

The exploitation solution to the Non-Identity Problem

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Abstract When discussing exploitation, we often say things like this, “sweatshop laborers have terrible working conditions and are paid almost nothing, but they are better off with that labor than with no labor.” Similarly, in describing the Non-Identity Problem, Derek Parfit points out: we cannot say that the individuals born in future generations are worse off because of our destructive environmental policies because the particular people living in those future generations wouldn’t even exist if it were not for these destructive policies. How can we explain these cases, exploitation and environmental destruction, as ones of wrongdoing when the victims in both cases are no worse off than they would have otherwise been? This paper investigates the link between these two moral puzzles and ultimately uses one to solve the other: an exploitation solution to the Non-Identity Problem.

Keywords Exploitation · Non-Identity Problem · Harm · Rights

In Sect. 1 of this paper I explain how an application of the concept of wrongful exploitation can serve as a unique solution to the Non-Identity Problem.¹ I argue that in Non-Identity cases, a choice made by current people is wrongfully exploitative of particular people in future generations. In Sect. 2, I explain that this solution is of the same *kind* as the “rights” solution to the Non-Identity Problem. That is, it attempts to divorce the wrong involved in these cases from harm. I show that the exploitation solution is safe from certain problems that confront the rights

¹ In particular, I appeal to the theories of Goodin (1987), Valdman (2009), Wertheimer (1996), and Wood (1995).

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solution. In Sect. 3, I address a potential objection to my account: that exploitation must involve a *gain* on the part of the exploiter, whereas Non-Identity cases need not benefit anyone. I respond by examining the breadth and leniency of the gain clause as a condition on exploitation. I argue that what is achieved by the perpetrators of the wrongs involved in any Non-Identity case is sufficient for satisfying this condition. In Sect. 4, I address another potential objection: what if harm actually is an essential normative element of wrongful exploitation? (After all, when philosophers distinguish between cases of harmful and mutually beneficial exploitation, they rely on what is now considered a rather outdated account of the metaphysics of harm). If this is the case, then an exploitation solution to the Non-Identity Problem will really just be another appeal to harm as a resolution to the problem. I argue that current, popular accounts of the metaphysics of harm do not yield this result.²

Of course, there are many approaches to explaining the wrong involved in Non-Identity Problem cases. Many philosophers accept Parfit's own solution—we may do wrong without wronging particular persons. Many others contest the metaphysical account of harm that gives rise to the problem. My solution does not compete with these varied approaches. One may, for instance, believe that Non-Identity cases involve wrongdoing both because they are harmful *and* because they are exploitative. Further, my solution may be appealing to those who have not been satisfied with existing proposals.

I am fully aware that this project, one that combines a literature ordinarily associated with markets, commerce, and employment with a moral puzzle as conceptual as the Non-Identity Problem seems disorienting. Any reader familiar with either literature will doubtless be forming objections to the proposal before she even begins to read. I ask that you withhold these judgments momentarily and read on. Though I am certain that I do not answer *every* good objection in the pages that follow, I do answer the most obvious objections.

1 Wrongful exploitation and the Non-Identity Problem

Wrongful exploitation occurs across a vast spectrum of public and private institutions, markets, and interpersonal relationships. Of course, we worry that manufacturing sweatshops are exploitative—a type of scenario in which exploitation arises in voluntary transactions of labor and money. However, we also worry that certain romantic relationships are wrongfully exploitative, that certain parent/child relationships are wrongfully exploitative, that certain medical research performed on human subjects is wrongfully exploitative—all scenarios that typically do not involve *transactions* of any type.³ If Non-Identity cases are cases

² I look specifically at the theories of harm proposed by Hanser (2008), Harman (2009), and Norcross (2005). However, I also briefly address the forthcoming accounts of harm by Ben Bradley and Justin Klocksien.

³ See Wertheimer (1996, p. 290), for an account of an exploitative marriage.

of wrongful exploitation, they will be of this type: wrongful exploitation without transaction.⁴

A wrongfully exploitative act might constitute harm to another person and might violate his rights. For instance, picking the pocket of a blind man harms the man, violates his property rights, *and* wrongfully exploits him.⁵ However, most theorists are more concerned with the cases of exploitation that seem clearly wrongful but are ones in which no one appears to be harmed and no rights have been violated. Consider rescue cases in which one person is charged an inordinate amount of money in exchange for an easily achieved rescue. For instance, Mikhail Valdman presents the following case, one that is uncontroversially an instance of wrongful exploitation:

Antidote Case: Hiker A carries with him an antidote for a deadly poison contained in the venom of a snake living in the woods. Hiker A encounters Hiker B who has just been bitten by such a snake and who has no antidote with him. The market value of the antidote is \$10. However, A knows that B is worth a million dollars and, so, charges him a million dollars for the antidote. B unhappily accepts the terms of the transaction, uses the antidote, and lives.⁶

In this case, both parties benefit. Because of cases like these, theorists of exploitation contend that the wrong of exploitation cannot be analyzed using the notion of harm.

