

# Exploitation's Grounding Problem

## I. Puzzle

Most theories of exploitation ground its wrong in distributive unfairness. Granting that unfair transactions are *pro tanto* wrong, why doesn't morally valid consent nevertheless transform the moral status of mutually beneficial but unfair transactions, (i.e., exploitations)?

I'll argue that insofar as mutually beneficial exploitations are all things considered wrong, their wrong is not grounded in distributive unfairness. Instead, it is grounded by invalid consent.

### Some Definitions

- Assent: saying 'yes', sometimes called 'token consent'.
- Morally valid consent: (something like) one's 'yes' is a genuine reflection of one's autonomous deliberation. (I'll mostly focus on factors that defeat valid consent)
- Morally transformative consent: morally valid consent that is sufficient to *transform* moral permissions.

## II. Responses to Puzzle

1. "The exploited are forced to transact in exploitations"
  - Literal force → **slavery**. Not mutually beneficial, no moral puzzle.
2. "The exploited don't know how bad the terms/conditions of their labour are".
  - If A's assent is predicated on deceit, it is not morally valid consent ; the transaction is **fraud**, and retains its impermissibility because it lacks valid consent, *not because it is unfair*.
3. "The exploited are *pressured* to transact in exploitations."
  - Perhaps the exploited's conditions are too bad for the options to be acceptable options. This sense of pressure is covered next.
  - Perhaps the exploited can't *deliberate* because of pressure from transactors, and they later regret their decisions.
  - I think the poor know exactly what their best options are. They may not be good options, but sweatshop workers make rational choices given their circumstances.
  - If A's assent is predicated on pressure, it is not morally valid consent; the transaction is \_\_\_\_\_, and retains its impermissibility because it lacks valid consent, *not because it is unfair*.
4. "The exploited are 'coerced' to transact in exploitations"
  - Coercion: A coerces B iff A gets B to  $\phi$  by credibly threatening to  $\psi$  if B doesn't  $\phi$  and A's  $\psi$ -ing is morally impermissible (Nozick).
  - If A gets B to work for him via an impermissible threat, A coerces B.

- Often B consents because A makes a take-it-or-leave-it offer. The ‘threat’ is that B stays at her status quo (or next best offer).
- Typically exploitation theorists assume obligations to pay fair wages are *conditional obligations*: conditional on transacting with B, A ought to pay her fairly. But A has no transaction-independent obligation to B.
- If this is so, A *does not* coerce B (by threatening to walk away).
- But in cases of duress, A plausibly has an unconditional obligation. Threat to not save B is impermissible.
- If A’s assent is predicated on an impermissible threat, it is not morally consent valid; the transaction is **coercion**, and retains its impermissibility because it lacks valid consent, *not because it is unfair*.
  - Aside: Perhaps most exploitations are actually coercions because so many are unjustly poor.
  - But note, the coercion approach makes those not involved in, e.g., sweatshops morally worse actors than sweatshop owners.

### Pits

*Suppose A finds B in a pit, A can save B at no cost, and if A does not save B, B will die in the pit. Suppose that in one scenario, A makes the impermissible threat to leave B in the pit unless she pays him \$10,000; in a second scenario, A leaves B to die, making no offer to save her. Quite plausibly, leaving B to die is morally worse than coercing B into paying an exploitative price for rescue, even though the latter is also wrong.*

5. “The presence of unfairness in a transaction undermines B’s consent”

- Nah. It is more straightforward to say B’s consent is morally valid, but nevertheless not morally transformative. If only because *none of these ground exploitation in distributive unfairness!*

### Moonlighting

*Suppose that B is a tenured academic and photography buff who decides to take on a side gig working for A to earn extra income to support this somewhat expensive hobby. A offers B an unfairly low wage and B accepts. Why does B accept a low wage? Perhaps there were no better side gigs available; perhaps B found bargaining unpalatable. But whatever else her reasons, suppose that none of the other factors that undermine morally valid consent are operative: B’s academic position provides her a good wage, she understands the terms of A’s offer, A communicated the terms honestly, her interest in photography isn’t a compulsive and irresistible addiction, and so on. It is not clear how the maldistribution of economic gains generated by A and B’s interaction undermines the autonomy of B’s choice to work for A in the way that the other factors that would invalidate her consent do.*

### III. Morally Transformative Consent

*Key Question: Does the unfair distribution of gains undermine the transformative power of morally valid consent?*

1. Valid consent insufficient for moral transformation.
  - Euthanasia: many suicides lack morally valid consent, but plausibly some euthanasia cases involve valid consent. If euthanasia is always wrong, then morally valid consent is insufficient to transform its moral permissibility.
  - Prostitution: many, but not all, exchanges of sex for money will lack valid consent. If prostitution is always wrong, then despite valid consent from both parties, consent is not morally transformative.
  - Organ transfer, Vote selling...
  
2. Theoretical reasons to think valid consent is morally transformative
  - B's self-ownership rights imply a claim right on her labour and a correlative duty for A to not enslave her.
  - B typically enjoys a second-order right (power) to change this claim right by selling her labour to A.
  - Can B lose this power in the presence of unfairness? If B has the moral power to rent her labour in the context of an unfair transaction, then her valid consent to enter into these contracts is morally transformative. Consider the main approaches to rights:
    - Will Theory: no, rights conceptually imply powers.
    - Interest theory: B has a right when it protects her interests.
      - It is generally in B's interest to sell her labour, but not necessarily in an unfair transaction.
      - Kramer claims "the interest theory can attribute rights to workers under a minimum-wage law even though the workers cannot themselves waive or enforce their entitlements to be paid at a certain level" (1998: 78)
      - This is too quick: If A has no duty to transact with B, he has a liberty to not transact with B and B has no right for A to transact with her. If protecting B's interests does not generate a general right to be transacted with, then how are B's interests are nevertheless insufficiently protected by an unfair transaction that leaves her better off than not transacting.
      - Since B's interests are worse not transacting B *either* has a right to a fair transaction and A has a duty to transact with her, or A has no duty to transact with her and B has no right to a fair transaction.

### 3. Practical reasons to think valid consent is morally transformative

- Morally valid consent is transformative in *harmful* transactions: tobacco products, lottery tickets, risky investments, make consumers worse off. Yet, morally valid consent is sufficient to waive any claims they might have against harms accompanying these purchases. If B's valid consent can morally transform harmful transactions, it can morally transform mutually beneficial exploitations.
- B's valid consent is morally transformative in *donations* of her labour. If we say B's valid consent cannot morally transform the status of unfair transactions in which she receive some, but not enough of the gains, then surely it cannot transform cases in which she receives no economic gain.

#### **Smartwatch**

Alice got me a new smartwatch for my birthday. I decided to sell my old one on eBay. To my disappointment, they were going for about £75. I remembered my neighbour mentioning she'd like a smartwatch and so I offered it to her for £20. Alice pointed out that this was a bit...avaricious: "If you're giving Elina the watch, just *give* it to her". She was right, and I gave Elina the watch for free.

- Assuming £75 was fair, I submit I nevertheless had the power to waive my right to a fair price and to either sell it to Elina for £20 or give it to her.

**Conclusion: Morally valid consent is morally transformative even in the presence of unfair transactions. Despite the widespread view that it can, distributive unfairness *cannot* ground exploitation's wrong.**