim throughout this thesis is the other way around: there *are* many modern liberal societies with laws that aim to restrict what are seen as consensual exploitative transactions, or with calls for such transactions. My goal is to analyse what is wrong with such transactions—what makes them exploitative—and thus to know what it means to justify legal restrictions on those transactions with the fact that they are exploitative, and to see if this justification is an acceptable ground for legal restrictions on consensual transactions in a liberal society. I have argued that consensual exploitation is wrong because of greediness, and I will now consider what it means to use this wrong as a justification for legal restrictions on consensual exploitative transactions, and whether this wrong can be used to justify such restrictions in liberal societies. My view is that it can, in principle, as I shall show in this chapter, but this does not mean that I am arguing for the legal regulation of all or even some consensual exploitative transactions. In order to decide whether restricting certain consensual exploitative transactions is indeed desirable, many other factors will also have to be taken into account, as will be discussed later.

My statement that anti-exploitation laws can be justified as means to prevent certain greedy behaviour, and to try to promote other-regardingness, comprises two different claims. The first claim is that if the wrong in exploitation is a matter of greediness, anti-exploitation laws can be justified as a means to prevent certain greedy acts. The second claim is that if the wrong in exploitation is a matter of greediness, anti-exploitation laws can be justified as a means to try to promote other-regardingness. These two claims will be discussed in turn.

For the claim that laws restricting consensual exploitative transactions can be justified as a means to prevent greedy acts, recall that in the previous chapter it was shown that the labels 'virtuous' and 'vicious' are applied both to people's stable character traits and to specific acts they perform. It was also shown that there are, broadly speaking, two different views of the relationship between the two usages of virtue terms, but that both these views will accept that it is bad if people perform greedy acts, and that it would be better if they acted less greedily, irrespective of their overall character. The first way in which laws that restrict consensual exploitative transactions may be justified, is as means to prevent such greedy acts.

It might be objected that anti-exploitation laws do not truly prevent greedy acts, because acting greedily or generously depends not solely on how people act, but also on their reasons for acting and emotions. Thus, it might be objected, if one refrains from acting greedily merely because of the law, this is not truly non-greedy. This objection will be discussed in section 5.3.2. For now, we may note that even if it is true that anti-exploitation laws do not truly prevent greediness, they at least prevent exploiters from doing what are considered greedy acts, and thereby, they can at least protect potential exploitees against the negative effects of such greedy acts. For example, minimum wage laws or working hour regulations protect employees against employers' potential greedy acts by restricting what employers can demand from their employees and for what wage (see section 5.4.1 for a further discussion of this).

In the previous chapter it was shown that on most virtue theories, generosity, like all virtues, is considered good for both its possessor and for

other people in society. Likewise, greediness, like all vices, is thought to be bad both for its possessor and for other people. Trying to justify anti-exploitation laws with the negative effect of greediness on exploiters themselves will likely be controversial and problematic, because it means that anti-exploitation laws are there for the benefit of exploiters. However, if the wrong in exploitation is a matter of greediness, we can also justify anti-exploitation laws with the negative effect of greediness on others, since this is an equally important element of the vice. As was argued in section 4.6.1, virtues such as kindness, justice, and generosity do not ‘accidentally’ benefit others; they are virtues partly *because* of the benefit to others. Conversely, vices such as unkindness and greediness are not ‘accidentally’ bad for others, with the real badness being the damage to one’s own character. They are vices partly *because* they have negative effects on others. Greediness involves, it was said in the previous chapter, trying to acquire or keep an excessive amount of wealth for oneself, irrespective of negative consequences on others (and oneself). Hence, if our trying to acquire or keep a lot of wealth did not have negative effects, it would not be seen as greediness. Or, in other words: if we did not think it undesirable or morally bad that other people (or ourselves) suffer negative consequences, greediness (and unkindness, injustice, etc) would not need to be considered bad either. And if, on a virtue approach, the negative consequences on others of vicious behaviour, such as greedy behaviour, are considered undesirable and morally bad, then a first way in which legal restrictions on consensual exploitative transactions can be justified, is that they prevent such negative consequences.

Another way of seeing this is by recalling that, as argued in the previous chapter, saying that someone acts greedily means at least partly to criticise the fact that she does not regard another’s interests and wellbeing as sufficiently important. That is, as important as they are. This means that on a virtue approach, other people’s interests and wellbeing *are* considered as important. Hence, again, this shows that what is considered bad about greedy acts is not only what it says about the greedy person’s character, but also the actual negative consequences of these acts on other people’s interests and wellbeing.

Therefore, if I am right that the wrong in consensual exploitation is greediness, a first way in which legal restrictions on exploitative transactions can be justified is as means to limit the negative consequences of greedy behaviour on other people's interests. Even if one might not succeed in truly reducing people's greediness (although one might, as will be discussed in section 5.3.2) legislation restricting exploitative transactions may in any case protect other people's interests against certain greedy acts.

The second way in which anti-exploitation laws may be justified if exploitation is a matter of greediness, is slightly more indirect: as a means to try to promote other-regardingness. In the previous chapter, it was argued that important elements of virtues like generosity, kindness and compassion are what I here call other-regardingness: an accurate moral perception of (the condition of) others, emotional responsiveness to the condition of others, and the motivation to promote others' interests. Conversely, it was argued, greediness in consensual commercial transactions involves a disregard for or undervaluation of the interests of others, and the absence of an appropriate emotional response to the condition of others. Moreover, it was argued, it may involve a lack of accurate moral perception of other people or of their condition, which means that people with whom one interacts are not perceived as human beings with their own desires, conditions and feelings that are worth taking into consideration, but more as abstract entities whose well-being is not important to oneself. Hence, as argued in the previous chapter, greediness in consensual commercial transactions means that people are either blind to the condition of people with whom they interact, or do perceive it in some way, but fail to regard people's condition, interests, and wellbeing as sufficiently important and to let themselves be emotionally affected by it.²⁷¹

²⁷¹ This corresponds to what Axel Honneth, after Georg Lukács, describes as 'reification': the mental habit of viewing people and interacting with people 'without a trace of inner sentiment or any attempt at understanding the other's point of view' (A Honneth, 'Reification and Recognition: A New Look at an Old Idea' (Oxford University Press, 2008) 18), in which people lose their ability for empathetic engagement with other persons (Honneth, *op.cit.* 53) and view people merely 'as things' (Honneth, *op.cit.* 24-25). As Honneth describes it, it means that 'we lose the ability to understand immediately the behaviour of other persons as making claims on

These features do not only concern individuals interacting with each other, but can also be of interest to societies as a whole. A commonly heard complaint is that in modern Western societies, people live alongside and interact with others in a detached, cold way, either not perceiving others at all, or perceiving them merely in terms of their own benefit.²⁷² This complaint is not just heard about the way people relate to each other in market relationships, but also, for instance, about some of the workings of the health care sector, or about the way people ignore homeless people on the streets.

By trying to discourage greediness and promote the virtue of generosity (or kindness or compassion, for that matter), a society might therefore not only try to encourage people to help others by being more generous (or kind or compassionate), but also, thereby, to promote more other-regardingness and a more accurate moral perception of other people, in the sense of not being blind to other people, but responsive to and affected by their condition. Hence, if I am right that exploitation can best be understood as a failure of the virtue of generosity, what societies may try to promote by restricting exploitative transactions, is not merely that exploiters benefit others by acting less greedily, but also an awareness or perception of other people as not simply things for their own benefit, or abstract actors in market transactions, but as real people whose condition is morally important and can make a claim on them.

To summarize, in chapters 2 and 3, I argued against explaining the wrong in exploitation as a problem of consent or unfairness, or as the violation of a duty to help people who are vulnerable, in need, or in unjust circumstances. If these justifications are indeed unfit to explain what is wrong with exploitation, they are also problematic as justifications for laws that aim to regulate allegedly exploitative voluntary transactions, such as minimum wage laws, interest rate ceilings, and price gouging laws. My view is that greediness is the wrong in

us—as demanding that we react in an appropriate way. We may indeed be capable in a cognitive sense of perceiving the full spectrum of human expressions, but we lack, so to speak, the feeling of connection that would be necessary for us to be affected by the expressions we perceive' (Honneth, *op.cit.* 57-58).

²⁷² See e.g. ME Cavanagh, 'Rediscovering Compassion' (1995) 34(4) *Journal of Religion and Health* 317-327.

exploitation, and therefore that laws that are intended to prevent or limit exploitation, can be justified as means of curbing greediness and promoting generosity in situations where this is particularly called for,²⁷³ and thereby also as means of trying to promote people's awareness of and responsiveness to others with whom they interact.

To avoid misunderstanding: I am not making the empirical claim that this is the intention lawmakers in all or even some societies had in mind when introducing laws that restrict exploitative transactions. This is a claim I cannot prove and that, I think, seems unlikely to be true for many cases. I am also not making the claim that by introducing some anti-exploitation law, people indeed will always become less greedy, or more other-regarding. This too is an empirical claim that I cannot prove in this thesis, and the extent to which it is true likely varies for different laws and different societies. Whether a certain law will have the effect of making people less greedy and more other-regarding, will thus have to be decided on a case-by-case basis. Yet I think it is a plausible assumption that laws *can* influence our moral thinking and attitudes, as has been argued by many,²⁷⁴ and as will be explained further in section 5.3.2; and that this can, at least partly, justify the introduction or existence of laws that restrict consensual exploitative transactions.

Hence, my argument is that since the wrong in exploitation is greediness, laws that aim to restrict exploitation in consensual transactions can be justified as means to curb greedy acts and promote other-regardingness. This is not to deny that there can be other, *instrumental*, reasons, for why we may want to have certain laws that curb exploitation. For example, we might want to support minimum wage laws in a certain society because, in that society, such laws turn out to be a reasonably effective means of reducing poverty, differences in income inequality, and societal injustice. In that case, we would try to fight

²⁷³ Which, as noted in section 4.4, depends on several factors including the relative affluence and needs of the parties.

²⁷⁴ See e.g. Aristotle, *Nicomachean Ethics* X.10, 1179a35-1181b20; Aquinas, *Summa Theologica*, I-II Q49-56; Q92 and Q96); Z Bankowski, *Living Lawfully: Love in Law and Law in Love* (Kluwer Academic Publishers, 2001) 70-71; DF Brosnan, 'Virtue Ethics in a Perfectionist Theory of Law and Justice' (1989) 11 *Cardozo Law Review* 335-425; and M Therrien, *Law, Liberty & Virtue: A Thomistic Defense for the Pedagogical Character of Law* (University of Fribourg, 2007).

poverty or injustice on a societal level, by regulating private transactions, on an individual level. Minimum wage laws could then be justified as a means to reduce injustice, yet as a means to prevent exploitation, they could merely be justified instrumentally, because, as I have tried to show in chapter 2, principles of justice cannot truly justify what is wrong with individual exploitative transactions, and what is morally required to correct societal injustice is not related to which particular individuals happen to transact with each other and what they transact. Still, such an instrumental use of anti-exploitation laws might be valid, if, all in all, we think that the benefits in reducing poverty outweigh the disadvantage that we are making particular individuals disproportionately and possibly unjustly responsible for doing so.

My argument is that even if we would not have such instrumental reasons to justify anti-exploitation laws, because, for instance, minimum wage laws do not reduce the overall levels of poverty or distributive injustice in a society (which may well be the case in certain societies; see section 5.4.1), there is a separate reason why we may still want to regulate exploitative transactions, and this is the goal of discouraging greedy behaviour and promoting generosity and other-regardingness. For any specific law that restricts exploitation in consensual transactions, both reasons—alleviating societal injustice and curbing greediness/promoting generosity—might function as a justification at the same time, but my focus is on the second reason. In other words, while I acknowledge that states may want to use certain anti-exploitation laws as a means to address macro-level societal problems such as poverty and injustice, I believe that there may also be an independent justification for such laws, which is not based on an argument against poverty or injustice itself, but on an argument against a certain response towards people who are in a dire situation because of poverty or injustice: a greedy response. And this involves, as explained, both acting greedily by trying to get the other to agree on a transaction that benefits oneself as much as possible, and a greedy perceptual and emotional response, in the sense of being blind to or not taking as sufficiently important the condition of the person with whom one interacts.

