A Vulnerability Theory of Exploitation

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Abstract

This thesis introduces and defends a vulnerability theory of exploitation and uses that theory to explain what is exploitative about international transactions such as commercial gestational surrogacy and clinical trials. The vulnerability theory is preferable to a number of alternative theories of exploitation that have been defended in the philosophical literature. The dominant theories of exploitation tend to be inadequate or incomplete to account for different forms of exploitation. These shortcomings stem from the theories’ tendency to mistake something that is characteristic of specific forms of exploitation for what constitutes exploitation itself. Meanwhile, according to the vulnerability theory, exploitation occurs when A derives benefit by taking advantage of the vulnerability and dependence of B. This conceptualisation of exploitation as a function of the levels of vulnerability and dependence between transactors is analytically advantageous because it identifies conditions for exploitation that characterise most forms of exploitation. This conception also renders exploitation in the international domain visible by highlighting the prevalence of vulnerability and dependence therefore demanding theorisation, which until recently has been absent. Lastly, the project argues that exploitation at the international domain is distinctively wrong for reasons that do not arise in transactions between compatriots and challenges the idea of global justice.
Declaration

I hereby declare that this thesis is the original work of the author and has not been submitted previously to any other academic institution. Where use has been made of the works of others it has been duly acknowledged and referenced.

Signed:

Date:
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# Table of Contents

Abstract ................................................................................................................................. i
Declaration ............................................................................................................................. ii
Acknowledgements .............................................................................................................. iii
Table of Contents .................................................................................................................... iv
Chapter 1 Introduction .......................................................................................................... 1
  Thesis Outline ...................................................................................................................... 14
Chapter 2 Examining Philosophical Theories of Exploitation .............................................. 22
  Introduction ......................................................................................................................... 22
  Marx’s Theory of Exploitation ............................................................................................. 24
  Roemer’s Theory of Exploitation ......................................................................................... 31
  Steiner’s Liberal Theory of Exploitation ............................................................................. 38
  Miller’s Equilibrium Theory of Exploitation ..................................................................... 43
  Wertheimer’s Account of Exploitation .............................................................................. 49
  Wolff’s Theory of exploitation ............................................................................................ 55
  Conclusion ........................................................................................................................... 60
Chapter 3 Analysing Vulnerability Theories of Exploitation: Goodin and Wood ............... 63
  Introduction ......................................................................................................................... 63
  Goodin’s Theory of Exploitation ......................................................................................... 66
    Examining Goodin’s Account ............................................................................................ 71
  Wood’s Theory of Exploitation .......................................................................................... 81
    Examining Wood’s account of Exploitation .................................................................. 88
  Conclusion ........................................................................................................................... 95
Chapter 4 The Concept of Vulnerability: Towards A Revised Vulnerability Theory of Exploitation 98
  Introduction ......................................................................................................................... 98
  What is vulnerability? .......................................................................................................... 101
  Vulnerability and Disadvantage ....................................................................................... 109
  Dependence and its role in exploitation .......................................................................... 112
  Conclusion ........................................................................................................................... 125
Chapter 5 International Gestational Surrogacy: Exploiting Women in India ...................... 127
  Introduction ......................................................................................................................... 127
Chapter 1
Introduction

The concept of exploitation remains a source of debate in philosophy and other disciplinary fields. The term remains one of the most overused and misused concepts that serves to describe a range of practices, interactions or transactions. People use the term exploitation, sometimes as a self-explanatory term, to describe diverse harmful, abusive, or unjust transactions among other things. Thus, charges of exploitation appear in different ways to describe or evaluate specific transactions between individuals, classes, corporations or governments. The concept is applied differently sometimes to indicate that there is something intuitively wrong about a transaction and other times it is used to determine what that wrong is. In short, there is no uniform meaning or consistent use of the term exploitation albeit a general agreement that exploitation describes the occurrence of unfair use or advantage-taking of a person. The term exploitation is often times confused with other concepts such as coercion, commodification and harm both in the common usage of the term and sometimes in specified fields. As J.L. Hill (1994: 699) observes, exploitation is misused or confused with other concepts because exploitation “has been a catchall term with as many meanings as to those who use it”.

There are also different views about whether exploitation is a moralized concept or not. In different ways, moralised views of exploitation hold that exploitation “is by
definition, wrong because unfair” (Wertheimer 1996: 6). For example, according to Andrew Reeve, “in social theory, exploitation implies a normative negative evaluation of the use of a thing” (Reeve 2010: 481). Moralised views of exploitation intend to highlight that exploitation involves some type of treatment of another person that is morally wrong. Mathias Risse and Gabriel Wollner concur stating that exploitation occurs when “an individual A treats B in a way T giving rise to a distribution or transfer D, and the joint occurrence of T and D violates some moral principle” (Risse & Wollner 2014: 20). However, there are disagreements about what types of outcomes, distributions or transfers, and kinds of treatment of a person indicate the wrongness of exploitation. In other instances, exploitation features in arguments against a range of practices presumed characteristically exploitative. Exploitation is regularly mentioned in the context of prostitution, surrogacy, organ selling and pornography among other presumably tainted activities. On the other hand, there are non-moralised views of exploitation arguing, “exploitation is not wrong by definition, and it is not obvious why it is wrong in every instance” (McLaughlin 2008: 15).

Similar diverse meanings and applications of the term exploitation mentioned above are manifest among philosophical theories of exploitation. However, despite the theoretical differences, exploitation generally refers to benefiting by taking unfair advantage of another person. That is, in general terms exploitation occurs when one benefits by taking unfair advantage of another (Veneziani & Yoshihara 2010: 2). Notwithstanding the intuitive appeal of this general definition, theories of exploitation offer different explications on what constitutes the unfairness or the source of the unfairness and the structural relationship between the exploiter and the exploited. For the rest of this thesis, A represents the exploiter and B represents the exploited.
The theories of exploitation are different because they hold different views about what constitutes exploitation. Consequently, each theory only accounts for some specific forms of exploitation rather than others. In other words, the meaning of what constitutes exploitation in individual theories of exploitation or their approach to exploitation determine their capacity to account for different forms of exploitation. The failure to account for a range of forms of exploitation by dominant theories of exploitation indicate their inadequacy or incompleteness. Marxist and liberal theories dominate the contemporary philosophical literature on exploitation, but what one approach says is exploitative about a practice or interaction is not necessarily exploitative for the other approach. Consequently, practices or interactions that one approach can pronounce as exploitative may not be charged as such by the other approach. On the one hand, the liberal approach broadly identifies such things as impaired consent and/or unfair price in a transaction between individuals to determine the occurrence of exploitation. On the other hand, Marxist approaches view exploitation as a product of, and located within, social and economic systems and structures of oppression (Deveaux & Panitch 2017: 2).¹

Each of the approaches has some shortfalls in accounting for exploitation. The inadequacy in the liberal approaches lies in their failure to take into account institutionalized and severe conditions that make some individuals more exploitable than others. For example, conditions that make workers more exploitable than the capitalists. In other words, the liberal approach offers a narrow approach to accounting for exploitation because it abstracts away from the real conditions such as background injustices against which exchanges or transactions are conducted. However, while the

¹ Young’s (1990) approach exemplifies this view of exploitation as an inevitable by-product of various interlocking systems of social oppression.
Marxist approach addresses the shortfall in the liberal approach, it is also inadequate as “it can lose sight of the specific agential aspects of exploitation – that is, troubling features of certain transactions that are critical to explaining why this particular exchange, in this instance but not others, is exploitative” (Deveaux & Panitch 2017: 2). In general, the theoretical inadequacy in both approaches is that they in varied ways are either too broad or too narrow to account for exploitation.

To illustrate the lack of uniform meaning or use of the concept of exploitation, let us consider the following putative examples of exploitation that we will be referring throughout the thesis:

1. “A factory owner visits a village in the Pacific Rim country and offers to set up a running-shoe factory that would pay each worker $2 per day. The current average wage in the village is $1, which is enough to prevent a worker and his/her family from starving. The workers will have no benefits other than salary and must work eighty hours per week. The workers accept. The running shoes sell for $95 per pair in the United States and Western Europe, and half of that price is corporate profit” (Sample 2003: 8).² Some people hold that this is exploitative because unlike the workers, the factory owner excessively benefits from this transaction.

2. A greedy tow truck driver finds a motorist stranded in a ditch during a snowstorm. Ordinarily, the tow truck would charge $10 for rendering his services of towing the motorist’s car out of the ditch. However, knowing that the motorist is probably willing and able to pay substantially more, and knowing that it may be a while before another truck comes along, the tow truck driver offers to rescue the

² The 1994 – 95 Nike case in Indonesia is the famous sweatshop example in the contemporary literature on exploitation and has many similar examples. See Korten 2001: 115
motorist for $210 (Wertheimer 1996: 218). Most people would agree that the truck
driver exploits the motorist by making him pay more than the ordinary charge for
the towing services.

3. Ms Roy, a lesbian, consulted Dr Renatus S. Hartogs for help with sexual problems
and depression. After several months of treatment, Dr Hartogs induced Ms Roy
to have sexual intercourse with him, telling her it was part of her treatment. Ms Roy’s condition worsened and she was subsequently committed to a mental
hospital on two occasions (Wertheimer 1996: 162). Again, most people would
argue that apart from professional misconduct, Dr Hartogs initiated an
exploitative relationship with Ms Roy.3

4. Mary Beth Whitehead agreed to bear a child at a fee for a biochemist named
William Stern and his wife, a pediatrician named Elizabeth. Whitehead found
herself unable to part with the child when the child was born, and sought to retain
custody (Wertheimer 1996: 96 – 97).4 This famous Baby M case in New Jersey
intensified public debate and opposition to commercial surrogacy from 1985.
Commercial surrogacy, like human organ sales, meets the charge that such
transactions would lead to the exploitation of the surrogates and organ donors
(who are usually poor) who may face undue pressure to hire out their body
services or sell their body parts to wealthy buyers.

5. The Tuskegee Study of Untreated Syphilis in the Negro Male was a forty-yearlong
study of untreated syphilis on poor African American men in the United States,
conducted between 1932 and 1972 to study the natural progression of the disease.

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3 Wertheimer (1996) discusses in detail sexual exploitation in Chapter 6 narrating cases of sexual relationships between psychotherapists and patients.
4 See In the matter of Baby M, 1988
The study was conducted without the benefits of patients’ informed consent. The subjects were told that they were being treated for “bad blood”, a local term that was used to describe several ailments including anaemia and fatigue. For their participation, the subjects received free medical examinations, free meals, and burial insurance (Centre for Disease Control and Prevention 2015). Most people agree that this clinical research was harmful and exploitative.

The above examples represent different scenarios of what is widely considered exploitation or different scenarios in which the term exploitation is applied. As used in the examples, the term exploitation intends to describe the harm, abuse, or injustice among other things that occur in transactions or characterise a transaction. The application of the term in the scenarios to describe different things reveal the ambiguity of the term exploitation. What is exploitative in one scenario is different in the others and what is exploitative in the same scenario may not be the same for everyone. For example, some can argue that the transaction in the factory example is exploitative because the profit that the factory owner makes is excessive or that the distribution of benefits is unequal and therefore unfair or unjust. Chris Meyer (2004: 327) argues that employers in sweatshops such as in this factory example exploit their employees when they benefit disproportionately from their labour and it is wrong because they take advantage of their desperate situation. That is, such transactions amount to exploiting the workers because the factory owner unfairly profits from the goods produced by the workers in harsh and/or dangerous conditions that they can only tolerate because of their distressing situation. Meyers (2004: 319) also argues that it is morally objectionable to pay low sweatshop wages for very arduous sweatshop labour even if there is no coercion, deception, or direct causing of harm. Other theorists such as Alan Wertheimer (1996: 230) employ a
hypothetical market principle to determine when the distribution of benefits and burdens is lopsided to count as unfair and exploitative. Yet, not all cases of lopsided or disproportionate distribution of benefits are necessarily instances of exploitation.

A different view may hold that the factory example is exploitative because the factory owner benefits by taking advantage of some form of misfortune or background injustice that the workers suffer or because the profit derives from the workers’ labour that is rendered under circumstances of poverty or need. For example, Sample’s (2003) account of exploitation as degradation holds that exploitation occurs when A benefits by taking advantage of the unfairness created by injustice. The workers in the factory example occupy a weaker bargaining position compared to their transactor perhaps because they are victims of socioeconomic injustice, among other factors. This condition does not obtain in similar situations. For instance, an exploitation charge is less likely where A benefits by selling an item to B who becomes needy because she has lost a similar item through something unfortunate or unjust such as theft. The circumstances of B are similar to those of the factory workers as being in need or victims of some misfortune or injustice, but the exchange does not appeal as a situation of exploitation between A and B.

Other authors insist that exploitative transactions are tainted by impaired consent or are demonstrably harmful to the exploited. Views that require harm to establish the occurrence of exploitation present us with some difficulty to adjudicate in the factory example because the transaction benefits the workers more than it harms them. However, such views may easily declare the psychotherapy and Tuskegee trials examples as exploitative. Allen Buchanan holds this view arguing that “to exploit a person involves the harmful, merely instrumental utilization of him or his capacities, for one’s own
advantage or for the sake of one’s own ends” (Buchanan 1985: 87). Views like Buchanan’s will also struggle to explain the surrogacy example, because it may not necessarily involve coercion, harm, or underpayment. On the other hand, other views as mentioned earlier hold that practices such as surrogacy, as well as prostitution, are inherently exploitative. Such views generally intend to set limits on the permissible scope of market exchange activity. For example, according to Richard Arneson (1992: 133), some goods or services should not be bought or sold but can be freely transferred to others and surrogacy falls in this category. The view is that once money is involved in such practices, they are likely exploitative. As Peter Singer and Deane Wells (1984: 125) argue, “once money enters the arrangement the possibilities of exploitation are everywhere”.

The term exploitation also commonly features in ordinary speech about international transactions and agreements, suggesting that exploitation is also an international phenomenon. However, exploitation remains under theorized at the international domain. There is wide use of the term in the discussion of phenomena as diverse as the use of migrant labour power, trade agreements between developed and developing countries, toxic waste disposal, human trafficking, human organ sales, international commercial gestational surrogacy, and international clinical research trials, among others. This suggests that there are some widely held intuitions about the occurrence of exploitation in the international domain. Some critics specifically argue that the current global economic order and its institutions are exploitative or generate and maintain conditions that encourage the occurrence of exploitation at the international level. For example, Thomas Pogge’s view that the current global order allows the rich to get the poor to accept trading schemes that are unduly favourable to the rich represents
one of the views about the perceived exploitative nature of international transactions under the current global arrangement (Pogge 2002).

The lack of theorization at the international level indicates some inadequacy in the existing theories of exploitation to readily account for exploitation at this level where it is rather complex. The lack of theorization may also suggest that the existing theories do not recognize exploitation occurring at the international domain. The under theorization or lack of theorization at the international domain consequently implies a failure to interrogate and address unjust or unfair practices that thrive on conditions of vulnerability and dependence prevalent in the international domain creating opportunities for exploitation. In other words, lack of or limited theorisation at this level indicates a failure to interrogate exploitation as an injustice issue. Avner De-Shalit makes one notable attempt to theorize exploitation in the international arena noting that most writers reluctantly use the term exploitation to discuss international and transnational exploitation and instead write about colonialism, structural hegemony and dependency (De-Shalit 1998: 693).

De-Shalit provides a theory of exploitation to illuminate when it is reasonable to talk about international and transnational exploitation. Criticising Marxian and liberal views of exploitation, he argues, “Exploitation entails benefiting from an exchange which involves treating B without equal concern, or merely as a means rather than also as an end, in circumstances of bargaining” (1998: 702). In his view, treating another without equal concern or the failure to see the intrinsic value of another person is degrading and

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5 De-Shalit holds that exploitation occurs when three conditions obtain. First, one agent treats another not as an equal. Second, some benefit accrues to the side that does not treat the other as an equal. Lastly, this treatment occurs in the circumstances of bargaining, where such an interaction leads into an agreement between transactors and potential other parties in the future.
is similar to humiliation (De-Shalit 1998: 703). While De-Shalit’s account of exploitation is helpful because it provides a view about how we should think about exploitation and perhaps why it matters by broadly describing instances of exploitation in the international arena, it does not describe what constitutes exploitation. In my view, De-Shalit mistakes one among many reasons that make exploitation wrong for a condition for exploitation. De-Shalit mistakenly insists that treating another without equal concern or degradation is a condition for exploitation when exploitation does not depend on the occurrence of degradation even at the international level. Exploitation can occur without a transaction being degrading or humiliating even though exploitative transactions can sometimes be degrading or humiliating, but this is not necessarily the case. The greedy truck driver and the stranded motorist example illustrates the point that exploitation need not involve degradation. Most people would agree that the driver exploits the motorist when he pays $210 or indeed anything above the ordinary price for the towing services. However, the driver does not exploit the motorist because he degrades the motorist, and in fact, the driver may not be degraded. Putting degradation as a condition for exploitation would also make it difficult to distinguish exploitation from other exchanges such as fraud that involve benefit and may sometimes be degrading.

De-Shalit’s theory is also mistaken to include degrading as a condition for exploitation because degradation is a moral evaluation of an exploitative act not a condition for exploitation. In other words, treating others without equal concern perhaps spells out what makes an exploitative transaction morally wrong. Yet, this view offers one of the reasons why exploitation is or could be wrong which is neither the only reason nor the reason in every case of exploitation. In addition, having degradation as a condition
for exploitation is also problematic because it is not clear what treating another without equal concern means or when one treats another without equal concern.

This thesis therefore proposes a vulnerability account of exploitation as a better conception of exploitation that is analytically adequate to account for various forms of exploitation. This vulnerability approach attempts to address the theoretical gap left by the dominant theories in accounting for a range of forms of exploitation. That is, the theory combines the relevant features of specific transactions and the conditions in which such transactions transpire to determine the occurrence of exploitation therefore widening the scope of the theory of exploitation. I argue that this vulnerability theory has explanatory advantage for accounting for exploitation in its various forms because it identifies the conditions that define exploitative relationship compared to the other theories of exploitation. In other words, the vulnerability theory explains the nature of exploitation and the mechanism by which it takes place. This vulnerability theory holds that exploitation occurs when A derives benefit by taking advantage of the vulnerability and dependence of B. According to this account of exploitation, an agent is vulnerable when his or her welfare interests are threatened. In this formulation, welfare interests are basic needs - those things that are vital to a person’s well-being. A threat to a person’s welfare interests is ultimately a threat to one’s well-being. Dependence refers to a relationship between transactors where the cost of exiting the relationship with A is greater for B than remaining in it and the transaction with A represents the best option available to secure B’s threatened welfare interests or wellbeing.

The threat(s) to one’s welfare interests, lack of options and/or capacity to protect the same makes an agent enter into a relationship with others for the protection of the threatened welfare interests. In short, in this theory the vulnerability that is relevant to
understanding exploitation comes with dependence. It must be noted that although people who are vulnerable are also often dependent, and *vice versa*, this need not be the case. B can be vulnerable without being dependent, if not interacting with A is not costly to B than continuing with the interaction such as where the interaction represent the best available option to secure the threatened welfare interests implying that B has the capacity and/or alternatives with which to protect his or her (threatened) welfare interests. However, there cannot be dependence without vulnerability. To illustrate this point, I borrow Mikhail Valdman’s (2009: 3) *antidote case*. A hiker bitten by a rare poisonous snake treatable by an antidote is on this account vulnerable because the hiker’s wellbeing is at risk as the hiker’s death is imminent. However, the hiker is not dependent if exiting or refusing to transact with another hiker for the antidote does not cost anything. That is, the cost of not transacting is no greater than zero that B can refuse to transact at $20,000 (the retail price is $10). When the cost of not transacting with A does not risk the chances of securing the threatened welfare interests, then B is not dependent on A. For instance where B has other alternatives for securing his or her wellbeing thus A is not the best option available to the hiker. A relationship of dependence will not exist if the hiker need not transact with the other hiker to secure her wellbeing because the hiker carried an antidote to use against the snake poison. In this case, there are no costs to the hiker’s decision not to transact with the other hiker. The hiker is also not dependent on the other hiker if there are other interactors to transact with for the use of an antidote under conditions that are better than what the other hiker is offering. Conversely, the hiker cannot enter into a relationship of dependence if his or her welfare interests are secure or when there exist alternatives for securing his or her wellbeing. That is, when B’s wellbeing is not threatened, transacting with A is simply not necessary. Secondly, B need
not transact with A if the transaction does not represent the best option available to secure B’s wellbeing.

By the proposed vulnerability theory, the five examples outlined are exploitative. That is, the theory does not face the problem of pronouncing one example rather than another as exploitative. In all the examples, A benefits by simultaneously taking advantage of the vulnerability and dependence of B. In all the cases of exploitation, there is a threat to B’s welfare interests and there is a cost greater than zero if B chooses to exit the relationship with A because the transaction represents the best option available to secure his or her wellbeing. The workers in the factory, the stranded motorist, the surrogate mother, the clinical trial subjects and the psychotherapy patient are exploited if and only if A benefits by taking advantage of the threats to their wellbeing and that it is costly for B to exit the relationship with A. This is the case in the above examples and it is what should be clear in any other form of exploitation.

Identifying vulnerability and dependence as necessary conditions for exploitation also helps the theory to easily and adequately account for exploitation at the international domain where vulnerability and dependence are more likely or prevalent creating many opportunities for advantage taking. This vulnerability conception of exploitation has the explanatory advantage over other theories because it identifies what is characteristic of exploitative relationships rather than what is characteristic of specific forms of exploitation hence it avoids the limitations of or challenges to the other theories.

This vulnerability theory of exploitation also holds that exploitation is primarily wrong or unfair insofar as the exploiter fails to adequately protect the welfare interests of the exploited. The failure to protect the welfare interest of vulnerable and dependent
others is established counterfactually, by the existence of the possibility to interact with the exploited under better terms and conditions that can adequately protect their wellbeing.\textsuperscript{6} However, I also contend that exploitation is morally objectionable for various reasons such that the moral beliefs cited by other theories are only some of the reasons why exploitation could be wrong. That is, there are a variety of reasons why benefiting by taking advantage of others’ vulnerability is morally wrong and why exploitation is therefore morally objectionable.

Lastly, the thesis argues that exploitation at the international level may be distinctively wrong for reasons that do not arise in cases of exploitation in domestic settings. Here the argument is that exploitation in the international domain is morally wrong because it involves unjustified practices of double standards suggesting a hypocritical commitment to the idea of equality of persons. Further, this practice of double standards constitutes covert arbitrary discrimination (perhaps unintended) against vulnerable others in ways that seem to taint these transactions as racist and colonialist.

\textbf{Thesis Outline}

This thesis is organised in two parts. Part I examines some prominent philosophical theories of exploitation in two chapters to expose their inadequacies in accounting for various forms of exploitation. \textit{Chapter Two} examines theories of exploitation proposed by Karl Marx, John E. Roemer, Hillel Steiner, David Miller, Alan Wertheimer, and Jonathan Wolff. The chapter argues that these theories are inadequate to account for different forms of exploitation because they mistake what is characteristic

\textsuperscript{6} This view is similar to John Roemer’s idea that exploitation “involves the possibility of a better alternative” (Roemer, 1996 p. 19) and David Miller’s view that exploitation involves the likelihood of an alternative close to the relevant benchmark that is available to the exploiter (Miller 1987 p. 161).
of specific forms of exploitation for what constitutes exploitation. In other words, the meaning of what constitutes exploitation in these individual theories of exploitation limit their capacity to only account for specific forms of exploitation rather than others. For example, Marx’s view of exploitation described by Richard J. Arneson as “the appropriation by a class of non-workers of surplus product of a class of workers” (Arneson 1981: 203) only applies to wage-labour relationship as in the case of the factory example. Marx’s theory is therefore blind to other forms of exploitation outside the necessary wage labour relationship such as exploitation of women’s reproductive and domestic labour, as argued by some feminist theorists.7 Similarly, liberal approaches’ definitions of what constitutes exploitation as unfair advantage-taking when transactions involve things such as impaired consent and/or unfair price are limited. As stated earlier, the liberal approaches tend to be too narrow to account for exploitation because they abstract away from the real conditions against which exchanges or transactions are conducted such as background injustices and therefore cannot successfully account for trenchant and institutionalized forms of exploitation. In addition, some quests to describe unfair advantage taking often feature some moral belief as a condition for exploitation such as in Steiner’s rights violation or Goodin’s violation of a duty to protect the vulnerable. Nevertheless, this is not to entirely dismiss such theories. As observed earlier, these approaches or theories still contain some insights relevant to building an analytically adequate theory of exploitation that avoids the limitations of the other theories. The view is that an analytically adequate theory of exploitation should provide a meaning of exploitation that does not draw from the characteristic of specific forms of exploitation so that it accounts for various forms of exploitation and extend to account for exploitation

7 This is a common feminist critique of Marxist exploitation. See Costa and James (1971)
in the international domain. In addition, the vulnerability view aims at achieving the conceptual clarity that helps address the problem of confusing exploitation with other concepts. As Deveaux and Panitch (2017: 2) observe, when exploitation is confused with other concepts, or “becomes synonymous with them, it risks losing its normative force, and theorizing about it loses its normative value”.

Chapter Three examines vulnerability theories of exploitation from Allen W. Wood and Robert E. Goodin. In this chapter, I argue that their vulnerability approach to exploitation provides a more plausible account of exploitation than the other theories of exploitation. Yet both theories are still incomplete in significant ways. The two theories agree that exploitation consists in benefiting by taking advantage of another’s vulnerability. That is, exploitation involves turning vulnerability into an opportunity for advantage taking which benefits the exploiter. The vulnerability present in a transaction is important because it shows the nature of the conditions for the exploited that are necessary in an exploitative transaction thereby broadening the understanding of exploitation. In other words, the vulnerability approach identifies what is common to exploitative relationships hence it avoids the limitations of the other theories such as mistaking what is peculiar about specific forms of exploitation for what is characteristic of exploitation in general. In addition, the vulnerability approach easily identifies the exploiter and the exploited both as individuals and groups. Nevertheless, these theories require some revision as they employ an unclear notion of vulnerability and as a result are either too narrow or too broad.

Chapter Four explains and defends my own vulnerability theory of exploitation. This chapter offers a refined notion of vulnerability that is relevant to understanding exploitation and which includes a notion of dependence that goes along with it.
Vulnerability is a condition in which a person or group’s welfare interests or wellbeing are threatened. As clearly depicted in the antidote case, one is vulnerable when one’s welfare interests are threatened. Welfare interests are those goods that are vital for one’s welfare or wellbeing. Dependence denotes a relationship between transactors where the cost of exiting the relationship with A is greater for B than remaining in it and where the transaction with A represents the best option available to secure B’s threatened welfare interests or wellbeing. Since this relationship with A represents the best option available to secure B’s threatened interests, it is disadvantageous for B to refuse to transact with A because her wellbeing is contingent on the prospects of this interaction or exchange. On this account, exploitation does not involve interdependence as such because B depends on A but not vice versa. The relationship of dependence in this account resembles Frank Lovett’s social relationship of dependence, described as a relationship from which the cost of exiting the relationship is greater than remaining in it (Lovett 2010: 50). As it can be seen in the all the examples, it is detrimental for B’s wellbeing not to enter, or to exit, a relationship with A.

For this vulnerability account, exploitation occurs when A benefits by simultaneously taking advantage of the threat(s) to an agent’s welfare interests and her lack of the capacity to secure the threatened welfare interests. This definition plausibly accounts for various forms of exploitation because it does not face the limitation set by specific conditions such as harm, excessive benefit and others that may only exist in some forms of exploitation but not others. Vulnerability and dependence afford A power or advantage to offer conditions in an exchange that are more advantageous to him or her than to B. The vulnerable and dependent B accepts conditions of a transaction that do not adequately protect their welfare interests because the transaction represents the best
available option for securing their threatened welfare interests or wellbeing. The situation of the stranded motorist exemplifies such a situation in which the tow truck driver’s offer is only one that the motorist can put up with under the circumstances.

Part II of the thesis applies the proposed vulnerability theory to explain why two arrangements, commercial gestational surrogacy and clinical trials at the international level, are exploitative. This application also demonstrates the theory’s analytical advantage at the international level by comparing it to other views of exploitation, which, as stated earlier, struggle to account for exploitation at this level. Deveaux and Panitch (2017: 1) similarly note that dominant theories of exploitation cannot readily explain why certain practices are exploitative and the authors therefore challenge “leading philosophical accounts of exploitation to confront globalized, racialized, and gendered practices”, which are in their considered judgement exploitative.