Compare this investigation of the wrong involved in mutually beneficial exploitation with the famous *Non-Identity Problem*. Parfit presents the following case:

Depletion: As a community, we must choose whether to deplete or conserve certain kinds of resources. If we choose Depletion, the quality of life over the next two centuries would be slightly higher than it would have been if we had chosen Conservation. But it would later, for many centuries, be much lower than it would have been if we had chosen Conservation. This would be because, at the start of this period, people would have to find alternatives for the resources that we had depleted.⁷

Parfit points out that the policy of depletion will have many effects, small and large, for our day-to-day lives, which will certainly affect the time at which we copulate. He further notes that each sperm and egg combination generate a unique human individual. Hence, the people alive many centuries down the road when the bad effects of *Depletion* set in will not be the same people who would have been alive at that time had we not chosen a policy of depletions, but instead Conservation. For

⁴ Despite this, I will typically be suing transactional cases of exploitation as examples, primarily because such cases are the most obvious instances of mutually beneficial exploitation.

⁵ Exploitation theorists agree that though this is not a paradigm case (precisely because the wrong can be explained in multiple other ways), it is still also wrongful exploitation. See Wertheimer (1996), Goodin (1987), Wood (1995), and Valdman (2009).

⁶ This is a summary of Valdman's case (4).

⁷ Parfit (1984, p. 362).

this reason, no individual alive on the depleted planet can complain that, were it not for our bad policy choice, she would have been better off.

Though these two problems are not morally analogous, there are some striking similarities: Both problems are generated by the fact that, when assuming a traditional, counterfactual comparative theory of harm, no all-things-considered harm occurs in either case. In fact, the victims of both alleged wrongs are presumed to be ones who would “opt in” to their own mistreatment, if given the opportunity. In order to make my case that the wrong involved in Non-Identity cases is wrongful exploitation, I need to explain how the necessary conditions of wrongful exploitation are met by the Non-Identity Problem. In order to do so, I will start by discussing the conditions proposed by exploitation theorists. Next, I will show that even according to the narrowest account of wrongful exploitation, *Depletion* meets the necessary conditions for counting as wrongfully exploitative. (In Sect. 3 I will discuss whether alternate Non-Identity cases meet these conditions.)

Exploitation theorists usually stipulate two necessary and jointly sufficient conditions for an act being one of wrongful exploitation. There is some predicament that must characterize the circumstances of the exploited persons (e.g. a condition of desperation or a state of being without options). In addition, there must be something morally problematic about the gain that the exploiter achieves (e.g. the gain is unfair or is motivated by opportunism). Not all characterizations of these conditions are particularly promising. For instance, Allen Wood contends that wrongful exploitation occurs when one person takes opportunistic advantage of another person’s vulnerabilities. Though this analysis gets close, it is too broad. Valdman suggests that, on Wood’s account, Hiker A would be wrongfully exploiting Hiker B even if Hiker A did not demand any money for the antidote, but rescued Hiker B *only* for the sake of the pleasure that Hiker A takes in rescuing others.⁸ Valdman does not deny that there might be something problematic about Hiker A’s character in such a case, but points out that we cannot say that Hiker A *wrongs* Hiker B, no matter his motivation in this rescue scenario. Hiker B certainly would have no cause for complaint.⁹

Valdman proposes his own account of wrongful exploitation: deriving excessive benefits from someone who has no reasonable way of refusing our offer. Valdman thinks that this account picks out what is wrong in the Antidote Case. Hiker B cannot reasonably refuse Hiker A’s offer, as the poisonous venom is deadly. Hiker A extracts benefits from Hiker B in excess. If he had only asked for \$10, his extraction would not have been wrong. At \$100,000, the extraction is wrong.¹⁰ Note that Valdman has proposed both a “Gain” clause (i.e. A derives excessive benefits from B) and a “Vulnerability” clause (i.e. B has no reasonable alternatives). I will handle these, and their application to the Non-Identity Problem, in reverse order.

⁸ Valdman (2009, p. 5).

⁹ Of course, Hiker B might complain that Hiker A does not value him correctly. Thanks to David Boonin for this point.

¹⁰ Valdman (2009, p. 9).