My view of exploitation does raise a potential problem, however. It might be thought that although it is indeed good to have less greediness and more other-regardingness between people, there is no reason why society or the state should be concerned with promoting these goals. I will briefly discuss this possible objection in the next section, and explain why I think that curbing greediness and promoting other-regardingness can be considered a desirable goal for societies on many different political theories. In section 5.3, I will next discuss the related but more specific possible objection that we ought not to use the *law* to curb greediness and promote other-regardingness.

5.2 Other-regardingness in political theory

My argument is that anti-exploitation laws can be justified as means to curb greediness and promote the virtue of generosity, and thereby to promote a higher level of other-regardingness. It might be objected that on most liberal views, states should only be concerned with enforcing ‘right’ and ‘wrong’ behaviour, and should not be concerned with promoting virtues or other-regardingness. Justifying anti-exploitation laws as means to promote generosity and other-regardingness might therefore be seen as incompatible with all such political theories. I believe, however, that this is not necessarily the case.

First of all, the recognition of the value of other-regardingness is evident in a number of theories, such as communitarian theories which argue for the importance of social attachments for our wellbeing,²⁷⁵ feminist theories which emphasize the importance for society of attitudes of care and responsiveness towards the needs of others,²⁷⁶ and ‘republican’ liberal theories which argue that liberal-democratic institutions require citizens to possess certain virtues, because those institutions will break down if citizens continuously put their own interests above the common good.²⁷⁷

²⁷⁵ See e.g. A MacIntyre, *After Virtue* (2nd ed, University of Notre Dame Press, 1984); A Etzioni, *New Communitarian Thinking* (University of Virginia Press, 1995).

²⁷⁶ See e.g. V Held, *The Ethics of Care* (Oxford University Press, 2005); N Noddings, *Caring: A Feminine Approach to Ethics and Moral Education* (University of California Press, 1986).

²⁷⁷ See e.g. R Putnam, *Making Democracy Work* (Princeton University Press, 1993); Q Skinner,

Yet even on several more mainstream liberal theories, other-regardingness could be recognized as an important element of a healthy society. Take for example the political theory of John Rawls, as set forth in his *A Theory of Justice*²⁷⁸ and *Political Liberalism*.²⁷⁹ Although Rawls explicitly rejects perfectionism, the view that the state should be concerned with perfecting its members' virtue or excellence, virtues do play an important role in his theory.²⁸⁰ A just, liberal society requires, Rawls says, 'virtues of fair social cooperation',²⁸¹ such as the virtue of reasonableness, justice, civility, tolerance, a sense of fairness, mutual trust, a spirit of compromise, and a readiness to meet others half-way.²⁸² For Rawls, these virtues do not depend on a particular conception of human flourishing, but are compatible with a variety of conceptions of the good held in a pluralist society. They are character features required to maintain a just society and to realize the values of liberty and equality. Virtues, in Rawls' writings, are thus instrumental for achieving and maintaining the type of society we want.²⁸³ 'A good person', he says, 'has the features of moral character that it is rational for members of a well-ordered society to want in their associates.'²⁸⁴

Rawls does not discuss virtues at great length, and does not explicitly mention the character traits important on my view of exploitation: generosity and other-regardingness. Yet his reasoning might be taken further, as some authors have done,²⁸⁵ to also include other virtues that are rational for members of a well-ordered society to want in their associates, or necessary for a

'The Republican Idea of Political Liberty' in G Bock, Q Skinner and M Viroli (eds), *Machiavelli and Republicanism* (Cambridge University Press, 1990); P Pettit, *Republicanism: A Theory of Freedom and Government* (Clarendon Press, 1997).

²⁷⁸ J Rawls, *A Theory of Justice* (Harvard University Press, 1971).

²⁷⁹ J Rawls, *Political Liberalism* (Columbia University Press, 1993).

²⁸⁰ For a discussion of the role of virtues in Rawls' work, see e.g. L Beckman, *The Liberal State and the Politics of Virtue* (Transaction publishers, 2001); and WA Galston, *Liberal Purposes: Goods, Virtues, and Diversity in the Liberal State* (Cambridge University Press, 1991).

²⁸¹ Rawls, *Political Liberalism*, *op.cit.* 194.

²⁸² Rawls, *Political Liberalism*, *op.cit.* 163, 194-195.

²⁸³ Although it has been pointed out that, in his later work, Rawls describes the development of moral personality also as an intrinsic good, in the sense of expressing our innate capacity for justice. See Galston, *op.cit.* chapter 6.

²⁸⁴ Rawls, *A Theory of Justice*, *op.cit.* 436-437.

²⁸⁵ See e.g. MV Costa, 'Political Liberalism and the Complexity of Civic Virtue' (2004) 42 *The Southern Journal of Philosophy* 149-170.

well-ordered, liberal and equal society. Virtues such as a 'habitual disposition to express egalitarian respect for fellow citizens ... in nonideal contexts',²⁸⁶ and kindness, compassion and generosity.

I cannot here provide an extensive discussion of the importance other-regardingness may have in the liberal theory of Rawls, or in any other liberal theories. My only aim here is to indicate that the notion that other-regardingness is an important attribute to have in societies is not necessarily incompatible with many political theories, even liberal ones.

Nevertheless, this still leaves a second and perhaps more problematic objection. Even if we would agree that generosity or other-regardingness can be understood as important goods for society on many different political theories, it might still be objected that it is not desirable that states use the *law* to promote this type of good. This will be discussed in the next section.

5.3 Virtue and the law

In the previous section, I explained why I think that the virtue of generosity, and other-regardingness, can be considered desirable traits for societies on several different political theories. In this section, I will discuss the possible objection that even if this is true, we ought not to use the law to curb vices or promote virtues.²⁸⁷

It is common to distinguish two categories of moral judgement: the aretaic and the deontic. As noted before, the former refers to virtues, ideals and goodness, and is open-ended because virtues, ideals or good states of affairs can in principle always be further perfected or realized. The latter (including both deontological and consequentialist theories) gives requirements which are fixed and have clear criteria of fulfilment, and which are often seen as giving the

²⁸⁶ As is argued in Costa, *op.cit.* 155.

²⁸⁷ For several recent examinations of the relationship between law and virtue see A Amaya and H Hock Lai (eds), *Law, Virtue and Justice* (Hart Publishing, 2013); and C Farrelly and L Solum (eds), *Virtue Jurisprudence* (Palgrave Macmillan 2007).

minimal requirements of morality.²⁸⁸ It is concerned with determining the cut-off point between which actions are right and wrong, or acceptable and unacceptable, instead of with what it means to live as well as one can.

In traditional liberal thought, law has usually been associated with deontic thinking ('the right'), but discussions of the relationship between aretaic ethics ('the good') and the law have re-emerged in post-war moral and legal philosophy. A central question in these discussions is whether it is desirable to use law to promote 'the good', or virtuous behaviour. According to many liberals, the answer is no. Although the moral perfection of people may be a valuable end, they say, it is not a valid reason for legal action. The law should only be concerned with enforcing 'right' conduct, and not 'good' or virtuous conduct. This is often referred to as the liberal neutrality principle, which says that states should be neutral with regard to different citizens' moral, religious and political views, or, as it is often termed, their 'conceptions of the good'.²⁸⁹ This does not necessarily imply that neutralists deny the importance of virtue, or that they deny that certain views of the good are more desirable than others. Yet they do state that reasons about the good are the wrong type of reasons for justifying public institutions such as the law. This view thus involves a strict distinction between types of arguments: arguments based on conceptions of the right, which are suitable for public decision-making, and arguments based on conceptions of the good, which should only play a role in people's private decisions.²⁹⁰

So-called moral perfectionists disagree. They say that it is, at least in some situations, appropriate for the state to promote valuable conceptions of the good or discourage bad ones, and to assist citizens in their endeavours to lead a good life. Although this view contradicts the liberal way of thinking that has dominated much of 20th century moral philosophy, moral perfectionism is

²⁸⁸ D Heyd, 'Supererogation' in EN Zalta (ed), *Stanford Encyclopedia of Philosophy* (Spring 2013 Edition) 2.

²⁸⁹ S Wall and G Klosko, 'Introduction' in *Perfectionism and Neutrality. Essays in Liberal Theory* (Rowman and Littlefield, 2003) 1.

²⁹⁰ See C Michelon, *Being Apart from Reasons* (Springer, 2006) 79-80.

in fact an old position that has been the dominant view of the state for most of Western history.²⁹¹

If I am right that exploitation can best be understood as a failure of virtue and other-regardingness, and that anti-exploitation laws may be understood as a means to curb greediness, promote generosity and, thereby, other-regardingness, this might trigger the neutralist objection that the state ought not to concern itself with promoting such goods. This section discusses three versions of this objection, and concludes that although those objections give good reasons to be careful with using the law to promote certain conceptions of the good, there is no reason why this should *never* be done. Those objections thus provide no conclusive reasons against anti-exploitation laws. Instead, it will be argued, the desirability of such laws should be decided on a case-by-case basis, balancing their drawbacks against the goods they promote.

5.3.1 Autonomy

The neutralist view that the state ought not to use the law to promote conceptions of the good and virtuous behaviour, often stems from the importance attached to respect for individuals' autonomy and their corresponding right to decide for themselves how they want to construct their lives.²⁹² For some neutralists, this is coupled with fear of misuse of power and repression by the state, if the state is given the power to enforce personal convictions and virtues.²⁹³ They consequently object to letting certain people in society impose their conception of the good on others, which they consider a

²⁹¹ See Wall and Klosko, *op.cit.* 13. Important articulations of this view can thus not only be found in the relatively recent works of e.g. Thomas Hurka (*Perfectionism* (Oxford University Press, 1993)), Alasdair MacIntyre ('The Privatization of the Good: An Inaugural Lecture' (1990) 52(3) *The Review of Politics* 344-377), and George Sher (*Beyond Neutrality: Perfectionism and Politics* (Cambridge University Press, 1997)), but also in classical works of, most notably, Aristotle (*Nicomachean Ethics* X.10, 1179a35-1181b20) and Aquinas (*Summa Theologica* I-II Q49-56, Q92 and Q96).

²⁹² See J Raz, *The Morality of Freedom* (Oxford University Press, 1986) 400.

²⁹³ P Koller, 'Law, Morality and Virtue' in RL Walker and PJ Ivanhoe (eds), *Working Virtue: Virtue Ethics and Contemporary Moral Problems* (Oxford University Press, 2007) 39.

degrading violation of autonomy, except when necessary to protect the autonomy of others, or, possibly, one's own autonomy.²⁹⁴

However, the argument for autonomy seems by itself unable to justify the absolute exclusion of arguments about the good from the realm of public decision-making. This is because for this argument to work, it needs to assume as a general principle that one particular kind of evil—the loss of autonomy—is more important than all other possible evils, or all other possible goods. Yet this need not necessarily be the case. Moral perfectionists work from another principle, which says that 'it is always right, other things being equal, to prevent evils; that the need to prevent evils of any description²⁹⁵ is a good kind of reason in support of legal prohibition.'²⁹⁶ And, as Joel Feinberg argues, this principle appears to be as plausible a principle as that which makes the prevention of one particular kind of evil, the loss of autonomy, a presumptively good reason against legal coercion.²⁹⁷

The consequence of this is that for every particular law, the neutralist liberal has to argue why the evil of limiting autonomy outweighs the evil that the law would prevent. It might be that the balance will very often be in favour of autonomy, but this does not change the main point of the argument, that this is not *a priori* the case. In other words: autonomy is certainly an important value, but if it is to justify the exclusion of arguments for the good from the realm of public decision-making, it needs to be shown why the value of autonomy will, in every particular situation, always outweigh all other possible values. And this seems very unlikely, especially if we take into account that in some situations, the possible gains or losses in terms of a particular value (such as equality, autonomy, welfare, education, etc) as a consequence of a certain policy, will be much smaller than in other situations. There can thus always be situations in which a certain policy brings a relatively small loss of autonomy,

²⁹⁴ J Feinberg, *Harmless Wrongdoing: The Moral Limits of the Criminal Law* (vol 4, Oxford University Press, 1990) xvii-xviii.