*Chapter Five* begins by applying the vulnerability theory of exploitation to international commercial gestational surrogacy (IGS) arrangements. The chapter focuses on the surrogacy industry in India because India had, until recently, more permissive laws regarding surrogacy than other countries. Consequently, there is substantial literature available on the surrogacy industry there. However, my analysis of this topic applies to other surrogacy industries, as India is not the only destination for international gestational surrogacy. For the rest of the thesis, surrogacy stands for commercial gestational surrogacy in the international domain involving persons from rich countries seeking surrogacy services in poorer countries. The chapter argues that other theories - such as those that limit the occurrence of exploitation to issues of consent, harm and unfair compensation, for example - fail to recognise exploitation at this level because these conditions are either absent or difficult to identify. The vulnerability theory points out,
for example, that unfair compensation or price is not enough for a charge of exploitation, especially at the international domain where the fairness of compensation may be difficult to establish. In some cases, the compensation may be ‘fair’ but the transaction may still be exploitative. This suggests that, surrogacy contracts are not exploitative because surrogate mothers are not fairly compensated or do not consent. Surrogacy is exploitative when surrogacy seekers and their brokers and/or artificial reproductive technology (ART) clinics benefit by taking advantage of the vulnerability and dependence of the surrogate mothers. That is, surrogacy seekers are able to achieve their goals at low cost and without many obstacles such as legal red tape because the women are poor, unprotected by the law, illiterate and in a deeply patriarchal society that does not adequately protect women. The vulnerability theory is therefore able to account for exploitation where other theories may not recognise it. Secondly, the vulnerability theory exposes the existence of many opportunities for exploitation in the surrogacy industry since vulnerability and dependence are more likely or prevalent at the international domain.

*Chapter Six* illustrates that while it is plausible to argue that exploitation in the international arena can be attributed to the absence of instruments and regulations to protect vulnerable and dependent others across jurisdictions, as shown in gestational surrogacy, in some cases the existence of such instruments or regulations does not matter. The chapter uses international clinical research trials to show that even where international regulations and instruments are available, they do not extend to protect from exploitation vulnerable and dependent persons in developing countries. This is because the instruments are weak or are ignored altogether. As stated earlier, vulnerability and dependence afford power and advantage to A in exploitative transactions. Even when developing countries have their own regulations on clinical research trials that should
protect and promote the welfare interests of individuals, international corporations and their agents flout the regulations because of the advantage that is given to them by their position of power based on resource control. Lack of adherence or ignoring these regulations or laws effectively lead to the problem of application of double standards in clinical research trials at the international level which allows for the occurrence of exploitation. Developing countries face a myriad of health problems and lack the capacity to address these health issues. These countries’ populations are vulnerable and become dependent on international medical researchers or pharmaceutical companies for their welfare interests in health and life in general because such interactors represent the best option available for securing welfare interests. The chapter therefore argues that research subjects and their communities in developing countries are exploited insofar as they do not get adequate protection for their wellbeing while their transactors derive benefit. That is, clinical subjects and their communities are exploited when there are no safety guarantees; no legal protection from possible harms of the trials; or they cannot access or afford medical products they have participated in their discovery, posttrial.

In Chapter Seven, I argue that exploitative exchanges involving transactors from different jurisdictions might be distinctively wrong, for reasons that generally do not apply to exploitative exchanges between compatriots. These reasons have to do with the employment of double standards concerning the protection and/or promotion of people’s welfare interests. The application of double standards serves to benefit the stronger party at the expense of the welfare interests of the vulnerable and dependent others. The argument is that the practice of double standards at the international level demonstrates a form of hypocrisy that violates the belief in the equality of people as it involves subjecting international interactions with developing countries to weaker moral demands while
demanding stronger ones in similar transactions within or among developed countries. The application of these double standards in effect exposes vulnerable and dependent individuals from developing countries to exploitation in that the double standards fail to pay adequate attention to their welfare interests. The chapter further argues that the practice of double standards at the international level has further ethical concerns that may not obtain domestically. I argue that exploitative international gestational surrogacy and clinical trials involve unjustified practices of double standards that constitute covert arbitrary discrimination against vulnerable others in ways that suggest maintaining racial injustice and colonial attitudes. In part, this is because the condition of the developing world is considerably instigated by historical, political and economic arrangements that have been shaped by racial injustice through colonialism or imperialism. The claim is therefore that continuing to transact in ways and within systems designed by these morally wrong mechanisms without paying proper attention to conditions of vulnerable individuals constitute maintaining the same moral wrongs, sometimes inadvertently through established systems and institutions.
Chapter 2

Examining Philosophical Theories of Exploitation

Introduction

This chapter explores the definitional debate on the concept of exploitation by examining some prominent philosophical theories of exploitation. The examination exposes the different views about what constitutes exploitation and its wrongness among these theories. I argue that these theories of exploitation are unable to account for various forms of exploitation because they fail to identify the correct necessary conditions for exploitation. Consequently, the theories’ views on what constitutes exploitation limit their capacity to account only for specific forms of exploitation rather than others. We will constantly refer to the five examples of exploitation cited in the previous chapter in the examination of the theories of exploitation (and throughout the thesis) and other examples wherever necessary to demonstrate the limitations of the theories to account for different forms of exploitation.

The philosophical theories of exploitation under examination in this chapter include Marxist accounts of Karl Marx and John E. Roemer; and non-Marxist or liberal views of Hillel Steiner, David Miller, Alan Wertheimer, and Jonathan Wolff. These theories represent the approaches to exploitation and exemplify the different ways in
which individual theories account for exploitation. That is, the analyses demonstrate the differences both between and within the Marxist (structural) and liberal (individual) approaches. The differences in the meaning and application of the concept of exploitation in these theories shows the ambiguity of the concept of exploitation that remain less resolved even among these philosophical theories. This analysis is important because it highlights different elements from both these structural and individual approaches that we should consider for a theory that has the explanatory advantage as in the proposed vulnerability theory. This examination, however, excludes vulnerability theories of exploitation by Allen W. Wood and Robert E. Goodin, which are examined in the next chapter because they, in my view, provide a more plausible account of exploitation than the theories examined in this chapter. I view that the vulnerability theories point towards blending insights from the structural and individual approaches and therefore they provide the foundations for the vulnerability theory of exploitation proposed in this thesis. However, these vulnerability theories are incomplete, as will be argued in the following chapter, because they provide an imprecise conception of vulnerability central to exploitation.

I first consider the structural approach theories starting with Karl Marx’s as the leading theory of exploitation followed by John Roemer’s attempt to recast Marx’s theory, characterizing exploitation in game theoretical terms, using property relations and counterfactual property distributions. Steiner’s theory is considered first in the liberal approach because of its clear efforts to formulate and defend a theory of exploitation from the liberal rights tradition. Miller’s theory follows because his theory builds on a critique to Roemer and Steiner’s theories. Wertheimer’s analysis is necessary as he provides a very comprehensive analysis of exploitation. Lastly, I consider Wolff’s theory because
his task to reiterate Marx’s theory highlights the problems of definition and meaning that I find important for any discussion of exploitation. In particular, Wolff’s introduction of the notion of vulnerability is promising for developing a general analysis of exploitation.

Marx’s Theory of Exploitation

Karl Marx’s account of exploitation rests on his labour theory of value and the concept of surplus value. Roemer (1985: 30) summarizes Marxist exploitation as involving “unequal exchange of labour for goods: the exchange is unequal when the amount of labour embodied in the goods which the worker can purchase with his income (which usually consists only of wage income) is less than the amount of labour he expended to earn that income”. Drawing on his labour theory of value, Marx argues that workers give more labour time to produce goods or services than the value in terms of wages they receive in return. This view follows from the basic claim of his labour theory of value that the value of a commodity is measured by the average amount of labour time required to produce a commodity. That is, labour essentially determines the value of a commodity as “the use value, in the form of a product, issues from the labour process” (Marx 2013: 123). According to Marx (2013: 113), workers sell their commodity “labour power or capacity for labour” which is the capacity to produce goods or services to capitalist. Since on Marx’s view workers sell their labour power or capacity for labour as a commodity, they should get in return commensurate wages. In other words, on Marx’ understanding, since the value of the commodities follows from the labour that has produced it, workers ought to receive an equivalent value for their labour. However, the workers labour longer than the time that is necessary to produce the value of the wages they receive from the capitalist.
Marx views that in capitalism, the workers produce surplus or excess product, which takes the form of “surplus value”, which then is the difference between the labour that workers put in to produce the value of commodities and the value of wages they receive in return for their labour power. On Marx’s definition, “surplus-value is the difference between the value of the product and the value of the elements consumed in the formation of that produce” (Marx 2013: 144). In short, the workers contribute more labour power in terms of hours than they are paid and the difference constitute a surplus that goes to the capitalists as profit. However, Marx emphasizes that profit is a privilege deriving from ownership of capital rather than a wage or reward for the entrepreneurial skill of capitalist (Marx 1999: 24). According to Marx, production of surplus value is central to exploitation in capitalism as he points out that “production of surplus value is the absolute law” of capitalism production (Marx 2013: 430). Thus, exploitation occurs when the workers’ compensation is less than or not equal to the value they produce with their labour hours. The workers are exploited because their labour power creates a value greater than the value of the wages they receive. On this understanding, exploitation in Marx’s view involves an inverse proportion of profits and wages because the wage-labour relation is not an exchange of equivalents.

From the above description of Marx’s theory, A exploits B when A appropriates surplus value produced by B’s labour and B receives less value in wages than the labour power he expends in producing a commodity. That is, since the value of a commodity issues from the labour that produced it, capitalist exploitation is “the appropriation of the unpaid labour of others” (Marx 1999: 262). It should be noted, however, that for Marx A and B are classes of people, the capitalists and the workers rather than mere individuals. As Richard J. Arneson aptly describes Marxist exploitation, it is “the appropriation by a
class of non-workers of surplus product of a class of workers” (Arneson 1981: 203). Marx utilizes these views about exploitation to criticize the structure and nature of capitalism, which in his view, forces B to transfer some of its labour value to A.

The charge of exploitation in Marx as described above denotes that workers do not enjoy all the fruits of their labour, or that the workers lose their rightful claim to the product of their labour or the value created by their labour. As G.A. Cohen points out, Marx’s view that workers should claim the value created from their labour sounds similar to libertarian self-ownership principle. This principle says that “each person enjoys over herself and power, full exclusive rights of control and use, and therefore owes no service or product to anyone else that she has not contracted to supply” (Cohen 1995: 12).\(^8\) Robert Nozick endorses this libertarian principle in his entitlement theory of justice putting forward a self-ownership argument that holds that since individuals own themselves, they also own their labour and therefore its products (Nozick 1974: 150 - 5).\(^9\) On this basis, taking away some value created by another’s labour suggests some form of injustice or wrongdoing. Cohen thus observes that “an appeal to self-ownership is latent in the standard Marxist condemnation of exploitation” (Cohen 1995: 12). This appeal to self-ownership underlies Marx’s various characterisations of exploitation as “theft”, “robbery” or “embezzlement”.\(^10\) Marx’s vampire metaphor describing capital as dead

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\(^8\) Cohen argues that Marx’s condemnation of exploitation endorses this principle, which is deeply inequalitarian affecting his Socialist agenda. See Chapter 5 pp. 116 - 143

\(^9\) Nozick (1974: 253 -62) views that the labour theory of value is false and consequently, Marx’s theory of exploitation (which relies on the labour theory of value) is false.

\(^10\) Marx uses these terms in Capital Vol. 1 to describe different ways in which a worker’s surplus value is seized.
labour that sucks the worker’s labour also appears to highlight more on the wrongness of unpaid labour (Marx 2013: 162).\textsuperscript{11}

There are two interpretations of Marx’s theory of exploitation. The first one is to think that the theory solely hinges on the view of appropriation of the unpaid labour of others. The second is that Marx’s theory takes into account background circumstances that affect the transaction such as those which make the workers offer their labour to the capitalists even when there is no fair compensation. Henry Laycock (1999) describes these interpretations as strains in Marxist understanding of labour-capital relations. The first view that exploitation means benefiting from another’s labour without due compensation is according to Laycock a mechanistic view that largely prevails (Laycock 1999: 121). The benefits that accrue to the exploiter derive from the workers’ labour by virtue of the wealth-based power that is exercised over the workers. The first view is common in the criticism of exchanges in which the party that contributes more in terms of labour power benefits less than the party which invests less labour. On this interpretation, it is easy to see why sweatshops are often exploitative. The factory owner in the Pacific Rim country example is in this sense exploiting the workers by profiting from the workers’ long hours of labour for a few pennies. We should note here that on this interpretation the unsafe conditions usually associated with sweatshop labour do not necessarily matter to the occurrence of exploitation. On this view, sweatshops owned or contracted by multinational corporations such as Nike are exploitative because they

\textsuperscript{11} Marx (2013: 162) uses the vampire metaphor describing capital as “dead labour which, vampire-like, lives only by sucking living labour, and lives the more, the more labour it sucks”. He states that capital furtively “sucks up the worker’s value creating power” (Ibid. 400) and transforms “the labourer into a crippled monstrosity” (Ibid. 251).
derive benefits from an inverse exchange of labour and wages with workers in developing countries such as Cambodia and Vietnam.

Marx’s theory of exploitation offers a good model for analysing some forms of exploitation. In particular, exploitation within specific types of relationships that characterise capitalism. However, his theory of exploitation as surplus transfer leaves out other exploitative transfers or exchanges that fall outside a wage-labour relationship such as within the family (Folbre 1982: 317). As stated earlier, Marx’s theory begins with an analysis of the commodity produced for the market. In other words, Marx builds his views of exploitation and capitalism from the analysis of the commodity. Without this commodity meant for the market, there is no exploitation because no labour is infused into a product. This means that Marx’s theory of exploitation is narrow, as it cannot account for exploitation outside the wage-labour relationship. As John Roemer (1996: 63) observes, the labour theory of value approach to exploitation is correct only in certain special and simple cases but the labour theory of value is unnecessary for a theory of exploitation. Cohen (1979: 338) similarly shows that “the relationship between the labour theory of value and the concept of exploitation is one of mutual irrelevance”. Laycock (1999: 121) notes similar difficulties with Marx’s capitalistic exploitation and argues that the theory is undermined by the confusion surrounding the notion of labour power and that it deserves to be rejected. While Marx’s theory can account for exploitation in cases such as the factory example, this theory will struggle to explain exploitation in the psychotherapist example because of the lack of the necessary labour-wage exchange. That is, it is hard to picture exploitation as the appropriation of surplus value that issues from labour power without compensation in this example.
Marx’s insistence on a specific type of exchange therefore leaves out other forms of transactions or relationships. For instance, other interactions that fall outside the typical wage-labour relationship such as women who work in the home are not considered exploitative because their labour is not recognised even though it plays an important role in the general scheme of things in capitalism. Moreover, as Will Kymlicka (2002: 182) observes, by focusing on surplus transfer Marx’s critique of capitalism fails to address the primary injustice of capitalism, which is the unequal access to the means of production, and which also affects other groups that exist outside the wage-labour relationship. For example, “dis-enfranchised women and the unemployed, and wage-workers in our society suffer from this injustice, while the capitalists benefit from it” (Kymlicka 2002: 182). Further, Marx’s view here may suggest that those who fall outside this relationship such as children, the unemployed and the infirm are exploiters because they are benefiting from a surplus created by other people’s labour (Kymlicka 2002: 182). As Jonathan Wolff (2016: 151) similarly summarizes this Marxist view, “those who receive rewards in the market without putting in a proportional level of work are exploiters”. Mariarosa Dalla Costa and Selma James make a related observation that Marx’s view suggests that women and others falling outside the wage-labour relationship may only suffer other forms of injustice, such as male chauvinism or oppression, but they are not exploited insofar as they are outside the production relationship (Costa & James 1971: 6). In Costa and James’ view, this is because Marx fails to see domestic work as “a masked form of productive labour” (1971: 6). Wolff also admits this inability of Marx’s view of exploitation built on the idea of surplus value to account for exploitation. However, Wolff shows that Marx’s definition of exploitation only applies to a specific model (capitalist relations of production) and trying to apply it outside this model may
lead us into error (Wolff 1999: 109). As it will argued later on, Wolff views that other forms of exploitation occur but those forms cannot be captured by the surplus value definition of exploitation (Wolff 1985: 89).

Noting the problems with the pillars of Marx’s theory of exploitation, namely the labour theory of value and the idea of surplus value, we should consider a different interpretation of Marx’s theory or the second strain in Laycock’s words. While holding unequal exchange central to the occurrence of exploitation, we need a theory that can account for exploitation in exchanges outside the wage-labour relation, and perhaps also one that considers background injustices. We should therefore abandon Marx’s idea of exploitation as appropriation of surplus value because it is narrow. As Roemer (1996: 39) points out, exploitation can exist where agents trade only produced goods not only when agents sell their labour power to other agents. Roemer (2017: 11) argues “it is not precisely true that a labour market is necessary for exploitation: a rental market for capital, at which the wealthy peasants can rent their capital to the poorer ones, will suffice to bring about exploitation”. Differential ownership of the means of production and a competitive market for finished goods are sufficient to generate exploitation. For example, Roemer demonstrates that the occurrence of exploitation in a subsistence economy or a credit market does not need a labour market. A credit market is in fact functionally equivalent to a labour market with respect to generating classes and exploitation. Property relations not labour exchange or labour value should be the central concern of Marx’s theory.

The next section therefore expounds Roemer’s theory suggesting, like Kymlicka, that a theory of exploitation should focus on the broader pattern of distribution in which transfers of resources occur. Laycock (1999: 129) similarly holds that “shifting the attention away from the idea of a specific economic mechanism of surplus transfer,
towards broader questions of distributive justice or property rights in the means of production” is a move in the right direction despite its own limitations. In Roemer’s view, focusing on property relations captures Marx’s ultimate goal in his critique of capitalism, which is to abolish exploitation by eliminating property relations in the means of production.\textsuperscript{12}

Roemer’s Theory of Exploitation

John Roemer’s theory of exploitation attempts to recast the Marxist theory of exploitation as a theory of distributive justice. Roemer suggests his property-relations theory as a more normatively adequate approach to exploitation than Marx’s approach founded on the labour theory of value (Roemer 1996: 16). Roemer challenges the classical Marxist identification of production as the essential locus of capitalist exploitation. Roemer defines exploitation as a transfer of labour time particularly caused by unequal access to the means of production rather than Marx’s definition of exploitation in terms of surplus transfer. Put differently, Roemer arrives at conclusions that run counter to the Marxian thought that the labour market is crucial to exploitation and that surplus is extracted at the point of production (Petersen 1984: 326).

In Roemer’s view, the material basis for exploitation as unequal exchange of labour and wages lies in the differential ownership of productive assets which give rise to his term property relations (Roemer 1996: 38). For Roemer, inequalities in the distribution of property rights in the means of production yields exploitation. He argues that exploitation should be “conceived as the distributional consequences of an unjust

\textsuperscript{12}Friedrich Engels emphasizes this goal for Marx arguing, “This exploitation is the basic evil which the social revolution wants to abolish by abolishing the capitalist mode of production” (Engels 1995: 15).
inequality in the distribution of productive assets and resources” (Roemer 1996: 96). Roemer’s conception of exploitation is therefore based on a principle of distributive justice since he views exploitation as more than an unequal exchange between labour time and goods. In other words, exploitation is an unequal exchange or distribution because of an initial unjust distribution of productive assets.

In Roemer’s view, the property-relations definition of exploitation attempts to make clear what Marx’s view of exploitation fails to clarify, namely the conditions that enable the occurrence of such exploitation hence its injustice. Roemer argues that exploitation is not in itself a fundamental theory of (in) justice, if by exploitation we mean the extraction of surplus labour at the point of production. Roemer observes, “exploitation can exist even when no agent sells labour power to any agent; it can exist when agents trade only produced commodities” (Roemer 1996: 39, 62). In other words, exploitation can occur, for example, in a market economy without any wage relations or where direct wage relations are absent, such as in international economic relations (Przeworski 1982: 291). Roemer is convinced that “the property relations definition is superior to the surplus labour definition, as its verdict on exploitation conforms more to the intuitive judgements of Marxists” (Roemer 1996: 25 fn. 8). According to Roemer, “the property-relations approach to exploitation is more general and it resolves many classical problems that have inflicted the labour theory of value approach to exploitation” (Roemer 1996: 16). In his view, we require a deeper theory of exploitation that gives priority to property relations to perceive the injustice of exploitation beyond the wage-labour relations employed in Marx’s theory of exploitation.

Roemer’s property-relations definition of exploitation employs a game-theoretical illustration as a test for exploitation. According to Roemer, “exploitation involves the
possibility of a better alternative” (Roemer 1996: 19). In other words, exploitation is on Roemer’s account “revealed by appealing to a hypothetical state under which an equal distribution of alienable assets are realized” (De Caro 2006). That is, Roemer’s property relations theory requires first a state of redistribution termed as the redistribution condition. In the state of redistribution, B gains alienable assets and A loses alienable assets. Roemer also formulates a ‘withdrawal test’ which holds that whether a coalition of agents is capitalistically exploited or not depends on whether the coalition would be better off in a hypothetically feasible situation of distributive equality. This is a situation where a coalition withdraws its “per capita share of society’s alienable, non-human property, and its own inalienable assets” (Roemer 1996: 24). Contrariwise, the exploiting class would do worse if it withdrew with its alienable assets received in this redistribution. The party that gains in terms of alienable assets in the redistribution is said to have been exploited under its initial economic conditions, while the party that turns out worse off, in terms of assets received, exploited the other under the initial distribution. To determine whether a coalition is exploited or exploiting “we compare how well the coalition is faring at the present distribution of income and labour with how well it would have fared under a certain alternative distribution of property” (Roemer 1996: 40). Roemer’s definition of exploitation in terms of counterfactual alternatives to property relations in society also helps him to model other forms of exploitation other than capitalist exploitation. In fact, Roemer’s general theory of exploitation is an attempt to put forward a theory that encompass feudal, capitalist and socialist forms of exploitation, which in essence “runs counter to the received Marxian wisdom, namely the crucial role of the labour market” (Petersen 1984: 326). Note that, the withdraw rule requires some specification for each type of exploitation (Roemer 1982a: 200 – 202).
The view above suggests that A exploits B when B would do better by withdrawing with his per capita share of his productive assets and work alone after redistribution while A would do worse by withdrawing with her per capita share of the means of production (Roemer 1982a: 202; 1982b: 94 - 97). In other words, B would do better under a hypothetical alternative of equal distribution of productive assets. This implies that under the current distribution, A benefits as a direct result of B’s labour or that A’s welfare causally depends on some form of deprivation of B. However, Roemer argues that a third condition for exploitation is that the relationship between A and B is that of dominance. This dominance enables A to prevent B from realizing the alternative (Roemer 1982a: 195). For Roemer, B is exploited when he or she is denied equal access to resources and dominated even though he does not elaborate what constitutes domination. Roemer views dominance as a condition “necessary to rule out certain bizarre examples” to his core definition of exploitation (Ibid). For example, using the withdraw rule, an invalid supported by the society at a very high cost will have capitalistically exploited the society, because the invalid will turn out worse off if he or she withdrew with his or her share of resources and society will be better off (Ibid., 237). Roemer holds that this is not a case of exploitation since the invalid does not stand in a relationship of dominance to the society. Thus, the dominance condition is for Roemer only strategic to sort out bizarre cases because the property relations and withdraw conditions, taken together, are satisfactory for a definition of exploitation (Ibid. 195).

Roemer holds that his view of exploitation, defined in terms of property relations, establishes a clear causal relationship between B’s situation, say of poverty, and A’s affluence in exploitative circumstances. In Roemer’s view, the injustice of exploitation is the product of the large inequality in access to the means of production or the unequal
distribution of productive assets and resources. Moreover, whether exploitation is bad depends on it being a consequence of the unjust unequal distribution in the means of production (Roemer 1988: 130). By Roemer’s account, exploitation is the most common consequence of distributive injustice. That is, exploitation is one of the common results of distributive injustice under capitalism, but it has no ethical interest apart from the inequality.

Fundamentally, the main issue for Roemer is the moral legitimacy of private property in the means of production (Roemer 1988: 3). This is clear in his argument that “the injustice of an exploitative allocation depends upon the injustice of the initial distribution” (Roemer 1988: 57). In other words, exploitation is unjust if it rests on an original unequal distribution of productive assets. The thought here is that the exploited, for instance the villagers in the factory example, are disadvantaged because of the inequalities that derive either from the original accumulation that is characterised by ‘plunder and robbery’, or from morally arbitrary factors such as underserved “luck” such as “capital stock inheritance”, or socially determined saving preferences and skills (Roemer 1988: 58 – 69). Richard Arneson (1981: 208) concurs with Roemer that such workers are exploited because they suffer from undeserved inequalities in either wealth or talent which enable others to take advantage of them. This means surplus transfer is only wrong when it arises as a result of unjust unequal distribution of capital but otherwise legitimate if it arises independent of, or if it is used to compensate for undeserved differences in wealth or natural talents. Jonathan Wolff in his interpretation of Marx makes a similar observation arguing that Marx’s idea of exploitation “is limited to relations of economic exchange under conditions where there is no justified rights to capital; that is, to earn money purely in virtue of one’s property holdings” (Wolff 1999:
It is on this basis that Marx view the capitalist as benefiting on the back of the workers without much effort.

While Roemer’s theory aims to recast the Marxist theory of exploitation as a theory of distributive justice, his view is inadequate. Roemer’s theory fails to account for exploitation that occurs when holdings are justly acquired as it only focuses on exploitation that occurs because of unjust property holdings. That is, Roemer’s suggestion of unjustly founded asset inequalities as a necessary condition for exploitation is not entirely true because any form of asset inequality can lead into a transaction characterised by asymmetric relations that may yield exploitation. In short, the condition of unjust accumulation is restrictive (Warren 2015: 301). Robert Veneziani also argues that “even if differential ownership of productive assets arises in morally unobjectionable ways, it does not mean that the wage relation is not exploitative” (Veneziani 2013: 539). Exploitation can occur even where inequalities are not a result of unjust distribution because any such inequality translates into inequalities such as economic power. Any inequalities in productive assets or ownership of means of production, regardless of their source, gives leverage over those who do not own such means of production. For instance, exploitative conditions necessary for the transfer of labour will equally obtain where A’s leverage results from B’s preferences or wastefulness of her initial holdings that were equal to A’s. Ants that toiled through the summer to save and prepare for winter can justly accumulate resources that can yield inequality and therefore leverage to offer exploitative conditions to a grasshopper that spent its summer making music (Wolff 1999: 116). This Aesop’s fable of the grasshopper and the ants illustrates that even where the original unequal distribution arose in a just way such as through differences in preferences or choices, exploitation can still occur for conditions of inequality obtain between the
interactors. Moreover, Roemer’s purely distributive approach “ignores some arguably salient features of exploitation such as notions of power or force” which are at play where other forms inequalities enable exploitation (Veneziani 2013: 537). Jeffrey Reiman (1990) similarly questions the purely distributive definition of exploitation and argues that the definition of exploitation requires a notion of power or dominance.

Another challenge to Roemer’s insistence on looking at exploitation as rooted in differential control or ownership of productive assets is that it does not make it as general a theory for exploitation as he intends. As Leslie Jacobs argues, Roemer’s theory seems insufficiently general because it is insensitive to non-class forms of exploitation, such as “job exploitation” (Van Parijs 1986) or “gender disadvantage” (Jacobs 1996). Van Parijs insists that exploitation (status exploitation) can result from inequalities in income, for example, “attributable to neither chance nor choice nor to inequalities in wealth or skills” (Van Parijs 1986: 462). Similarly, gender and race can give rise to inequalities that are as objectionable as inequalities deriving from inequalities in productive assets. This is because race or gender sometimes entails inequalities that can be taken advantage of despite not being inequalities deriving from initial unjust distributions. For example, male domination can enable men to appropriate surplus labour in the form of domestic services, and racial domination may enable exploitation regardless of economic class. Khalid Nadvi also notes that Roemer’s theory never mentions the existence or possibility of race or gender exploitation yet differential endowments of human assets can lead to exploitation (Nadvi 1985: 1482). The exploitation of female sweatshop labour in developing countries such Bangladesh and Vietnam, and low pay for black miners in South African mines compared to their white counterparts under Apartheid exemplify exploitation that is not merely a product of distributive inequality of productive assets.
Other instances of such exploitation not arising from initial unjust distributions manifest in how churches have the ability to exploit believers, and how a state can use military violence to appropriate part of the surplus. In short, it is plausible to argue that A can appropriate the social surplus through other mechanisms that are not necessarily asset-based as Roemer suggests. This means Roemer’s view of exploitation has restrictive conditions that limit its capacity to account for other forms of exploitation outside exchanges characterised by inequalities founded on unjust accumulation.