1.1 The vulnerability

What must be true of B and his circumstances in order for it to be the case that B has been wrongfully exploited? Valdman's proposal is very strict, and yields a very narrow range of cases that can be called wrongfully exploitative on his account. For instance, if only someone with no reasonable alternatives can be called wrongfully exploited, then the woman charged \$200 for a \$2 umbrella in a rainstorm is not wrongfully exploited. After all, getting wet is not an *unreasonable* option. However, it seems that it is important to stipulate *some* "Vulnerability" condition. Otherwise, Valdman points out, an individual might *let* himself be exploited even though he has no urgent need to enter into a transaction. For instance, imagine a car seller who knows that he could get a better deal for his car than what the buyer is offering, but is lazy and doesn't want to hunt around. Valdman thinks that we cannot call exploitation wrongful when the exploited party lets himself be used in this way. Valdman says, "To wrongfully exploit someone is to *extract* excessive benefits from him—it is to use the fact that his back is to the wall, so to speak, to get him to accept lopsided and outrageous terms of exchange."¹¹

While Valdman's account of the "Vulnerability" condition for wrongful exploitation may well be too strict, that does not matter here. After all, even if Valdman is correct, the Non-Identity Problem satisfies the Vulnerability clause. Future generations in Parfit's *Depletion* case have no other alternative but to live with the amount and quality of natural resources left to them by the current generation of people. They are entirely vulnerable to the choices made by those who have lived before them.

1.2 The gain

Consider now Valdman's proposed "Gain" Clause for Wrongful exploitation: A extracts excessive benefits from B. What Valdman means by "excess" in his analysis must mean some sort of quantitative benefit. This condition on wrongful exploitation is too strict. It is entirely possible that someone might wrongfully exploit another by deriving a qualitatively inappropriate advantage from a transaction. For instance, imagine that Hiker A charges Hiker B, not \$100,000, nor even \$10 for the bottle of antidote, but instead charges hiker B a kiss. There is no sense in which the kiss is "excessive." Yet, Hiker A still wrongfully exploits Hiker B, who himself has no other reasonable option but to pucker up.

Wertheimer's account does better than Valdman's in this regard. According to Wertheimer, A [wrongfully] exploits B when A transacts with B to A's advantage in a way that is unfair to B.¹² While Hiker A gaining a kiss from Hiker B might not be excessive, it is certainly an unfair use of the advantage he has over B in the woods.

¹¹ Valdman (2009, p. 10).

¹² Wertheimer (1996, p. 16.)

So, we will use Wertheimer's condition on the gain involved in exploitation: *A must unfairly take advantage of B*.¹³ We can call this the "Gain" clause.

Have members of the current generation gained an advantage that is unfair to future generations? That is, does *Depletion* satisfy the "Gain" condition for wrongful exploitation? Presumably, there are more and less *fair* ways of divvying up natural resources between generations of people living on the planet. So, we might say that, in choosing *Depletion*, the current generation of people is enjoying advantages because they are using more than their fair share of these resources, whereas future generations will have to make do with less of their fair share, which will involve deprivations of various sorts.

Now, one obvious disanalogy between Non-Identity Cases and most cases of wrongful exploitation is that, in the latter, victims can appeal to the fact that they themselves *could have been* dealt with in a way more beneficial to them. Future generations in Parfit's *Depletion* case cannot.¹⁴ However, you can imagine a case of wrongful exploitation in which we cannot say of the exploiter that he could have given the victim a fair deal. Consider the following:

Manufacturer's Choice: Clothing manufacturer, M, must decide between setting up her factory in Country Y or Country Z. Country Y has no regulations, which would allow M to pay her employees very little. Further, if M chooses to set up shop in Country Y, she will only *be able* to pay her employees a piddling wage in exchange for long hours in the factory, because she will need all of those profits to keep the company running, especially taking into account the shipping fares and plane flights. If she chose instead to set up shop in Country Z, she would be forced by regulations in that country to pay her employees a living wage, which she *could* pay in Country Z since she would not have to contend with large shipping and airplane fares. Imagine that all other features of Countries Y and Z are the same. Either way, M is contracted (perhaps by her stockholders) to make a sizable salary that cannot be redirected toward employee salaries at the factories.

Of course, unlike in Non-Identity Problem cases, there is at least one potential source of the wrong M commits when she chooses to set up her factory in Country Y: she *could* have benefitted existing people in Country Z. Whereas, in Non-Identity cases, the alternate person/s that could have been brought into existence do not actually exist unless they are brought into existence. Many philosophers share the conviction that being brought into existence does not come as a benefit to a previously non-existent person.

However, in addition to this source of wrong, there is another. People are being paid piddling amounts of money for long hours of factory work. M did not have to make the decision to set up a factory in which employees were treated in this way.

¹³ For another account of exploitation as unfairness, see Goodin (1987).