²⁹⁵ This need not necessarily be positive evils, but may also be the loss of a (potential) good.

²⁹⁶ Feinberg, *Harmless Wrongdoing, op.cit.* 5.

²⁹⁷ Feinberg, *Harmless Wrongdoing, op.cit.* 5.

but great gains in terms of some other value,²⁹⁸ which makes it seem mistaken to assume that the values of autonomy and state neutrality will always trump all other values.²⁹⁹

While I have argued that the autonomy argument for state neutrality is problematic, another possibility is to argue that state neutrality towards conceptions of the good is a special type of value, a value on a different 'level' than other values, which therefore overrides other values. In the next two sections, I will discuss two such arguments, which might be called 'ethical liberalism' and 'political liberalism'.³⁰⁰

5.3.2 Ethical liberalism

The 'ethical liberalism' argument³⁰¹ is also based on the value of autonomy, but in contrast with the earlier argument treats the value of autonomy as a second-order value. On this view, autonomy is important because it is necessary to enable people to act virtuously or morally. The argument holds that what matters for moral behaviour is not just how people act, but also whether they choose their actions truly autonomously. As shown in the previous chapter, to be virtuous means not just to show excellent behaviour, but to voluntarily choose to do so, and to do so for the right reasons. This means, the ethical liberalism argument says, that obliging people to act virtuously by law is self-defeating, because people will act out of fear of punishment or 'automatic conformity'³⁰² to the law, and not because of a genuine moral choice.

²⁹⁸ Think, for instance, of the use of taxpayers' money (which impairs taxpayers' autonomy) to fund nationwide vaccination programmes or education, bans on having sex in public, rules on the collection of rubbish, and mandatory education for all children.

²⁹⁹ See Michelon, *op.cit.* 88-90.

³⁰⁰ Beckman, *op.cit.* 8-9.

³⁰¹ A classic expression of this view is given by John Stuart Mill in *On Liberty* (1859). For a more recent variant see Ronald Dworkin's 'Liberalism' in S Hampshire (ed), *Public and Private Morality* (Cambridge University Press, 1978); and 'Foundations of Liberal Equality' in S Darwall (ed), *Equal Freedom* (University of Michigan Press, 1995). For a version of this argument specifically directed against the promotion of generosity by the state see TR Machan, *Generosity: Virtue in Civil Society* (Cato Institute, 1998).

³⁰² Feinberg, *op.cit.* 293.

All virtue ethicists would acknowledge that voluntary choice is important for true virtuous behaviour. Yet most of them also agree that the development of virtue and true moral freedom require moral education and 'habituation', and law can play an important role in this.³⁰³ The idea is that while virtues involve doing the right thing voluntarily, for the right reasons, and with the right emotion, no one is born with this ability, and it therefore has to be trained from an early age. Thus, it is said, children need to be taught what is good and bad behaviour by their parents, teachers and other people around them, and it makes a great deal of difference for someone's character in later life whether someone has received such moral education.³⁰⁴ Teaching people to have correct emotional, rational, and behavioural responses, is however not something that can usually be achieved by explanation or reasoning alone. It is thought that this usually also requires, at least in the beginning, some form of authority or coercion. For example, when a parent tells a very young child not to take a toy from another child, the reason why a child initially obeys will often be the authority of the parent, and not the fact that the child properly (emotionally and rationally) agrees with or understands the reasoning behind the command—in this case, that she has to take other children's feelings and interests into account. Yet it is thought that while children are initially taught to act morally correct because some authority forces them to do so, over time, most of them get into the habit of acting in the desired manner, will start acting correctly without being coerced to do so, and will *want* to act in the desired manner, for the right reasons, without being coerced to do so. The idea is thus that while people may initially make 'virtuous' choices because an authority coerces them to do so, over time, this moral education and habituation may produce a corresponding development of character in them, and ultimately lead them to freely choose the virtuous acts. And, it is thought, the required authority

³⁰³ The emphasis on the importance of moral education is perhaps most famously associated with Aristotle and Aquinas, but it is an important element in almost all virtue ethics theories. See Aristotle, *Politics* III.5, 1280b; *Nicomachean Ethics* X.9, 1179b-1180b; Aquinas, *Summa Theologica*, I-II Q49-54, Q91, Q92, and Q95-97, and e.g. J Annas, 'Being Virtuous and Doing the Right Thing' (2004) 78(2) *Proceedings and Addresses of the American Philosophical Association* 61-75, 69; R Hursthouse, *On Virtue Ethics* (Oxford University Press, 1999) chapter 5.

³⁰⁴ Aristotle, *Nicomachean Ethics* II.2, 1103b23-1103b25.

is initially, in the case of very young children, primarily provided by the parents, but for older children it is also provided by the law, which stipulates what people are and are not allowed to do. Moreover, although the working of this process of moral education through habituation is relatively uncontroversial when it comes to children, in the view of most virtue ethicists, moral development does not stop the moment someone turns 18. Moral growth is an ongoing process, it is thought, and even adults need support from their environment, which laws that delineate which actions are mandated, permitted, or forbidden, help provide.³⁰⁵ This is not just true for morally immature or 'bad' adults, it is thought; laws also help basically good or well-meaning people to form good habits and acquire the virtues they already wish to have.³⁰⁶ In fact, some argue that it is *inevitable* that law influences people's character, whether we like it or not.³⁰⁷ Exactly how it is that laws help to promote virtue is described differently by different people. It is beyond the scope of this thesis to provide an extensive discussion of these views, but I do wish to outline a few arguments.

One argument focuses on explaining the psychological mechanism of 'internalization', which means that the commands that are initially given by parents or another authority are taken over by individuals themselves.³⁰⁸ Hence, this is the process by which children initially learn that stealing is wrong because their parents tell them so, but over time start telling themselves that stealing is wrong. A particularly good educational technique is thought to be 'induction', in which parents try to make the child see the effects of her behaviour on others; for instance, that stealing a toy from another child will

³⁰⁵ Aristotle, *Nicomachean Ethics* X.10, 1179a35-1181b20; Aquinas, *Summa Theologica*, I-II Q49-56; Q92 and Q96. See also MC Nussbaum, *The Fragility of Goodness. Luck and Ethics in Greek Tragedy and Philosophy* (Cambridge University Press, 1986) 347-348.

³⁰⁶ See for a discussion of this point MM Keys, 'Aquinas's Two Pedagogies: A Reconsideration of the Relation Between Law and Moral Virtue' (2001) 45(3) *American Journal of Political Science* 519-531.

³⁰⁷ See e.g, SJ Clark, 'Neoclassical Public Virtues: Towards an Aretaic Theory of Law-Making (and Law Teaching)' in A Amaya and H Hock Lai (eds), *Law, Virtue and Justice* (Hart Publishing, 2013) 81-104, 84. Clark describes six ways in which law and politics influence virtue, whether intentionally or unintentionally.

³⁰⁸ Brosnan, *op.cit.* 367-382.

upset the other child.³⁰⁹ Over time, it is argued, many children will no longer need their parents to point out such things, but they will start to generate their own feelings of guilt, and will themselves be both rationally and emotionally motivated not to steal, and to take other children's feelings into account. For older children and adults, this process is thought to be aided by the law, which also proscribes certain behaviour, and in doing so forces people to take others into account when making decisions. It should be clear that the degree of internalization of norms set by parents and laws varies considerably from person to person,³¹⁰ and from norm to norm. But research indicates that this psychological process does take place to a significant extent in most people, and that many legal rules are internalized.³¹¹

An alternative way in which the idea that law promotes virtue is sometimes described is in terms of a 'moral environment' which law can help create or sustain. The idea is that a framework of understandings, expectations and conditions of social interaction influences people's moral education and the choices people want to make. And people's choices, in turn, shape that framework. A good moral environment helps people by encouraging them to choose good actions and avoid bad actions. This might be because a healthy moral environment offers fewer inducements to choose bad things, or because it makes moral conduct beneficial instead of to people's disadvantage.³¹² The importance of one's moral environment for the development of virtues seems particularly clear when we imagine a society in which such a framework does not exist. As Peter Koller argues: 'In a state of social affairs which is dominated by corruption, lawlessness, and injustice, individuals have little incentive to develop moral dispositions, such as honesty, reliability, justice, trust, and benevolence, since these dispositions would be to their detriment.'³¹³ In other

³⁰⁹ Brosnan, *op.cit.* 374-375.

³¹⁰ While some people will not internalize certain norms, and merely observe them out of fear of punishment, another possibility is that for some people, the mechanism of internalizing norms with the aid of authority, does not lead them to internalize the norms or dispositions that others are trying to teach them, but instead leads them to internalize the disposition to obey authority.

³¹¹ Brosnan, *op.cit.* 381.

³¹² See e.g. Clark, *op.cit.* 86-87; RP George, 'The Central Tradition—Its Value and Limits' in C Farrelly and L Solum, *Virtue Jurisprudence* (Palgrave Macmillan, 2007) 46; Koller, *op.cit.*

³¹³ Koller, *op.cit.* 41-42.

words: what people see as behaviour that can reasonably be expected of themselves and of others, and what behaviour they see as an undue burden, is heavily influenced by the society in which they grow up. Societies and their laws thus influence people's willingness to maintain a level of virtuous conduct that in another society may be regarded as too much to be demanded.³¹⁴

Other writers³¹⁵ explain how law can aid virtue by arguing that law is a form of 'rational persuasion'; that law can rationally persuade people to behave correctly. They recognize that law can and frequently does induce people to behave in a certain way merely because of the threat of punishment. Yet, they say, this fear of punishment only serves as the motivation for people who are not rationally persuaded by the importance of the good that a certain law aims to achieve. People who are persuaded that the rules laid down by a law are desirable and reasonable, obey the law not because of fear of punishment, but because they agree with it, and they would even obey it without punishment.

An important part of this argument is the idea that law cannot truly force people to behave in a certain way, but can at most persuade people to behave in a certain way by changing the advantages and disadvantages of doing so by introducing penalties or rewards. For example, if I am driving on a road with a speed limit of 20 miles per hour, I am still able to choose whether or not to observe the speed limit, and I might choose to ignore it and take the risk of getting a penalty.³¹⁶ It might also be that I want to ignore the speed limit and drive faster, but that I am too afraid of being caught and getting a penalty, and that I therefore observe the speed limit merely out of fear of punishment. Nevertheless, some theorists argue, this means that the effect of the speed limit is that, at least sometimes, it makes me consider the advantages and disadvantages of observing it; of driving no more than 20 miles per hour on that road. And this means that I will not only consider the risks of punishment and the benefits of driving faster, but probably also consider why the state would not want me to drive faster on that road. I may then realize, for example, that a

³¹⁴ See for a discussion of this point LA Blum, *Moral Perception and Particularity* (Cambridge University Press, 1994) chapter 7.

³¹⁵ E.g. Aquinas, *Summa Theologica* I-II Q90, Q92, and Q96; Therrien, *op.cit.* part 1.

³¹⁶ Based on an example in Therrien, *op.cit.* 91-92.

lot of children may live near the road, and that it would indeed be dangerous for me to drive faster than 20 miles per hour. There is thus a chance that the speed limit will 'rationally persuade' me that it is unwise to drive faster than 20 miles per hour on that road, and if so, I will follow the speed limit truly voluntarily, and would do so even without the risk of a penalty. In the same way, it is argued, all laws can have the effect of making people consider or become aware of the desirability of certain behaviour, and thereby they can rationally persuade people of the reasonableness and importance of the norms laid down by the law.