Roemer’s distribution of productive assets condition limits us to defining exploitation in purely distributive terms hence fails to account for other forms of exploitation. Moreover, as earlier observed, asset inequalities are only necessary but not sufficient for the occurrence of exploitation. Therefore, we need to look beyond the theories of exploitation that focus on the structure of the interaction between agents perhaps to those that reveal specific features of exploitative interactions and the outcome. Nevertheless, Roemer’s view of exploitation as theory of distributive justice points us in the right direction. As Veneziani (2013: 539) commends, “Roemer’s theory is an important and insightful contribution, and it sets an unsurpassed standard of rigour in exploitation theory”.

Steiner’s Liberal Theory of Exploitation

Hillel Steiner’s theory is markedly the first theory of exploitation in the liberal tradition grounding its analysis in the liberal values of personal rights, liberties and choices (Otubusin 1987: 64). Steiner’s liberal theory of exploitation thus moves us away from the Marxist framework. Steiner defines exploitation as “a mutually self-interested, consensual exchange in which what one party transfers is - but need not have been - of
greater value than what is received in return” (Steiner 1987: 132). For Steiner, an exploitative transaction is essentially a trilateral relation where “at least three persons, or sets of persons, are needed” (Steiner 1984: 233). According to Steiner, exploitation is a voluntary transaction in which A benefits by exchanging with B an item of a transaction at a lower price than which C was prepared to offer for the item but could not because of some rights violation (Steiner 1987: 135). Steiner’s view of exploitation can be understood as a form of injustice involving violations of moral rights (Ferguson and Steiner 2018). Thus, an injustice – an exploitation – occurs when A exchanges with B items of unequal value because C’s rights to transact with B were violated. A exploits B when an unequal but voluntary exchange takes place but B receives less than what he would receive from C because C was not able to make an offer due to some rights violation. By way of illustration, Bob is exploited when he sells some object or service to Alice at $1.50 when he could have sold it to Carol for $2 had Carol not been robbed on her way to the auction or had Carol not been forcibly prevented from attending the auction (Ferguson & Steiner 2018). In other words, an unequal exchange occurs between Bob and Alice because of Carol’s exclusion from participating in an auction. On this understanding, the exploitation of B is a consequence of the violation of C’s rights and what A gains arises from an act of interfering with C’s valid rights. In short, exploitation involves A benefiting by taking advantage of B’s failure to transact with C because some rights violation has occurred. Steven Walt aptly summarizes Steiner’s definition of exploitation as “an unnecessary and voluntary exchange of unequally valued items resulting from the violation of the rights of at least one other party” (Walt 1984: 242). Steiner’s view thus requires “a prior injustice which consists in the violation of a relevant person’s rights – the expolitee’s or some third party” (Ferguson and Steiner 2018). On
Steiner’s account then, the factory example is not a case of exploitation unless the worker’s transaction with the factory owner results from a failure to transact on better terms with another employer (C) because of some interference through some violation of rights such as employer C losing his or her factory to a fire set by some arsonist.

Steiner’s view that exploitation involves a voluntary exchange of goods of unequal value is similar to the two preceding theories. The transaction must be voluntary because an involuntary exchange amounts to theft (Steiner 1984: 228). As Steiner illustrates, when A unilaterally takes B’s expensive watch without B’s consent it amounts to theft even when A leaves something for B. Secondly, exploitation consists in an exchange of goods. That is, goods must move in both directions because if an exchange does not occur, then it is counterintuitive to call it exploitative (Steiner 1984: 226). Unilateral transfers such as theft and donations are not cases of exploitation but perhaps involve some forms of abuse or oppression. Thirdly, exploitative transactions are unfair exchanges because the items exchanged are not of equal value (Steiner 1984: 226). These conditions for exploitation are agreeable and seem to be present in other theories.

However, Steiner’s inclusion of rights violations as a necessary condition for exploitation makes his theory narrow. As explained before, Steiner insists that rights violations distinguishes exploitation from other forms of transfers such as exchange, theft, benefit, and donation (Steiner 1984: 225 – 226). First, Steiner’s rights violation condition that makes exploitation a trilateral relationship hinders his theory from accounting for other forms of exploitation. Steiner insists that even slavery as a form of exploitation is a trilateral relation where "it is the master's forcible exclusion of all other persons from engaging in commerce with the slave that creates the circumstance of the slave's exploitation by the master" (Steiner 1984: 233). This condition makes his theory
restrictive as it discounts the occurrence of exploitation where there are no third parties as seen in the factory and stranded motorist examples. Secondly, on his view, unequal exchanges that do not result from a violation of rights do not count as cases of exploitation. Voluntary and unequal exchanges can be exploitative without the violation of property rights or the presence of a third party. As Walt argues, we can illustrate the occurrence of exploitation even in the absence of a violation of rights (Walt 1984: 242 – 3). For instance, John and Frank produce art works at the same value of 3X per painting. Through a natural mishap, John loses the use of his fingers and can no longer paint. Frank enjoys the monopoly that results at sell his paints for 5X. Frank exchanges his painting (actual value is 3X) with Joseph’s shoe of 5x value (Otubusin 1987: 79). Clearly, Frank exploits Joseph because if John were still painting, Frank would have not made a surplus of 2X. However, this exploitation is not a consequence of a rights violation. Exploitation occurs because the exchange involves items of unequal value not because a violation of John’s rights. Similarly, in the stranded motorist example, the tow-truck driver benefits from a voluntary and unequal exchange by taking advantage of the motorist without involving a third party and the occurrence of some rights violations. Rights violations are also not visible in the psychotherapy, surrogacy and clinical trials examples yet many people regard them as exploitative.

If these examples are exploitative even when rights violations have not occurred, it means that rights violations are neither a necessary nor a sufficient condition for the occurrence of exploitation (Miller 1987: 153). David Miller argues that rights violations are not sufficient because “rights violations can occur, and yet all participants in the market may be left with sufficient partners to make non-exploitative exchanges” (Miller 1987: 153). Rights violations are also “not necessary because it appears that other types
of intervention in the market may create circumstances of exploitation” (Ibid). That is, other possible interventions apart from rights violations can exclude C from transacting with B and yield the same result whereby B is exploited. For example, the lack of other factories in the Pacific Rim example could be because of a simple business decision on the part of other factory owners who do not want to invest in the region. This example does not seem to involve rights violations but the transaction in the example is still exploitative. Aesop’s fable of the grasshopper and the ants mentioned earlier also illustrates that exploitation can occur without rights violations. We can therefore dismiss rights violations as neither both a necessary nor a sufficient condition for exploitation. As earlier illustrated in Roemer’s theory, the way in which people find themselves in a position that is open to exploitation is irrelevant to a charge of exploitation. The examples also demonstrate that exploitation need not involve trilateral relations and Steiner fails to show how exploitation cannot be a quadrilateral or bilateral exploitation (Walt 1984: 245 – 6; Miller 1987: 152). In short, there seem to be no good reason why the occurrence of exploitation should depend on the existence of a third party and rights violation. In addition, Steiner’s analysis is too narrowly historical in focus as it is premised on previous rights-violation as the source of exploitation (Miller 1987: 155). The rights violation condition would make all unequal exchanges exploitative because property rights may involve the problem of rights violation. As Walt points out, “most if not all titles have far from clean causal ancestry” (Walt 1984: 242). In other words, most titles are unjustly acquired and therefore may invalidate all unequal bilateral exchanges. Walt alludes to Marx’s statement describing property or capital accumulation that “in actual history it is notorious that conquest, enslavement, robbery, murder, briefly force, play the great part” (Marx 2013: 502). Thus, since exploitation involves a prior injustice in the form of
violation of moral rights, most transactions would qualify as exploitative because most titles do not have a clean background which would make exploitation omnipresent.

Miller’s Equilibrium Theory of Exploitation

In his theory of market exploitation, David Miller comments on both Roemer’s and Steiner’s theories of exploitation. Miller argues that Steiner’s rights analysis is too narrowly historical in focus as all exploitation stems from previous rights-violations. As earlier pointed out, Miller argues that that there is no reason to tie exploitation to one particular feature of the historical background to a current exchange, as Steiner’s theory suggests. According to Miller, this approach overlooks the fact that even when individuals begin with a fair (equal) allocation of resources some participants may gain advantages as the market evolves “that enable them to strike bargains that are quite as disadvantageous to their contractual partners as the bargains that would be struck following rights violations” (Miller 1989: 186). On the other hand, he argues that Roemer’s theory is too broad and too indifferent to history since all that matters is whether some coalition could now be better off by redistributing assets (Miller 1987: 155). Miller argues that the basic flaw with counterfactual accounts of exploitation such as Roemer’s is that they disregard the processes whereby the final distribution has come about. In his view, since all that matters is whether a coalition could be better off by the redistribution of assets, “it may therefore include as exploitative resource-distributions that have risen in quite unobjectionable ways, while at the same time excluding other states of affairs where groups of producers are deprived, on the grounds that there is no withdrawal scenario under which particular groups would do better” (Miller 1989: 185). However, in Roemer’s defense, I think Miller is mistaken to criticist Roemer’s view for being
indifferent to history because Roemer connects exploitation to how property distribution arose. In other words, only focusing on Roemer’s hypothetical withdrawal test is a misinterpretation of the theory.

Based on these observations about Steiner’s and Roemer’s approaches, Miller points out that “exploitation does not refer simply to the distributive results of the transaction but to the fact that the exploiting agent had available an alternative course of action whose outcome would have been close to the relevant benchmark” (Miller 1987: 161). This suggests that exploitation should not be reduced to unfairness in initial endowments even though that may be a source of exploitation. Further to that, exploitation should not be reduced to injustice in the final distribution as an unequal distribution can occur without exploitation occurring. Miller argues that, “exploitation is a particularly repugnant form of injustice. It implies not only the final distribution of resources as between exploiter and exploited is unjust, but that this imbalance arose through the exploiter’s use of power of some kind: both the process and the outcome are objectionable. Thus, a theory of exploitation links together the issue of market power with that of the final distribution of resources” (Miller 1989: 175).

According to Miller (1989: 189), exploitative transactions are exchanges made at non-equilibrium prices, due to asymmetries of information or of bargaining power. Miller argues that exploitation occurs when one uses special advantages to deflect markets away from equilibrium – defined as exchanges involving equivalent value (Miller 1989: 175). In other words, exploitation occurs when those favoured by the asymmetries of information and bargaining power “use their position to extract a surplus return from those who have no alternative but to deal with them” (Miller 1989: 191). By definition, an equilibrium price is the price that one would pay in a perfectly competitive market
where all existing holdings are justly possessed (Miller 1989: 187). Miller acknowledges that a perfectly competitive market does not exist and that the question of just possessions is highly controversial. In general, Miller holds that exploitative transactions have two essential conditions: “the terms of the transaction must deviate in the exploiter’s favour from the terms that would obtain at a (suitably defined) competitive equilibrium”; and “the deviation must be brought about by some advantage that the exploiter already enjoys, whether of information or of bargaining power” (Miller 1989: 193). In other words, according to Miller an exploitative transaction is “typically more advantageous to the exploiting party and less advantageous to the exploited than some benchmark transaction which we use (tacitly or explicitly) as a point of reference” (Miller 1989: 186). In addition, the actual transaction “must have come about through some special advantage which the exploiter enjoys, upon which he capitalizes to induce the exploited to engage in this relatively less beneficial exchange” (Miller 1989: 186).

According to Miller, the first condition shows why exploitation always involves injustice and the second condition shows what is distinctive about exploitation as opposed to making mere windfall gains through the market. These conditions capture his view that “both the terms of the exchange and the causal history leading up to it are necessary ingredients in identifying a case of exploitation” (Miller 1989: 186–7). In his view, to identify the first condition, we need to identify an equilibrium price, which is the ideal price in a perfectly competitive market.¹³

Miller argues that exchange at non-equilibrium prices is a necessary but not a sufficient condition for exploitation because in some circumstances exchanges at above

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¹³ Miller (1987: 156 fn.6) agrees with Goodin (1987) that the idea of exploitation trades upon an idea of “normality” which straddles “what usually occurs in fact” and “what morally ought to occur”.
or below the equilibrium prices are not exploitative (Miller 1987: 157). For Miller, exploitation consists in paying a price above or below the equilibrium price because the exploiter has the ability to bring about the exchange, which actually occurs by virtue of certain factors. Miller thinks that A can exploit B when A sells an item to B at a price above the equilibrium price if A knows that the price of the item is X and B mistakenly believes it to be Y (when Y is greater than X). Conversely, A can exploit B by buying at below the equilibrium price. In other words, exploitation requires an asymmetry between the parties to an exchange caused by influential factors that Miller categorises into asymmetries of information and asymmetries in bargaining power (Miller 1987: 158). The argument is that exploitation occurs when the exploiter uses their position with reference to these factors, to extract benefits from those who have no alternative but to deal with them (Miller 1989: 191). A must in some sense be better placed than B for exploitation to occur and, in Miller’s view, A is better placed either by information or bargaining power. For example, an antiques dealer exploits an old woman if the dealer buys a picture from her at a price she thinks is good for her Victorian rubbish when the dealer knows that the picture is a probable Renoir (Miller 1987: 158). In the event that the buyer has no idea about the probable Renoir, then he does not exploit the old woman even when it may seem that the woman is hard done by when the real value is revealed. The asymmetrical information leads to exploitation in this case because the dealer has the knowledge and capacity, which is not available to the old woman.

14 Miller (1987: 157–8) states that there are three circumstances of this sort. First when there is genuine ignorance on both sides of the transaction. That is, neither A nor B knows the worth of the item. If it turns out that A gains from the deal when the equilibrium price is revealed, A is not an exploiter. Second, an exchange is not exploitative if both parties value the good at the price it is sold. Third, if a person who loses out in comparison to the equilibrium price is willing to lose out.
Similarly, asymmetries in bargaining power leads to exploitation because A has an advantage over B. For example, when there is a short supply of goods that are in demand or when there is a monopoly over particular resources, the party owning the goods or resources has an advantage over those who do not. As seen earlier from Roemer, inequalities of productive assets, for instance, lead into asymmetrical relations of power that control over productive assets. Control over such assets gives bargaining power to the exploiting party rather than the exploitee. That is, A has an advantage over B by virtue of the control A has over goods or assets that B does not have but needs, in addition to that, there are no alternatives available to B. Thus, the researchers in the Tuskegee trial exploited the subjects because they had control over resources that the subjects needed and because the subjects had no alternative way to get those resources.

Miller’s view, which says that exploitation involves some form of asymmetry, manifests in our five putative examples. In each example, one party enjoys an advantage with which to take advantage of their interactor in the transaction. The tow truck driver and the factory owner, for example, use their superior bargaining power to make the stranded motorist or the workers agree to terms that are not in their favour and that the exploited would rather transact with the tow truck driver or the factory owner rather than do nothing at all. In the psychotherapy and Tuskegee trial examples, the exploiters use their advantage based on both bargaining power and information as their positions also denote some form of knowledge and therefore advantage to induce the exploited into a transaction that is less beneficial.

Miller holds that his view of exploitation allows us to understand why capitalism is characteristically exploitative, whereas under market socialism, exploitation would only occur in specific circumstances. According to Miller, “market socialism avoids the
systematic exploitation that characterizes capitalism” because capital is treated as a social asset allocated to cooperatives by investment agencies unlike the monopolies of resources that exist in capitalism which are a source of exploitation (Miller 1989: 197).

In summary, Miller’s theory suggests that attaining equilibrium prices derived in a competitive market indicates that there is no exploitation in exchanges. This position follows from the idea that exploitation is the product of differences in bargaining strength which are absent in a competitive market. That is, Miller holds that in a competitive market, prices are set fairly by the market and such prices are the appropriate norm as a benchmark for determining the occurrence of exploitation since no one has more bargaining power to use to their advantage to dictate prices. However, this view of exploitation is premised on the contested idea that a competitive market can reach equilibrium. As Jonathan Wolff points out, the possibility of attaining equilibrium prices so defined is doubtful because the very nature of a competitive market precludes it from the sort of equilibrium that would eliminate exploitation. Wolff argues that the idea of a competitive market reaching a state of equilibrium is self-contradictory (Wolff 2002: 87). Wolff uses some Marxian explanation to illustrate that in a competitive economy such as capitalism reaching equilibrium is impossible because both the supply of labour is expanding and there are labour-saving machines or innovations that disturb wages when they approach equilibrium. For instance, in the factory, surrogacy, and Tuskegee trial examples, a competitive market is near impossible because of the number of potential exploitees, those willing to take on the contract. In other words, the availability of a surplus population available to transact with the exploiter gives bargaining advantage to the exploiter comparable to a surplus population described as “a disposable industrial reserve army” in Marx’s analysis (Marx 2013: 440).
Wolff also shows that the equilibrium price fails to provide the right exploitation benchmark as it cannot “discriminate morally pertinent from morally arbitrary determinants of price” (Wolff 2002: 89). That is, since the equilibrium price is a just price, it appears to treat price-determining factors such as one’s possession of rare skills and enormous effort in performance work as morally on par and this is implausible since in some cases rare skill does not justify high income. This means that equilibrium prices are not a morally neutral baseline for determining exploitation. Additionally, the idea of equilibrium price as the baseline for exploitation seems compatible with violations of his view about basic rights/needs (Pearson, 2011).

Wertheimer’s Account of Exploitation

In his book *Exploitation*, Alan Wertheimer provides a comprehensive analysis of the notion of exploitation. For Wertheimer, exploitation occurs when “A takes unfair advantage of B” to benefit (Wertheimer 1996: 207). Central to exploitation is the benefit or advantage that accrues to A since “A cannot exploit or take advantage of B unless A obtains some advantage through the transaction with B” (Wertheimer 1996: 208). Secondly, the occurrence of exploitation requires that the terms or substance of a transaction be unfair (Wertheimer 1996: 208). Wertheimer’s theory of exploitation, like David Miller’s theory, appeals to a fair hypothetical market price derived in a competitive market to determine the occurrence of exploitation. In other words, both Wertheimer and Miller view that an exchange is exploitative if and only if an exchange occurs at prices that deflect away from the counterfactual price.

According to Wertheimer, a hypothetical market price generated by a competitive market provides “a plausible conception of a fair transaction at least for a certain range
of cases” (Wertheimer 1996: 230). In his view, whether a transaction is unfair depends on a “fair market value” which is a counterfactual or hypothetical notion. A fair market price represents “the price that an informed and unpressured seller would receive from an informed and unpressured buyer if the object of the transaction were sold on the market” (Wertheimer 1996: 230). This counterfactual price is called a reservation price: “the minimum threshold that the party is prepared to accept for entering into an agreement” (Wertheimer 1996: 211). This understanding of a fair market price is also comparable to Miller’s equilibrium price, which is a price unaffected by special advantages due to asymmetries of information or bargaining power. For Wertheimer, this fair price obtains when an exchange occurs where both parties are informed and not pressured. These conditions for a price are comparable to Miller’s fair price which obtains when no asymmetries of information and bargaining power create special advantages to deflect the markets away from equilibrium. Thus, for both Wertheimer and Miller, exploitation consists in paying for something at a price that does not adhere to some standard hypothetical market price. In other words, no exploitation occurs when fair prices obtain. In the Pacific Rim factory example, for instance, the factory owner exploits the workers because the owner purchases the services of the workers at a lower price than the price for the workers’ labour that would obtain at a competitive market where the workers’ labour would be purchased. The workers are exploited insofar as the price for their labour is a price that they are not prepared to accept if they were informed and not pressured. This description of the example suggests that the workers are pressured by their life circumstances to transact with the factory owner.

According to Wertheimer, a competitive market is the foundation for the fairness of the hypothetical market price. In his view, a hypothetical market price is fair because
it “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” (Wertheimer 1996: 232). This hypothetical market price therefore serves as the
normative baseline with which to measure the occurrence of exploitation. By way of
illustration using the *stranded motorist* example, it means that were other tow truck
drivers present to compete with the greedy driver to transact with the stranded motorist,
no one would take advantage of the motorist in the way that the tow truck driver in the
example does. In other words, the presence of other tow truck drivers would make the
tow truck driver ask a fair price for towing if the driver insists to transact with the motorist
who is informed (say about the availability of other options) and is not under pressure to
transact with the greedy driver. In other words, a hypothetical market price obtains
because the availability of other tow truck drivers creates a competitive market for towing
services. The same also holds for the other examples in which A has monopoly because
B has no other transactors. A’s position enables her to take advantage of B but this
position would be lost as soon as that monopoly is lost. That is, A loses her ability to
transact with B on exploitative terms when there are other potential transactors.
Wertheimer’s point then is that a fully competitive market is attractive and fair because
“no one can choose to transact at anything but the market price” (Wertheimer 1996: 233).
This implies that a competitive market price is a standard price and is non-exploitative
“for neither party takes unfair advantage of the other party” (Wertheimer 1996: 232).
However, this price is not necessarily a just price. Wertheimer states that this hypothetical
market price “does not assume that the outcome of non-exploitative relations are just, tout

15 Wertheimer (1996: 40) uses a similar example of a famous maritime case, *The Port Caledonia and the Anna* to illustrate this point. A vessel in difficulty asked for assistance from a nearby tug but later refused to uphold an agreement of £1000. It is argued that the Anna used its monopoly position to force such an agreement, which could not have been possible if there were other competing tugs.
court” (1996: 233). B might still suffer some misfortune or injustice. The hypothetical market price only reflects a price at which exploitation does not occur, and a price at which the distribution of the social surplus is fair.

Not everyone, for different reasons, accepts Wertheimer’s theory of exploitation despite it being one of the most comprehensive theories. Wertheimer’s definition of exploitation is, for example, viewed as too conservative because in his view transactions are non-exploitative as long as they adhere to a convention, namely, paying the standard price for a given object or service in a competitive market (Sample 2003: 23). However, as much as paying the standard price may be regarded as fair, for example by law, as expressed by the doctrine of unconscionable contracts, it does not mean that the prices are genuinely fair and non-exploitative. As Sample (2003: 24) argues, competitive market prices are set by demand and supply which may be influenced by monopolies of resources. In other words, if exploitation essentially means paying a non-standard price, then we lack the ability to explain intuitively exploitative cases that occur when a standard price is paid (Sample 2003: 23). The Pacific Rim factory example illustrates this point that there is a competitive market for labour because there exist other offers albeit not as good as the factory offer in the example. If this interpretation of Wertheimer is correct, then the factory offer is not exploitative because a competitive market generates the offer and is therefore a fair price. Evidently, the existence of more labourers than the employers or capitalists need makes the market price for labour low. Wertheimer’s account may suggest that the factory offers a competitive price in the context of the other available jobs that are offering less than the $2 offered by the factory making the exchange non-exploitative. Sample’s objection to Wertheimer’s account illuminates the significance of the background conditions such as poverty in an exploitative transaction. I argue that the
transaction is still exploitative even though the factory wage is better than the existing average wage of $1. Despite being a better offer, the factory wage is exploitative because the factory’s wage nonetheless results from taking advantage of worker’s situation. Employing an argument suggested by Robert Goodin, the factory owner exploits the workers because he benefits by taking advantage in a situation where advantage taking is inappropriate hence not permissible, for example, where there is disproportionate bargaining power or where one party suffers some grave misfortune (Goodin 1987: 186).

Sample’s observations about Wertheimer’s theory are insightful as they point to other worrying features of exploitative transactions that may ensue even where the fairness of the price is determined by a competitive market. On Sample’s view, B in the examples is exploited because under the circumstances of the transaction, taking advantage signifies a failure “to respect a person” when one takes advantage of an injustice done to or suffered by another (Sample 2003: 57). Sample’s theory of exploitation as degradation may at this point seem to put into question all transactions involving persons affected by conditions that possibly affect a transaction such as background injustices. This may imply that business operations in the developing countries are likely exploitative because certain conditions such as injustices affect the workers. However, Wertheimer has a solution to this objection to his theory which lies in making a “distinction between taking advantage of unfairness (misfortune), and taking unfair advantage of unfairness” (Wertheimer 1996: 298). In his view, it might be detestable to profit by “charging exorbitant prices for materials to those whose homes have suffered a natural disaster - but not because they are profiting from other’s

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16 Snyder (2008: 192) argues similarly. That is, the action of taking advantage of the unfairness caused by an injustice constitutes a failure to respect a person.
 Nevertheless, there is no exploitation when one profits from charging a fair fee for plumbing, building, repairing automobile, medical or legal services etc. even when the service provider gains from an injustice or misfortune. Therefore, while it appears that Wertheimer’s view is limited in the said way, including background circumstances as a necessary condition for exploitation is not tenable as it stands to make every benefit from misfortune exploitative as pointed out that most business operations would turn out to be exploitative on this basis.

While Wertheimer’s theory is comprehensive, his approach to exploitation takes away crucial details that are relevant for exploitation. His approach abstracts certain features from the actual markets such as those in which sweatshops operate when the focus is on a fair price set by a competitive market. A simple exchange at a fair market value may certainly be fair but this does not make the transaction non-exploitative. For example, Marx shows that competitive market prices can be exploitative “when there are many unemployed people, the workers are not organised and the alternative to employment is bad for workers while the alternative not employing for the capitalist need not be bad since there are many others” (Christiano 2013: 6). Moreover, Wertheimer’s condition is satisfied when A steals a car from B and offers to sell it back to B at an equilibrium price. Yet, this transaction is not fair because a fair price is $0 which is simply returning the car to B (Ferguson 2013: 102). Therefore, concurring with Sample’s observations, Wertheimer’s hypothetical market price is inadequate to explain other cases of exploitation because background conditions affect market operations. In other words, the hypothetical market price “is not sufficient to assure us that a transaction is fair” (Ferguson 2013: 102).
Wolff’s Theory of exploitation

Jonathan Wolff’s account of exploitation reiterates Marx’s idea of exploitation by stating the conditions under which Marx’s definition should operate. Wolff maintains the Marxist view that exploitation is paradigmatically the consequence of differential bargaining strength (Wolff 2002: 86). Wolff argues that Marx’s definition of exploitation “is limited to relations of economic exchange under conditions where there is no justified right to capital, that is, to earn money purely in virtue of one’s property holdings” (Wolff 1999: 105). Wolff argues that Marx’s definition of exploitation in terms of surplus value captures exploitation in capitalist production where it is assumed that capitalists have no moral entitlement to the means of production. According to Wolff, Marx’s definition of exploitation only applies to a specific model and trying to apply it outside that model may lead us into error (Wolff 1999: 109). For example, the theory can only account for exploitation in the factory example if the factory owner has no moral entitlement to the means of production or resources he owns. This may sound awkward because in the analysis of the other theories, such Roemer’s, we established that the source of exploiter’s advantage is not relevant to the occurrence of exploitation. Wolff agrees with this observation and his response is that there is exploitation outside this model and exploitation can occur even where there are justified entitlements but it will not necessarily be captured by the surplus value definition of exploitation (Wolff 1985: 89).

Wolff’s reinterpretation of Marxist exploitation attempts to provide a more general definition of exploitation which then can account for our intuitions of exploitation outside the capitalist model including where entitlements are justified. He argues that exploitation is more than unfairness and unequal exchange even if it is true that unequal exchange is often exploitative (Wolff 1999: 107). Wolff argues that Marx’s theory of
exploitation does not begin and end with the labour theory of value (Wolff 1985: 57). He suggests that a general Marxist theory of exploitation should be based on the theory of alienation. On Wolff’s account, it is on this understanding of the theory of alienation that we can provide a definition of exploitation as benefiting by wrongfully or unfairly taking advantage of another person. Thus, exploitation involves wrongful treatment of another person and to say that one has wrongfully treated another requires an appeal to some moral norm (Wolff 1985: 33). In his view, Marx’s exploitation “involves deriving profit from the workers alienation and dehumanisation” (Wolff 1985: 80). For Wolff, this general theory of exploitation derives from Marx’s views on human nature and on an account of objective human needs and interests found in Marx’s earlier writings about alienation. Wolff holds that human needs, conceived of as “what is necessary to lead a flourishing human life”, have a place in a Marxist theory of exploitation (Wolff 1985: 62). This sense of human needs provides a moral norm for exploitation and this is at the heart of the Marxist claim that capitalism is a regime of exploitation. That is, Marxist exploitation consists in profiting because the workers are generally in a weak bargaining position and are treated without regard to their flourishing as human beings.