¹⁴ At least, that is the kind of contention that gives rise to the problem. Of course, it is physically possible that current generations copulate at the exact same moments in time with the exact same people under Conservation as they would under Depletion. However, this is both vastly unlikely as well as being largely out of the control of the perpetrators of the wrong.

She could have made a choice that came with the same moral benefits (people getting jobs) and no moral costs by choosing Country Z. So it is the case that M wrongfully exploits her employees in Country Y but, at the same time, she could not have given *them* anything more than a piddling wage, though she could have given others a reasonable wage. As this example shows, the fact that current generations could not give the particular people alive in future generations a resource-rich Earth does not save current generations from the charge of wrongful exploitation.¹⁵

2 The exploitation solution versus the rights solution

The Exploitation Solution is of the same *kind* as the Rights Solution to the Non-Identity Problem. That is, it attempts to divorce the wrong involved in these cases from harm. A natural worry might be then that if there is a serious problem with the Rights Solution to the Non-Identity Problem, it might be shared by the Exploitation Solution. In this section I will accept that there is a serious problem for the Rights Solution, but it is not shared by the Exploitation Solution.

The Rights Solution stipulates that future generations have a right to a particular quality of life, to a certain amount of preserved resources, for instance. Even if we do not harm particular people in future generations in *Depletion*, we violate their rights. Parfit himself thought that the rights solution was unsuccessful because future people would happily waive their right to, say, a good environment in order that they may live at all. Parfit thinks that this fact undermines our ability to appeal to rights in order to describe the wrong in *Depletion*.¹⁶

Elizabeth Harman, in the course of making quite a different point, describes a case that should give us pause concerning Parfit's position on rights.

Rape: A woman is raped, becomes pregnant, and ends up raising the child. The woman is remarkably able to separate the trauma of the rape from her attitude to the child, and they have a normal and healthy parent–child relationship. The woman's life is better, due to the value to her of the relationship with her child, than it would have been if she had not been raped, even taking into account the trauma of the rape. This woman loves her child. She does not wish that she had not been raped, because if she had not been raped, then her child would not exist.¹⁷

Harman's language is very careful here, given the sensitive subject matter. However, it is clear that she means something stronger than: the woman does not

¹⁵ One might argue that there is another wrong that M commits in choosing to set up her factory in Country Y. In so doing, she supports a government that is unjust and has no labor laws. Perhaps it is this wrong and not the wrong of exploitation that explains why M must choose Z instead of Y. (Thanks to David Boonin for this objection.) In order to answer this concern, imagine that the factory that she will set up is one that in no way supports or aids Y's government. Y's government does not care one way or the other about the employment of its people.

¹⁶ Parfit (1984, p. 365).

¹⁷ Harman (2004, p. 10).

wish she had not been raped. The example describes a case in which the woman, all things considered, prefers that she was raped than that she had not been raped. This preference is something like the preference experienced by the particular members of future generations in *Depletion*. They do not wish that current generation had chosen Conservation, because if the current generation had chosen Conservation, they would not exist. They prefer that the current generation, their ancestors, chose *Depletion*.

Yet, we can all agree that in *Rape* this retroactive preference does not amount to a retroactive “rights waiving.” No matter the consequence, the woman’s rapist violated her right against being raped. So, we might similarly say (especially if the environmental degradation is severe enough that future generations’ lives involve a lot of suffering): current generations violate the rights of the members of future generations when they choose *Depletion*, even if those persons, when they arrive, prefer that current generations chose as *Depletion*.

Having supplied *Rape*, Harman later considers whether the rights violation is sufficient for accounting for the wrong committed to the woman. Given that Harman presents this case in a very different context than the one I am discussing here, she does not say, “rights violation.” Instead she says “lack of consent.”¹⁸ I take her analysis of the wrong-making features of this case to be helpful here nonetheless, as lack of consent is primarily what renders *Rape* a rights violation.

Harman says that lack of consent certainly supplies part of the reason why the rapist’s actions were wrong in *Rape*. Not only does the mere fact that there was no consent provide some of the explanatory role of the wrong committed, but the lack of consent also is part of what makes the experience of being raped so terrible. Harman goes on to claim that the lack of consent cannot provide a complete account of the wrong in *Rape*. In addition to consent considerations, we must also look at the experience itself and how it harmed the person (even if only in a *pro tanto* way).¹⁹

If Harman is correct, then perhaps the same can be said of *Depletion*. That is, maybe current generations do wrongfully exploit future generations, but because exploitation is measured independently of considerations of harm, perhaps the account only does some of the work of explaining the wrong committed. If the wrong of exploitation does not take the felt experiences of future generations into account, than it is as unsatisfying a solution to the Non-Identity Problem as the Rights Solution.