Of course, laws will frequently fail to rationally convince people of the desirability of certain behaviour. Some people might never stop to consider the reasoning behind a law; others may do so, but disagree with the reasoning, or think it right, but not as important as their own interests. In such cases, laws will at most change people's behaviour because of the threat of punishment. Yet for other people, at least some laws will make them consider the reasoning behind the law, and will convince them of the desirability of the norm that the law puts forward. Those people will therefore obey laws truly voluntarily, which means that the fact that a virtuous act is prescribed by law, does not preclude people from voluntarily choosing the act, and thus from acting virtuously.

A somewhat related argument says that laws can help virtue because they can help to specify what is required for virtuous behaviour in particular cases. In many situations it is difficult to see exactly what would be the best course of action, especially when it concerns the common good of society. Law, it is said, therefore helps virtue, because it specifies what everyone in society ought to do for the common good, which is something that even individuals who are disposed to virtue often cannot determine for themselves.³¹⁷ Think again of the speed limit example described above. Even people who are disposed to behave well, and do not want to endanger anyone else while driving, cannot possibly know which speed limit is safe on every particular road. Speed restrictions thus help them by telling them what speed is acceptable in particular situations. Moreover, it is further argued, over time, following laws

³¹⁷ See e.g. Aquinas, *Summa Theologica* I-II Q96; Therrien, *op.cit.* 65.

such as traffic laws brings people experience and gives them a feel for which type of situations call for which behaviour. In other words, it can habituate them into a higher degree of practical wisdom and virtue.

It might be objected that I claim that for people to act virtuously they need to follow the law from their own conviction instead of from fear of punishment, but that if they do so, the law becomes superfluous because if people act out of their own conviction, they do not need the law in order to act in that way. For example, many people would say that they would not steal or rape even if it was legally allowed, because it is their own moral conviction that doing so is wrong. Yet the point of the arguments discussed in this section is that an important part of what made this into people's own moral conviction, is their upbringing and the initially coercive imposition of the fact that stealing and raping is wrong, and that part of this moral environment and coercive imposition is provided by the law. The argument is not that law is the only factor that creates people's moral convictions and attitudes, but that laws help, and that they do not inhibit people's ability to truly voluntarily choose to act virtuously.

It would be naïve to think that law always has the effect of promoting virtue, whether by aiding the internalization of certain moral standards through habituation and the provision of a certain moral environment, by rationally persuading people of the desirability of those moral standards, or by specifying what is required for virtue in particular cases. This will, as said, vary greatly from person to person, from law to law, and perhaps from society to society. Yet it would be equally mistaken to think that law never has the effect of influencing people's moral outlook and attitudes, and of aiding our moral development. This seems evident, as noted before, when imagining a situation in which certain moral norms, or virtues, are not supported by law. Imagine, for example, that we have to try to teach our children that stealing is bad in a society where stealing is not illegal and therefore widely practiced (because in societies where stealing is illegal there are plenty of people who refrain from stealing only out of fear of being caught). When children are still young, and their parents the main authority they are aware of, this would perhaps not be a problem. But when

they grow older, and realize that stealing is not illegal, and that many people do in fact steal, there is a large chance that they will start thinking that they should steal as well, since it will benefit them, since many other people are doing so, and since it is legal which indicates that apparently the state thinks it is not such an unacceptable thing. Many laws have the effect of the state or society giving out the message 'this is something we think is unacceptable' or 'this is something we think is desirable'. If that message is missing, along with the general habit of people to act in a certain way, it is likely more difficult to teach or internalize that behaviour as a moral standard.

In sum, while it is indeed important for virtue that people's choices are voluntary, the existence of laws regulating certain virtuous or vicious behaviour does not necessarily prevent this, and, moreover, may even aid the development and maintenance of virtue. The 'ethical liberalism' argument can therefore not explain why we ought never to use law to promote a certain virtue. The next section will discuss a third and final argument against using the law to promote virtue or curb vice, which is sometimes referred to as 'political liberalism'.

5.3.3 Political liberalism

So far I have discussed two arguments for the claim that law ought not to be used to promote virtue: an argument which is based on autonomy, and an argument which says that laws prevent the possibility to make voluntary moral choices. A third argument for the idea that the law should not be used to promote virtue or certain views of the good focuses on political justification. Its point of departure is that in a pluralist society, reasonable and well-meaning people often disagree about the best conception of the good. Yet laws and other state institutions are coercive and have a large impact on people's lives. Therefore, it is argued, a certain kind of legitimacy is required to justify state institutions, with stricter requirements than when justifying decisions in our

private lives.³¹⁸ More specifically, proponents of this argument want to restrict the types of reasons that are permissible grounds for government action, and mere 'personal beliefs' or conceptions of the good are not considered valid, but only reasons based on moral beliefs that are held in common in society. This does not mean that everyone in society needs to agree on all public decisions, but only that the arguments with which public decisions are justified are based on principles that other (reasonable) people recognize as valid moral principles as well, even though they might draw different conclusions from those principles about the desired public policies. For some, like Thomas Nagel,³¹⁹ it is important that principles are actually shared in a society, while for others, like John Rawls,³²⁰ it is the *shareability* of principles by rational free and equal people that counts. But the conclusion is the same: only shared grounds are suitable to legitimate state actions and institutions that greatly impact people's lives. Why would this be so?

One possible answer might be that such reasons are more likely to be true. It seems logical to think that arguments based on principles held in common in a society are more likely to be correct than arguments based on private views of the good over which people disagree. However, there is no proof that the fact that an argument refers to shared principles increases the likelihood of that argument being correct. As Claudio Michelon points out, common principles are as likely to ground massacres as personal moral beliefs are.³²¹ Moreover, societies in different times and places have often had shared beliefs that contradicted shared beliefs in other societies, for example about the appropriate role of women in politics or society, the role of children, or homosexuality. Because many of those different views are in complete opposition with each other, they cannot all be true, so the fact that they were shared beliefs cannot have influenced the likelihood of them being true.

³¹⁸ Beckman, *op.cit.* 8-9. Two important articulations of this view are Rawls, *Political Liberalism*, *op.cit.* and T Nagel, 'Moral Conflict and Political Legitimacy' (1987) 16(3) *Philosophy & Public Affairs* 215-40.

³¹⁹ Nagel, *op.cit.*

³²⁰ Rawls, *Political Liberalism*, *op.cit.*

³²¹ Michelon, *op.cit.* 97.

Another possible argument for why shared principles are more suitable than private beliefs for legitimizing public decisions is based on the idea of respect for people's dignity, or, as Michelon suggests, on Kant's formulation of humanity as respecting people as ends in themselves.³²² As said before, a feature of public decision-making is that such decisions are backed by state force and have a large impact on people's lives. This imposition of coercive force by the state may give rise to worries about respecting people as ends in themselves. It might therefore be argued that if public decisions are based solely on the basis of principles that everyone potentially recognizes as valid principles (even if they disagree with the actual decision), people are respected more than if decisions that impact their lives are based on private beliefs that they don't agree with.

One problem with this view, as Michelon points out,³²³ has to do with the idea that it is acceptable to force others in society to abide by public decisions that go against their opinion if and because those decisions are grounded in principles others recognize, even though others derive different conclusions from those common grounds. The problem with this is that it means we have to consider ourselves to be more capable of drawing conclusions from shared principles than others are, and in imposing our conclusions on them, have to act rather paternalistically. Yet if we want to maintain that treating people as ends in themselves outweighs all other moral values, it seems to follow that coercively imposing a certain policy on others is intolerable in both situations: both when people disagree on which common grounds can be used to justify a policy and when people disagree on how those grounds are to be interpreted. This leads to the conclusion that either coercively imposing policies is never justified, and only anarchism is compatible with the humanity argument, or the humanity argument is not systematically prior to all other moral considerations. The latter seems the right choice, which means, as shown in the previous sections, that the humanity argument is a value that has to be weighed on a

³²² Michelon, *op.cit.* 99.

³²³ Michelon, *op.cit.* 99-100.

case-by-case basis against all other possible moral reasons, including reasons for the good.

A second and perhaps even more important problem is that while the humanity argument seems convincing as an argument for the idea that it is better to base arguments for public decisions on common grounds than on people's private beliefs, it is not clear why this would justify excluding arguments on the basis of a distinction between *types* of argument; arguments for the good and arguments for the right. It may well be—and is in fact frequently the case—that there is common agreement in a society on the value of some aspects required for leading a good life, such as acquiring knowledge, or on the importance of specific virtues, such as honesty. In such situations, the humanity argument gives no grounds for the claim that it is disrespectful to justify public arguments and policies on conceptions of the good. Likewise, if there is common agreement on the undesirability of greed or the importance of generosity or other-regardingness in a society, then the humanity argument gives no reason against trying to promote those values with legal regulation.

Concluding, the problem with trying to systematically exclude from public decision-making a certain type of reasons, reasons for the good, is that this requires a moral argument; either directly, as was the case with the argument for autonomy I described, or indirectly, as with the second-order arguments for ethical and political liberalism. The problem is that there is no reason why that moral argument itself cannot be weighed against other moral considerations, and, in particular circumstances, be outweighed by them. Thus, even though a particular reason, such as autonomy or respecting people as ends in themselves, may generally provide a good reason for being reluctant towards using law to promote particular conceptions of the good, this does not mean that this reason will necessarily always outweigh all other possible reasons, including reasons based on conceptions of the good. Such reasons can therefore not systematically rule out arguments based on conceptions of the good or virtues.

Moreover, even if we were to use the argument for respecting people as ends in themselves to only approve of laws which enforce values that are

commonly shared in society, this would not justify the exclusion of arguments based on the value of certain virtues, because such values may well be commonly shared in society. Consequently, while we may have good reasons for wanting to restrict the extent to which the state may interfere in people's lives through the law, there is no reason why the restriction of such state interference should be based on a division between arguments for 'the good' and arguments for 'the right'.

In section 1, I argued that anti-exploitation laws can be understood as an attempt to curb greed and promote the virtue of generosity and, thereby, other-regardingness. In section 2, I argued that such other-regardingness can be recognized as an important good for societies on many different political theories. In this section I have tried to answer to the possible objection that law ought not to be used to promote virtues such as generosity, in order to show that even if we understand anti-exploitation laws as attempts to curb greedy behaviour and to promote generosity and other-regardingness, this does not necessarily make such laws objectionable. Instead, whether a certain anti-exploitation law is desirable should be decided on a case-by-case basis, balancing the goods the law seeks to promote against its possible drawbacks, including the possible threats to people's autonomy. In the next section I will further illustrate this—and my argument that anti-exploitation laws can be understood as a means of curbing greed and promoting generosity and other-regardingness—with two examples: minimum wage laws and the legal regulation of payday loans.

5.4 Examples

I will conclude this chapter by illustrating my view of exploitation and its relationship to law with a discussion of some existing laws that are used to regulate transactions that are widely considered exploitative. In particular, I will discuss minimum wage laws (section 5.4.1) and payday loan regulation

(section 5.4.2), although I think that my view of exploitation could also have implications for how we may view some other laws that restrict allegedly exploitative transactions, such as price gouging laws or working hour regulations.

5.4.1 Minimum wage law

Minimum wage laws were first introduced in the late nineteenth century in Australia and New Zealand.³²⁴ Since then, most countries in the world have adopted some form of minimum wage law, either at the national level or on a state or regional level. In many countries, minimum wage laws initially only applied to specific industries or specific groups, such as women or children, and were introduced as a means to fight sweatshops.³²⁵ Over time, minimum wages became increasingly advocated as a means to combat poverty and enable employees to be self-sufficient and meet their basic needs,³²⁶ and today, many countries have minimum wage laws that apply to all employees.