Wolff argues that within Marx’s theory exploitation plays a dual role. Exploitation functions as a moral category and as a technical term to show how capitalism works. As moral term, exploitation is “a moral complaint about A’s behaviour” (Wolff 1985: 11). That is, employing the idea of exploitation has some moral purpose meant to criticise a person’s behaviour in using another “improperly” (Wolff 1999: 110). For example, we will judge as improper and exploitative the conduct of parents who derive benefits from a religious, elderly, wealthy relative by enforcing a strict code on their teenage daughter as a means of impressing the relative to secure a piece of the estate (Wolff 1999: 110).
The parents in this example exploit their daughter by taking advantage of her. Wolff distinguishes between exploiting a person and exploiting circumstances and that distinction is treating the person as a means to our own end. For instance, the parents exploit their daughter’s circumstances of dependence by threatening to throw her out to enforce a strict code even when it is out of genuine concern for her (Wolff 1999: 10). While this distinction is clear and acceptable, later on in the thesis, I will use vulnerability and dependence as separate notions that should not be used interchangeably in discussing exploitation. This is because, according to my theory, exploitation occurs when A simultaneously takes advantage of B’s vulnerability and dependence.

The second role of the term exploitation in Marx’s theory is to offer a technical definition. This technical definition of exploitation is reference fixing. It only applies within a model by picking out all and only cases of exploitation that occur within the capitalist model. In other words, the surplus value based definition of exploitation “gives necessary and sufficient conditions for the occurrence of exploitation within the capitalist relations of production” (Wolff 1985: 89). Despite this strict technical definition, Wolff aims to show that Marx has a theory of exploitation that goes beyond the labour theory of value. That is, while Marx’s theory only applies to this specific model, “it is by no means the sole possible theory of exploitation” (Wolff 1985: 6). This suggests that we need other conceptions of exploitation to explain the occurrence of other forms of exploitation outside the capitalist model. Wolff urges us not to view the Marxian definition of exploitation as a way of “giving meaning of exploitation or of giving a fully general reference-fixing definition, but a way of fixing the reference in within the model” (Wolff 1999: 109).
Wolff’s general analysis of exploitation essentially reduces to what is wrong with exploitation. Wolff’s view of exploitation holds that for A to exploit B, A has to derive profit by taking advantage of B’s circumstances and A has to treat B merely as means rather than as an end (Wolff 1999: 112). As he views it, what is wrong with exploitation is in the broad sense Kantian. He argues, “the wrong of exploitation is in treating another as a means to your own ends, rather than with the respect that is due to another human being” (Wolff 1985: 97). Wolff in essence suggests a Kantian interpretation of Marxist exploitation where we can interpret treating another as a means in different ways. Kant’s interpretation of what is to be an end in itself motivates Wolff’s view of exploitation as benefitting from improper use of another. Thus, Wolff arrives at what he terms as Kantian exploitation, which is “to a first approximation, to use another’s vulnerable circumstances to obtain their actual compliance with a situation which interferes with their flourishing in some way; or with a situation which involves them in some sort of avoidable suffering” (Wolff 1999: 114). According to Wolff, this interpretation of Marxist exploitation can be given Kantian, Aristotelian, or Utilitarian content (Wolff 1999: 113). That is, we can explain what to be treated as means rather than as an end means by referring to the Kantian tradition that emphasizes the idea of will or choice, or the Aristotelian view that holds that ends have their own good, or the utilitarian idea of pleasure and pain.

While reiterating Marx’s view of exploitation, Wolff’s theory brings something new into the discussion of exploitation not mentioned or used by the other theories considered so far. Recall the two aspects of exploitation: taking advantage of circumstances and treating B in a morally objectionable manner. Wolff clearly suggests that there is a causal link between the benefits gained by A and the treatment that B suffers (Wolff 1985: 48). That is, the wrongful treatment of B (which is wrong with reference to
some correct moral norms), directly benefits A. Thus, in the psychotherapist and clinical
trial examples, the exploiter benefits from wrongful or improper treatment of the patients
or from harming them (wrongful or improper treatment because this violates the idea of
Aristotelian human flourishing). Wolff concludes then that, “the key idea of exploitation
is taking advantage of another’s vulnerability, for our own purposes without proper regard
to the effect your behaviour has on the interests of the other” (Wolff 2002: 84). For Wolff,
“exploitation is typically a matter of using another person’s vulnerability to your own
advantage” (Wolff 1999: 111). That is, A exploits B when A takes advantage of B’s
vulnerability as source of power over B for personal purposes without proper regard to
the well-being of B. In Wolff’s view, to exploit a person is to “use another’s
circumstances to obtain their actual compliance with a situation without having sufficient
regard to whether that situation violates fairness, flourishing, or suffering norms” (Wolff
1999: 119). In Wolff’s view, one’s vulnerability is exploited if another person uses this
weakness to advance his advantage which were it not for the asymmetry of power the
exploited party would not have accepted (Wolff 1999: 110).

Wolff’s attempt to broaden the theory of exploitation as involving misdistribution
of the benefits of a transaction and the wrongful use of another by disregarding their
interests is promising. I agree with Wolff’s key insight that “exploitation is typically a
matter of using another person’s vulnerability to your own advantage” (Wolff 1999: 111).
This insight is what I hold to be central to the understanding of exploitation and this the
line of thought that this thesis pursues. However, Wolff’s analysis is somehow vague
because the idea of vulnerability is not developed, acknowledging the difficulty in
explaining the nature of vulnerability (Wolff 1999: 111). Wolff states that it is difficult
to explain the nature of vulnerability. His view is that we can point out causes of
vulnerability such as poverty and ignorance or other such weaknesses in a bargaining situation with respect to the exploiter. In the examples at the beginning, we can easily show in what ways the exploited are vulnerable and how their vulnerability affects their bargaining strength. Their weakness in a bargaining situation is a product of different causes such as poverty, ignorance and other forms of weakness, which makes them accept terms that would not be acceptable under circumstances of equal bargaining strength where they are not vulnerable. However, an imprecise notion of vulnerability loses its usefulness in the discussion of exploitation as it risks making exploitation omnipresent. To provide a more precise notion of vulnerability, I turn to vulnerability theories of exploitation.

Conclusion

The analyses of the above theories of exploitation show that these theories generally agree, in different ways, that exploitation is essentially benefiting by taking unfair advantage of another person. The major differences in the theories concern what constitutes unfair advantage taking or the source of the unfairness. The theories also point to different things as conditions for exploitation or benchmarks to determine the occurrence of exploitation.

However, as much as these theories sound plausible, their explanatory power is limited to specific cases of exploitation. I argue that their limitation is due to their failure to identify the correct conditions for exploitation and the relationship between A and B that is necessary to the occurrence of exploitation. For example, as shown in Marx’s theory, its explanatory capacity is limited to exploitation in wage-labour relationships.
Even Wertheimer’s comprehensive theory is limited because his fair price benchmark is not genuinely fair and non-exploitative as shown in the examination of his theory. However, Wolff’s account points us in a different direction in terms of how we should understand what constitutes exploitation. In my view, Wolff’s insights perhaps broaden our understanding of what exploitation involves. His description of exploitation as typically a matter of using another person’s vulnerability to your own advantage suggests how we should understand the conditions for B that are necessary for exploitation. However, I differ with Wolff that exploitation is typically a matter of using another’s vulnerability because vulnerability is a necessary condition for exploitation. Despite the disagreement, the vulnerability approach has an advantage over other exploitation views such as Roemer and Steiner’s that argue that exploitation depends on specific sources of inequality, unjust initial distribution and rights violations, respectively. The advantage of the vulnerability approach is that it does not require explaining the source of B’s vulnerability to determine the occurrence of exploitation. We can use Wolff’s understanding of exploitation to determine the occurrence of exploitation in our five examples of exploitation. That they are all cases of exploitation insofar as A derives benefit by using or taking advantage of B’s vulnerability.

I argue that Wolff’s approach to exploitation is not as limited as the other theories because it identifies the nature of exploitation involving conditions of vulnerability. The thought here is that most of these theories portray exploitation as involving B who is vulnerable. We can argue that the exploitation in Marx’s labour-wage relationship is about the capitalists benefiting by taking advantage of the vulnerability of the workers. I believe that having vulnerability as a necessary condition for exploitation provides the basis for accounting for different forms of exploitation. In addition, these theories refer
to different moral principles to determine the wrongness of exploitation. This suggests that there are a variety of reasons that explain why benefiting by taking advantage of others’ vulnerability is morally wrong and why exploitation is therefore morally objectionable. Going further than Wolff’s theory, I contend that exploitation is morally objectionable for numerous reasons, and not only Kantian, Aristotelian or Utilitarian ones.

However, the explanatory advantage of the vulnerability approach is not self-evident. We require an argument to show its theoretical potency. A vulnerability theory of exploitation thus needs to explain the nature of vulnerability rather than merely appealing to it as if vulnerability is a self-explanatory term. In other words, we need an elaborate explanation of the nature of vulnerability and the role of vulnerability in exploitation. I embark on this task in the next two chapters beginning with a philosophical analysis of two vulnerability theories of exploitation in the next chapter to show the explanatory advantage of the vulnerability approach over other theories of exploitation and their deficiencies. This will lead to the other chapter clarifying and qualifying the notion of vulnerability that is relevant to our understanding of exploitation.
Introduction

This chapter argues that vulnerability-based accounts of exploitation have the ability to account for various forms of exploitation than the theories examined in the previous chapter. I argue that vulnerability theories of exploitation, represented by Robert E. Goodin and Allen W. Wood, have an advantage over the theories because they at least identify the correct necessary conditions for exploitation. These theories identify vulnerability, despite the conceptual difficulty, to denote both a condition for the exploited and a relation between interactors. I will use these vulnerability accounts from Goodin and Wood as the foundation for the vulnerability theory I am proposing in this thesis.

Albeit largely agreeing with these the two vulnerability accounts, I find these accounts conceptually and normatively wanting. Both theories are not successful in spelling out what constitutes vulnerability. In addition, the theories use vulnerability in two different senses. These senses manifest in Goodin and Wood’s interchangeable use of vulnerability and dependence. They use vulnerability to denote a condition for B (c-vulnerability) and a relationship between A and B (r-vulnerability, B is vulnerable to A). In my opinion, these refer to two different phenomena despite the proximity between vulnerability and dependence and this difference is important to maintain in a theory of
exploitation so that there is some conceptual clarity. Thus, the theories are incomplete because they employ an imprecise notion of vulnerability making both theories over-inclusive and under-inclusive. An imprecise concept of vulnerability loses its usefulness in the discussion of exploitation as it makes exploitation socially ubiquitous on the one hand and too restricted to account for other cases of exploitation on the other. Goodin’s theory is further restricted because he includes a moral belief in what constitutes exploitation. I argue that vulnerability is a necessary but not a sufficient condition for exploitation. Secondly, I argue that exploitation is not, as such, morally wrong because benefiting by taking advantage of another’s vulnerability may be wrong for various moral reasons rather than one as suggested by the two theories. Thus, both Goodin and Wood are mistaken to limit what makes exploitation morally wrong to a specific moral reason rather than other possible moral reasons.

On my account, exploitation occurs when A derives benefit from taking advantage of B’s vulnerability and dependence in an interaction. My view is that the best way of capturing exploitative relationships requires separating vulnerability and dependence to achieve conceptual clarity rather than using the two terms interchangeably as used in both Goodin and Wood’s theories. I define vulnerability as a condition in which there is a threat to an agent’s welfare interests or wellbeing. Dependence signifies a relationship between interactors where B’s cost for exiting a relationship with A is greater than zero (Lovett 2010: 50) because this transaction is the best option available for securing B’s welfare interests. In my view, vulnerability as relationship between interactors and what it intends to denote in the occurrence of exploitation is best captured by the notion of dependence. That is, dependence rather than the phrase “vulnerable to” should be used to portray the relationship in which there is a cost for B greater than zero when he or she
exists a relationship with A perhaps because there are no better options for securing B’s wellbeing. We also need not use the two terms interchangeably because in the analysis of exploitation, it is possible to be vulnerable without being dependent but it is not possible to be dependent without being vulnerable in the context of exploitation because dependence presupposes vulnerability and not vice versa. In a dependence relationship, A’s action and choices can effect adverse consequences on B’s wellbeing rather than vice versa. I maintain that vulnerability and dependence are necessary conditions for all forms of exploitation. In other words, conditions of vulnerability and relationships of dependence characterise all forms of exploitation. I elaborate and defend this conception of exploitation in the next chapter.

In this chapter, I give a brief overview of vulnerability theories of explanation before analysing Goodin and Wood’s theories. I address the two accounts separately, treating Wood’s account after Goodin’s account because unlike Goodin’s, Wood’s account acknowledges and attempts to address one of the issues with the notion of vulnerability that the concept should not be imprecise as that makes exploitation socially ubiquitous (Wood 1995: 143).

A brief overview of vulnerability theories of exploitation

In general, vulnerability accounts hold that exploitation occurs if A benefit from taking advantage of B’s vulnerability. Both Goodin and Wood endorse the view that exploitation occurs when A benefits by taking advantage of B’s vulnerability in a voluntary transaction. That is, both accounts hold that exploitation lies in the opportunistic use of people’s vulnerability or weakness. The two accounts agree that vulnerability is a necessary condition for the occurrence of exploitation. Both Goodin and
Wood dismiss such things as unequal distribution and coercion or involuntariness as the necessary conditions for exploitation. The main difference between the two vulnerability accounts lies in when exploitation occurs, with Goodin suggesting that it is when one benefits by taking advantage of another’s vulnerability in an inappropriate situation while Wood holds that exploitation is simply deriving benefit by taking advantage of someone’s vulnerability (Wood 1995: 147). The second difference between the two theories is in what makes exploitation morally objectionable. Goodin (1987: 187) thinks exploitation is morally objectionable because it constitutes a failure to perform a duty to protect the interests of vulnerable others. On the other hand, Wood holds that exploitation is morally objectionable because “the proper respect for others is violated when we treat their vulnerabilities as opportunities to advance our own interests or projects” (Wood 1995: 150 – 1).

Goodin’s Theory of Exploitation

Goodin’s view of exploitation holds that the core notion of exploitation is fundamentally to take advantage of something. That is, the basic understanding of exploitation remains that the exploiter takes advantage of something to benefit and this is the same across all cases of exploitation. For Goodin, “exploitation is an act which, if successful, confers certain perceived benefits” (Goodin 1987: 168). “Otherwise, such acts would not be performed at all” (Goodin 1987: 168). Exploitation occurs when A successfully seizes an opportunity and cashes in on that opportunity, and not a moment before (Goodin 1987:168). In other words, benefits must necessarily accrue to A in a

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17 Feinberg (1983) holds a similar view in his essay “Non-coercive exploitation”.

66
successful act of exploitation. Goodin holds that using a person is a necessary but not a sufficient condition for his/her exploitation. Goodin argues, “what more is required in order to make it sufficient is not the presence of harm, or the absence of consent, or the presence of coercion, or the absence of reciprocity, or the presence of manipulation” (Goodin 1987: 180). In Goodin’s view, “what is needed is instead some specification of the ways in which B is being used” (1987: 180) and this “reduces the analysis of exploitation to the analysis of why, and in what respect, it is wrong (unfair, exploitative) to use certain attributes of people and their situations in certain ways” (1987: 181).

Goodin contends, “notions of exploitation and of a duty to protect the vulnerable are analytically inseparable” (Goodin 1988: 148). This is similar to Wolff’s general analysis of exploitation that essentially reduces to what is wrong with exploitation, which in Wolff’s view is “treating another as a means to your own ends, rather than with the respect that is due to another human being (Wolff 1985: 97).

On Goodin’s account, A exploits B when A benefits from taking advantage of B in inappropriate situations, and thereby violates the norms governing certain social interactions (Goodin 1987: 184). In other words, exploitation occurs when A derives benefit by taking advantage of a person under unusual or inappropriate circumstances that impose a moral responsibility on an agent to protect another’s interests (Goodin 1987: 187). This understanding of exploitation means two things must be satisfied for the occurrence of exploitation. Exploitation first involves A benefiting by taking unfair advantage of B (Goodin 1987: 167). Secondly, A takes advantage of B in circumstances that are unusual or inappropriate for such behaviour. By this understanding, exploitation fundamentally consists a certain sort of behaviour that is inappropriate or wrong when
done in a certain situation. Goodin’s account is therefore moralised since “to commit an act of exploitation is to commit a wrong” (Goodin 1987:182). Goodin’s argument is that it is morally wrong or unfair to play for advantage under these inappropriate circumstances. He argue, “the generic unfairness associated with interpersonal exploitation lies…in playing for advantage in situations where it is inappropriate to do so” (Goodin 1987: 184).

For Goodin, it is inappropriate to take advantage of B in four situations. On Goodin’s view, in these inappropriate situations B is particularly vulnerable to A’s actions and choices regardless of the particular source of their vulnerability (Goodin 1987: 187). Goodin states that B is vulnerable to A if and only if A’s actions and choices have a great impact on B’s interests (Goodin 1985b: 779). Put differently, “vulnerability amounts to one person’s having capacity to produce consequences that matter to another” (Goodin 1985a: 114). For Goodin, A is in these four situations under an obligation to avoid taking advantage of B because B’s interests are sensitive to A’s actions and choices. The first inappropriate situation for advantage taking is when one’s interactors have renounced playing for advantage themselves (Goodin 1987: 185). On Goodin’s view, it is unfair and/or inappropriate to take advantage of friends and lovers, for example, because they let their guard down. In such situations, B trusts that A’s actions and choices would take into consideration his or her interests, or that A would not act against B’s interests such that taking advantage of B in such a situations amounts to betrayal of trust. Lovers are in this case vulnerable because they trust that their partner will act in ways that are fair to them by considering their interests when dealing with them. The second situation where it is inappropriate to take advantage of others is when one’s interactors are unfit or
otherwise unable to play for advantage because such people are in positions where they do not have a choice but to accede to A’s demands (Goodin 1987: 185). Taking advantage of people with some weakness of will or cheating a blind person fall into this category of inappropriate situations. The third inappropriate situation for advantage taking is when one’s interactors are not your match (Goodin 1987:185). Goodin claims that it is inappropriate to take advantage of others where there is disproportionate bargaining power or that it is unfair to take advantage of the weaker counterpart, which perhaps is the central objection to all forms of economic exploitation such as one depicted in the Pacific Rim factory example in the previous chapter. The fourth situation that is inappropriate for advantage taking is when one’s interactor suffers some grave misfortune (Goodin 1987: 186). On Goodin’s view, it is inappropriate to take advantage of victims of natural disasters or famine.

The four inappropriate situations are not exhaustive but they all manifest some kind of weakness on B’s part and the moral wrong that is central to Goodin’s theory (Goodin 1988: 144). 18 Goodin’s point is that taking advantage of others in these inappropriate situations is exploitative and constitute one kind of wrong which is the violation of one’s moral responsibility to protect the interests of others (Goodin 1987: 187). It follows then that in situations described in the five examples of exploitation, it is inappropriate to take advantage of another, or act in certain ways against B because in these situations A is morally obligated to protect B’s interests. Goodin argues that in these situations individuals have a moral duty to protect the interests of vulnerable others because “ceteris paribus it is morally desirable that people’s interests and welfare should

18 Goodin (1988:147) acknowledges that the catalogue of such situations is not exhaustive, but he views that the conditions that make it inappropriate for advantage taking are principally of four kinds.
be furthered” (Goodin 1985b: 779). Conversely, it also then follows that in other kinds of situations, A’s taking advantage of B is acceptable and hence not exploitative since A is not under the moral obligation to protect B’s interests.

On Goodin’s account, exploitation therefore consists in the failure to perform the duty to protect persons that are particularly vulnerable to our actions and choices.\(^1\) To exploit a person is to fail to uphold a moral duty that restrains A from taking advantage of B who is vulnerable to A’s actions and choices. Moreover, this moral duty instructs that A ought to assist or meet B’s interests when B’s interests are affected by A’s choices and actions (Goodin 1987: 187). According to Goodin, in the four inappropriate situations for advantage taking that he identifies, A ought to “suspend ordinary rules of behaviour with B who is particularly vulnerable” (1987: 187) because doing otherwise is a failure to perform this duty or a failure to engage in fair play (1987: 183). In other words, it is wrong for A to derive benefit by taking advantage of B in these unusual or inappropriate circumstances because B is essentially vulnerable and vulnerable to A. This suggests that vulnerability is a condition or circumstance of weakness. At the same time, vulnerability is a relation between interactors where A has the capacity to produce consequences that matter to B (Goodin 1985a: 114). In other words, B is vulnerable to A is a relationship in which B’s interests rely on A’s choices and actions. In Goodin’s view, the essence of exploitation is thus in the characteristics of the process of a transaction that brings about an outcome that is more favourable to A than to B. In other words, to exploit a person is thus to commit a wrong which lies in the act or process, a failure to perform a moral duty

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\(^1\) Goodin (1987: 187) develops this view based on his moral norm of protecting the vulnerable suggesting that “we have a strong moral responsibility to protect the interests of those who are particularly vulnerable to (i.e., whose interests are strongly affected by) our own actions and choices, regardless of the particular source of their vulnerability”.

70
that leads to the outcome. As earlier stated, for Goodin the notions of exploitation and of a duty to protect the vulnerable are analytically inseparable (Goodin 1988: 148).

Examining Goodin’s Account

Goodin’s theory has an advantage to capture a range of exploitative cases because it spells out some things that are correct about exploitative transactions. In Goodin’s view, exploitation occurs because A possesses something that B wants or needs. This possession gives A the capacity or advantage to prescribe to B terms and conditions that are more favourable to A than to B. Under the circumstances, it is B’s need for what A has that necessitates an interaction with A. Moreover, because A has what B needs, B wants to interact with A more than A wants to interact with B such that B cannot negotiate as an equal in the interaction. On Goodin’s account, vulnerability or dependency is exploitable when the following conditions obtain (Goodin 1988: 175 – 176):

1. The relationship embodies an asymmetrical balance of power.
2. The subordinate party needs the resources provided by the relationship to protect his vital interests.
3. For the subordinate party, the relationship is the only source of such resources.
4. The superordinate party in the relationship exercises discretionary control over the needed resource.

Goodin (1985a: 195) also argues that dependency or vulnerability relationships that display these four features are morally objectionable and the presence of these features increases the risk of exploitation. In other words, our moral objection to a vulnerability
relationship diminishes if a relationship fails to display these features (Goodin 1985a: 196).

Using the stranded motorist example, the relationship between the tow truck driver and the motorist embodies an asymmetrical balance of power. The tow truck driver has and controls what the motorist needs, which gives the driver the capacity to demand as much money from the driver whereas the motorist cannot negotiate. Similarly, the capitalist in Marx’s depiction possess a resource in the form of private property that many other people need if they are to labour productively and earn a living. This suggests that various forms of exploitation involve asymmetrical relationships between the interactors. Goodin (1895a: 196) argues, “only asymmetrical power relations, only unilateral dependencies create opportunities for one side (the stronger) to exploit the other (the weaker).” The asymmetrical relationship is very important in identifying the exploiter and the exploited in an interaction. This relationship addresses the weakness of some of the theories addressed in the previous chapter that may view the exploiter as also an exploitee or include others outside an interaction as exploiters.20 The examples given in the previous chapter are therefore exploitative by Goodin’s characterization that B’s interests rely on the resources provided by the relationship with A.

The use of vulnerability as a condition of weakness and unsatisfied interests of the exploited party in a transaction serves as the foundation of asymmetrical relationships between interactors necessary for exploitation. For example, the Pacific Rim factory case satisfies Goodin’s conditions for exploitation. It is clear that there is an asymmetrical

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20 Kymlicka (2002: 182) makes this observation on Marx’s theory of exploitation. See discussion in Chapter 2 p.29
balance of power between the factory owner and the workers because the factory owner has what the workers need. The workers desperately need the job to provide them with resources that address their welfare interests or wellbeing. Moreover, entering into a relationship with the factory owner is the workers’ only source for the resources they require for the protection of their interests. The factory owner exercises discretionary control over the resources - the work and its attendant benefits, which is the reason why the factory owner has the ability to decide on the terms and conditions with little or without consideration of the workers’ input. In other words, Goodin’s theory suggests that all forms of exploitation occur because A exercises control over something that B needs because B is vulnerable and therefore weak to negotiate in a transaction with A.

The first problem with Goodin’s theory is his use of the notion of vulnerability. Goodin’s theory of exploitation is broad because the notion of vulnerability on which the theory hinges, is imprecise. The notion is not narrow enough to yield a plausible account of exploitation. Goodin (1987: 187) argues that a person is vulnerable when his or her interests are strongly affected by other’s choices and actions. As Tea Logar observes, this conceptualisation is too broad because it does not answer the question “what in particular constitutes the notion of vulnerability that could be usefully applied to the philosophical analysis of exploitation” (Logar 2009: 82). The lack of precision in the use of the concept thus appears to include superficial desires since it does not outline the relevant or genuine vulnerability required for a charge of exploitation. Such imprecise use of the notion of vulnerability trivializes the notion of vulnerability that it does not offer the illumination it promises on the problem of exploitation. The lack of precision on the notion of vulnerability makes the account too broad, which compromises its explanatory advantage.
Examples of such broad use of vulnerability are found in medical research where categories of vulnerable persons have expanded widely without defining vulnerability such that it is difficult to know who is not vulnerable (See World Medical Association’s (WMA) Declaration of Helsinki 2009 Article 8).

The use of the notion of vulnerability in Goodin’s theory may suggest that all transactions in which A benefits when dealing with vulnerable others are exploitative. We therefore run the risk of charging every transaction that involves vulnerable others, however we identify vulnerability or vulnerable people, as exploitative because the use of the notion does not state what constitutes vulnerability in the analysis of exploitation. As Wood cautions, such use of the notion of vulnerability may mean that any need or desire constitutes vulnerability and this would make “exploitation virtually ubiquitous in human social life” (Wood 1995: 143). An imprecise notion of vulnerability puts into question, for example, economic transactions, which involve a vulnerable party (the weaker) as may be suggested by unequal bargaining power between the transactors. Unequal bargaining power usually suggests that one party is weaker than the other therefore vulnerable. Yet, many such transactions often seem ordinary and not exploitative even where some form of vulnerability is used for advantage taking. Goodin attempts to narrow down the concept by referring to specific situations where advantage taking constitutes exploitation but I think it does not successfully help his theory of exploitation. For instance, Goodin states that it is unfair and/or exploitative to take advantage of persons when relative advantage derives from another’s unfortunate circumstances or grave misfortune (Goodin 1987: 186). For example, transactions involving surgeons, dentists, personal trainers and dieticians to mention a few, all seem to involve benefitting from people’s unintended weaknesses but we do not tend to think
of these transactions as intuitively exploitative. Similarly, if an ordinary driver happens on the stranded motorist offering to help the motorist at the usual towing price, the driver, by Goodin’s account, exploits the motorist since he has benefitted from the motorist’s situation, which he would otherwise have not. Goodin’s account is thus broad since it seems to suggest that any form of vulnerability is source of exploitation and morally objectionable.

Since Goodin holds that to be vulnerable is when one’s interests are strongly affected by the choices and actions of others, it presents us with other problems in terms of how we should construe interests and the extent to which they should be protected to avoid exploitation. Goodin’s maintains that exploitation is essentially the failure to meet the interests of B and includes this as a necessary condition for exploitation in his account of exploitation. I argue that this inclusion is mistaken, as this is not consistently true in all exploitative cases. Goodin does not offer much clarity on these interests and the extent to which these interests should be met, by which we may exclude other exploitative cases because interests have been met. Holding this condition as necessary for exploitation makes Goodin’s account problematic because it is possible to exploit someone while at the same time meeting his or her interests. The Pacific Rim factory example illustrates this problem. Most people would agree that this is an example of an exploitative transaction because the factory owner takes unfair advantage of the villagers’ vulnerability that puts them in a weak bargaining position. It does not seem that the factory owner exploits the villagers because he has failed to discharge Goodin’s moral injunction to meet or protect the worker’s interests. That is, understanding exploitation as a mere failure to discharge this moral duty may suggest that the above example is not an instance of exploitation because it is clear that the factory owner meets some of the
interests of the villager’s by contributing to the workers’ welfare. In fact, the factory owner achieves more by offering $2 instead of the current average wage of $1, which is only enough to prevent the workers and their families from starving. Unless we offer a further explanation to this condition of protecting B’s interests, for example, by describing what these vital interests are and/or to what extent should they be satisfied, it would be counter-intuitive to claim that the factory example is not an exploitative transaction.