Unlike the Rights Solution, the Exploitation Solution *does* take these experiences into account. Consider, the normative source of the wrong involved in wrongful exploitation is unfairness. In order to gauge unfairness, we must examine welfare. Factors such as suffering, discomfort, and even relative discomfort must be taken into account. Part of what makes *Depletion* unfair is the experiences of suffering that future generations will have to undergo that current generations do not have to undergo. Perhaps future generations will have health problems because of the quality of their air or the thinness of their ozone layer. Perhaps they will have to live through

¹⁸ Harman (2004, p. 12).

¹⁹ Harman (2004, p. 12).

uncomfortable temperatures, or without comforts that were once produced and sustained using certain natural resources. Of course, this examination will be comparative; the comparison must yield a verdict, ‘unfair,’ which is then a component of the verdict, ‘wrongfully exploitative.’ But, in this way, the welfare of future generations is built into the analysis of the case as one of wrongful exploitation.

3 The “Gain” objection

One might well complain that, while exploitation must involve a gain on the part of the exploiter, some Non-Identity cases seem as though they do not benefit anyone. I launched this comparison using Parfit’s *Depletion* case, one in which the current generation of people achieve a gain in resources and welfare. But consider instead the other case Parfit uses to introduce the problem:

The 14-Year-Old Girl. This girl chooses to have a child. Because she is so young, she gives her child a bad start in life. Though this will have bad effects throughout this child’s life, his life will, predictably, be worth living. If this girl had waited for several years, she would have had a different child, to whom she would have given a better start in life.²⁰

Surely the 14 year old does not benefit from her choice. How can we say that she is guilty of wrongful exploitation? Further, consider the following Non-Identity case by Justin Klocksiem (of a type proposed by Parfit and others).

Archie and Betty are deciding whether to conceive a child now, or to wait a year. If they conceive now, then as a result of a temporary medical condition from which Betty suffers, the child will be born deaf. Call this child “Archie, Jr.” It is important to point out that although the deafness will have a negative impact on Archie, Jr.’s life, it will not be a bad life. It will be a good life, overall. But in a year’s time the medical condition will be resolved, and if they wait to conceive, their child will not be born deaf. Intuitively, it seems that they should not conceive now, and intuitively, this is because to do so would harm Archie, Jr. But we have our sperm–egg pairs essentially, and Archie, Jr.’s particular sperm and egg will be long gone a year from now. So if they wait a year, they will have a different child—Betty, Jr. This confounds the counterfactual comparative account of harm, because the nearest possible world in which Archie, Jr. is not born deaf is a world in which he does not exist at all.²¹

In this case, the parents, Archie and Betty, do not seem to gain by conceiving now. In fact, their lives will probably be worse as a result of this choice. So, how can we possibly say that they are gaining from their decision to have the deaf Archie, Jr. now rather than the hearing Betty, Jr. later?

²⁰ Parfit (1984, p. 358).

²¹ Klocksiem (2012, p. 10). For other cases of this type, see Kavka (1982), Parfit (1984, pp. 357–358), and Shiffrin (1999).

Despite philosophers' insistence that the gain involved in wrongful exploitation must be unfair, or, as Valdman problematically contends, excessive, they are actually quite lenient when it comes to what exactly comprises the gain. For instance, Hiker A wrongfully exploits Hiker B even if the gain is a merely perceived gain.²² Imagine that Hiker A demands the impressive looking ring off of Hiker B's finger in exchange for the life-saving antidote. Though the ring has sentimental value to Hiker B, it is actually worth nothing on the market. Hiker B tries to inform Hiker A of this fact, but Hiker A does not believe him. It still seems to be the case that Hiker A wrongfully exploits Hiker B.

Perhaps the 14 Year Old Girl believes that her life will be better if she has a child now. Alternately, perhaps, in *some* respect, her life is better for having a child now. She loves children, and she gets to spend the years of her life between 14 and 20 mothering a child when she would have otherwise not have been able to do so. Similarly, Archie and Betty get the opportunity to be parents, which they want to be, many months sooner than they would have if they had waited to conceive. The gain involved in wrongful exploitation may certainly be a *pro tanto* one.²³ Imagine that Hiker A takes Hiker B's \$100,000 and is then robbed a murdered by a band of thieves who would not have bothered him if they had not seen his giant wad of money. We would not resist saying that Hiker A had still wrongfully exploited Hiker B, even though the \$100,000 came as an all-things-considered harm to Hiker A.²⁴

Further, the gain involved in wrongful exploitation might be merely *ex ante*.²⁵ That is, if Hiker A extorts the large and expensive stack of lottery tickets that Hiker B carries in return for the antidote, and none of those lottery tickets end up winners, Hiker A has still wrongfully exploited Hiker B. The gain need not even be for the exploiter himself! We would still call the Antidote Case wrongfully exploitative is Hiker A was a doting mother who insisted that Hiker B write out a check for \$100,000 to her son in return for the antidote.