Generally speaking, minimum wage laws are popular with the public,³²⁷ yet they have been controversial since before their first introduction, and there is a continuing debate about their desirability. Very low wages are widely considered exploitative, and many of the arguments of proponents and opponents of minimum wage laws mirror the different arguments about exploitation that have been spelled out in this thesis. Some proponents argue that minimum wages prevent employers from paying unfairly or unjustly low wages, or from benefiting from or exacerbating injustice.³²⁸ Others argue that minimum wages prevent employers from taking advantage of vulnerable people

³²⁴ D Neumark and WL Wascher, *Minimum Wages* (Massachusetts Institute of Technology, 2008) 10.

³²⁵ See e.g. Neumark and Wascher, *op.cit.* 1; G Pitt, *Employment Law* (Sweet & Maxwell, 2011) 242.

³²⁶ Neumark and Wascher, *op.cit.* 1.

³²⁷ See e.g. DA Green and K Harrison, 'Races to the Bottom versus Races to the Middle: Minimum Wage Setting in Canada' in K Harrison, *Racing to the Bottom? Provincial Interdependence in the Canadian Federation* (University of British Columbia Press, 2006) 193-229, 198; J Waltman, *The Politics of the Minimum Wage* (University of Illinois Press, 2000) 65-68; J Waltman, *Minimum Wage Policy in Great Britain and the United States* (Algora Publishing, 2008) 21-23.

³²⁸ See e.g. MR Reiff, *Exploitation and Economic Justice in the Liberal Capitalist State* (Oxford University Press, 2013) 14, 135.

or people in need by offering extremely low wages;³²⁹ or that minimum wages protect low-skilled employees who are forced to accept any wage because they have limited employment opportunities.³³⁰ I have argued in this thesis, however, that such arguments based on fairness, injustice, vulnerability, needs, and consent, cannot adequately explain why exploitation is wrong, and why employers would have a moral duty not to exploit. Instead, I have argued, the wrong in exploitation can better be understood as a matter of greediness. In line with this, I believe that minimum wage regulation can be justified as a means of curbing greediness and promoting other-regardingness, as I will explain below.

Opponents of minimum wage laws argue that minimum wages lead to higher unemployment amongst less-skilled workers, because many employers will not be able to afford to employ those workers for higher wages. Some economists also argue that minimum wages do not, all in all, reduce the poverty of low-skilled workers, but merely redistribute income among low-skilled workers, and may actually increase poverty.³³¹ Other economists, on the other hand, argue that minimum wages do, all in all, lead to less poverty amongst low-skilled workers and to less income inequality, and that they do not necessarily lead to higher unemployment.³³² Whether minimum wage laws are actually effective in improving the income of low-skilled workers thus remains uncertain, and research on this question is surrounded by a lot of disagreement and controversy.³³³ Yet my view of exploitation provides a possible justification for the existence of minimum wages that does not depend on the overall effects

³²⁹ See e.g. DG Arnold and LP Hartman, 'Worker Rights and Low Wage Industrialization: How to Avoid Sweatshops' (2006) 28(3) *Human Rights Quarterly* 676-700, 692-693; JC Snyder, 'Needs Exploitation' (2008) 11 *Ethical Theory and Moral Practice* 389-405.

³³⁰ See e.g. J Cassidy, 'The Case for a Higher Minimum Wage' *The New Yorker* (14 February 2013) <<http://www.newyorker.com/online/blogs/comment/2013/02/the-case-for-a-higher-minimum-wage.html>>; Industrial Global Union, 'Minimum Wage Needed to Push Back Exploitation in Uganda' (7 March 2013) <<http://www.industriall-union.org/minimum-wage-needed-to-push-back-exploitation-in-uganda>>.

³³¹ Neumark and Wascher, *op.cit.* give an overview of many different studies that come to this conclusion.

³³² See e.g. S Devereux, 'Can Minimum Wages Contribute to Poverty Reduction in Poor Countries?' (2005) 17 *Journal of International Development* 899-912; J Dolado and others, 'The Economic Impact of Minimum Wages in Europe' (1996) 11 (23) *Economic Policy* 317-372; P Dolton, CR Bondibene and J Wadsworth, 'The UK National Minimum Wage in Retrospect' (2010) 31(4) *Fiscal Studies* 509-534.

³³³ Neumark and Wascher, *op.cit.* 6-7.

of minimum wages on poverty and income inequality; although it does not deny that these effects can be important as well.

In line with what was explained earlier in this chapter, I believe that minimum wage laws may be justified as a means to curb greediness, and to promote generosity and other-regardingness in private transactions. Employers, whose aim is often to maximize their profit, can be motivated to pay their employees as little as possible, even if they could pay more and still make a profit. Minimum wage laws prevent employers from doing so, and force them to pay at least a certain amount, often an amount around or slightly above what is thought to be the minimum required for people to meet their basic needs, broadly construed. Such laws thereby prevent employers from greedily acting solely for their own interests, force them to take their employees' needs and interests into account, and thereby force them to perceive their employees as people whose condition is morally important and makes a claim on them.

It could be objected that while minimum wage laws do force employers to pay higher wages, they do not really reduce greed, promote generosity, or force employers to perceive their employees' interests as making a claim on them. After all, minimum wage laws coerce employers into paying minimum wages against their will, while truly acting less greedily involves doing so voluntarily. Moreover, it might be argued, if employers do genuinely want to pay higher wages, they could and would also do so without minimum wage laws. There are at least three answers to this objection.

First, it is not clear that all employers who voluntarily want to pay low-skilled workers a reasonable wage would be able to do so without the existence of minimum wage laws, because without a lower limit to what competing companies can pay to employees, well-meaning employers may not be able to compete in the market when paying reasonable wages.

Second, while minimum wage laws may not necessarily make employers less greedy or more other-regarding, they at least prevent them from doing a certain greedy act: offering extremely low wages. This might not change or say anything about the greediness of their character, but, as explained in section 5.1, at least it prevents the negative effects of their greedy behaviour on their

employees. As argued in section 5.1 and chapter 4, virtues are not only concerned with the character of the virtuous actor herself, but are relational. What it is to act virtuously or to fail to do so, and thus what it is to act generously or greedily, is partly defined by the needs and interests of other people. Curbing greediness and promoting generosity is therefore not only good for the moral development of a greedy person, but also for other people around her. Even if minimum wage laws will sometimes or often fail to help make employers less greedy and more concerned about the interests of their employees, they will at least help protect the interests of employees against greedy behaviour.

Third, as argued in section 5.3.2, legally regulating certain virtuous or vicious acts does not necessarily prevent people from making voluntary virtuous choices, and may even aid the development and maintenance of virtue. As argued, coercively imposing a certain moral standard or outlook can, over time, through habituation and internalization, lead people to adopt this moral standard or outlook for themselves. And even if minimum wage laws do not have the effect of making many employers want to pay higher wages, such laws do send a message to society in general, a message that says 'we think it is unacceptable to pay people extremely low wages in order to maximize one's own wealth'. Thereby, minimum wage laws can help to create or sustain a certain 'moral environment', in which this type of greedy behaviour is considered reprehensible. As argued in section 5.3.2, laws help to create and sustain a social framework of understandings and expectations about which type of behaviour can be reasonably expected of people, and about which type of behaviour is unacceptable. Such a framework, in turn, influences people's willingness to voluntarily live up to the standards of what is considered good and unacceptable behaviour. Minimum wage laws give out the message that greedy behaviour, and with it the neglect of other people's interests for one's own wealth maximization, is unacceptable; or at least a certain level and type of greedy behaviour, between employers and employees. I am not arguing that minimum wage laws, by themselves, will be sufficient to create a societal moral environment that rejects greed and promotes other-regardingness. Yet they

may help in creating or sustaining such an environment, together with certain other laws, such as legal caps on bonuses for executive officers and legal measures to curb executives' pay, which have been increasingly called for in a number of Western countries in the past decade.³³⁴ The extent to which such laws will really have the effect of helping to create a societal moral framework in which (a certain level of) greediness is widely rejected, and of reducing greediness and encouraging other-regardingness, will arguably differ from country to country. Yet as was discussed in section 5.3.2, it is a plausible assumption that such laws can play a role in doing so in many societies, and that this may serve as one justification for such laws.

Another possible objection is that minimum wage laws do not necessarily curb greediness because minimum wages are generally still quite low, which means that it might still be considered greedy to pay the legally required minimum wage when one is able to pay more. This may well be true. But as explained in the previous chapter, greediness, like generosity, is a matter of degree, and there will usually not be clear cut-off points between what it means to act greedily, act non-greedily but not generously either, and act generously. It was also explained in the previous chapter that people will inevitably disagree on exactly which offers are greedy, but that, other things being equal, it is more greedy to refuse to benefit another the more the other needs it, and the more we can afford to do so. Minimum wage laws usually force employers to pay employees a level of wages that is thought to be needed to cover only the most essential needs, however construed. I acknowledge that one may think that this is not enough to prevent all levels of greed, and that some might still consider it greedy not to offer more than what is required for basic needs when one is able to do so. Nevertheless, such laws at least prevent employers to act what might

³³⁴ Think, for example, of the recent EU agreement on a cap on bankers' bonuses (see e.g. J O'Donnell and R Emmott, 'Isolated Britain Fails to Avert EU Bank Bonus Cap' *Reuters* (5 March 2013) <<http://uk.reuters.com/article/2013/03/05/uk-eu-bonus-idUKBRE92400F20130305>>, or the recent approval by voters in Switzerland of legal measures to curb executives' pay and ban 'golden handshakes' (see e.g. K Willsher and P Inman, 'Voters in Swiss Referendum Back Curbs on Executives' Pay and Bonuses' *The Guardian* (3 March 2013) <www.guardian.co.uk/world/2013/mar/03/swiss-referendum-executive-pay>).

be seen as *extremely* greedy, by even refusing to offer people enough to cover their basic needs. This may still leave room for greediness on some people's view if employers can easily pay more than the minimum wage, but it at least rules out high levels of greediness—wage offers that most people can agree on are greedily low.

It might also be objected that my argument appears to assume that employers can often easily pay higher wages, but simply do not want to do so for their own gain. Yet in reality, it may be objected, employers are frequently unable to pay their employees more without making a loss, because their competitors also offer low wages, or because consumers are unwilling to pay a higher price. In those cases minimum wages do not curb greediness and promote other-regardingness, it may be argued, but merely prevent companies and jobs from existing.

The economic argument that minimum wages may lead to job losses when employers are simply not able to offer higher wages is a valid practical objection against minimum wages, which should be weighed against the benefits of minimum wage laws on any view of what these benefits are. A different issue is the claim that in such situations, minimum wages do not prevent greedy behaviour or promote other-regardingness, because employers are not greedy, but simply unable to pay more. With regard to this objection, three things should be noted.

First, we cannot assume that employers in such a situation would not have acted greedily if they had been able to. They simply did not have the opportunity to choose to act greedily, non-greedily or generously. Most likely, some of them would have acted greedily if given the opportunity, and others would not. Second, if the fact that competitors offer low wages is what makes it impossible for certain employers to offer higher wages even though they want to, then this problem will be solved by the introduction of minimum wage laws, which will force the competitors to increase their wages. Third, if it is impossible for certain employers to offer higher wages because consumers are not willing to pay more for their goods, then this may, at least in certain cases, also be construed as a matter of greediness: greediness on the part of

consumers. Consumers typically, and understandably, want to pay as little as possible for the goods they buy. Yet if consumers try to pay as little as possible for a good while they are able to pay more, irrespective of serious negative consequences on other people, this is a matter of greediness as well. Think, for example, of consumers who knowingly buy sweatshop products from a certain developing country while they could easily afford to buy fair trade alternatives from the same country. If greediness means, as I have argued, wanting to maximize one's own wealth, irrespective of the fact that one has enough, and irrespective of the negative consequences on others, then this is greedy behaviour too. Minimum wage laws send out the message that it is unacceptable to pay extremely low wages to employees for one's own wealth maximization, and this is not just directed at employers, but at consumers as well.