Failure to meet B’s interests is not a necessary condition for exploitation even when we construe these interests as basic needs. As Meena Krishnamurthy (2013: 4) observes, failure to meet or protect interests is not a necessary condition for exploitation because this condition can be satisfied yet the transaction remain exploitative. The stranded motorist example similarly illustrates this observation. While we may view that the tow truck driver exploits the motorist, the driver at the same time protects the interests of the motorists to survive considering that, there is an impending snowstorm and it is not certain when another tow truck may come around. This shows that it is possible to exploit someone even when his or her interests are met. The same thing can be said about the psychotherapist example that even in the event that the patient gets the expected or desired result from her therapy. That is, taking advantage of the patient is still exploitative regardless of the fact that her interests are met or protected.21 Thus, understanding exploitation as a failure to protect another’s interests does not then correspond to the

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21 One may argue that the client in the psychotherapy example has an interest in not being manipulated and she is therefore exploited because of this unmet interest. However, Goodin defines interests in terms of welfare and in the event of the successful treatment; it means the therapeutic process enhanced welfare regardless of the manipulation.
general notion of exploitation as unfair advantage taking because in most cases B’s interests are somehow met, which is precisely why B agrees to transact with A.

To solve the difficulty in determining when A has protected B’s interests in Goodin’s theory, we need to appeal to a particular baseline by which we can judge whether A has discharged her duty to protect B’s interest or has failed to do so. However, Goodin’s theory does not appeal to such a baseline. His the moral injunction that A has a duty to protect the interests of others as a condition for exploitation is on this account problematic. This is because as shown above, the moral injunction alone does not provide any proper guidance in terms of determining the extent to which we should meet B’s interests. Moreover, the notion of interests by itself does not give adequate guide even though Goodin is very clear that vulnerability places constraints on A’s actions and choices. The factory setting is one example showing how difficult it is to determine the occurrence of exploitation by focusing on the protection of interests in Goodin’s account. As explained earlier, the factory owner certainly does protect the interests of the villagers by giving them a better option than the status quo and contributes to their welfare by giving them something more than to keep the workers and their families from starving.

We may want to interpret interests in terms of welfare as suggested by Goodin that to be vulnerable is a condition in which B has a threat of harm to his or her welfare or interests, terms which he uses interchangeably (Goodin 1985: 111). However, even when interests are construed in terms of welfare, without a baseline, it is not very clear why the factory example is exploitative when the transaction is positively contributing to or improving the villagers’ wellbeing or welfare. Goodin’s view may want to suggest that B is exploited in the factory example because A does not sufficiently contribute to B’s
welfare. However, the question of sufficiency is another issue that may need some clarification because by other consideration the factory example may remain exploitative even when the compensation goes up in the same way the stranded motorist example is still exploitative when the driver demands $12 instead of the $200 demanded in the example. Moreover, as Krishnamurthy points out, even when we alter Goodin’s condition to failure to satisfy and protect the basic needs of B, it does not go very far because B can be exploited even when the basic needs are met as shown in the examples above (Krishnamurthy 2013: 6).

Goodin’s attempt to define interests in terms of welfare equally fails to address the problem of under-inclusiveness. In the examples explained in the above paragraphs, A contributes something to B’s welfare. If the current average wage of $1 in the factory example is enough to keep the workers and their families from starving, then $2 offered by factory owner does more than keeping the workers and their family from starving. As Sample (2003: 51) argues, it is difficult to see how a transaction that improves the situation of the transactors is wrong no matter how unusual the transaction. It would appear then in this case that A contributes to B’s welfare. By the examples, it does not appear that A harms B’s welfare rather than improve or secure B’s welfare compared to what would happen if there was no interaction. As Goodin states about the argument for protecting the vulnerable, it “is first and foremost an argument for aiding those in dire need” (1985a: 111). In short, it appears that A does secure or improve B’s welfare, or aids B in his or her dire need and therefore A does not exploit B. However, it is odd to hold the view that this example is not exploitative because A contributes to B’s welfare. Thus, using contribution to another’s welfare as a standard for determining the occurrence
of exploitation leaves out many cases of exploitation where A contributes to B’s welfare. In fact, in all our examples, A contributes to B’s welfare yet they are exploitative.

We should note that Goodin’s account also emphasizes the obligation that we ought to refrain from harming those who are vulnerable to us more than the obligation to promote welfare. However, A can refrain from harming vulnerable others by not interacting with them. In our examples, A improves the situation of the vulnerable party. This means Goodin requires an argument to show why A is obligated to improve B’s situation, perhaps to some extent more than is done in the examples especially where it is difficult to establish that some harm has been caused to the vulnerable party. For example, we can argue that A fails to refrain from harming B in the psychotherapy and Tuskegee examples, but it is difficult to establish harm in the factory example and the stranded motorist’s example.

Some critics identify a related problem that it is possible not to discharge the moral duty of protecting other people’s interest without the occurrence of exploitation. They argue that there are counter examples that demonstrate that failure to meet to another person’s interests does not entail exploitation. For example, Krishnamurthy (2013: 6 – 7) argues that A can fail to meet B’s interests while playing for advantage against B, yet still fail to exploit B. The Snow Shovel example below illuminates this point:

“A prices snow shovels above the at-cost price just before a snowstorm hits. B, who is in need of a shovel, decides not to buy one because she does not have the money to do so. B cannot get to another store before the storm hits. So, B goes without a shovel” (Sample 2003: 8).
Krishnamurthy argues that on Goodin’s account, A exploits B since the two conditions for exploitation are satisfied. That is, in the example A has played for advantage and has failed to protect the interests of B who is vulnerable (Krishnamurthy 2013: 7). Krishnamurthy argues that the example above demonstrates that the two conditions are not jointly sufficient. Krishnamurthy thinks then that Goodin’s account is broad because it includes cases like these, which are not necessarily exploitative. However, this seems to be a wrong interpretation of Goodin’s account since exploitation requires the occurrence of an exchange and not a mere attempt to benefit by taking advantage. Goodin clearly states that exploitation “occurs when A successfully seizes an opportunity and cashes in on that opportunity and not a moment before” (Goodin 1987: 168). Exploitation in Goodin’s account amounts to “seizing the opportunity – it is not in the act of seeking it, or creating, or discovering it” (Goodin 1987: 168). Most importantly, “the value of the act of exploitation to the exploiter is not contained within the act itself, but rather in the further advantage (i.e. benefits) that follows from seizing the (strategic) advantage” (Goodin 1988: 126). In short, in the snow shovel example, A’s behaviour intends to exploit B but he does not exploit B since no benefit accrues to A or that there is no exchange between A and B. Thus, Goodin shows that there is a link between taking unfair advantage and benefit and this takes care of the worries that he does not distinguish between successful exploitation and attempted exploitation.

The challenges that compromise the usefulness of the notion of vulnerability in Goodin’s theory shown in the preceding paragraphs implore us to clarify on the notion by providing some precision. Despite the challenges, Goodin’s vulnerability view of exploitation points out an important feature for the occurrence of exploitation. Vulnerability shows the circumstances of the exploitee that affords power to exploiter
who then has discretionary power to take advantage of his or her transactor in the pursuit of benefits. At the same time, vulnerability indicates a relationship between interactors as Goodin argues that B is vulnerable when his or her interests are sensitive to A’s actions and choices (Goodin 1985b: 779). That is, without vulnerability or threat of harm to B’s interest or welfare, and the ability that A has in affecting B’s welfare, A cannot take advantage of B. Here, Goodin’s theory suggests that vulnerability is a condition and a relation as confirmed by his use of vulnerability and dependence as interchangeable terms (1985b: 779). I find the interchangeable use of vulnerability and dependence affects the description of what constitutes exploitation. As much as vulnerability and dependence are often close, and interchangeably used in common language, I suggest that separating the two notions to achieve some conceptual clarity necessary for an improved vulnerability theory. The separation of the notions is important because vulnerability and dependence are not synonymous and do not necessarily imply each other. I outline the use of vulnerability and dependence as separate notions in the next chapter and argue that this usage is relevant to clarifying the vulnerability view of exploitation. Meanwhile, I turn to Allen Wood theory as the starting point for providing relevant precision required for the notion of vulnerability.

Wood’s Theory of Exploitation

As stated earlier, Wood subscribes to the vulnerability view of exploitation stating that exploitation involves “the use of a vulnerability for the exploiter’s end” (Wood 2016: 92). However, unlike Goodin, Wood thinks that the occurrence of exploitation does not require a violation of any moral principle. For Wood, exploitation is the same whether used in the pejorative or non-pejorative sense (Wood 1995: 147). According to Wood,
exploiting a person means deriving some benefit by taking advantage of the vulnerability or weakness of another (Wood 1995: 142). In other words, exploitation consists in using something about B for A’s ends by taking advantage of B’s vulnerability or weakness (Wood 1995: 147). For Wood, this is the basic idea behind all exploitation involving human objects and “it applies equally to cases where exploitation is commonly considered unfair, wrongful, or unethical and to cases where it is not” (Wood 1995: 147).

Wood takes note of the obfuscations in the philosophical and economic reflective accounts of exploitation and states that his aim is not to provide a technical analysis of exploitation. Wood aims to explore what “people mean when they object to behaviour or social arrangement as exploitative, and identify the moral convictions which give such objections their force” (Wood 1995: 137). On Wood’s account, to exploit a person is to take advantage of their vulnerability and use that weakness/vulnerability to derive benefit. For Wood, exploiting a person involves two types of exploitation that form a complementary pair. First, benefit exploitation (b-exploitation) in which A exploits or uses some attribute of B from which to derive benefit or use to achieve his or her end (Wood 1995: 142). Second, advantage exploitation (a-exploitation) which involves using vulnerability or weakness on B’s part, which gives A the advantage over B and puts at A’s disposal the attribute which he or she b-exploits (Ibid). Wood’s argument is that exploiting a person is simply b-exploitation – deriving benefit by using some attribute of B as means to A’s end. In other words, b-exploitation, presupposes a-exploitation (1995: 146). Thus, in his view, advantage taking of vulnerability and benefitting form a complementary pair in the occurrence for exploitation (Wood 1995: 142). In other words, without the benefit there would be no point of taking advantage of another’s vulnerability; and without vulnerability, it would be impossible to control or manipulate B to benefit.
Therefore, on Wood’s account, “for a person to be exploited, he or she has to be vulnerable to the exploiter, and it is this advantage over the exploited person that the exploiter plays upon to make use of the exploitee” (Wood 1995: 146). Note here that Wood also depicts vulnerability as a relationship in which the exploitee is vulnerable to the exploiter.

In Wood’s view, exploiting B requires that the B is under A’s control. For example, A can exploit B’s labour if he finds B in position where B needs to work for A (Wood 2016: 95). In order to exploit B, A must find some vulnerability of which to take advantage to get B to work on A’s terms (Wood 2016: 95). Vulnerability or weakness in Wood’s sense gives A some form of advantage, essentially giving A some form of control over B. Wood argues, “the exploitation of a person by another requires that the exploited person should be under the control of one who exploits. And the exploiter should make use of this fact in furtherance of the exploiter’s ends” (Wood 2016: 96). For Wood, the occurrence of exploitation ultimately depends “on who is in control – who is vulnerable and how that vulnerability is used” (Wood 2016: 97). Again, the example of capitalists’ ownership of the means of production is handy here. Capitalists possess in the form of private property the opportunities many other people need if they are to labour productively and earn a living. This makes the workers vulnerable to the capitalists. Thus, underlying all exploitative exchanges is that B is weak therefore vulnerable to A, and A uses B’s vulnerability or weakness as an opportunity for deriving benefit.

Having established what constitutes exploitation, Wood turns to engage his main aim to explain what makes exploitation morally objectionable. Wood argues that the real reason or the moral belief that makes exploitation objectionable is that “proper respect for others is violated when we treat their vulnerabilities as opportunities to advance our
interests or projects” (Wood 1995: 150 – 151). According to Wood, “it is degrading to have your weaknesses taken advantage of, and dishonourable to use the weaknesses of others for your ends” (1995: 151). In other words, benefiting by taking advantage of another’s vulnerability is morally wrong because it constitutes a violation of the proper respect owed to a human being. He views this badness of exploitation is there even when exploitation involves injustice, unfairness or violations of rights (Wood 1995: 154). This moral belief is important in Wood’s account because it is what distinguishes morally objectionable exploitation from morally permissible exploitation since as stated earlier; there is no difference in the meaning of the term exploitation. For example, it is permissible to exploit others or benefit by taking advantage of vulnerabilities or weaknesses of others in sports and games because you do not degrade your interactors. On the other hand, this moral conviction is, for instance, what makes surrogacy morally wrong, as opposed to that surrogacy is wrong or bad because it possesses that property which in light of certain moral principles will be regarded wrong (Wood 1995: 140). On Wood’s account, surrogacy constitutes morally objectionable exploitation when the exploiter uses the surrogate mother’s ability to carry and give birth to a child through her vulnerability to advance the exploiter’s project.

For Wood, vulnerable individuals need help rather than using their vulnerability for some end of our own and most importantly we need to preserve the dignity of those in need of help (Wood 1995: 153). Wood argues:

“When people are vulnerable and in need of help, it is not only the helping itself which they need….They are also beings with dignity, with whom not all is well as long as they lack the conditions under which a human being can be respected” (1995: 153).
Thus, for Wood, the preservation of dignity is more vital than any positive contribution to welfare. Ruth J. Sample expresses a similar view in her theory of exploitation as degradation that exploitation involves “interacting with another being for the sake of advantage in a way that degrades or fails to respect the inherent value in that being” (2003: 57). By way of explanation, Wood’s account would charge the factory example as exploitative on the basis that the factory owner derives benefit from taking advantage of the worker’s vulnerability. The factory owner has an advantage over the villagers and more importantly has control over the villagers because of their vulnerability. Wood would further charge that taking advantage of the villagers’ vulnerability or weakness is morally objectionable if and only if there is a violation of the dignity of the villagers by not according them proper respect even though there is a contribution to their welfare. Thus, in Wood’s view benefiting B in a transaction, or protecting or contributing to her welfare as in Goodin’s sense, is not enough if proper respect is not given to the dignity of the recipients of that contribution. Violation of one’s dignity can occur while he or she benefits from a transaction or interaction. On Wood’s account, the psychotherapy example is exploitative because the psychotherapist uses his position to encourage or persuade his patient into sex, taking advantage of the patient’s vulnerability. However, it is wrongful exploitation because the psychotherapist fails to afford the patient proper respect due to her as a human being or that he fails to treat the patient as an agent with dignity particularly because in her situation the patient need help. In contrast to Goodin here, Wood does not think this example exploitative because A has not performed the duty to protect the vulnerable. As noted before, the psychotherapist can perform the duty of protecting the patient’s welfare even when some manipulation occurred. On Wood’s account, the example is exploitative because A derives benefit by taking advantage of B’s
vulnerability and it morally objectionable because A treats B without the respect due to B as a human being. In both examples, the villagers’ and the patient’s vulnerability requires their transactors’ help rather than using their vulnerability as an opportunity to derive benefit.

To illustrate further on Wood’s claim on what makes exploitation morally wrong, we can refer to the maritime case mentioned in the previous chapter between Port Caledonia - a vessel in difficulty, and the Anna’s (a tugboat) use of her monopoly to charge excessively to rescue Port Caledonia. The case represents an example of circumstances in which B, in this case the Port Caledonia (crew) can benefit from a transaction while at the same time have their dignity violated. When tugboat’s captain offers to rescue the Port Caledonia at a cost of sorts, the master of the Port Caledonia makes the only reasonable choice taking the offer to be rescued rather than passing it up. By Wood’s account, the crew of Port Caledonia (B) lacks the conditions under which proper respect can be accorded and it is degrading to take advantage of a person in that state, in this example, a state of distress. This example is comparable to the stranded motorist example, a situation in which A is in a position to insist upon his or her terms while B can only put up with it. Our five examples follow the same scheme where B is vulnerable and in a situation where only A can salvage that situation and are thus by this account exploitative because A benefits from B’s vulnerability. The relationship that Wood uses to describe an exploitative situation is clear in the five examples that A has control over B because of B’s vulnerability and capitalizes on this vulnerability to benefit. In other words, B’s interests depend on A more than vice versa in this relationship. However, whether these examples are morally objectionable cases of exploitation depends on whether we can determine that A treats B without proper respect or that there
is violation of B’s dignity. Wood’s theory therefore has to address with some detail how we should determine the occurrence of a violation of a person’s dignity.

Wood thinks that his moral conviction that makes exploitation wrongful or bad could be Kantian if given a different interpretation (Wood 1995: 151 fn 24). In principle, when A benefits by taking advantage of B’s vulnerability, A violates the Kantian maxim of respect for persons requiring that we treat other individuals not merely as means but also as ends in themselves (Kant 2002: 46 – 47). Wood proposes that respecting other persons, as ends in themselves, should go beyond the common interpretations of this Kantian maxim that demand absence of manipulation and coercion, or demand one’s consent to our treatment. He views that interpretations that employ ideas such as of consent are weaker than the interpretation that fits his belief. Wood points out the problem, for example, with Onora O’Neill’s interpretation of the Kantian maxim. O’Neill’s interpretation holds that treating others as mere means entails that we do not only “act in ways that they do not consent; we act on maxims that to which they could not consent” (O’Neill 1989: 138). Wood holds a contrary view that treating a person as mere means should go beyond issues of consent and include refraining from “making use of their vulnerability for our ends, whether they consent to it or not” (Wood 1995: 151 fn 24). Wood is right to point out that treating other people merely as means should go beyond consent because if it is only about consent, then the alleged cases of exploitation we have looked at may not be exploitative since they are all voluntary transactions.

Despite focusing on what makes exploitation morally objectionable, Wood notes some problems that his vulnerability accounts will encounter. He firstly highlights the problems that affect the notion of vulnerability including what constitutes vulnerability. He acknowledges that needs and desires can sometimes constitute vulnerability as in how
“emotional needs for lovers make them vulnerable to those they love and hence create opportunities for exploitation” (Wood 1995: 143). While considering needs and desires may put many dealings between human beings in an exploitative light, Wood urges us to be clearer on the notion of vulnerability. He argues, “to suggest that any need or desire constitutes vulnerability…would make exploitation virtually ubiquitous in human social life” (Wood 1995: 143). He suggests that exploitative interactions are those that play on genuine vulnerabilities but is sceptical of the possibility of a proper distinction with those interactions that do not play on genuine vulnerabilities (Wood 1995: 143).

Examining Wood’s account of Exploitation

Unlike Goodin’s account, Wood’s account of exploitation takes note of the lack of precision on the concept of vulnerability in exploitation and attempts to clarify the notion. However, Wood’s attempt to rescue vulnerability accounts is not successful, as his theory does not successfully offer much clarity on the notion of vulnerability. As earlier stated, Wood argues that in advantage exploitation we take advantage of “someone’s weakness or vulnerability, which gives a hold or advantage over a person and puts at our disposal the attribute which we b-exploit” (Wood 1995: 142). The interchangeable use vulnerability and weakness in Woods theory, does not seem to solve his concern over the use of vulnerability because it faces the same over-inclusion problems that Goodin’s theory face on the use of the two terms.

Wood’s attempt to resolve the lack of precision on the term vulnerability by suggesting that exploitation plays on genuine vulnerability does not offer the clarity that we need in a vulnerability theory either. There is some difficulty with his suggestion that
the distinction between human interactions that play on genuine vulnerability and those that do not require the use of common sense rather than “inflexible philosophical conceptions or dogmas” (Wood 1995: 143). However, the use of common sense in an attempt to avoid using a specific notion of vulnerability that may equally end up being too narrow. That is, both inflexible philosophical conceptions of vulnerability and one based on the use of common sense will leave out other forms of vulnerability therefore exclude other cases of exploitation. Wood fails to spell out specific things about genuine vulnerabilities. Employing common sense to adjudicate between genuine and non-genuine vulnerability does not seem to be a successful solution to the problem of precision hence does not resolve the issues of under or over-inclusiveness that also arise in Goodin’s use of notion of vulnerability. The problem with using common sense to distinguish between genuine vulnerability and any other need or desire in the determination of the occurrence of exploitation is that common sense mostly depends on one’s perspective. If we use common sense to determine the genuineness of vulnerabilities then we risk determining or defining vulnerability based on perspectives comparable to the perspectives of six blind men attempting to describe an elephant by the body part that they are experiencing.\footnote{The parable of six blind men and the elephant is an Indian folklore retold and popularised by John Godfrey Saxe (1816-1887) in his poem “The Blind men and the Elephant”} Samia A. Hurst (2008: 192) similarly uses this parable to capture the challenge of defining vulnerability. The common sense method thus makes vulnerability a very loose notion that it would lose its usefulness to accounting for exploitation because vulnerability becomes a matter of opinion.

Furthermore, Wood’s explanation that “if one party has a significantly stronger bargaining position than the other” and that therefore this “constitutes a clear case of
vulnerability on the part of the weaker party” does not show then how the distinction between genuine vulnerability and others can be drawn (Wood 1995: 144). Determining a significantly stronger bargaining position may require pointing out some conditions that would indicate the strength of the position, which Wood does not provide and makes the determination vulnerability a matter of perspective. Viewed this way, Wood’s idea of vulnerability does not then seem far off from Goodin’s use of vulnerability. In short, his distinction between genuine and non-genuine vulnerability using common sense does not go very far to solve the problem at hand. In other words, Wood’s formula for distinguishing genuine from non-genuine vulnerability does not seem to address his initial worry that an imprecise notion of vulnerability will virtually make exploitation virtually ubiquitous in human social life.

Wood’s other use of vulnerability to refer only to “the vulnerability to be used” also does not help on this matter (Wood 1995: 144). It would appear that all forms of vulnerability render B weaker in some respect and therefore makes B vulnerable to be used because A capitalizes on this weakness to gain some control. In short, Wood’s suggestion that we employ common sense to determine genuine vulnerability from irrelevant vulnerability does not give us a precise guide. Since there is no clear distinction between genuine vulnerabilities and those that are not, the notion of vulnerability remains imprecise hence making the account equally broad. Thus, the account faces problems similar to those raised against Goodin’s account.

Another problem with Wood’s account of exploitation relates to what he thinks makes exploitation morally objectionable albeit appearing more encompassing. Wood views that exploitation is objectionable when we violate another’s dignity but he is not convincing on what constitutes the violation of human dignity. Wood’s moral reason for
objectionable exploitation at this point seems plausible because it is based on some specific way that A treats B if it is granted that A’s behaviour toward B does not afford B proper respect. Wood’s moral reason avoids the questions that we raised against Goodin’s moral principle. For example, Wood and Goodin agree that the driver exploits the stranded motorist because the driver derives benefit by taking advantage of the motorist’s vulnerability or weakness. Goodin’s moral objection, built into the definition of exploitation, is that the driver fails to perform the moral obligation to protect the interests of the motorist. However, the driver’s offer arguably does protect the most important interest for the stranded motorist, namely his interest in survival. As shown earlier, Goodin’s explanation seems inadequate even if the example changes such that the driver does not demand as much money to help the motorist. In other words, Goodin’s account struggles to explain how we should determine a failure to protect the interests of another or by what standard should we establish this failure. In contrast, Wood view does not face such difficulties to determine the occurrence of exploitation. His view holds that any benefit above the normal or standard cost of towing that the driver demands is exploitative insofar as the benefit results from taking advantage of the vulnerability of the stranded motorist. B is in Wood’s view still exploited even when B’s interests are better protected by not demanding too much for the towing cost. For example, when the tow truck driver tows the motorists for a slightly higher price, say $12 than the usual $10. In addition, Wood states that the transaction is morally objectionable by specifying something specific about the treatment of B.

As much as Wood’s moral view seem to escape some of the challenges facing Goodin’s view, he requires some further argument that can help us determine this lack of proper respect towards another in a transaction or relation. His view of treating others’
vulnerability for our ends whether they consent or not does give us the material to distinguish between morally objectionable and morally acceptable exploitation. What is missing is an explanation on when can we say that we have used another person for our ends in a way that violates their dignity. That is, it is not enough to employ this principle in his theory because respect or dignity are not self-explanatory terms and so is what constitutes their violation. For example, one can argue that B’s dignity is violated when they are harmed. Construed this way, Wood’s moral belief may only apply to the psychotherapy and Tuskegee trial examples. Nevertheless, it is difficult to use the principle in other three examples of exploitation where the exploiter does not cause harm but actually benefit B unlike in a situation of no interaction.

The above concern shows that there must be something more to exploitation than mere opportunistic use of vulnerability and equally suggests that there is more we can say about what makes exploitation morally wrong. Other attempts at defining exploitation, such as Mikhail Valdman’s, intend to escape the above problems but they do not succeed in accounting for other cases of exploitation. Valdman argues that exploitation “lies in the moral obligation not to extract excessive benefits from people who cannot, or cannot reasonably refuse offers” (Valdman 2009: 1). Valdman holds that benefits are excessive “insofar as they deviate from the benefits that we would expect A to receive were he transacting with someone who was rational, informed, and could reasonably refuse his offer (Valdman 2009: 12). However, this definition does not fit with other instances where B is rational, informed and could reasonably refuse A’s offer. For example, the stranded motorist is rational, could be aware of other towing possibilities but he cannot wait, and in this instance B can reasonably refuse A’s offer. We may equally call the same transaction exploitative where the driver does not demand any payment but demand
something else such as praise or an endorsement that enhances his reputation. By Wood’s account, these are all instances of exploitation as A benefits from the transaction by turning B’s vulnerability into an opportunity to meet A’s own ends.

From Wood’s perspective, the use of another’s vulnerability is degrading as he points out, “it is degrading to have your weaknesses taken advantage of, and dishonourable to use the weaknesses of others for your ends” (Wood 1995: 151). By appealing to the notion of proper respect, Wood’s account does not face the challenges such as which interests should be met before exploitation occurs or how much benefit in terms of excess constitute exploitation. Wood’s account would pronounce the variations of the stranded motorist example as instances of exploitation. That is, the driver exploits the motorist despite meeting or protecting her interests, or the driver not extracting excessive benefit. The driver equally exploits the motorist when the driver demands other things such as endorsement. As Wood argues, “helping those in need has a more profound moral ambivalence about it, making solidarity with them a far more vital achievement than any positive contribution to their welfare” (Wood 1995: 153). This means that A’s beneficence can be objectionable if it does “not preserve the dignity of the vulnerable” (Wood 1995: 153). This is why it is possible to say the driver’s offer to help the motorist at no monetary cost is equally exploitative and morally objectionable as there is no proper respect given to the motorist when the driver gains some reputational advantage from the motorist’s vulnerability. We should recall that the driver here benefits because in Wood’s view he or she has the motorist under his control because of the motorist’s vulnerability. Thus, all these instances are exploitative when A benefits from B’s vulnerability and are morally objectionable when A does not preserve the dignity of B not in the narrow sense pointed out earlier in O’Neill as there is consent given in all the examples. In Wood’s
sense, A exploits B because A has not refrained from using B’s vulnerability for her opportunistic interests or ends.

Meanwhile, as highlighted earlier, Wood’s moral injunction puts into question all forms interaction where A benefits when interacting with vulnerable B as it remains unclear on how we should understand what constitutes degrading. Further, it is also not easy to pinpoint in what ways it is degrading to a person when a transaction contributes to the welfare of another as compared to a situation of no transaction. Without further clarification, both interacting and not interacting with a vulnerable person may be degrading. As mentioned above, the notion of respect or dignity is itself problematic because it is vague. One can argue that in the examples A does not treat B merely as a means because A benefits B by interacting as compared to non-interaction. Moreover, other cases of exploitation do not seem to be violating this moral belief as proposed by Wood but they are equally morally objectionable.

Wood’s analysis of exploitation, unlike Goodin, distinguishes what constitutes exploitation from what makes exploitation morally wrong. Recall that Goodin analysis of exploitation reduces to the analysis of why, and in what respect, is exploitation wrong (Goodin 1987: 181). Wood’s theory is thus free of moral limitations as it defines exploitation without including moral beliefs. However, his attempt to address the problem of lack of precision in the concept of vulnerability does not succeed. Wood does not provide a convincing formula for distinguishing between genuine and non-genuine vulnerability. That is, his suggestion that we employ common sense in distinguishing genuine from non-genuine vulnerability does not solve the problem mainly because common sense is a matter of perspective. In addition, the wrongfulness of exploitation is
not necessarily, in that we degrade other people even though exploitation in some instances may involve degrading others.

Conclusion

The identification of vulnerability as a necessary condition for exploitation and/or relationship between interactors give vulnerability theories an advantage to account for various forms of exploitation. The notion of vulnerability pinpoints what underlies exploitative interactions and/or circumstances under which benefitting by advantage taking is exploitative. Vulnerability is also crucial in identifying the exploiting and exploited agents. I contend that the other theories of exploitation fail to account for a range of exploitation forms because they do not identify such relevant conditions or scheme for exploitation. Thus, the vulnerability theories provide a better approach to exploitation and offer good ground on which we can build an improved vulnerability account of exploitation.