It seems that when we say "gain" in our analysis of exploitation, what philosophers really mean is *something achieved*. With few exceptions, I suggest that any practical reasons that motivate Archie, Betty, and the 14 Year Old Girl to choose as they do result in something achieved.²⁶ Even if Archie and Betty make a

²² Wertheimer (1996, p. 13).

²³ Wertheimer (1996, pp. 282, 293, 28).

²⁴ We *might* want to say that in the case of the ring, Hiker A only *attempts* to wrongfully exploit Hiker B (thanks to David Boonin for this suggestion). However, even so, we would not want to say that this next case, in which Hiker A does secure the large sum of money from Hiker B, but is then robbed and killed, is a mere attempt at wrongful exploitation. After all, Hiker A has concluded his dealings with Hiker B before the robbing, and the actual capital and scope of options available to him, before he meets with the robbers, has increased.

²⁵ Wertheimer (Wertheimer 1996, p. 57).

²⁶ One clear exception to this broader interpretation of the gain clause is the set of cases in which a person is motivated *only* by the interests of the person who is the candidate for being the exploitee. For instance, if someone, A, acted on behalf of a person, P, for no other reason than to help P and at no personal gain besides achieving A's end of helping P, and doing so subjected P to some unfairness to which P had not been subject before (but was, all things considered, better off), then A would not have wrongfully exploited P. After all, we cannot wrongfully exploit persons when the advantages reaped from

decision on the basis of a coin toss, there is still some practical reason informing this decision (e.g. they want to escape the weighty decision and leave matters up to chance). This might mean that wrongful exploitation is a broader category than some of us believed it to be. However, I have not broadened it in this analysis. If gains can be *pro tanto*, merely perceived, *ex ante*, and for the sake of another, then the category was already so broad.

Are these gains unfair to Archie Jr. and to the child of the 14 Year Old Girl? In *Depletion*, there are clear, long-term natural resources that are unfairly distributed to the advantage of earlier generations *by* members of earlier generations. However, in the alternate Non-Identity cases that I have just described, it is not clear that the gains reaped by the current generation are reaped unfairly.

Note that there is an obvious unfairness that is caused by all three of these parents. In both of these cases, the parents cause their children to be unfairly disadvantaged compared to their peers, other children born to that generation, ones who will compete with them for positional goods, etc. The “Gain” condition merely says that A wrongfully exploits another when A gains in a way unfair to him; the unfairness need not be measured against A’s own welfare. Imagine a culture in which everyone in the Girl’s generation has children at the age of 14. There are special advantages that *would* be reaped by children born to older mothers, but no one waits; it is the practice to have children early. No child is at a disadvantage compared to any other. There is nothing wrong with the Girl participating in this practice alongside her peers. The Exploitation Solution to the Non-Identity Problem gets this case right.²⁷

Keep in mind that the wrong of exploitation is merely a *pro tanto* wrong. For instance, it might be an all-things-considered permissible to reap an unfair advantage from workers without other employment options in a poor country (for instance, if a tyrannical ruler in that country allowed no other sort of transaction, and if the transaction provided them with an important—maybe life-saving—all-things-considered benefit). Similarly, there might be circumstances in which it is all-things-considered permissible to wrongfully exploit a child be giving birth to her. For instance, if the only child a couple *can* have is one who will suffer an unfairness relative to her peers, and the couple cannot adopt, and the couple will suffer tremendously if they go childless, then there might well be sufficient moral reasons in favor of having the child to outweigh the reason against—that of wrongful exploitation.

Footnote 26 continued

the exploitation are their own (Thank you to Elizabeth Harman for an example that brought this point to light).

²⁷ There might be cases in which an entire future generation is genetically enhanced to have super-abilities, making the life of a normal, non-enhanced child one in which the child would be badly off, relatively speaking, and subject to routine unfairness. In such a case, my view would have the following result: if parents intentionally conceived a non-enhanced child for some end of their own (e.g. not wanting to raise a child who is smarter than they are, or wanting to create a love-child), then they would wrongfully exploit that child. Thanks to Tyler Doggett for providing an example much like this one in order to draw out this point.

4 The “Harm” objection

Exploitation theorists distinguish between cases of harmful exploitation, in which an exploited person is made worse off by a transaction, and mutually beneficial exploitation, in which the exploited person, along with his exploiter, has actually been made better off. As I explained at the outset, it is the instances of mutually beneficial exploitation that give rise to the interesting question: what is the special wrong of exploitation? Because of these cases, theorists of exploitation contend that if we want to nail down the wrong of exploitation, it cannot be an account that depends upon the notion of harm.