Finally, as noted before, the analysis in this section should not be understood as an attempt to argue for the introduction or preservation of minimum wage laws. In order to determine whether and what level of minimum wages are desirable in a specific society, other factors should be taken into account as well, such as the importance we want to attach to people's right to autonomy and freedom of contract, and the net effect of minimum wage laws on poverty and job creation in that particular society. Such possible negative effects of minimum wage laws should be balanced against the arguments in favour, and this assessment may yield different results in different societies. My point is that one of the arguments in favour of minimum wages is that they can provide a means to help prevent a certain level of greediness in labour transactions, and force employers and consumers to act more other-regarding; and that they thereby protect employees against greedy behaviour, and, perhaps, help to create a societal moral framework in which people are encouraged to be more other-regarding in their private economic transactions.

In the next section, I will illustrate my view of exploitation and its relation to law with a second example of legal regulation aimed at restricting transactions that are often regarded exploitative: payday loan regulation.

5.4.2 Payday loan regulation

Payday loans are also sometimes referred to as payday advances, cash-advance loans, or deferred-deposit loans.³³⁵ They are relatively small, short-term, high-interest loans, which are usually expected to be repaid when the borrower receives her next wage or other regular income. Some major banks offer or help finance payday loans,³³⁶ but the majority of payday lenders in Western countries are non-bank firms, many of which are part of large national payday loan chains. When payday loans were first introduced, borrowers acquired the loan by physically going to a payday loan shop, and providing the shop with a post-dated cheque for the amount of the loan, plus a fee.³³⁷ The borrower would then commit to returning to the shop to repay the loan in full by an agreed date, typically within two weeks or less. If she failed to do so, the lender would cash the cheque with the extra fees at the borrower's bank. Nowadays, payday loans can also easily be acquired on the internet, and most payday lenders no longer work with cheques, but require borrowers to sign contracts that allow the lender to electronically debit their bank account for the loan, interest, and possible fees or other extra costs. The payday loan market has grown rapidly in many Western countries since the beginning of the 1990s, and in some of them continues to do so.³³⁸ Nonetheless, there is much opposition against payday loans. This is partly because of illegal or deceptive practices by some payday lenders, such as coercive methods of debt collection, or misrepresentation of the true costs of a loan. Yet even payday loan companies that do not engage in

³³⁵ C Johnson, 'America's First Consumer Financial Watchdog is on a Leash: Can the CFPB Use Its Authority to Declare Payday-Loan Practices Unfair, Abusive, and Deceptive?' (2012) 61 *Catholic University Law Review* 381-428, 387.

³³⁶ See Johnson, *op.cit.* 385-386.

³³⁷ Johnson, *op.cit.* 388-389.

³³⁸ For example, in the UK, the Office of Fair trading estimates that the total turnover from payday loans in 2011/2012 was around £860 million, a significant increase from around £220 million in 2009/2010. (See 'Payday Lending Compliance Review, Annexe A - Quantitative Findings' (2013) 2 <<http://www.offt.gov.uk/OFTwork/credit/payday-lenders-compliance-review/#.UT4Ey9GgZCU>>) In the US, estimates suggest that the number of payday lending stores (excluding online stores) has risen from around 2,000 in 1996 to around 20,000 in 2010 (see N Bianchi, 'Profiting from Poverty: How Payday Lenders Strip Wealth from the Working-Poor for Record Profits', Report National People's Action (January 2012) <<http://npa-us.org/profitting-from-poverty-report>>), and that around ten million households use payday loans every year (PM Skiba, 'Regulation of Payday Loans: Misguided?' (2012) 69 *Washington & Lee Law Review* 1023-1050, 1024).

criminal or misleading practices receive much criticism, mainly because payday loans are one of the most expensive forms of credit that consumers can legally acquire.³³⁹ The interest rates asked, when converted to annual interest rates, are usually several hundred percent, sometimes even exceeding a thousand percent.³⁴⁰ Even more problematic, perhaps, are the costs of rollovers. Payday companies generally charge high fees for extending a loan to another period. They also usually do not allow borrowers to repay part of their loan, but require full payment of the entire sum at once. This means that when a borrower cannot repay the full loan on the agreed date, many payday loan lenders will automatically extend the loan for another period, obliging the borrower to pay the high rollover fees, on top of the extra interest and the interest from the previous loan period. The increased costs may lead to a vicious circle where the borrower has even more difficulty to repay the loan, which may prompt more automatic rollovers and more extra fees and interest, etcetera. Moreover, research shows that rollovers are not an exception, but occur very often,³⁴¹ and critics argue that the policy of many payday loan companies is specifically designed to earn large profits from rollovers.³⁴² As a result, some borrowers end up having to pay the payday loan company an amount that is several times higher than the amount they originally borrowed.³⁴³ One payday loan customer in the US, for example, borrowed \$300 from a payday loan company, but eventually had to pay \$1800 in fees.³⁴⁴ Because of these dangers, several countries have adopted legislation that restricts payday loan practices. This legislation varies widely between countries and states, and includes, amongst others, interest rate ceilings,³⁴⁵ limitations on rollovers,³⁴⁶ restrictions on loan

³³⁹ Skiba, *op.cit.* 1024.

³⁴⁰ See e.g. MA Stegman and R Faris, 'Payday Lending: A Business Model that Encourages Chronic Borrowing' (2003) 17 *Economic Development Quarterly* 8-32, 20, table 6.

³⁴¹ For example, the UK Office of Fair Trading found that 28 percent of the loans in 2011/12 had been rolled over at least once, and that these loans accounted for almost 50 percent of the companies' total revenue (see 'Payday Lending Compliance Review' Annex A, *op.cit.* 4) See also e.g. Skiba, *op.cit.* 1032; Stegman and Faris, *op.cit.*

³⁴² See e.g. Stegman and Faris, *op.cit.*

³⁴³ Johnson, *op.cit.* 392-394; Stegman and Faris, *op.cit.* 13.

³⁴⁴ MA Satz, 'How the Payday Predator Hides Among Us: The Predatory Nature of the Payday Loan Industry and Its Use of Consumer Arbitration to Further Discriminatory Lending Practices' (2011) 20(1) *Temple Political & Civil Rights Law Review* 123-158, 132.

³⁴⁵ E.g. in Australia, Canada, France, Italy, Israel, the Netherlands, and 31 states in the US.

duration,³⁴⁷ and total bans on payday lending.³⁴⁸ Some other countries do not have such restrictions at the moment, but are considering tightening regulation of payday lending in the near future.³⁴⁹

As with minimum wage laws, many of the arguments in favour and against payday loan regulation mirror the arguments about exploitation that have been discussed in this thesis. Critics of legal restrictions say that people who use payday loans voluntarily choose to do so, and that while they do have to pay high interest rates, they often need the loan to prevent an even bigger loss or even more serious financial consequences, such as utility shutoffs or overdraft fees.³⁵⁰ Banning payday loans will make those people worse off, it is argued, because it takes away the best option available to them, expensive as that option may be. Opponents of restrictions on payday lending also argue that many people who use payday loans are rejected by banks for alternative ways of acquiring credit, and that banning payday loans may therefore condemn those people to turn to illegitimate credit providers, such as felonious loan sharks.³⁵¹ Another argument says that the high interest rates and fees asked by payday lenders reflect the high risk involved with those loans,³⁵² since they cater for people with bad creditworthiness. Finally, some opponents of legal limitations on payday loans say that while payday lending may work out costly for particular people who do not manage to pay back their loans in time, for other people they do bring benefits, and research shows mixed evidence as to

³⁴⁶ E.g. in all but four states in the US. See table 2 in Skiba, *op.cit.* 1048.

³⁴⁷ E.g. in Australia.

³⁴⁸ E.g. in fourteen states in the US. See table 2 in Skiba, *op.cit.* 1048.

³⁴⁹ In the UK, for instance, the payday lending sector is currently regulated by the Office of Fair Trading (OFT), and faces no restrictions on interest rates, loan duration, or rollovers. However, in March 2013, the UK government proposed to introduce a new code of practice for the payday lending sector, and potential restrictions on advertising. More importantly, it announced its intention to transfer the regulation of consumer credit to the new Financial Conduct Authority (FCA) in April 2014, which will be given more powers than the OFT, including the power to introduce restrictions on interest rates or rollovers (see HM Treasury United Kingdom, 'A New Approach to Financial Regulation: Transferring Consumer Credit Regulation to the Financial Conduct Authority' (Consultation document, March 2013) <http://www.hm-treasury.gov.uk/d/consult_transferring_consumer_credit_regulation_to_fca.pdf>).

³⁵⁰ See e.g. Skiba, *op.cit.* 1044-1045; WM Webster, 'Payday Loan Prohibitions: Protecting Financially Challenged Consumers or Pushing Them over the Edge?' (2012) 69 *Washington & Lee Law Review* 1051-1092.

³⁵¹ CA Cicconi, 'A Role for Payday Lenders' (2006) 123 *Banking Law Journal* 235-248, 236.

³⁵² Cicconi, *op.cit.* 235.

the overall welfare effects of allowing payday lending in a society, which means that there is no evidence that payday loans are welfare reducing on net.³⁵³

On the other hand, many supporters of payday loan regulation argue that payday loans are predatory, usurious and exploitative.³⁵⁴ They object that the interest rates and fees are unfairly high,³⁵⁵ or that payday lenders are taking advantage of and increasing injustice by making people who are already poor even poorer.³⁵⁶ They criticize payday lenders for taking advantage of people in a vulnerable position; people who are poor, and often in urgent need for money.³⁵⁷ Some also object that because of borrowers' urgent need for money, and because they usually cannot acquire money anywhere else, they feel they have no other choice than to consent to the very high interest rates and fees.³⁵⁸

These arguments against payday lending correspond well to the arguments about exploitation that I described in chapters two and three of this thesis, which say that exploitation is wrong because of a moral duty not to take advantage of people's vulnerability or need, or because of a problem of consent, injustice, or unfairness. I have argued, however, that these arguments cannot justify a duty not to exploit and cannot adequately explain the wrong in consensual exploitation. I have argued that the wrong in exploitation can instead better be seen as a matter of greediness. Consequently, on my view, one argument in support of legal restrictions on payday lending is as an attempt to curb a greedy practice, and thereby to promote other-regardingness in these

³⁵³ See Skiba, *op.cit.* 1041-1042 for an overview of different studies on the welfare effects of banning or allowing payday lending.

³⁵⁴ See e.g. K O'Sullivan, 'Scottish Human Rights Commission Issues 'Exploitation' Warning over Payday Loans Companies' *Holyrood*, 18 December 2012 (<http://www.holyrood.com/2012/12/scottish-human-rights-commission-issues-exploitation-warning-over-payday-loans-companies/>); L Sherriff, 'Payday Lenders Are Exploiting Vulnerable Students, Warns NUS' Pete Mercer', *Huffington Post* (10 December 2012) <http://www.huffingtonpost.co.uk/2012/12/10/payday-lenders-exploit-students-warn-nus_n_2270008.html>.

³⁵⁵ See e.g. PL Hayes, 'A Noose Around the Neck: Preventing Abusive Payday Lending Practices and Promoting Lower Cost Alternatives' (2009) 35(3) *William Mitchell Law Review* 1134-1161; and Johnson, *op.cit.*

³⁵⁶ See NS Bailey, 'Predatory Lending: The New Face of Economic Injustice' (2005) 32 (3) *Human Rights* 14-16.

³⁵⁷ See e.g. Bianchi, *op.cit.*; and End the Payday Trap Campaign, 'Credit Enhancements Bill a 'Win' for Payday Lenders' (27 June 2012)

<<http://debtttrap.org.au/?s=exploit&submit.x=0&submit.y=0&submit=Go>>.