I agree with the vulnerability theories that exploitation involves deriving benefit by taking advantage of another’s vulnerability in a mutually beneficial transaction or interaction. As emphasized, mutual benefit motivates both A and B to enter into a voluntary transaction. Despite both parties benefitting from the interaction, the benefit accruing to A is only possible because A has turned B’s vulnerability into an advantage or opportunity to benefit. Thus, benefit and vulnerability are necessary conditions for exploitation.

Nevertheless, this vulnerability conception of exploitation requires providing a more precise notion of vulnerability to address the problems affecting the two vulnerability theories. Conceiving exploitation as benefiting by taking advantage of
vulnerability is not self-explanatory or unproblematic. We need a precise notion of vulnerability to help us avoid the charges of incompleteness, over-inclusiveness or under-inclusiveness that affects the above vulnerability accounts. Moreover, the concept of vulnerability remains vague and elusive as attempts at defining it often consists further imprecise notions such as human needs (Logar 2010: 335). We also need to address the use of vulnerability in the theories referring to both a condition - indicating B’s weakness or the source of weakness and a relation between the interactors – B is vulnerable to A. Vulnerability as relationship between interactors and what it intends to denote in the occurrence of exploitation is best captured by the notion of dependence. I propose a vulnerability theory of exploitation with a clearer notion of vulnerability in the next chapter separating the two senses in which the term vulnerability is used in both Goodin and Wood.

On what constitutes morally objectionable exploitation, I contend that exploitation is morally objectionable for various reasons, and not only those suggested by Goodin and Wood. That is, there are a variety of reasons why benefiting by taking advantage of others’ vulnerability is morally wrong or objectionable. Wood’s violation of the proper respect for a person or degradation and Goodin’s failure to protect another’s interest are only some of the reasons why exploitation could be morally wrong and not the only reasons. Wolff’s view makes a similar suggestion arguing that his Kantian interpretation of Marxist exploitation can be given Kantian, Aristotelian and Utilitarian content in spelling out the different ways in which exploitation is morally wrong (Wolff 1999: 113). Similarly, Risse and Wollner (2014: 21) think that exploitation could be morally objectionable for one reason or another, or it could be objectionable for more than one reason. In terms of approach, I follow Wood’s approach of separating the definition of
exploitation from what makes it morally wrong. Wood’s method is more appealing than Goodin’s theory because it avoids the limitations set by the use of a moral conviction to determine the occurrence of exploitation. That is, Wood’s account determines the occurrence of exploitations in different scenarios without the restrictions of a moral principle whose violation determines the occurrence of exploitation.
Chapter 4

The Concept of Vulnerability: Towards A Revised

Vulnerability Theory of Exploitation

Introduction

The task in this chapter is to clarify the concept of vulnerability and its role within exploitation. The task contributes to the vulnerability approach to exploitation by philosophically analysing the concept of vulnerability. The analysis supports my claim in the preceding chapter that a vulnerability-based theory provides a better understanding of exploitation than other theories of exploitation. The claim in the previous chapter is that the vulnerability approach identifies the correct necessary conditions for the occurrence of exploitation thereby avoiding the mistakes made by other theories. The identification of the correct necessary conditions means that the vulnerability approach captures a wider range of exploitative relationships, including exploitation occurring in the international arena, than the other theories of exploitation.

However, as demonstrated in the previous chapter, Wood and Goodin’s vulnerability theories of exploitation both contain an imprecise conceptualisation of vulnerability, and this leads to the problems of over and under-inclusion. Thus, the clarification of the concept of vulnerability is against the backdrop that the concept
remains fuzzy and under-theorized. The concept of vulnerability is applied ambiguously even in academic fields where it is expansively used. As Mackenzie and her co-authors (2014: 18 – 19) remark, “the conceptual confusion within fields such as bioethics about the scope of vulnerability and the obligations it generates demonstrates an underlying lack of philosophical clarity about the concept of vulnerability.”

In the following sections, I develop the definition of vulnerability and qualify the concept of vulnerability that should guide our understanding of exploitation. The argument in this chapter builds on the claim made in the previous chapter that vulnerability is a necessary condition for exploitation because exploitation is only possible where one party is vulnerable. This is in contrast to the view suggested by other theorists, such as Sample, which says that although exploitation is typically connected to vulnerability it is not always at the root of exploitation (Sample 2003: 75). I further argue that vulnerability is only one of the necessary conditions for exploitation, and that it must also be the case that the exploited agent be dependent on the exploiter. Accordingly, on my account, exploitation occurs when A derives benefit by taking advantage of the vulnerability and dependence of B. Vulnerability is a condition in which B’s welfare interests or well-being is threatened. Dependence is a relationship between interactors where B’s cost for exiting a relationship with A is greater than zero (Lovett 2010: 50) because this transaction is the best option available for securing B’s welfare interests. As a reminder, in an exploitative relationship, A and B refer to agents or groups or coalitions of agents where A is the exploiter and B is the exploetee.

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23 Wolff (1999: 111) holds a similar view that “exploitation is typically a matter of using another person’s vulnerability to your own advantage”.
As demonstrated in the previous chapter, Goodin and Wood use vulnerability and dependence interchangeably and to refer to two different phenomena: a condition for B (c-vulnerability) and a relationship between A and B (r-vulnerability, B is vulnerable to A). However, to achieve some conceptual clarity, we need to separate the notions rather than using them interchangeably. I argue that dependence rather than r-vulnerability best characterises the relationship between A and B in an exploitative transaction. In a dependence relationship, transacting with A is the best available option for B to secure his or her welfare interests which then entails that A’s action and choices can effect adverse consequences on B’s wellbeing rather than vice versa. The two notions of dependence and vulnerability should not be used interchangeably because despite their proximity, they are not synonymous. Vulnerability denotes a condition while dependence denotes a relationship, which is not properly depicted by r-vulnerability.

Thus, on this vulnerability account, the understanding of vulnerability that is relevant to exploitation is one that is accompanied by dependence. A exploits B when A benefits by simultaneously taking advantage of the threat(s) to an agent’s welfare interests and the relationship in which B can only exit at a cost above zero to his or her welfare interests. B is exploitable if and only if he or she is vulnerable and dependent on A. The vulnerability theory as proposed, explains the nature of exploitation and the mechanism by which it takes places in a range of exploitative examples.

In the following sections, I explore the meaning and use of vulnerability to highlight the lack of philosophical clarity on the concept of vulnerability in the various academic fields. I also narrow down to concept of vulnerability that is relevant to the understanding of exploitation in ways that do not make exploitation narrow or broad. The explanation of the nature of vulnerability also shows how vulnerability disadvantages B
in a transaction. The last section explains the notion of dependence and its role in exploitation.

What is vulnerability?

In ordinary language, something is ‘vulnerable’ when it is “capable of being attacked, harmed, or injured in some way” (Levine et al. 2004: 47). When something is vulnerable, it means it is in some state of weakness such that vulnerability and weakness are often used interchangeably. There is extensive use of the term vulnerability in a wide range of disciplinary fields where it means different things and sometimes differs in its application within the fields. Vulnerability may sometimes indicate a mere increased risk of harm while in other cases it refers to specific things such as lack of capacity to consent or increased susceptibility to coercion. Despite these differences, the use of the term vulnerability mostly indicates the probability of the occurrence of harm (broadly construed) due to some weakness in an entity, an individual or a group of people. In other words, the idea of vulnerability in various fields denotes a condition in which entities including human beings are susceptible to harm or injury or that there is an imminent threat of harm that may befall these entities or individuals. For example, in disaster management the term vulnerability suggests “the diminished capacity of an individual or group to anticipate, cope with, resist and recover from the impact of a natural or man-made hazard” (IFRS).24 Similar definitions also exist in other fields such as bioethics emphasizing the likelihood of harm or injury because of some weakness and the questions

of capacity to avoid or deal with the threat of harm or the harm itself. For example, the Council for International Organizations of Medical Sciences (CIOMS) defines vulnerable persons (or vulnerability) as “those who are relatively (or absolutely) incapable of protecting their own interests. More formally, they may have insufficient power, intelligence, education, resources, strength, or other needed attributes to protect their own interests” (CIOMS guideline 13). Similarly, Doris Schroeder and Eugenijus Gefenas (2009: 119) hold that “to be vulnerable means to face a significant probability of incurring an identifiable harm while substantially lacking ability and/or means to protect oneself”.

Despite becoming a key term among academics, in research and policy-making, vulnerability “is used without defining what they mean by the term” (Brown 2011: 314). That is, the concept of vulnerability in these fields is often used as a self-explanatory term. In research ethics, for instance, few policies and guidelines explicitly define vulnerability. Instead, they rely on implicit assumptions and delineation of vulnerable groups and sources of vulnerability (Bracken-Roche et al. 2017). McKenzie (2014: 82) shares a similar view that the concept of vulnerability remains a background assumption or is used implicitly in many accounts of clinical bioethics. Madison Powers and Ruth Faden make use of such implicit assumptions about vulnerability in their work stating, “Our background assumption is that some people are more vulnerable, less powerful, less advantaged than others, and that all live lives of dependency and interdependency” (Powers & Faden 2008: 30). The theme of vulnerability is also prominent in a number of areas of philosophy albeit without much clarity on what the concept precisely means. Issues of vulnerability run through the writings on international ethics, feminist ethics, global justice and human rights amongst others.
The lack of clarity on the concept of vulnerability traces back to an unresolved issue about the meaning of vulnerability. That is, whether vulnerability refers to a general human condition of susceptibility to harm or to specific kinds of conditions in which some people have an increased susceptibility to specific kinds of harms or injuries. The definitions from disaster management and medical research ethics in the above paragraphs in part exemplify the differences. The first interpretation of the concept of vulnerability views vulnerability as an ontological condition. This interpretation views human vulnerability as inherent and inevitable as it results from our embodied humanity hence it is universal. On this view, we can point out how all humans are essentially susceptible to various harms such as physical illness, disability, and death, among other things.

Ontological definitions of vulnerability generally use the concept consistently with its derivation from the Latin word *vulnus* (wound). “The root of the concept of vulnerability lies in the possibility of physical harm” (Levine et al. 2004: 47). Martha A. Fineman’s definition of vulnerability as “a state of constant possibility of harm” falls within this approach (2008: 11). In Fineman’s view, vulnerability is an inherent human condition that is universal and constant. It is universal because vulnerability arises from our “embodiment which carries with it the ever-present possibility of harm, injury, misfortune from mildly adverse to catastrophically devastating events, whether accidental, intentional or otherwise” (Fineman 2008: 8). Vulnerability is constant because our embodied humanity “carries with it the ever-constant possibility of dependency as a result of disease, epidemics, or other biologically-based catastrophes” (Fineman 2008: 8). We need to note here the use of dependence in the explanation of vulnerability also noted in Goodin and Wood’s conceptions of vulnerability. Some authors conceptualise
vulnerability in this way in recent debates in feminist theory and bioethics where there is a revived interest in the concept of vulnerability. For example, Mackenzie and her co-authors (2014: 4) classify a number of theorists as those who understand vulnerability as a universal, inevitable and enduring aspect of the human condition. They include in this category Judith Butler’s (2004) corporeal vulnerability, Martha Nussbaum’s (2006) human animality, Alisdair MacIntyre’s (1999) vulnerabilities of human life and Margaret U. Walker’s (1998) vulnerability-in-principle.

However, this approach to understanding vulnerability is not useful for understanding the role it plays in exploitative exchanges. As Wood suggests, it implies that all human beings are vulnerable and, as a consequence, gives the misleading impression that exploitation is ‘virtually ubiquitous in human social life’ (Wood, 1995, 145). In addition, other critics have pointed out that this ‘universalist’ conception of vulnerability is too broad and poorly defined to be of any practical use (Macklin 2003; Levine et al. 2004; Schroeder & Gefenas 2009). For instance, Mackenzie (2014: 6) observes that this approach renders the concept of vulnerability potentially vacuous and of limited use in responding to specific vulnerabilities by labelling everyone as vulnerable.

The above ontological definition is lacking because it does not explicitly acknowledge that while vulnerability is embodied in our biological nature, it is not the same for everyone. The distribution of vulnerability is not even, because susceptibility to harm is often significantly social and relational. As Fineman (2013: 21) states in her analysis, vulnerability is significantly a function of our positioning within the web of economic and institutional relationships, which determine our particular abilities to avoid or respond to risks. For example, all human beings are vulnerable to the outcomes of crop
failure. Nevertheless, vulnerability is of concern when individuals experience the outcomes of crop failure differently because of other reasons or conditions such as their socioeconomic positions. Our concern with vulnerability with respect to crop failure is when the conditions surrounding some people are such that practices or policies, for example, are not supportive and that they amplify the people’s precarious situation – their susceptibility to harms such as hunger. In other words, crop failure only turns into famine when there are no measures in place, for example, to compensate farmers and when socio-political institutions are not willing to help the affected people. Under these circumstances, individuals experience vulnerability differently in that some individuals’ welfare interests are more threatened than other people’s. The differences in susceptibility as described, shows that beyond the human condition, our vulnerability is also a function of specific social conditions such as those born out of relationships, systems and institutions that we have in place to mediate, compensate, or lessen the likelihood of harm from occurring (Fineman 2013: 22).

Picking out the conditions or contexts that surround individuals and make them particularly vulnerable is important as this makes the notion of vulnerability less vacuous and more useful particularly for our understanding of exploitation. In other words, this understanding of the concept of vulnerability is helpful because it points to us what sort of vulnerability matters to the occurrence of exploitation. Onora O’Neill states that this understanding of vulnerability is further helpful because it identifies those who are “more deeply, variably and selectively vulnerable to the action of particular others and the particular institutions on whom [they] come to depend for specific and often unavoidable purposes” (1996: 192).
Mackenzie and her co-authors (2014), while acknowledging the ontological nature of vulnerability as intrinsic to the human condition and therefore universal, emphasize the second view of vulnerability. They also view vulnerability as a function of positioning, social ties and institutions. This vulnerability is particular to some individuals rather than others. According to Mackenzie and her co-authors, there are two forms of such vulnerability. The first one is situational arising from context and the other is pathogenic, which is situational but arising specifically from significant oppression or injustice (MacKenzie et al. 2014: 7 – 9). Their argument uses this understanding of vulnerability as a critical or normative notion to make a case for a more responsive state and institutions in addressing individual vulnerability. Fineman (2008: 1 – 2) similarly employs this notion of vulnerability to analyse and reconfigure social policies on inequality and disadvantage founded on the understanding of the liberal subject as an autonomous being. This understanding of the concept of vulnerability is important because it serves as a critical notion that seeks to address the inadequacies of policies and institutions in fields such as moral, legal and political theory.

Without dismissing vulnerability as a human condition, the vulnerability that matters to our understanding of exploitation should focus on vulnerability that is often unequal because it is socially or relationally determined. That is, we should emphasize the second view of vulnerability as something that is unequally experienced because it is socially influenced rather than a mere human condition. The reason for this is that we may fail to grasp how threats to people’s welfare interests are often subject to their socioeconomic posturing. In addition, using this view of vulnerability we can easily identify the exploited party. That is, when we view vulnerability as unequally distributed
because of other circumstances, that other people are at a higher risk of harm or wrong
more than others, we identify an essential characteristic of an exploitative relationships.

In this account of exploitation, I employ the second conceptualisation of vulnerability as the relevant sense of vulnerability to the occurrence of exploitation. Both A and B may have threats to their wellbeing because of their shared embodied humanity. They may both be threatened by diseases but B may be more vulnerable and therefore more exploitable than A because the threat to B’s wellbeing is escalated for instance by some injustice in the distribution of resources that may help to protect her from the disease. That is, because of the other socioeconomic factors, B may be vulnerable or “more or much more susceptible than others to certain harms, injuries, failures and misuse” (Schroeder & Gefenas 2009: 113). On this understanding, vulnerability is contingent on “contextual factors, which signifies increased precariousness or greater risk of harms for particular individuals” (Rogers 2014: 60). Put differently, vulnerability is relevant to the discussion of exploitation only when it “turns out to have been created, shaped, or sustained at least in part through certain social arrangements” (Titmuss 1958 cited in Goodin 1985: 783). For example, vulnerability (or threats to welfare interests) associated with childhood or old age is inevitable and come along with dependence. However, this vulnerability is of concern in our case when intensified, for example, by institutional or social arrangements. Children and the elderly are inevitably vulnerable but their vulnerability is exacerbated by their situation such as one in which the social institutions or laws do not protect children and the elderly from some forms of abuse. All children are vulnerable as children because of their (or lack of) abilities, resources, etc. but those children in places where contextual conditions such as the absence of functional
child protection policies are vulnerable in a way that matters to the occurrence of exploitation.

The definition of vulnerability that focuses on contextual conditions avoids the problem of over-inclusiveness identified in the previous approach because it “focuses on a high degree of vulnerability” (Formosa 2014: 91). This implies that only those whose welfare interests are more threatened than their interactors because of other contextual factors are vulnerable in the relevant sense to this theory. This type of vulnerability motivates a person to interact with another to protect their welfare interests hence a potential victim of exploitation. For instance, a mentally challenged person is vulnerable because s/he has more needs to be met hence more susceptible to various forms of abuse and exploitation. Lack of provisions or support and protections for people with mental challenges therefore makes them more vulnerable than those without such a challenge. This, in my view, is what should inform the identification and categorisation of individuals and groups as vulnerable people such as children, refugees, the elderly, and women among others. The idea here is that these groups experience vulnerability in more specific ways than others because of their context or situation and their condition produces other forms of challenging experiences. In other words, this conception of vulnerability views that individuals or groups’ likelihood of suffering some harm increases with the contextual conditions. Moreover, these conditions cause or contribute to their lack of the ability to secure their welfare interests to avert the threats that may ensue. For example, refugees are vulnerable because they are more susceptible to physical and other forms of harms more than non-refugees are because their condition or situation of displacement, which makes them exceptionally prone to those harms and injuries or abuses.
The vulnerability view that is relevant to the understanding of exploitation is thus one that considers contextual conditions that further threaten B’s welfare interests. The idea is to bring into the picture the nature of vulnerability and its role, particularly when it concerns transactions or relationships. For example, understanding women as vulnerable should go beyond the mistaken view that still holds in some societies that women’s vulnerability simply connotes an inherent weakness. In this case, we need to consider how contextual factors such as society, tradition and institutions among others that particularly threaten their welfare interests expose women to various forms of harm or abuse and exploitation. By emphasizing such contextual conditions, we deal with the problem of over-inclusiveness because it helps to pinpoint the exact conditions that make women vulnerable. For instance, when we label women as a vulnerable we make the concept narrow enough to acknowledge the conditions that threaten their welfare interests even across different jurisdictions. Thus, institutional, environmental, social or economic contexts surrounding individuals are important to the understanding of vulnerability as a necessary condition for exploitation.

Vulnerability and Disadvantage

The view of vulnerability sketched above adds some analytical advantage to understanding the concept of exploitation. To demonstrate this potency we need to clarify how vulnerability works in exploitative transactions. The view particularly shows how vulnerability is necessary for the occurrence of exploitation. For instance, when one is vulnerable to a disease, his or her welfare interests are threatened. However, the threats to one’s welfare interests by a disease increase by certain socioeconomic conditions such as lack of access to healthcare and lack of food caused by factors ranging from poverty
to other people’s irresponsibility and/or institutional failures. A disease such as Cholera is more threatening to the wellbeing of people who are victims of poor institutional policies that unequally distribute resources such as access to clean water, proper sanitation and medical care. Individuals living in parts of a society that lack access to clean water, have poor sanitary conditions and do not have proper medical care, are in this sense more threatened by the disease than those living in parts of the society that have better conditions. In other words, their vulnerability is about their contextual or socioeconomic conditions that increase the threats to their welfare interests rather than a mere human condition.

The conditions that intensify the vulnerability to diseases for the people living in poor conditions in the example above is their source of disadvantage when bargaining with their counterparts living in the better part of society. Their poor conditions influence their life chances and puts them to a disadvantage because they have more threats or serious threats to their welfare interests than other members of the society do. More clearly, the conditions surrounding each part of the society constitute an advantage or a disadvantage in an interaction or bargaining situation such that those living in the poor parts of this society are at disadvantage compared to those living in the more affluent part of the society. Those who have an advantage have the capacity or resources with which they can control their counterparts leading to exploiting them. The advantage is based on that they have the ability or resources to help secure the wellbeing of their interactors from the poor part. Vulnerability owing to contextual conditions indicate B’s disadvantage in bargaining situations because B lacks the capacity and/or resources to protect her threatened welfare interests. As an example, considering clean water as need, those from the poor part of society may wish to transact with those from the other part for
a resource that they do not have. However, B goes into this bargaining situation
disadvantage because A has control over a resource B needs to secure his or her welfare
interests. In this bargaining situation, vulnerable B is therefore more disadvantaged, that
A’s choices and actions have more influence of B’s welfare than vice versa. Thus, A has
the opportunity to use this vulnerability to his or her advantage.

This understanding of vulnerability emphasize that when the individual’s
contextual conditions compound threats to one’s welfare interests, the likelihood of
exploitation escalates. In the disease example, threats posed by the disease to one’s
wellbeing are amplified by lack of resources or conditions that can protect individuals’
wellfare interests. These contextual conditions ultimately put the vulnerable individuals at
a disadvantage when transacting with less or non-vulnerable others because the protection
of their welfare interests is subject to their transactors’ choices or actions. In this case,
one can take advantage of their vulnerability to derive benefit. In Goodin’s words, under
such conditions, A’s actions and choices have a great impact on B’s interests (1985b:
779). The situation for the people from the poor part is comparable to the situation for the
stranded motorist because he or she is in a position of disadvantage when bargaining with
the tow truck driver. The stranded motorist is vulnerable to snowstorm and being caught
in a ditch is the contextual condition that compound the threat to her welfare interests.
Compared to the stranded motorist, the tow truck driver is not vulnerable to the
snowstorm like the motorist because the tow truck driver is not trapped in a ditch. In short,
the threats to the welfare interests of the two parties are not similar giving the tow truck
driver an advantage over the stranded motorist. The tow truck driver and the people from
the better part of society are therefore in a position to insist on their terms of a transaction
and their interactors can only put up with it. In a bargaining situation as described, and
where there are no alternatives to transacting with A, B’s vulnerability is his or her
disadvantage when transacting with A. Thus, the difference between the two parties lies
in B’s levels of vulnerability and lack of capacity and alternatives to protect his or her
welfare interests without transacting with A. In this sense, B’s welfare interests are subject
to A’s actions and choices. The clarification of what constitutes vulnerability and its role
in a bargaining situation only establish the necessary conditions for B in an exploitative
relationship. The bargaining situation at best suggests an asymmetrical relationship
between A and B, but does not explain the nature of the relationship that is necessary for
exploitation. That is, not all asymmetrical relationships are exploitative. This leads into
the discussion of the notion of dependence. As stated earlier, exploitation occurs if and
only if A benefits by taking advantage of B’s vulnerability and dependence.

Dependence and its role in exploitation

Vulnerability and the disadvantage it implies in a bargaining situation creates an
asymmetrical relationship between A and B. B is at a disadvantage because he or she has
threats to her welfare interests compared to A. B lacks the capacity to secure or promote
her welfare interests without the assistance of other individuals and this assistance comes
through a transaction. That is, B can only secure his or her welfare interests by entering
into a relationship with A to secure the threatened interests. I argue that vulnerability
caused by an individual’s specific circumstances often yields dependence. Dependence
as defined earlier denotes a relationship between interactors where the cost for exiting a
relationship with A is greater than zero for B (Lovett 2010: 50) because this transaction
is the best option available for securing B’s welfare interests. This implies that B prefers
this transaction to others since the transaction with A represents the best option available
for securing B’s welfare interests. In other words, dependence entails a relationship in which B’s welfare interest are more secure if B transacts with A because not transacting is costly to B’s wellbeing.

This vulnerability account holds that exploitation occurs only where vulnerability and dependence are present together. In other words, vulnerability and dependence are necessary conditions for exploitation. It is not possible to benefit by taking advantage of a vulnerable person when not transacting with A is not costly for B and the best option for securing his or her welfare interests. For example, a person who is drowning is vulnerable because of contextual conditions as is a person with mobility problem. However, the two are not dependent if they lose nothing by exiting a relationship with A because they have the ability to secure their wellbeing or have available to them other assistive devices to secure their wellbeing. That is, the cost of not interacting with A to secure their wellbeing is not more than zero and there are other options to meet their needs or secure their wellbeing. Both are therefore not exploitable because their welfare interests or wellbeing can be met without transacting with A. Similarly, the research subjects in the Tuskegee experiments and the psychotherapy patient are not exploitable if they can exist the relationship without risking the opportunity of securing their wellbeing because they have other alternatives to secure their threatened welfare interests. The idea of dependence advanced here borrows from Frank Lovett’s idea of dependence that B is dependent on A if the cost of exiting the social relationship with A are greater than zero (Lovett 2010: 50). Lovett uses this idea of dependence as a necessary condition for domination that holding all other things equal, most people would prefer not to be subject to domination unless there is something holding them in place, which presumably is the cost of exit (Ibid 49). For instance, slavery in the antebellum American South represent a
relationship of dependence since the cost of exiting were made too high by the grave
dangers of attempting to escape. Similarly, the lack of employment opportunities for
women in the 18th century England and elsewhere, and to some extent today, makes
women depend on their husbands since the prospects for life outside marriage are not
attractive because of the legal and cultural difficulties of divorce (Lovett 2010: 50 – 51).
Where there are no costs to exiting any social relationship there is no dependence or the
level of the cost determines the level of dependence. Lovett view is comparable to my
view of dependence because B has more to lose by not transacting with A since B has no
better options to transacting with A. The cost for B refusing to transact with A or exiting
a relationship with A is therefore high for B because his or her wellbeing remain
unsecured and misses the best available option for securing the threatened interests. The
stranded motorists and the research subjects are for instance in such a position where the
cost of not transacting with A are high comparable to the slaves and women in Lovett’s
examples. Thus, it is because it will cost B’s wellbeing not to transact with A and B is out
of options than to transact with A that B is exploitable. In other words, vulnerable but not
dependent persons are not exploitable because they can secure their welfare interests
hence would not accept terms and conditions of transactions that do not adequately protect
her welfare interests unlike persons who do not have alternatives to protect similar welfare
interests. The cost for refusing to transact or exit a relationship for B who is vulnerable
but not dependent is by Lovett’s depiction not more than zero (Lovett 2010: 50). Thus,
exploitation cannot occur without conditions of vulnerability and a relationship of
dependence between interactors.

Dependence as a necessary condition for the occurrence of exploitation is also the
significant difference between interactors in the vulnerability model. Dependence shows
the difference between the tow truck driver and the motorist, the villagers and the factory owner, the research subjects and the researchers, the psychotherapy patient and the doctor, and the interactors in the other examples. Unlike A, securing B’s welfare interests in all these examples is contingent on his or her transactor. For instance, the motorist needs the tow truck driver to secure his or her welfare interests because the motorist cannot release the vehicle from the ditch by himself or herself. Similarly, in the factory example, the workers’ vulnerability to hunger increases with poverty, and their lack the capacity to protect their welfare interests disadvantages them when bargaining. Contrariwise, the tow truck driver and factory owner’s welfare interests are not contingent on their transactors because they do not have the threats that the motorist and the villagers have. As stated earlier, B depends on A only insofar as there is a cost greater than zero to B’s wellbeing when B chooses not to transact with A. At the same time, transacting with A represents the best available options for securing B’s welfare interests compared to other possibilities if available such as in the factory example. A has an advantage over B because A’s interests do not rely on B as much as B’s welfare interests rely on A through the transaction for the protection of his or her welfare interests. Borrowing Goodin’s expression, the A’s actions and choices have a great impact on B’s welfare interests rather than vice versa.