Yet, when theorists of exploitation distinguish harmful exploitation from mutually beneficial exploitation, they implement a very narrow conception of harm. In particular, they use the counterfactual comparative account of harm popularized by Derek Parfit: Action X harms Person P if X makes it the case that P is worse off than she would have been had X not occurred.²⁸ It is clear in the Antidote case that the exploitative transaction does not harm Hiker B. After all, without the event of the transaction, Hiker B would have died. Given that a rich literature on the metaphysics of harm has been produced and applied to the Non-Identity Problem, and given that I am proposing an intersection between these two moral discussions, it makes sense to scrutinize the exploitation problem through the lens of alternative accounts of harm.

After all, if a different account of harm is correct, one that describes Hiker B as having been harmed by Hiker A, then it may not make sense to do as exploitation theorists have traditionally done and define wrongful exploitation independently of harm. If exploitation necessarily involves harm, then the exploitation solution to the Non-Identity Problem is little different of an approach than the various solutions that propose and then use differing conceptual analyses of harm.

An alternate understanding of the metaphysics of harm has the potential to dramatically change the range of the concept ‘harmful exploitation.’ For instance, consider a non-comparative theory of harm in which an individual is harmed if she suffers a non-comparatively bad state.²⁹ On such a theory, an act of exploitation in which a happy, wealthy woman is cheated out of \$3,000 by a cunning con-man is not an act of harmful exploitation, as the wealthy woman is still non-comparatively well-off (unless “having been robbed” is, in and of itself, a non-comparatively bad state—but this is neither here nor there, as there are plenty of wrongful exploitation cases that do not involve theft, for instance, the Antidote Case). This suggests that non-comparative theories of harm will not do away with the need for an account of wrongful exploitation that is independent of harm.

In what follows, I will show that on at least two other leading accounts of the metaphysics of harm, cases that we previously thought to involve mutually beneficial exploitation in fact are harmful. Nonetheless, for the reasons that I will

²⁸ Parfit (Parfit 1984, p. 69).

²⁹ For the most famous version of non-comparative theories, see Shiffrin (1999) and Harman (2004, 2009).

describe, we still have good reason to analyze the concept of exploitation independently of harm.

Matthew Hanser rejects a variety of accounts of harm that involve the comparison of states in which it is good or bad for persons to be. For instance, a counterfactual comparative account of harm compares those states of persons in the actual world versus the corresponding states in which they might be when we look to some possible world. Instead, Hanser proposes what he calls an Event Based account, whereby someone suffers a harm if and only if he suffers a harm on some level with respect to some basic good. A basic good might be anything of moral value to the person in question—money, health, etc.³⁰

On Hanser's view, a theft would be a case of Level 1 harm, because an event occurs by which the victim suffers a loss of a basic good. If the thief were to prevent the victim from getting some money that was otherwise coming to him (i.e. prevent a benefit) then the victim would have suffered a Level 2 harm. If the thief were to accidentally give the victim all of the wallets he had previously stolen (maybe in a jolt of panic as some police officers pass by), then, in virtue of having experienced a gain, the victim would have experienced a Level 1 benefit. If the thief were to, in his attempt to steal money from the victim, prevent the victim from being hit by a car, then the victim would have experienced a Level 2 benefit. If the thief holds up another man, Victim* who, because he is held up, fails to prevent Victim from being hit by a car, as Victim* would have otherwise done, then Victim experiences a Level 3 Harm. As you can tell, the theory goes on in this way. Now, many recent philosophers have objected to Hanser's account of harm. I will not deal with any of those objections here; I am merely examining wrongful exploitation through the lens of a few popular accounts of harm. I do not mean to champion any one of them.

If we analyze Valdman's Antidote Case in light of Hanser's theory then it is clear that Hiker B experiences both a benefit and a harm with respect to different basic goods. Hiker B experiences a harm with respect to money, and a Level 2 benefit with respect to his life/health. Can this account of harm do any work toward explaining the wrongfulness of exploitation? Certainly, all cases of exploitation will involve some harm in some respect. After all, when people are exploited they give up some amount (of money, of their time, of their possessions, or of their bodily parts) that seems *too much* compared to what they get in exchange. Alan Wertheimer and Robert Goodin describe this *too much* in terms of an unfair gain the exploiter gets from the exploited. Mikhail Valdman describes this *too much* as an excessive benefit "extracted" from the exploited party in the exchange. However, most perfectly fair transactions involve some harm in some respect as well. For instance, if Hiker B was receiving a fancy Lamborghini in return for his \$100,000, then, with respect to money alone, this transaction would have come to him with the same amount of harm. Hence, this account of harm cannot distinguish exploitative from non-exploitative transactions (at least, not insofar as the transactions are harmful). Further, it seems that when we distinguish cases of harmful exploitation from cases of mutually beneficial cases, what we care about is all-things-considered