³⁵⁸ See Satz, *op.cit.* 133.

transactions. Payday lenders try to earn a lot of money by charging extraordinary high interest rates and fees to people who feel they are in urgent need of money, sometimes so much that customers become debt trapped and ultimately have to repay the lenders an amount that is several times more than the amount they actually borrowed. Moreover, many payday companies' policies seem specifically designed to make large profits from such debt-trapped customers. Payday loan companies therefore act greedily, on the definition of greediness set out in the previous chapter: they try to acquire as much money as possible for themselves, irrespective of the serious negative consequences on others. And this means, as argued in chapter 4, that payday lenders show a lack of care and concern for other people's wellbeing, and fail to perceive them as people whose wellbeing is morally important, or fail to let themselves be moved by their wellbeing. On the view of exploitation defended in this thesis, then, payday loan regulation, whether outright bans or limits on interest rates, fees, or rollovers, can be understood as a means to curb such greedy behaviour.

Of course, other considerations come into play as well when deciding whether to legally limit payday lending, and in what way. One factor that policymakers will probably want to take into account is the overall welfare effects for low-income groups in society. Research on these effects shows no consensus, however,³⁵⁹ and such effects may be different in different countries, and will most likely be different for different types of restrictions.³⁶⁰ My claim is that irrespective of these considerations, there is a separate argument for the legal regulation of payday loans that is based on the exploitative character of these loans. And this exploitative character, I argue, lies in the greediness that is inherent in the practice of enriching oneself by charging exorbitant interest rates and fees to people who are already in a dire situation, and thereby the lack of regard shown for those people's wellbeing. I am not arguing that this argument should necessarily outweigh the practical argument about the net welfare effects of payday loan restrictions, but merely that it is an argument that

³⁵⁹ Skiba, *op.cit.* 1041-1042.

³⁶⁰ Many economists oppose outright bans, but do support prohibitions on rollovers or interest rate caps. See, for instance, Skiba, *op.cit.* 1041-1042; MA Stegman, 'Payday Lending' (2007) 21(1) *The Journal of Economic Perspectives* 169-190.

can also be taken into account in the overall assessment of the desirability of certain legal restrictions on payday lending.

The possible objections that were mentioned in the discussion of minimum wage laws could apply to my discussion of payday loan regulation as well. For one thing, it is probably doubtful that restricting payday loan practices will have the effect of making many payday loan company owners truly less greedy. Nevertheless, as was explained in section 5.1 and in the discussion of minimum wages, such restrictions will at least prevent payday lenders from acting (extremely) greedily towards their customers and from showing no regard for their customers' wellbeing, and thereby they at least protect borrowers' interests against greedy practices of payday lenders. Moreover, legislation that restricts certain payday loan practices sends out the message that certain greedy behaviour is deemed unacceptable or reproachable. As a consequence, such laws may play a role in supporting a societal moral framework in which (extreme) greediness in commercial transactions is widely considered unacceptable and, thereby, a certain level of regard for other people's interests is promoted.

Another possible objection is that payday loan restrictions such as caps on interest rates may not be enough to curb greediness, because these caps are often still quite high. Hence, it may be thought, payday lenders who ask an interest rate that is below the cap, but who could easily ask even less, are still acting greedily. As explained above, this may indeed be true on some people's view of which transactions are greedy, but limits such as interest caps will at least prevent what might be called extreme greediness, and prevent payday lenders from charging interest rates that most people see as greedy.

In sum, as with minimum wage laws, legal restrictions on payday lending may curb greediness and promote other-regardingness in at least two ways. First, even if they do not make payday lenders act truly less greedily, at least they coerce them to act *as if* they were not (extremely) greedy, by preventing them, for instance, from charging extremely high fees or interest. Thereby, although they may not benefit the character or virtuousness of payday lenders,

legal restrictions will at least protect borrowers' interests from some of the negative effects of payday lenders' greediness. Second, legal restrictions on payday loans give out the message that greedy behaviour, or at least a certain level of greedy behaviour, is considered unacceptable or abhorrent in a society. Those laws may thereby help to sustain or create a societal moral framework in which (extreme) greediness is seen as unacceptable, and more generosity and regard for others' interests promoted, as was explained in section 5.3.2.

In this chapter, I have addressed the second of the two main research questions of this thesis: if I am right that the wrong in exploitation can best be understood as greediness, and a failure of the virtue of generosity, what implications may this have for the legal restriction of certain transactions that are regarded exploitative in present-day liberal societies? I argued that legal restriction of exploitative transactions can be justified as a means to curb greediness, and to promote 'other-regardingness': an accurate perception of, responsiveness to, and motivation to advance, the interests of other people in society. I also argued that this can be seen as an important aim for societies on several different political theories. Next, I discussed the possible objection that law should only be used to regulate right and wrong actions, and not to promote 'good' or virtuous behaviour. I argued that we cannot justify making an absolute distinction between 'arguments for the right' and 'arguments for the good' when deciding which laws are desirable, and that, instead, the desirability of certain laws, including anti-exploitation laws, has to be decided on a case-by-case basis, weighing all the advantages and disadvantages. I illustrated my arguments with two examples of laws that are used to restrict transactions that are often considered exploitative: minimum wage laws and payday loan regulation. I argued that those laws force employers and payday lenders to act less greedily, even if they may not always make them truly less greedy, and that those laws thereby protect the interests of employees and borrowers against greedy behaviour. Moreover, I argued, minimum wage laws and payday loan laws give out the message that certain (extremely) greedy behaviour in one's private economic transactions is considered unacceptable or reproachable in a society.

Thereby they may help to create or sustain a societal moral framework in which such greediness and lack of regard for other people's interests is generally considered reproachable. And such a framework, I have shown, might help restrain greediness, and support the development and maintenance of the virtue of generosity and of other-regardingness.

Throughout, my goal has not been to necessarily argue for introducing, broadening or maintaining anti-exploitation laws. Instead, my starting point was the fact that there *are* laws, and calls for laws, which restrict consensual transactions that are deemed exploitative, and that these laws are partly justified with the fact that those transactions are exploitative. My question has been: given that this is the case, and given that I have argued in this thesis that the wrong in consensual exploitation is greediness, how should this justification be understood, and is it an acceptable justification for legal restrictions in a liberal society? I have argued that the goal of curbing exploitation—and thus curbing greediness and promoting other-regardingness—can be a valid justification for anti-exploitation laws in liberal societies, but have also acknowledged that whether a particular society should indeed introduce such laws depends on many other factors and arguments as well.

The next and last chapter summarizes the arguments and conclusions of the thesis.

CHAPTER 6 – CONCLUSION

This short concluding chapter consists of two parts. The first section gives an overview of the different arguments put forward in the thesis, and how they are connected. The second section contains some final reflections on the findings of the thesis.

6.1 Overview arguments of the thesis

This thesis was inspired by two facts. The first is the fact that in many present-day liberal societies, there exist (calls for) laws that restrict consensual transactions because those transactions are considered exploitative. Think, for example, of laws that restrict working hours, minimum wages, maximum interest rates, maximum rent, and price gouging. The second is the fact that while there is general agreement that ‘exploiting’ means taking wrongful advantage of someone, within the fields of moral and political philosophy there are currently several competing views of what makes exploitation morally wrong (and thus of what exploitation is) in the case of consensual transactions. Yet different answers to the question of what ‘consensual exploitation’ involves will have different implications for the type of transactions against which the charge of exploitation can be used as an argument, and for the extent to which the charge of exploitation may be used as a justification for legal limitations on those transactions. The aim of the thesis has therefore been to analyse the question of why so-called ‘consensual exploitation’ in commercial transactions is morally wrong, in order to determine which implications the answer to this question may have for the legal restriction of voluntary transactions that are seen as exploitative in present-day liberal societies. The thesis thus had two main research questions:

1. What is wrong with consensual exploitation?
2. What implications may the answer to this question have for the legal restriction of voluntary transactions that are regarded exploitative in present-day liberal societies?

Chapters 2, 3, and 4 addressed the first research question: what is wrong with consensual exploitation? Chapters 2 and 3 distinguished five competing views that exist in the present-day philosophical debate on what is wrong with consensual exploitation, and argued that none of the five views can successfully answer the question. First, what was called the vulnerability account of exploitation was discussed: the view that exploitation is wrong because exploiters take advantage of the vulnerability of others. It was argued that the fact that exploiters take advantage of someone's vulnerability is indeed a feature of all exploitative transactions, but that this feature does not in itself explain what is wrong with exploitation, because we can also take advantage of someone's vulnerability without exploiting her. We thus have to explain, it was argued, why taking advantage of someone's vulnerability is wrong in certain situations, or in certain ways.

Next, the thesis discussed what was called the consent account of exploitation: the view that consensual exploitation is wrong because it is not truly consensual. Since exploitees' bad circumstances leave them with no better choice than to consent to the exploitative offer, the argument is, they are forced by their circumstances to consent, and their consent cannot be considered valid or voluntary. This argument was rejected because it implies that everyone is always forced by their circumstances, and that no one can ever make a valid choice. It was argued that we need to distinguish between the desirableness of the options available to a person, and whether that person is free to make a valid choice between those options. It was said that while there may be something morally problematic about the circumstances in which exploited people find themselves, and about the options available to them, this does not automatically make their consent invalid or involuntary.

The third understanding of exploitation that was discussed was called the needs account, which says that exploitation is wrong because we have a moral duty to help people who cannot meet their basic needs, and exploiters neglect this duty. It was argued that even if we could justify an individual duty to help others in need with whom we engage in a commercial transaction, the demands of this duty are not related to the particularities of the transactions, and thus to whether and when we find transactions exploitative. As a consequence, it was argued, this account of exploitation cannot satisfactorily explain what is wrong with exploitation, and we can exploit people who have a basic need to be met while meeting this need, we can exploit people who do not have a basic need to be met, and we can engage in a non-exploitative transaction with someone in need while not satisfying our moral duty to help her to meet her basic needs.

The fourth answer to the question of what is wrong with exploitation, which was called the injustice account of exploitation, says that the wrong in exploitation is a matter of injustice: exploiters take advantage of previous injustice and/or they fail to apply the principles of distributive justice in their private transactions. It was argued that taking advantage of previous injustices is not necessarily wrong or exploitative. It was further argued that even if people ought to apply the principles of distributive justice in their private transactions, as with the needs account of exploitation, the demands of these principles would not be related to the particularities of the transactions, and therefore to whether and when we find transactions exploitative. Hence, it was said, the injustice understanding of exploitation cannot adequately explain what is wrong with exploitation. We can engage in exploitative transactions without taking advantage of injustice or increasing injustice; and we can engage in non-exploitative transactions with people in unjust circumstances while taking advantage of their injustice, or while failing to apply the principles of distributive justice.

The fifth and final understanding of exploitation that was distinguished was called the unfairness account of exploitation. It says that the wrong in consensual exploitation is a matter of the unfair division of benefits and

burdens, or in short, the unfairness of the price asked or offered. It was argued that while the fairness understanding gives an accurate description of which transactions strike people as exploitative, it does not explain why they are morally wrong, and therefore does not actually answer the question of what is wrong with exploitation. This is so, it was argued, because the term unfairness is itself 'morally empty', and in order to explain why a certain transaction is unfair, or in other words, why one morally ought to pay a higher or ask a lower price, one has to appeal to further moral principles or arguments. Likely arguments, it was shown, are that exploiters ought to offer or ask a higher or lower price because they should not take advantage of vulnerable people, of people with no better option but to consent, of people in need, or of injustice. However, it was argued, these are exactly the arguments used by the other four accounts of exploitation; arguments which were shown unable to explain why we ought not to exploit people and to justify what is wrong with consensual exploitation. They are therefore also unable to justify why exploiters ought to offer or ask a higher or lower price. That is: why exploiters act unfairly. It was concluded that, looking at all the discussed theories of exploitation, it might be impossible to justify a moral duty not to exploit. Instead, it was argued, the wrong in consensual exploitation can better be understood not as the violation of some moral duty, but as a failure of virtue.