From the above explanation, A can only exploit B when B is both vulnerable and dependent. In the absence of vulnerability and dependence, A would offer different conditions for B because B would not accept exploitative terms and thus exploitation would not occur. This understanding shows why or how people who have threats to their welfare interests and lack the capacity or resources to protect those interests, such as refugees, orphans, victims of natural disaster, patients without access to medical care etc.,
are often victims of exploitation. Their situation is precarious and they generally lack the ability to protect their welfare interests. Their exploitability is in both that they have threats to their welfare interests and they lack options with which to secure their interests such that they become dependent on their transactors who represent the best option available for securing the threatened welfare interests. We can contrast this exploitable situation with a scenario where the stranded motorists has other drivers available to transact with him or her. The motorist is vulnerable to the snowstorm but she is not dependent on the driver because the cost of exiting the relationship with the greedy tow driver is less than zero as the motorist has other options available for securing her welfare interests. The motorist loses nothing by not transacting with the greedy tow truck driver hence exploitation does not occur. Thus, when employing the idea of vulnerability in discussing exploitation, we at the same time aim to indicate B’s need to transact with a particular A to secure the threatened interests because there is a cost to B’s wellbeing if the transaction does not occur. I think that this is the implication of Goodin’s four inappropriate circumstances where advantage taking is unacceptable (1987: 185). The exploited in all four circumstances are vulnerable – have threats to their wellbeing and at the same time, the vulnerable stand to incur a cost that is detrimental to their threatened welfare interests if they do no transact with A who is also the best option hence they are dependent on A to secure protect their threatened welfare. Dependence is therefore the better term to use to explain Goodin’s point that “one is vulnerable to particular agents with respect to particular sorts of threats to one’s interest” (1985: 112).

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25 Virginia Held (2006) holds similar views of vulnerability in her *Ethics of Care* endorsing care as an activity that meets the needs of those who cannot care for themselves. Held’s ethics of care views that their various relations with others affect individuals and these relations are not only those that have been voluntarily entered into rather than viewing individuals as independent and equal competing with each other for resources and advantage. She argues that her care approach represents an alternative to moral theories such as Kantian ethics and utilitarianism and addresses the shortfalls that right-based approaches.
The proximity between vulnerability and dependence underlined in this view of exploitation is not novel. As already indicated, other theorists including Goodin (1985b: 779) use the two concepts interchangeably albeit without showing how or to what extent the terms are related. Goodin (1988: 174 fn 34) states that “all exploitation is the exploitation of dependencies or vulnerabilities (terms used interchangeably)”. Dodds (2014: 182 – 3) also explains the relation between the two concepts by stating that dependence is “a specific form of vulnerability” that “dependence is vulnerability that requires the support of a specific person (or people)”. The definitions of vulnerability stated earlier from Schroeder and Gefenas (2009) and the CIOMS similarly suggest the close relationship between the two terms such that vulnerability implies dependence. However, I argue that despite this proximity, vulnerability and dependence are not synonymous. Concurring with Mackenzie et al. (2014: 11), we should not mistake vulnerability and dependence for equivalents as much as the two are related.

The reason why we should distinguish the two concepts is that, as stated earlier, it is possible to be vulnerable without being dependent. For example, a person whose vulnerability to disease increased by lack of health care facilities may not be dependent if that person has not yet caught the disease. Such a person is not dependent in the sense that he or she has no costs to incur by not interacting with A or does not need to transact with A as the best way available for securing his or her welfare interests. In other words, such a person is not dependent on their interactor in the way a stranded motorist is dependent on the tow truck driver. Unlike this person, the stranded motorist as well as B in the other examples stand to lose by not transacting with A and because this transaction is the best options available for securing welfare interests.
As noted, other authors hold that vulnerability denotes dependence. For instance, such usage is clear in Fineman’s definition of vulnerability as “the present potential for each one of us to become dependent upon our persistent susceptibility to misfortune or catastrophe” (Fineman 2008: 12). However, the emphasis on vulnerability that arise from contextual conditions intends to capture as O’Neill (1996: 192) states how other individuals or groups are more deeply, variably and selectively dependent on others. Examples of vulnerable people such as children, prisoners, the economically or educationally disadvantaged, refugees, racial minorities, the sick, etc. capture this idea of dependence. That is, their position is such that there is a cost to their wellbeing if they chose not to interact with another actor to protect their own interests for which they do not have options to secure their threatened interests. Thus, vulnerable individuals or groups are more exploitable than others not only because of the existence of threats to their wellbeing and their lack of capacity to protect themselves. They are exploitable because they risk their welfare interest if they do not engage with their interactors who represent the best option available for securing their welfare interests. The emphasis here is that dependence outlines the necessary relationship to the occurrence of exploitation where B is in need and stand to lose if he or she will not transact with a specific A because there are no better options for securing the threatened interests than a transaction with A. This means that a relationship of dependence is not merely an asymmetrical relationship where one party is weaker in comparison with the other.

Thus, the notion of vulnerability that is relevant to the occurrence of exploitation is accompanied with dependence to depict the necessity for B to transact with A. In other words, B’s vulnerability is exploitable when it is also the case that B is dependent on A - the exploiter. B is dependent on A when there is a cost above zero to B’s welfare interests
if B chooses not to transact with A in addition to the fact there are no better options available for securing the threatened welfare interests. A has the capacity and/or resources to help B forestall a threat to her welfare interests. As Dodds puts it, dependence entails a special relationship with another which “makes one person reliant on the other party to attend to their needs and interests” (2014: 190). It is my view that dependence rather than vulnerability should be used to decide who is responsible for rendering assistance. For example, we should replace r-vulnerability with dependence in Goodin’s discussion of vulnerability as the source of responsibility (Goodin 1985b: 779).

The relevance of a relationship of dependence to exploitation can be illustrated using Nicholas Vrousalis’ modified pit example. Suppose a situation in which individuals trapped in a pit at different positions facing mudslides but individual “A has a rope, and it would be very easy for B to use that rope to climb up, thus avoiding worse mudslides” (Vrousalis 2013: 134). B is vulnerable to mudslides and her vulnerability increases with depth. B’s wellbeing is threatened and she has no ability to pull herself out of the pit. Vrousalis (2013: 133) calls this absolute vulnerability, which is comparable to what I simply term c-vulnerability – a condition in which one’s welfare interests or wellbeing is threatened. Vrousalis (2013: 134) thinks that exploitation also requires r-vulnerability where B is vulnerable to A and A has some sort of power over B. In his view, in the presence of A offering to transact with B, B is vulnerable to A and B’s vulnerability becomes a function of A’s willingness to throw the rope. I argue that in this situation B is dependent on A because the cost of not transacting with A is high to B and transacting with A is the best option available to B for securing her wellbeing. A’s actions and choices with respect to the use of the rope have a significant impact on B’s wellbeing if B has no
other options. The vulnerability theories from Goodin, Wood, and Vrousalis’ hold that in exploitation B is vulnerable to A.

However, on my account, vulnerability is a condition which constitute threats to B’s wellbeing and stating that B is vulnerable to A would mean A is threat to B’s welfare interests. I argue that this is not necessarily the case. A does not have to threaten B’s welfare interests or contribute to the threats. A merely takes advantage of the existence of those threats. In the deep pit example as well as in the other five examples, for instance, A does not threaten B’s wellbeing because A does not add anything to the threat to B. In other words, with or without A, the threat to B’s welfare interests remains the same. Thus, when transacting with A, B enters into a relationship of dependence rather than r-vulnerability. Moreover, it is in the sense of having no other better options to transacting with A to secure one’s interests that dependence is similar to the idea of helplessness. B in the deep pit example agrees to transact with A because she cannot power to pull herself out of the pit and avoid the mudslides and does not have any other better options available. At this point, other theorists such as Vrousalis may argue that exploitation therefore requires a relationship of domination as he argues that “exploitation should be conceived instead, as form of domination, that is, domination for self-enrichment” (Vrousalis 2013: 131). However, understanding exploitation as a form of domination for self-enrichment makes the conception of exploitation too broad as it may include cases where thugs take money from B because they have power over B. The thugs’ scenario depicts a case of domination for self-enrichment but is not a case of exploitation, which implies that a relationship of domination is not necessary. I therefore insist that a relationship of dependence rather than of domination is necessary for exploitation. Thus, B is open to exploitation by A because, first, her welfare interests are threatened by mudslides; and
second, the cost to exiting or refusing a transaction with A is high for B as A represents the best option for securing B’s welfare interests.

The severity of the threat(s) and the cost of exiting a relationship with A to B’s welfare interests, as well as the lack of better options for protecting those welfare interests determine the level of dependence. In the stranded motorist example, as well as in the other examples, A demands for what we may call unfair, unjust, or unequal benefit because there is a threat to B’s welfare interests and the cost of not transacting is high for B because B lacks other options for protecting her welfare interests. The impending snowstorm poses a greater threat to the motorist than if there was no snowstorm coming her way. That is, the threat to B’s welfare interests would be less if the motorist was only caught in a ditch and there was no snowstorm; or if there was an impending snowstorm but she was not caught in a ditch. The seriousness of the threat to B’s wellbeing is compounded by being caught in the ditch and the absence of other tow drivers as alternatives increases her level dependence on the greedy tow truck driver. It is therefore only under the conditions of vulnerability and dependence that A can derive benefit by taking advantage of B. Under different conditions, such as where B can help herself out of the ditch, or where there are other tow truck drivers willing to transact, A cannot insists on terms of a transaction that B can only put up with. B cannot accept such conditions, as exiting a relationship with A is not costly, in part, because A is not the best option available.

However, we should note that exploitation could be systematic or institutionalised that C and D can offer the same conditions as A that do not adequately secure B’s welfare interests. As argued above, the tow truck driver cannot exploit the stranded motorist when there are other drivers available to provide towing services to the motorists, which renders
A not the best option available to B. Where offers from C and D are not different from A’s offer, or perhaps where the drivers seem to have formed a cartel, the motorist is simply dependent as the cost for exiting the relationship is high for B and there are no better options available for the protection for B’s wellbeing. Henk ten Have makes a comparable observation on exploitation in clinical research stating that A (the more powerful party) is not a single individual, but usually represent a network of actors while B is often isolated and not embedded in a supportive network (Have 2016: 140). The same can also be said about Marxist exploitation where it is costly for the workers to exit a relationship with the capitalist as owners of the mean of production without whom the workers cannot labour productively and earn a living. In such a situation, the conditions of vulnerability and relationships dependence prevail and B’s capacity to protect herself diminishes and is simply exploitable.

As articulated above, the idea of dependence implies lack of bargaining power and advantage in an asymmetrical relationship. B is dependent on A implies that A has power or control over B. The pit example illustrates this point. In addition to A’s possession of a rope, A has advantage and power over B because B’s wellbeing relies on a transaction with A and B lack of other options for securing the threatened welfare interests. B’s need for a resource that A can provide to secure his or her wellbeing creates an asymmetrical relationship between the parties but the cost of exiting a relationship for B creates dependence hence A’s ability to insist on terms that do not suit B. In this dependence relationship, A occupies a position where she recognizes both the threat to B’s welfare interests and the cost of not transacting for B including the lack of options for securing his or her wellbeing. A uses these to his or her advantage. In the Tuskegee example, the researchers take advantage of the subjects because they recognise both the
threat to subject’s welfare interests through the disease and poverty and how much it would cost the subjects if they exit or refuse a relationship with the researchers because of their lack of options for protecting their welfare interests. In the context, only the researchers can secure the subjects’ wellbeing. The absence of alternative transactors or resources makes the cost of exiting the relationship high for subjects hence the subjects depend on the researchers in the same way individual B trapped in a pit is dependent on A with a rope. This is in my view what explains Goodin’s view of the exploiter and the exploitee as superordinate and subordinate respectively. The superordinate has discretionary power over some the resource in an asymmetrical relationship (Goodin 1985a: 196) when the cost of exiting a relationship is high for B who has no alternatives for securing the threatened welfare interests.

It follows then that advantage taking is in the cases above only possible because the cost for exiting a relations for B - the stranded motorist, the workers, the psychotherapy patient and the syphilis subjects, is high particularly where B does not have options available for securing their welfare interests. B occupies a position of disadvantage or weakness compared to A in the interaction because B does not have alternatives for securing his or her wellbeing while A has other B’s available for transactions. This is perhaps why theorists such as Goodin, feel that exploitation is morally wrong because it involves violating some moral obligation or some kind of abuse of power. That exploitation involves a violation of a duty to help others in need by protecting their interests (Goodin 1988: 114). Similar expressions are found in John Wilson’s brief definition of exploitation as “self-interested exercise of power” (1978: 307) and Vrousalis’ interpretation of exploitation as domination for self-enrichment (Vrousalis 2013: 131).
We should also note here that A can exploit B by taking advantage of an actual threat to B’s wellbeing or a mere belief that there is such a threat. There is also a possibility that the cost of exiting a relationship may be real or a mere belief because B believes there are no better options or is not aware of the other options. We can liken taking advantage of someone’s beliefs that there is a threat to one’s wellbeing and lack of options for securing his or her wellbeing to Jeremy Snyder’s ‘exploiting hope’ (2017). Snyder defines hope as an “imaginative and optimistic engagement with this outcome despite its statistical unlikeness” (Snyder 2017: 241). Snyder’s exploiting hope discusses unproven medical intervention and involves taking advantage of actual threats but a mere belief that the cost of exiting a relationship is high when it is not particularly when the trial involves unproven medical intervention. Researchers’ with unproven medical interventions exploit their subjects’ hope for securing their wellbeing and the lack of better alternatives to the researchers to secure their wellbeing. HIV/AIDS clinical research trials in developing countries exemplify such a situation where the subjects face existential threats and they lack options for securing their wellbeing except transacting with the researchers as the best available option for securing their wellbeing, which makes exiting this relationship costly. However, we can apply the idea of exploitation to other situations where people hold certain beliefs including unfounded beliefs about how their welfare interests are threatened and that there are costs of exiting a relationship with their interactor. For instance, the idea is applicable to some religious relationships where hope and faith form the basis of exploitation. Contemporary churches for example, benefit by taking advantage of the threats to the members wellbeing (actual or not) and their dependence on the church or church leader(s) to secure their wellbeing in the present life and/or afterlife. The churches’ teachings on prosperity teach their believers that God
wants them to be physically healthy, materially wealthy, and personally happy. This is in summary the main message of the “prosperity gospel” (Jones 2015). I argue that these churches exploit their members when they benefit by asking for offerings or other financial commitments to the church so that they secure their physical health or material wealth and happiness, which all pertain to the members’ well-being. These church members may be vulnerable in the sense that they are actually afflicted with sickness or poverty; or even when they are not sick or poor, but they all want to have a foreseeable continuance of good health, wealth and happiness. Their vulnerability is in this sense based on a strong belief that their wellbeing is threatened and their dependence is equally based on the belief that there is a cost greater than zero to exiting the religious relationship compounded by the belief that there are no better options for securing their wellbeing other than the religious institution such as the church.

Conclusion

The concepts of vulnerability and dependence broaden our understanding of exploitation. Exploitation as benefiting by taking advantage of vulnerability and dependence accounts for a range of forms of exploitation by pinpointing the correct necessary conditions for exploitation that are missing in the other theories of exploitation: conditions of vulnerability for B and a relationship of dependence between the transactors. These are the necessary conditions for exploitation and not merely typical to exploitation. As we have seen in the discussion above, this vulnerability theory accounts for all the five and other cases of exploitation without struggling like the other theories of exploitation. That is, exploitation occurs in the stranded motorist, psychotherapy, Tuskegee trial, the Baby M and other examples of exploitation used in the discussion
because A benefits by taking advantage of the vulnerability and dependence of B. In addition, the notions of vulnerability and dependence identify who the exploiter and the exploited are in an alleged exploitative relationship. That is, it is easy on this vulnerability account to identify the exploited as the one whose interests are threatened, cannot easily exit a relationship because his or her welfare interests are more threatened, and does not have any better options to protect those interests apart from the transaction at hand. This vulnerability account thus makes it easier to explain how or when different agents, including individuals as well as collectives, such as states and companies, could be implicated in the exploitation of vulnerable others. Thus, this theory is not limited in accounting for a range of exploitative cases in the ways that other theories are limited because they use notions such as harm, coercion, or lack of consent to determine the occurrence of exploitation.

Vulnerability indicates a condition in which certain contextual factors threaten B’s welfare interests or wellbeing. Vulnerability is necessary because it indicates the reason for B to enter into a transaction with A, which is to avert a threat to one’s wellbeing. Dependence shows a relationship between interactors where B’s cost for exiting a relationship with A is greater than zero. A utilizes these to transact with B on terms that are more favourable to A than B. This transaction represents the best option available for B to secure his or her threatened welfare interests or wellbeing. Thus, on this vulnerability view, exploitation will not occur where conditions of vulnerability are not accompanied by a relationship of dependence between the transactors. Even though an exploitative transaction is mutually beneficial, it is more important to B because the transaction secures her wellbeing or that her wellbeing depends on the transaction more than A’s wellbeing.
Chapter 5
International Gestational Surrogacy: Exploiting Women in India

Introduction

The analysis of commercial gestational surrogacy in this chapter demonstrates the analytical advantage of the proposed vulnerability theory of exploitation by comparing the vulnerability theory with other views of exploitation that are commonly applied in the discussion of international commercial gestational surrogacy arrangements. I argue that commercial gestational surrogacy arrangements are exploitative if surrogacy seekers, Assisted Reproductive Technology (ART) clinics and/or their agents benefit by taking advantage of the vulnerability and dependence of the surrogate mothers. At the international domain, the presence of pervasive inequalities of wealth and income, and other forms of injustices create and/or sustain conditions of vulnerability conducive for relationships of dependence. In other words, the levels of inequalities and injustice in the international domain create a favourable environment for exploitation in arrangements such as commercial gestational surrogacy among others. The argument is that the likelihood for exploitation in commercial gestational surrogacy arrangements is high
where surrogate mothers are vulnerable (have threats to their welfare interests) due to their socioeconomic conditions. The likelihood for exploitation is even higher as the surrogate mothers must transact with commissioning parents and their agents because this interaction represent the best option available for securing their welfare interests. In other words, surrogacy contracts between commissioning parents in the developed world (and/or their agents) and surrogate mothers in the developing world are likely to be exploitative because of the comparatively high levels of vulnerability and dependence amongst women in the developing world. Thus, under increased conditions of vulnerability and prospects for relationships of dependence at the international level also characterized by lack of or poor regulations, commercial gestational surrogacy is more likely to be exploitative. Under these described conditions present at the international level, surrogacy seekers and their agents, have increased opportunities to benefit by taking advantage of the vulnerability and dependence of women. Surrogacy is therefore exploitative notwithstanding the fact that surrogacy arrangements secures some of the surrogate mothers’ welfare interests as surrogacy serve as a source of revenue for women for basic survival, to fend for their families, or expand their children’s opportunities and more.

I begin this analysis by briefly describing commercial gestational surrogacy and the development of the international gestational surrogacy industry. I base the discussion of international commercial gestational surrogacy mostly on the Indian surrogacy industry because India has until recently had lax laws regarding surrogacy promoting reproductive tourism by comparison with other countries.26 Consequently, there is

26 The Assisted Reproductive Technology (Regulation) Bill was introduced in August 2016 banning commercial gestational surrogacy after increasing criticism that IGS was inherently imperialist and oppressive and was passed in December 2018. See Parry & Ghoshal (2018)
substantial literature available on the surrogacy industry in India including empirical and ethnographic reports about the practice and the lives of Indian surrogate mothers. However, the discussion on this topic applies to other surrogacy industries in the developing countries, as India is not the only destination for international commercial gestational surrogacy. An overview of the debate on surrogacy follows, briefly outlining the types of objections that are raised against surrogacy before examining exploitation arguments on surrogacy following Stephen Wilkinson’s (2003) categorisations of the exploitation in surrogacy as involving wrongful use or unfair advantage taking. I first examine the wrongful-use exploitation views mostly founded on the claim that selling reproductive labour is degrading arguing that these views fail to provide satisfactory bases for exploitation. I follow on to examine the unfair advantage taking view, which I find plausible but not convincingly addressed by theorists such as Wertheimer and Miller among others. For the rest of the discussion, surrogacy stands for commercial gestational surrogacy in the international domain involving persons from rich or developed countries seeking surrogacy services in developing countries.

International gestational surrogacy and its development

Surrogacy as a medical procedure enables a woman, acting as a carrier, to bear a child on behalf of other individuals. Existing research on gestational surrogacy indicates that it is a relatively safe and effective procreation alternative. Gestational surrogacy is now an available solution for people who choose not to bear children or are infertile, having difficulties in conceiving or gestating and also a solution for women who have conditions that may be worsened by pregnancy such as diabetes. Gestational surrogacy
also allows parenting opportunities to same-sex couples and those who suffer from illnesses such as HIV/AIDS (McEwen 1999: 274).

As gestational surrogacy involves a complex medical process, I will not comprehensively describe the process or its various types or forms (See Brinsden 2003 for a detailed description). However, my concern – commercial gestational surrogacy, refers to a contractual relationship wherein a surrogate mother is paid compensation over and above medical expenses for a nine-month gestation period (Kornegay 1990). The UK Surrogacy Arrangements Act (1985) defines commercial surrogacy as remuneration to the surrogate mother beyond reasonable expenses incurred by the pregnancy. Other payments include any reasonable medical, legal and psychological expenses. Many ethical issues including those dealing with fair or unfair compensation and unfair treatment of surrogate mothers among others arise in commercial surrogacy. These issues mostly arise because of the compensation that is at the centre of the arrangement. For example, some people believe that commercial surrogacy reduces child birthing to an economic transaction that can be evaluated by market principle when it should not (Anderson 1990).

Gestational surrogacy, like other forms medical tourism, has grown as globalisation has gradually erased economic and cultural borders. Advancements in technology and free trade regimes have also contributed to the growth of the surrogacy industry in scale and numbers. The significant increase in the number of infertile couples in developed countries has also contributed to the demand for surrogacy services. For instance, existing reports indicate that about one in six (1/6) couples in the US (Pittman 2013) and one in the seven (1/7) couples in the UK (NHS 2017) face difficulties in
conceiving or are infertile. The proportion of these numbers is increasing as women delay motherhood to focus on careers (Birns & Hay 2013: 264). Reported figures of surrogacy births is evidence to the growth of surrogacy industry. For example, between 1977 and 1992, an estimated 5000 surrogate births had taken place in the United States (Levitt & Lorenzo 1992: 71 cited in Perdue 2011). By 2008, the number of surrogate births had skyrocketed to approximately 28,000 (Kuczynski 2008). Considering the increase in the number of people affected by infertility and other reasons necessitating gestational services such as same-sex unions in the world today, we can safely project that these figures will continue to grow.

The numbers of surrogate births in India remain unknown but “anecdotal evidence indicates that the number continues to rise as the numerous assisted reproductive technology (ART) facilitators continue to streamline the process for prospective commissioning parents” (Smerdon 2013: 187). One clinic in Anand run by Dr Nayna Patel has produced over 500 babies two-thirds (2/3) of which are for foreigners (Bhalla & Thapliyal 2013). Recent reports indicate that the number doubled in 2 years as Dr Patel’s clinic reached a milestone 1000th surrogacy births in October 2015 (Kumar, 2015). According to a 2013 study in the United Kingdom, there is also an increasing demand for foreign surrogacy services (Crawshaw, Blyth & van den Akker 2012). Data collected by Family through Surrogacy from 12 major overseas surrogacy clinics show an 180 per cent increase in commissioning parents from the UK between 2010 and 2013 (Dugan 2014). The figures from another study by Surrogacy Australia indicate that Australian couples are increasingly seeking surrogacy services in India as evidenced by 97 surrogacy births in 2009 and 269 in 2011 (Everingham et al. 2014: 270). Apart from these partial
figures, numerous media reports in the last couple of decades also indicate that there is a growing trend.

Another factor that has propelled the growth of gestational surrogacy is restrictive and paternalistic legislation in most developed countries compared to the developing countries such as India. These restrictions then incentivise couples or individuals to go abroad to countries such as India to bypass local limitations, such as legal red tape, ill-defined laws, and costs (Humbryd 2009). Reproductive tourism has subsequently grown into a multimillion industry in developing countries such as India with the potential of stimulating economies and providing jobs in both the service sector and healthcare. A study by the Confederation of Indian Industry (CII) estimated that the reproductive industry in India could become a $2.3 billion business by 2012 (cited in Sarojini et al 2011).

The Debate on Surrogacy: An overview

Surrogacy arrangements remain controversial despite being a viable reproductive alternative for couples and individuals and showing potential for economic contribution to countries. Advocates consider surrogacy simply as a matter of individual choice. That “surrogacy empowers women to choose whether to participate and gain financial compensation for their valued service” (Chamie & Mirkin 2014). Some feminists argue in favour of surrogacy that constructing pregnancy as a productive, economic endeavour shifts the boundaries of public/private dichotomy (Sistare 1988). Some more liberal or libertarian feminists agree with radical free marketers that the freedom for women includes the freedom to contract for labour (Posner 1992). Practitioners such as Dr Patel
favour surrogacy because it permits childless people to have children while giving surrogate mothers a capacity to lead a good life (Thapliyal 2013).

However, critics have raised both intrinsic and contextual objections. On the one hand, some critics cite concerns such as baby selling/commodification (Anderson 1990) and objectification/denigration of women among others (Berkhout 2008). These views hold that reproductive labour is a special form of labour different from other forms of labour consequently demanding that reproductive labour should be respected and not used (Anderson 1990: 72). That is, commodifying reproductive labour effectively use the surrogate mother like an incubator thereby compromising her dignity (Warnock 1985). Thus, these critics denounce surrogacy because it commodifies or objectifies women and constitutes the exploitation of women providing wombs for rent. Some critics believe that surrogacy enhances neither the surrogate’s autonomy nor women’s autonomy in general (Berkhout 2008: 95). Others argue that surrogacy may have negative health and social consequences for women despite the money motivation (Tieu 2009). Some conservative views hold that surrogate motherhood challenges traditional convictions concerning reproduction, motherhood and the formation of a family because each component of reproduction is now geographically separable and potentially transnationally commodifiable. They view that the innovations in reproduction “have compartmentalised reproduction into sperm donation, fertilisation of egg and sperm, and implantation of the fertilised egg into a womb.” (Banarjee 2012: 2). In other words, the human body and sacred motherhood is no longer solely a personal resource but transform into a commodity for sell, trade or rent at market value (Banerjee and Basu 2009). Furthermore, some view that the perceived major cost of subjecting reproductive labour to a market economy is
that it may have an effect on the attitudes of people and the tone of society making culture “fragmented, rootless and alienated” (Field 1990: 199).

On the other hand, there are concerns with the unequal bargaining power between the parties to a surrogacy arrangement (Perdue 2011: 279) or an imbalance of power relations in the arrangements (Teman 2009). Some raise further concerns that the general economic and educational vulnerability of surrogate women increases health injustice and stratifies reproduction (Sarojini et al. 2011). Such views are mostly based on the fact that many surrogate mothers suffer from certain background conditions such as poverty and structural injustices that make them particularly vulnerable and therefore disadvantaged in bargaining situations. Surrogacy is also complex because of the lack of international regulations for surrogacy arrangements. What exist at best regarding regulations is “a web of conflicting national laws that generate loopholes and removes safeguards for both the surrogates and commissioning parents” (Ramskold & Posner 2013: 397). Surrogacy, therefore, presents us with a variety of moral, legal, emotional, theological, cultural and sociological dilemmas. It is important to note that exploitation concerns feature in or appear alongside these other issues about surrogacy. In some cases, these issues are raised as the bases for a charge of exploitation, for instance, where commodification and degradation issues are raised.

Exploitation Arguments against Surrogacy

In the following paragraphs I examine some exploitation arguments on surrogacy to illustrate how they do not adequately account for exploitation. I employ Stephen Wilkinson’s illuminating insights on the conceptualisation of exploitation to categorise,
broadly, the arguments in the discussion of commercial surrogacy. Wilkinson identifies two moralised views of exploitation: the wrongful use conception and the unfair advantage conception (Wilkinson 2003). According to the wrongful use conception, A treats B as if B has only instrumental value when in fact B has some value which generates some right to respect to (some level of) non-instrumental consideration and treatment (Wilkinson 2003: 171 – 2). I will argue that using the wrongful use conception in surrogacy, as the basis for exploitation charges, is mistaken and weak because the arguments assume some agreement on what constitutes wrongful use. Moreover, the wrongful use conception is not consistently applied to other comparable arrangements such as bone marrow transplants or blood transfusions to warrant exploitation charges. The unfair advantage conception holds that A uses B as a means and does so unjustly under conditions which make it the case that either B does not consent or that B’s consent is not valid (Wilkinson 2003: 172). In other words, exploitation as unfair advantage taking occurs if and only if there is an unjust distribution of benefits between A and B, and B does not validly consent to the transaction (Ibid 179). Wilkinson, however, focuses on the unfair advantage view where exploitation occurs when both the conditions of justice and consent are not satisfied.