³⁰ Hanser (2008, p. 440).

harm. Even on Parfit's account we can find *pro tanto* harms with most cases of wrongful exploitation. Of course, the wrongfulness of exploitation could require a *pro tanto* harm of this type. However, nothing about the theory of harm yields this particular analysis of exploitation. It only results in it happening to be the case that every transaction (or every transaction in which at least one party gives up something of value to herself), including exploitative transactions, involve harm.

Alastair Norcross proposes a revised, contextual version of the counterfactual comparative account of harm. Norcross explains that when we compare a person's state in the actual world with the state they *would* be in had a particular event not occurred, it is not clear to which world (where the event has not occurred) we should appeal.³¹ For example, in the Antidote Case, perhaps we should appeal to the world in which the particular transaction (\$100,000 in exchange for the antidote) has not occurred and Hiker A has left Hiker B to die, but on the other hand, perhaps we should look to the world in which that particular transaction has not occurred, and a more fair transaction has occurred instead.

How does Norcross propose choosing the world of relevant comparison? He suggests that some possible world is more salient than others in the context of our comparison, and this salience can be generated in a variety of ways, though it will occur primarily through conversational context.³² (One striking example of a different salience condition that he proposes, and one that makes his account very different from the one that follows, is the constraint of "ought implies can." That is, for Norcross, one is not harmed by an action if the *conversationally* salient alternative is one that would not have been possible even if the action had not been performed.)³³ In Valdman's Antidote Case, whether or not Hiker B has been harmed by the transaction depends on what is the salient alternative to the transaction in any conversation in which it is being considered.

Of course, one particular context we might examine could occur between Hiker A and Hiker B in the woods. If Hiker A is only talking about his ability and willingness to exit the transaction (as tough negotiators often do) then 'leaving Hiker B to die' is the salient alternative to which the hikers should compare the transaction. Of course, the conversation could have been different. Hiker A and Hiker B could have had a long conversation about the moral decision facing Hiker A, and Hiker B could have proposed a string of fair prices before Hiker A demanded \$100,000. In this case, the hikers might want to say that a fair price was the salient alternative to compare to the actual transaction, in which case, Hiker B has been harmed in this conversational context.

All of this being said, it seems clear that wrongful exploitation, probably equally wrongful exploitation, has occurred when the actual transaction transpires, regardless of which of these conversations was held ahead of time. Further, in our own discussions as theorists, in which we discuss both the fact that Hiker A might walk away and the fact that there is a fair price that Hiker A could ask, the

³¹ Norcross (2005, pp. 165–167).

³² Norcross (2005, pp. 169–170).

³³ Norcross (2005, 170–171).

Antidote Case is both one of harm and benefit, in the same all-things-considered respect, to equal degree. Hence, Norcross' account of harm cannot do any work to account for the wrong of exploitation. He will not be surprised or alarmed by this. He does not think that the concept of harm has a role to play in ethical theory.³⁴

The results of this section suggest that while exploitation theorists have probably misclassified many instances of harmful exploitation as mutually beneficial exploitation, they have not been wrongheaded in their pursuit of a theory of wrongful exploitation that is independent of the concept of harm.³⁵

In this paper I have proposed the Exploitation Solution to the Non-Identity Problem, explained its unique handling of the famous Non-Identity cases, and defended the proposal against a variety of both obvious and less than obvious objections. I expect that there will be more objections and that they will fall into the following categories: (i) objections to the theories of wrongful exploitation used to advance this proposal (this is bound to happen anytime one literature is introduced to a new audience, which is the inevitable fate of this paper given the unusual combination of topics advanced here); and (ii) suggestions of Non-Identity cases that cannot be handled by the Exploitation Solution. These responses are very welcome. After all, in these pages I have only attempted to propose this solution and get it moving with forceful push.

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³⁴ Norcross (2005, p. 171).

³⁵ I should point out that I have passed over a discussion of harm recently proposed by Ben Bradley. On Bradley's account, we should do away with the notion of harm as doing any work in normative or applied ethics. Since my conclusion in this section is that we need to define wrongful exploitation independently of harm, no matter what account is correct, I do not need to address Bradley's position. He and I are in agreement on this point (Bradley 2012). I have also omitted Justin Klockiem's recent account of harm. For reasons I will not describe here, I believe it will have the same conclusions for wrongful exploitation as Norcross' account.

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