This argument was spelled out in detail in chapter 4. It was argued that the wrong in exploitation is greediness, a failure of the virtue of generosity. It was argued that virtues play a large role in people's everyday moral thinking, and that, on a theoretical level, they are considered important not only in virtue ethics, but also in some deontological and consequentialist approaches. Next, it was explained that generosity involves voluntarily giving something to another with the aim of promoting the other's interests, wellbeing or happiness. Greediness, in contrast, was described as an excessive desire for money or wealth, which also implies an excessive self-concern or self-aggrandizement. As such, it was said, greediness is a vice that is directly opposed to generosity, in that it involves trying to acquire or keep a lot of wealth for oneself, irrespective of negative consequences for others, and, thereby, showing no or limited

concern for the interests or wellbeing of others. Such greediness, it was argued, is exactly what exploiters display. Exploiters try to get a large amount of personal benefit out of a situation or transaction, and leave little benefit left for the other party, or make the other party pay a lot. And they do so even though they could afford leaving the other party more and still keep enough left for themselves, and even though they know that the other party needs or would like to receive or keep more benefit. The wrong in exploitation, it was argued, is therefore a matter of greediness, and a failure of the virtue of generosity.

It was argued that virtues and vices, including generosity and greed, are context-dependent, and that whether someone's behaviour in a commercial transaction counts as greedy depends on several factors, most importantly the wealth and needs of both parties. It was further emphasized that the virtuousness or viciousness of an act does not solely depend on the act, but also on a person's motives for performing that act, and her emotions and perceptions. What exploiters do wrong, it was argued, lies consequently not merely in their actions, but also in their selfish motive, in their perception of the person with whom they interact and in their emotional responses to another's condition. Exploiters either do not truly perceive the exploitees' condition, needs or interests, or they do perceive it rationally, but are indifferent to it, and fail to let themselves be moved by the other's condition to actually give up some of their own wealth.

Chapter 5 returned to the second research question set out in the beginning of the thesis, and asked: if I am right that the wrong in consensual exploitation can best be understood as greediness, and a failure of the virtue of generosity, what implications may this have for the legal restriction of consensual transactions that are considered exploitative in liberal societies? More specifically, the chapter considered: if the wrong in consensual exploitation is greediness, what does it mean to use this wrong as a justification for legal restrictions on consensual exploitative transactions, and to what extent can this wrong be used to justify such restrictions in liberal societies? It was argued that since the wrong in exploitation is a matter of greediness and a failure of the virtue of generosity, legal restrictions on exploitative transactions

may be justified both as a means to curb certain greedy acts, and, thereby, as a means to promote a certain 'other-regardingness' that is part of the virtue of generosity: an accurate moral perception of others, emotional responsiveness to the condition of others, and the motivation to promote others' interests. It was further argued that this can be considered an important good for societies on many different political theories, even liberal ones. Next, a likely possible objection was indicated, which is the argument that law should only be used to regulate 'right' and 'wrong' actions, and not to promote virtuous behaviour. Three versions of this argument were discussed and rejected, and it was argued that while we have good reasons to be hesitant about allowing too much state interference, we cannot justify making an absolute distinction between 'arguments for the right' and 'arguments for the good' when debating which types of regulation to allow. It was concluded that whether a particular law based on virtue arguments is desirable, including anti-exploitation laws, consequently has to be decided on a case-by-case basis, comparing all the advantages and disadvantages. It was also concluded that while true virtuous or moral behaviour requires voluntary choice, laws that regulate virtuous or vicious acts do not necessarily prevent people from making voluntary moral choices, and might even help the development of virtue. The thesis' arguments about exploitation and the law were illustrated with two examples of legal restrictions on consensual transactions that are widely considered exploitative: minimum wage laws and legal regulation of payday loans.

Throughout, the aim of the thesis has not been to argue for the introduction or extension of legal restrictions on consensual transactions that are seen as exploitative. Nor has the thesis assumed from the outset that something is undeniably wrong with consensual transactions that are widely regarded exploitative, such as sweatshop work, high interest loans, or price gouging. Instead, the starting point of the thesis was the fact that in all present-day liberal societies, there *are* (calls for) laws that restrict consensual commercial transactions that are at least partly based on the claim that those transactions are exploitative. Given this fact, the thesis aimed (a) to analyse what, if anything, is wrong with such transactions—what makes them

exploitative—and thereby to identify what it actually means to justify legal restrictions on those transactions with the claim that they are exploitative; and (b) to consider to what extent this justification is an acceptable ground for legal restrictions on consensual transactions in a liberal society. The thesis has argued that the widely shared feeling that something is wrong with what are called consensual exploitative transactions, can best be accounted for by not referring to a violation of some moral duty, but to greediness, a failure of virtue; and it has further argued that this wrong can, in principle, be used as a valid argument for legal restrictions on consensual exploitative transactions in liberal societies.

6.2 Final reflections

This thesis has analysed the concept of exploitation, but it has looked at a rather specific meaning of the term. First of all, the thesis has only focused on transactions in which the good transacted is itself not considered controversial. It should be remembered, therefore, that the conclusions of the thesis, such as that greediness is the wrong in exploitation, do not necessarily apply to allegedly exploitative transactions in which the good sold is seen as controversial, such as prostitution, the sale of body parts, or commercial surrogacy.

Second, the thesis has only analysed exploitation as a relationship between individuals, and not as a systematic phenomenon. In other words, it has only looked at the use of the term exploitation to condemn individual transactions, and not to the use of the term to condemn the working of entire societies or economic systems. The conclusions of this thesis do therefore not necessarily imply anything for the latter use of the term, such as claims that the difference in wealth between developing countries and developed countries is wrong because it is unjust, and that the relationship between those countries is therefore exploitative. As said in the thesis, I recognize that such overall differences in wealth may indeed be unjust, and that one might want to call the

relationship between such countries exploitative. Moreover, I also recognize that such macro injustice can contribute to making exploitation between individuals possible. Still, as I have tried to argue in this thesis, such background injustice does not itself explain why individuals act wrongly in individual transactions that are called exploitative, and it is that question that this thesis has focused on.

Third, the thesis has only analysed consensual exploitation, and the conclusions of the thesis do therefore not necessarily apply to transactions that are called exploitative because a person takes advantage of someone by using coercion, deception, a lack of sufficient information, and so on. Nevertheless, it might be possible to argue that in cases of coercive or deceptive exploitation, exploiters act greedily as well. After all, greediness was described in this thesis as trying to get a large and excessive benefit for oneself irrespective of the negative consequences on others, and as thereby involving selfish motives and emotions, and an inaccurate perception of or lack of regard for other people. And it might be thought that this is indeed happening in coercive or deceptive exploitative transactions. It is likely that in coercive or deceptive exploitation, the greediness of the exploiter's behaviour will be considered a minor moral wrong compared to the harm that the coercion or deception inflict on the exploitee's autonomy and wellbeing, but that does not change the fact that greediness is involved as well. Nevertheless, this thesis has not focused on such non-consensual exploitation, and much more would need to be said to properly substantiate the idea that greediness is part of non-consensual exploitative transactions as well, and even more about what, if anything, this might mean for the legal regulation of such transactions.

Fourth, this thesis has only focused on exploitation in commercial transactions, and it should be kept in mind that the thesis' conclusions, both about that the wrong in exploitation is greediness, and about the legal regulation of exploitative transactions, do not necessarily pertain to claims of exploitation in personal relations. Nevertheless, it might be that what is wrong with exploitation in personal relationships is similar to what is wrong with exploitation in commercial transactions. Greediness involves, as said, trying to

keep or acquire a large benefit for oneself irrespective of the negative consequences on others, and entails selfish motives and emotions, and an inaccurate perception of or regard for other people. It might be thought that this is also what is happening in exploitation in personal relationships. Think, for instance, of one of the examples mentioned in chapter 1: A couple would like to have children together, and the man knows that his partner would rather not do the childcare alone, but that she dislikes even more not to have children at all, or to find a new partner. The man therefore proposes to have children on the condition that his partner will do all the childcare. It might be thought that in this example the man is also acting greedily, because he tries to extract a large benefit for himself irrespective of the negative consequences for his partner, and he has selfish motives and emotions and shows little regard for the interests of his partner. The difference between commercial transactions and personal relationships is that people can be expected to care more about people close to them than about relative strangers with whom they engage in commercial transactions. Trying to extract a large benefit for oneself irrespective of negative consequences on another might for that reason be considered even worse in a personal relationship than in a commercial transaction. After all, while we may be expected to take others' interests into account to some extent in a commercial relationship, in a personal relationship in which we claim to care about someone, this is arguably even more so. Hence, it might be thought, the wrong in the example of the couple wanting to have children, as in all cases of greediness, is not merely the man's greedy act, but also what this act seems to reveal about the man's emotions towards and perception of his partner: that he does not care as much about the happiness or wellbeing of his partner as about his own ease of living, and that he perceives her as an instrument for his ease of living. Still, as said before, this thesis has not focused on exploitation in personal relationships, and much more work would need to be done to substantiate the idea that the wrong in personal exploitation might also be understood as greediness.

Finally, the main original contributions to knowledge of this thesis have been its outlining and analysis of the existing non-Marxist philosophical debate

on what is wrong with exploitation; and its formulation of a new account of the wrong in exploitation, and the possible consequences of this account for the legal restriction of exploitative transactions. As such, the thesis has consisted to a large extent of a relatively abstract theoretical investigation. Nevertheless, the concept of exploitation is used frequently in everyday discussions and public debates about many different types of topical social issues. These include not only debates about whether the minimum wage should be increased³⁶¹ or whether regulation of payday loans should be tightened or loosened, but also, for instance, debates about Western companies that contract with sweatshop factories in developing countries,³⁶² unpaid internships³⁶³ and extortionate rents.³⁶⁴ Therefore, I hope with this thesis to have contributed not just to the philosophical debate on consensual exploitation, but also, thereby, to debates on such topical social issues.

³⁶¹ See e.g. N Morris, 'Government Rejects 'Freeze' Calls and Raises National Minimum Wage by Nearly Two Per Cent, With a New Adult Rate of £6.31' *The Independent* (15 April 2013) <<http://www.independent.co.uk/news/uk/home-news/government-rejects-freeze-calls-and-raises-national-minimum-wage-by-nearly-two-per-cent-with-a-new-adult-rate-of-631-8573289.html>>.

³⁶² See e.g. M Rafi Atal, 'The Bangladesh Factory Tragedy and the Moralists of Sweatshop Economics' *The Guardian* (29 April 2013) <<http://www.guardian.co.uk/commentisfree/2013/apr/29/bangladesh-factory-tragedy-sweatshop-economics>>; K Bashin, 'American Apparel CEO Dov Charney On Bangladesh: Start Making Clothing In A Human Way' *Huffington Post* (14 May 2013) <http://www.huffingtonpost.com/2013/05/11/dov-charney-bangladesh_n_3253763.html?utm_hp_ref=business>.

³⁶³ See e.g. V Barhat, 'Unpaid Internships: Avoiding Exploitation and Lawsuits' *Toronto Star* (13 May 2013) <http://www.thestar.com/business/small_business/people/2013/05/13/unpaid-internships--avoiding-exploitation-and-lawsuits.html>; O Gibson and P Walker 'Football Clubs Accused of Exploiting Unpaid Interns' *The Guardian* (12 April 2013) <<http://www.guardian.co.uk/football/2013/apr/12/football-clubs-accused-exploiting-unpaid-interns>>.

³⁶⁴ See e.g. S Farmelo, 'Student Co-operatives Fight Back Against Exploitative Landlords' *The Guardian* (3 May 2013) <<http://www.guardian.co.uk/education/mortarboard/2013/may/03/student-cooperatives-fight-back-against-exploitative-landlords>>; M Salsbury, 'Tenants to Take to Streets to Protest Against 'Exploitation'' *24dash.com* (26 April 2013) <<http://www.24dash.com/news/housing/2013-04-26-Tenants-to-take-to-streets-to-protest-against-exploitation>>.

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