One of the arguments that falls within Wilkinson’s wrongful use conception of exploitation holds that surrogacy is degrading. That subjecting reproductive labour to market principles amounts to treating women as commodities. Furthermore, treating women as commodities is an improper intrusion indicating a failure to respect the intrinsic or special nature of women and their reproductive labour. The view is that once we commodify reproductive labour, we effectively use the surrogate mother like an incubator
thereby compromising her dignity (Warnock 1985, ).27 Central to this understanding is the belief that reproductive labour is not intrinsically a commodity that should be bought or sold as other forms of human labour. By extension, viewing surrogate mothers as commodifiable objects devalues women as a class. In short, the commodification of reproductive labour (or women) constitutes wrongful use because it objectifies women. Objectification is degrading to women because women are deemed to have only instrumental value when in fact they have a value which generates a right to respect and to non-instrumental consideration and treatment. Such views correspond with the Kantian maxim, notwithstanding in different ways, which instructs us not to treat an individual merely as a means. As Siegel (2008: 177) suggests, a provisional and very general formulation of a Kantian account of exploitation should hold that “A exploits B when A secures benefit from B by acting toward B on a maxim that violates the categorical imperative.” Thus, on this view, surrogacy is exploitative because it involves benefiting by treating women or their reproductive labour as fungible objects which is perceived to violate this Kantian maxim.

Richard Arneson, Elizabeth Anderson, and Ruth J. Sample agree with the above views in different ways. Mary Warnock links reproductive labour to a person’s dignity holding that “it is inconsistent with human dignity that a woman should use her uterus for financial profit” (Warnock 1985: 45). Warnock further denounces surrogacy “a form of exploitation similar to prostitution” (Warnock 1985).28 Andrea Dworkin makes a similar pronouncement drawing an analogy between surrogacy and prostitution arguing, “motherhood is becoming a new branch of female prostitution... Women can sell

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27 See also The Iona Institute 2013: 3
28 Warnock has recorded in Nature and Mortality (2003) a change of heart on surrogacy that her strong abhorrence for surrogacy was a matter of feeling rather than reason.
reproductive capacities the same way old-time prostitutes sold sexual ones but without the stigma of whoring…” (Dworkin 1983: 181 – 182). Arneson (1992: 133) argues that there is a datum of common sense morality that individuals should be left free to engage in some activities or not as they wish, but not to engage in them for a price. He argues “there are some goods that we should be left free to transfer to others if we wish, but not buy or sell” (Arneson 1992: 133). The point is that there should be limits on the permissible scope of market exchange activity. He claims, for instance, that individuals should be left free to vote or not, for instance, but not free to sell their vote or to vote in a certain way at any price (Ibid). Reproductive labour, by Arneson’s account, simply falls into the category of things that should not be bought or sold. This argument rests on the belief that the intrinsic nature of reproductive labour sets it apart from other kinds of labour. Treating reproductive labour as a commodity, therefore, amounts to wrongful use of the person because it is not a commodity similar to other forms of labour that can be bought or sold. Thus, as per Siegel’s suggestion, benefiting from commercial surrogacy is exploitative because it treats the surrogate mothers without regard of the Kantian categorical imperative (Siegel 2008: 177).

Anderson similarly argues that commercial surrogacy involves the wrongful use of women since treating women’s labour as a commodity is degrading to the women who perform it (Anderson 1990). The special character of reproductive labour demands that it should be respected and not used (Anderson 1990: 72). It is in this regard that we ought to preclude reproductive labour from market use or put it beyond the scope of market exchange. The lack of respect in this argument is also expressed in the view that surrogacy is merely a commercial transaction aiming to fulfil the desire of adults, to enable foreign parents to satisfy their wish for a child at any price (The Iona Institute 2012: 4). On
Anderson’s view, surrogacy is exploitative because it involves an unequal exchange of gift values that include love, gratitude, and appreciation of others “which cannot be bought or obtained through piecemeal calculations of individual advantage” (Anderson 1990: 84). In Anderson’s view, A benefits by taking advantage of B’s emotional needs and vulnerabilities. In her view, instead of showing consideration for these needs and vulnerabilities, they are manipulated to encourage B “to make grave sacrifices to the broker’s and adoptive couple’s advantage” (Anderson 1990: 87). In other words, exploitation in surrogacy involves benefiting by wrongful use of the surrogate mothers treating them only as means to other people’s ends.

Sample’s views on commercial surrogacy concur with the above and similarly holds that reproductive labour is non-commodifiable and its commodification is degrading (2003: 57 – 58). Broadly, the notion of degradation here intends to capture the demeaning nature of exploitation which merely uses the surrogate as a means and that constitutes wrongful use of a person. Sample defines exploitation as benefiting from conditions that do not respect the inherent worth of another person, and that thereby degrades the other (Sample 2003). In summary, the wrongful use arguments highlight the violation of dignity in surrogacy, arguing that surrogacy commodifies women and their reproductive abilities and hence objectifies women by treating them merely as means.

Applying the abovementioned thoughts to our Indian case, one may argue that the surrogate mothers are exploited because the commissioning parents and their agents benefit by wrongfully using the women and their reproductive labour as commodities. This commodification or objectification constitutes a lack of respect for their dignity. However, surrogacy is not different from other forms of labour or services that are exchanged on the market. That surrogacy is degrading seem to depend on prejudices and
taboos surrounding reproduction (Del Savion & Cavaliere 2016: 83). Moreover, arguments that single out surrogacy as degrading are lacking because they fail to divorce from the assumptions regarding women’s sexuality and reproduction that have historically proven oppressive (Ibid 85). Thus, surrogacy is is not a degrading form of work even though it may sometimes raise such a moral concerns. Traces of instrumentalisation of human beings are present in many other jobs that involve selling the capacity and physical powers yet they are not considered degrading. In other words, surrogacy is not degrading because it involves a special type of labour but rather by its context. Surrogacy, like other forms of labour selling ventures, is only degrading under particular political and socioeconomic conditions. What is degrading about surrogacy lies outside the type of labour or service similar to what is degrading to poor women working in textile factories in Bangladesh or Cambodia. Thus, concurring with Debra Satz, selling “reproductive labour is not ipso facto degrading. Rather, it becomes degrading only in particular political and social context” (Satz 1992: 109). Therefore, objections to the commodification of reproductive labour are mistaken when based on the intrinsic and essentialist grounds. Objections seem plausible when based on contextual grounds such as pervasive gender inequality that characterise society, which reinforces gender hierarchies or asymmetrical social relations of gender domination (Ibid).

The degrading argument in surrogacy often culminates into the discussion of exploitation in some ways suggesting degradation as a condition for exploitation. Regula Stampfli (2017), for instance, argues that fair payment is not possible in surrogacy and it negates all human values including that it treats women merely as means. She also argues that surrogacy is not work but obscene exploitation. For Stampfli, reproductive labour (pregnancy) is a status, not work. This view seems to place the degrading aspect as a
necessary condition for exploitation when it is not. Exploitation occurs even where degradation is not an issue. Even where we consider other socioeconomic factors that may affect B in a bargaining situation we do not necessarily raise similar concerns. Thus, the reason that surrogacy is exploitative lies outside the claims that it involves degrading surrogate mothers. In short, the degradation arguments in surrogacy fail to establish a basis for a charge of exploitation. It is not enough to show that surrogacy involves the commodification or objectification and therefore degradation to make a charge of exploitation because these are not necessary to the occurrence of exploitation. This is an instance where exploitation is confused with other concepts or thought to be synonymous with other terms when it is not. Exploitation is therefore not the word to use if our concerns are merely about commodification or objectification or degrading. Consider the view that commodifying reproductive labour objectifies something integral to a woman’s identity. This view does not hold in other cases where the integral identity of a person is involved. For example, the charge of objectification is absent when you pay a priest to perform some religious rituals even though his labour is integral to his identity. As Satz (1992: 109) argues, nothing convincingly distinguishes reproductive labour from other forms of human labour. Any given form of labour is only degrading because of the circumstances but not in itself. Similarly, surrogacy is not exploitative because it involves a special type of labour but in the manner in which it is performed, or in the terms and conditions of the arrangement. In other words, surrogacy is exploitative not because it involves the wrongful use of reproductive labour or the women but in the conditions surrounding the practice. Particularly, those conditions that threaten the surrogate’s welfare interests and render them open to advantage taking.
A related problem to the degrading concerns about surrogacy emanates from the use the notion of dignity to explain what constitutes degrading another person. The wrongful use argument is still problematic when it refers to a notion of dignity because the notion is complex and slippery as cursorily noted in the previous chapters. We do not have a satisfactory explication of human dignity, and we do not know when it is respected or violated. As explained earlier, defining degrading as treating others merely as means is not self-explanatory. Even when we refer to such things as the recognition of another’s autonomy as respecting human dignity, we may face problems explaining how one’s autonomy is recognised considering that this also is a highly contested concept as seen in the arguments on choice or consent. We may to this extent need to ask if there are other concepts besides autonomy that are involved in respecting or violating human dignity. Therefore, our attempt to understand exploitation in surrogacy should now shift to what constitutes unfair advantage taking.

Exploitation in International Commercial Surrogacy: A Vulnerability Argument

Unfair advantage arguments in surrogacy largely focus on the compensation given to the surrogates. Some critics view that the compensation is unfair or unjust considering the services rendered or the value of goods exchanged in a surrogacy transaction. The basis of exploitation charges in this regard include the differences in the cost of the process and the compensation given to the surrogate mothers. Bearing in mind the basis of such exploitation charges, it is important to highlight the differences between surrogacy arrangements in developed and developing countries. This contrast serves to
situate my argument for a vulnerability theory of exploitation in surrogacy. The vulnerability view is broadly an unfair advantage taking argument as it argues contrary to the aforementioned wrongful use views that insist that surrogacy is degrading because reproductive labour is of a special nature that ought to exclude it from market transactions.

Surrogacy in countries such as India costs considerably less than what it costs in developed countries, and the surrogates get a small fraction of the price of the process. For example, some reports indicate that the cost of surrogacy in India including all medical expenses and the surrogate’s fee is around $12,000 when it can cost up to $70,000 in the United States (Haworth 2009). According to Scott Buckley, the director of legal services at Circle Surrogacy, which has facilities in four states in the United States and Sweden, surrogacy on national soil can cost upwards of $120,000. Meanwhile, the price tag for surrogacy in India is regularly cited as under $30,000 (Cuhna 2014). Leslie Morgan Steiner (2013) reports in her book that an American couple paid $50,000 for three children in India when it would cost almost double the figure ($100,000) per child in the United States. Alison Bailey (2011: 718) estimates that the entire surrogacy process in the United States can cost between $40,000 and $150,000 while the complete medical procedure, surrogate’s fee, airline tickets, and hotel stay for two trips to India costs around $25,000, but prices can go as low as $12,000. Surrogate mothers in the United States receive between $20,000 and $30,000 while their Indian counterparts get between $2,000 and $10,000 (Gentleman 2008 cited in Bailey 2011: 718).

Some critics of surrogacy arrangements base their arguments of exploitation on these differences. For instance, Casey Humbryd (2009) holds this kind of view. Humbryd uses the following example to put his view into perspective supposing that:
“An incubator were designed to allow ectogenesis throughout a nine-month gestation. After obtaining an embryo through IVF, prospective parents contract with gestational service companies. These companies manage incubator facilities in the United States and India, and the gestational service industry is a profitable business. In Situation A, the incubator’s design requires full-time maintenance by a skilled, trained professional. In the United States, a trained professional is paid $20,000 per trimester, while in India a trained professional is paid $6,000 per trimester. In Situation B, the incubator requires full-time maintenance, but its simple design does not require a skilled worker. In the United States, the federal minimum wage requires workers to be paid $10,000 per trimester. In India, there is no set minimum wage for the incubator maintenance industry, and workers are paid $300 per trimester” (Humbryd 2009: 115).

According to Humbryd, while the two situations are similar in that those workers in India are paid less for the same work in either situation, only workers in situation B are exploited. Situation A is analogous to all other forms of international outsourcing in the service industry such as call centres where workers earn lower nominal wages but equivalent real wages (Ibid).29 On the contrary, situation B according to Humbryd constitutes exploitation because the workers are underpaid. That is, the only valid objection to international surrogacy is that surrogates may be exploited by being given too little compensation (Humbryd 2009: 112). However, there is a good reason to disagree with this opinion considering that the surrogates in the Indian case are not underpaid as per the figures presented earlier. Exploitation is not merely a function of payment.

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29 The nominal wage rate is the salary in equivalent dollars, while the real wage rate is the amount that the nominal wage rate can buy in terms of goods and services
I argue that neither the difference in costs for the same procedure nor the compensation given to surrogate mothers adequately indicates the occurrence of exploitation. We may want to consider, for example, that some salaries for similar jobs vary across the globe and there are no international guidelines regarding how much a cleaner or a dentist, for instance, should earn. Thus, the fact that the surrogates in India earn less compared to their counterparts in developed countries alone does not satisfactorily explain the occurrence of exploitation. It may only illustrate the difference between nominal wage and real wage rates (Ramskold and Posner 2013: 399). Moreover, we may think it otherwise if we consider the fact that the surrogates in Indian earn in 9 months what they can only accumulate in years. There are no uniform surrogacy fees paid to gestating mothers in India, but almost all of them indicate that surrogacy pays better than other forms of employment. For example, Priya Shetty claims that Indian surrogates earn between $5000 and $7000 which is “an enormous sum for women who would normally earn about $300 a year” (Shetty 2012: 1634). This claim indicates that women in India gain an equivalent of around 10 years’ salary by becoming surrogates while others estimate up to 15 years’ of accumulation (Parks 2010: 334). These amounts suggest that Indian surrogates in relative terms earn more than what they would earn elsewhere. Perhaps this also suggests that such payment is fair considering the local setting of the contract and where unfair means low payment. Considering that the Indian surrogates get more by local standards, it is hard to say that the compensation is unfair hence exploitative if our measure of exploitation is underpayment. The point here is not to dismiss the exploitative concerns for underpayment but to state that we need an appropriate benchmark to determine underpayment and that underpayment alone is not a satisfactory basis for exploitation.
Others may argue that these offers are not exploitative since the surrogates freely enter into these arrangements after deciding against the available options. As per Wertheimer and Miller’s stipulations about a competitive market, surrogacy offers in the Indian context may be viewed as obtaining from a competitive market and freely agreed to but it would be misrepresenting the two theorists that these offers are therefore fair and not exploitative if we stop there. Both Miller and Wertheimer argues that this market price is only fair if it is unaffected by special advantages due to asymmetries of information or bargaining power, which, as will be shown below, is not the case in this surrogacy industry.

On exploitation arguments focusing on the fairness of compensation through voluntary agreements, Vida Panitch correctly suggests that the unfairness of the compensation should be determined by inter-contractual rather than intra-contractual comparisons (Panitch 2013: 332). That is, to establish the fairness of compensation, we should compare B to another party B in a similar surrogacy agreement. That is, we should establish fairness by comparing compensation for Indian surrogate mothers against their counterparts in developed countries rather than comparing the surrogate mothers in India to other women in other forms of contracts in India. Perhaps some would ask why we should compare contracts from different settings. It is because the surrogacy contracts in places like India are in fact dictated by the terms preferable to the surrogacy seekers from wealthy nations thus implicating them in these transactions.

While acknowledging the point that the nominal wages for surrogate mothers in two locations may be different but there is a possibility of the same real wages, the unfairness of surrogacy in India is not merely in the payment but also in what makes such payments possible. Further, the unfairness of surrogacy contracts is in that the Indian
surrogates do not enjoy the other benefits and protections available to their counterparts in developed countries. Panitch summarises that unlike surrogate mothers in India, those in the United States are entitled to such things as legal representation and rights, grace period following birth within which they can change their mind, and compensation is guaranteed should they fail to produce a child among other (Panitch 2013: 332). These entitlements are not available for the Indian surrogates, and payment is contingent on the delivery of a healthy baby.30

We can also add the fact that brokers or agencies make profit in this intersection of biotechnology and inequality is comparable to the exploitative role of pimps in the commercial sex industry. As described earlier, stark socioeconomic inequalities characterise the surrogacy industry in India. In the absence of institutionalized practices or regulations to provide oversight and demand transparency, recruiting agencies will likely exploit the surrogates. The weak regulations (or absence of) allows agents to be a major force in determining the benefits of the surrogacy process comparable to the way pimps control where and how prostitution is done, and how the benefits are distributed. Agencies and clinic owners are equivalent to managers and owners of sweatshops since they have the primary responsibility for their workers’ wages and other working conditions since they are causally responsible for setting wage levels and the other work conditions (Snyder 2010: 194). In my view, the agents, alongside the commissioning parents exploit the surrogate mothers because they both benefit by taking advantage of the surrogate mothers’ vulnerability and dependence. In addition, the social and cultural

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30 According to Chief Judge John Pascoe, head of the Federal Circuit Court of Australia and an expert on surrogacy, there is anecdotal evidence that commissioning parents would not accept babies with defects and problems (Associated Press 2014). The famous Baby Gamma case is therefore not an isolated incidence in the surrogacy Industry in Asia, Baby Gamma was left by Australian commissioning parents because he was born with Down Syndrome but they took his healthy twin sister. See Murdoch 2014.
environment of the surrogates heighten the injustices of conventional trade present in surrogacy and enable ‘exploitative’ contracts as surrogacy is often done in secret because of the taboo surrounding surrogacy (Shetty 2012:1633). In other words, surrogacy does not resonate with social, moral or religious values of most of the societies in India making some to keep their pregnancies from neighbours and community (Pande 2010: 297).

According to the proposed vulnerability account, surrogate mothers in India are exploited if their interactors benefit by taking advantage of their conditions of vulnerability and the relationship of dependence that develops between A and B. That is, contractual conditions for surrogate mothers in India and comparable places are exploitative if the surrogate mothers have threats to their welfare interests and the cost of refusing or exiting the relationship with A is high as this relationship represents the best option available for securing their wellbeing. A relationship of dependence means that surrogacy seekers and their agents command a position of advantage and power since they can secure the threatened welfare interests of the surrogate mothers. The point here is that we should not only think about the fairness of compensation in terms of the amount paid but in how that compensation materializes and how other benefits and burdens are distributed compared to other surrogacy agreements. This approach is much better than Wilkinson’s or Humbyrd’s that establish the fairness of the compensation by focusing on the figures and view underpayment as an adequate indicator for the occurrence of exploitation.

Going beyond the figures resonates with our intuition about sweatshop labour that it is not problematic because of the underpayment, which is often times justified because it is better than nothing at all or the available options and within legal requirements such as minimum wage. The exploitation of sweatshop labour includes the conditions under
which the labourers work such as unsafe working conditions. In short, to determine the occurrence of exploitation we need to consider not only the distribution of the benefits in terms of payment, but also the distribution of other benefits such as protections through work conditions and what enables such types of distributions, which according to this exploitation theory is the vulnerability and dependence of the surrogate mothers.

To determine the occurrence of exploitation in surrogacy arrangements in India, we need to establish whether the benefit that accrues to the adoptive parents and their agents derives from taking advantage of the vulnerability and dependence of surrogate mothers. We therefore need to describe in what ways the surrogate mothers in India are vulnerable and how the relationship between the commission parents/agents and the surrogate mothers is a relationship of dependence. As per the definition of vulnerability in this work, the surrogates are vulnerable because they have threats to their welfare interests. The threats to their welfare interests make the surrogate mothers accept to work under compromised or substandard contractual terms and conditions only to secure their welfare interests. A variety of factors causes the vulnerability of these women and the extent of their vulnerability is heightened by their lack of alternatives that may help them secure their threatened welfare interests. According to the literature on surrogacy in India, typical surrogate mothers have limited education or are illiterate, have two or more children, they live below the poverty line, and have no access to other as well-paying jobs (Mukherjee 2015). As Gupta puts it, the choice for surrogacy is “made in a context of limited possibilities for self-expression or development, rising unemployment, lack of financial resources, low education levels, poverty, marginalisation in labour and job markets, and patriarchal social and family structures” (Gupta 2012: 16). These conditions explain the various ways in which surrogate mothers are specifically vulnerable unlike
their counterparts in the United States and other developed countries. Unlike surrogates in India, surrogates in the United States engage in surrogacy to help others and provide them the time to pursue other interests such as furthering their education, not due to an absence of other equally remunerable options (Panitch 2013: 332). These conditions surrounding the surrogate mothers in India threaten their welfare interests, and they lack the abilities and means to protect these interests. This vulnerability renders them open to advantage taking as they seek to secure their interests. That is, surrogacy seekers and their agents have an ability to influence the surrogate mothers’ wellbeing. By way of analogy, surrogacy is to the surrogate mothers in India what the factory in the Pacific Rim country example is to the workers, or the tow track driver is to the stranded motorists providing an opportunity for securing welfare interests.

Further, the lack of legal representation for surrogate mothers also amplifies their vulnerable conditions. The lack of legal representation coupled with the lack of functional legal instruments further threatens the surrogate mother’s welfare interests. That is, the lack of legal representation and legal instruments expose the surrogate mothers to exploitation because this lack and/or absence denies the surrogate mothers certain rights and protections in surrogacy agreements. The lack of such protections through representation and instruments make surrogate mothers carry more burdens by working under terms and conditions that are adverse. For example, in a bid to minimise costs, surrogate mothers are often given poor accommodation. Panitch states that some surrogates are “housed in clinical compounds where all of their meals and activities are monitored, and from which they are not permitted to leave until delivery” (Panitch 2013: 282). Amrita Pande (2014: 122) reports that sometimes surrogates deliver the babies through caesarian section than natural delivery partly to accommodate the scheduling
needs of the intended parents and the clinic. It is thus clear that the commissioning parents and their agents implement contracts in ways that cannot be possible in the developed countries. Such skewed contractual terms are only possible because of the vulnerability and dependence of the potential surrogate mothers partly caused by lack basic legal protections. Largely, the low costs and skewed contracts in surrogacy agreements are possible because the conditions of poor legal representation and protection for the women confer an advantage to their interactors.

As argued in this vulnerability account, exploitative exchanges require a relationship of dependence between the interactors. A can exploit B if and only if B has to interact with A to protect her welfare interests because the cost of not interacting A is greater than zero. Surrogate mothers thus become dependent because surrogacy presents to the surrogates the best option available under their condition of vulnerability. The surrogates cannot meet their own needs without the assistance of other agents, in this case, commissioning parents and their agents. Surrogate mothers thus enter into a relationship of dependence with surrogacy seekers because the arrangement secures their wellbeing better than the status quo. For instance, poverty generally threatens the surrogate mothers’ welfare interests. Lack of better job opportunities or alternatives, compounded by illiteracy, which renders surrogate mothers not very employable; takes away their capacity to meet their needs making surrogacy arrangements the best available avenue through which they can secure their wellbeing. The surrogate mothers thus enter into a relationship of dependence insofar as they cannot exit or refuse a relationship because of the cost to their threatened interests in the same way man trapped at the bottom in the pit example cannot refuse to transact with A to throw down a rope to escape the mudslides.
Further, the surrogate mothers’ dependence is evident that opting out of the arrangement is disadvantageous than taking the contract because securing the contract is the best prospect through which they can secure their wellbeing. Surrogacy is in this case the best opportunity for securing their wellbeing compared to other possible avenues in the same way the factory offers better wages than the minimum wage of $1, or how the Tuskegee trial offers something that is otherwise unavailable to the subjects. In short, surrogacy provides the vulnerable women with a means of securing their welfare interests in the best ways possible compared to other alternatives available to them. As described earlier, Indian surrogates earn much more than what they could earn in other forms of work that may be available to them. Using Frank Lovett’s description of a social relationship of dependence, the cost of exiting or not entering this surrogacy arrangement is greater for the surrogate mothers than remaining in it (Lovett 2010: 51). That is, the women risk suffering from the various effects of poverty by not taking or by opting out of a surrogacy contract with no hope of change for themselves and their families. Surrogacy arrangements enable the surrogate mothers to send their children to school or generally provide for their families in better ways than when they choose to take other jobs if at all available to them. Thus, surrogacy arrangements are a source of refuge under their conditions of vulnerability that makes them accept terms and conditions that they otherwise would not accept. The ability to secure one’s welfare interests, in essence, determine the level of dependency. In other words, the levels of vulnerability determine the levels of dependency and consequently one’s exploitability. This understanding offers us a way of arguing that the exploitation of surrogate mothers in India is as a result of their being vulnerable and dependent unlike their counterparts in the developed world. Their counterparts in developed countries such as the Unites States may be vulnerable but
are not dependent on their interactors to meet their needs. In other words, surrogate mothers cannot be exploited if they can secure their wellbeing through other means as those that are available to their counterparts in the developed countries including state security and/or social provision. By this account, then, exploitation is a function of the levels of vulnerability and dependence.

The vulnerability and dependence of the women puts them at a disadvantage in bargaining their surrogacy contracts. As mentioned earlier, surrogacy contracts offer more protection to the women’s welfare interests than other forms of opportunities available to them. That is, losing or not getting a surrogacy contract is costly to the surrogate mothers. This inequality between the transactors contributes to the unfair distribution of the benefits and burdens of the contract. That is, unfair distribution is possible because the women have threatened welfare interests and stand to lose if they fail to interact with A to secure their wellbeing. As argued earlier, exploitation in surrogacy is beyond matters of compensation. It is evident that focusing on payment alone does not properly establish unfairness let alone exploitation. Adoptive parents do not only get surrogacy services at a considerably low cost, a third of what it would cost in the developed world where most of the surrogacy seekers originate. The adoptive parents enjoy terms and conditions of the contract that are more favourable to them than to the surrogate mothers. For instance, while surrogacy seekers obtain an agreement quickly and easily without too much red-tape or procedure because of lack of regulations, surrogate mothers cannot do the same without harming their own interests. In other words, the surrogate mother does not have much of the luxury to consider the terms and conditions of the arrangement that if she should be careful to avoid a bad contract. What is available to the surrogate is as is and there are no significant differences between surrogacy
contracts. In addition, the availability of a host of potential surrogates entails that the surrogate will lose the opportunity to secure her interests to other potential surrogates if she takes time to bargain. Using Marxist description, the availability of a surplus population constitutes “a disposable industrial reserve army” that available to transact with A and giving bargaining advantage to A (Marx 2013: 440).

Surrogacy is often exploitative when it is easier to replace B in a surrogacy arrangement than it is to replace A which is the case in India. The imbalance between demand and supply tips the scales against the surrogate mothers in the bargaining situation while working in favour of the surrogacy seekers giving them an opportunity for advantage taking. The availability of many women who can become surrogate mothers gives an advantage to the surrogacy seekers and their agents. Unlike B, A has alternatives and can thus easily walk away from a surrogacy arrangement that does not suit him or her. A is accordingly in a position of advantage and power compared to B while B is disadvantaged (by comparison with A) to influence the terms and conditions of the contract. A relationship of dependence is also sustained because what B desires from this contract is more vital to his or her welfare interests than A’s interests. In other words, this relationship is sustained because it is more costly for B than it is for A to decline or to leave this arrangement. Advantage taking would not be possible if A’s interests were more threatened than B’s, or if their interests were equally threatened. That is, if both parties’ interests were equally threatened the relationship between the interactors would be of interdependence rather than dependence. The surrogacy relationship as described now is thus similar to the basis of Goodin’s caution that it is inappropriate to play for advantage against others who are not our match in games of advantage (Goodin 1988: 146). The case of surrogacy contracts involves vastly disproportionate bargaining power,
which makes it inappropriate or unfair for the commissioning parents and their agents to press for advantage against vulnerable women leading to unfair distribution of the benefits and burdens. Thus, surrogacy under these conditions is exploitative because it involves benefiting by taking unfair advantage of the women’s vulnerability and dependence.

The case of surrogacy is, as earlier mentioned, similar to that of workers in the Pacific Rim example. Like the workers’, the surrogates’ welfare interests are not secure largely also because their governments do not fulfil their obligations to adequately provide for and protect the people’s welfare interests. Both the workers and the surrogate mothers lack opportunities and alternatives to help them secure their welfare interests. Furthermore, the absence of a minimum wage and laws regulating the surrogacy industry in India makes the surrogate mothers more open to advantage taking just like the workers in a Pacific Rim country. Thus, in general, the benefits that accrue to A in surrogacy arrangements are only possible because of contextual conditions where there are no measures to protect and secure welfare interests of the surrogates. For example, lack of a minimum wage and the absence of other laws escalate the surrogates’ vulnerability and dependence. Broadly, surrogacy contracts in India take place against a backdrop of global inequality and constrained options, which are the source of the women’s vulnerability and dependence.

Do vulnerable women consent in surrogacy?

Other unfair advantage views of exploitation in the discussion of surrogacy employ the idea of consent. Such views hold that constrained options or the lack of acceptable alternatives constitute consent-compromising factors to the surrogate mothers
like in any other transaction. That is, women’s choice to enter into surrogacy contracts is
made against no other feasible alternatives to secure their interests. The circumstances
under which transactions or arrangements such as surrogacy are made are sometimes
viewed as coercive which works against the consent of the surrogate mothers. For
example, Panitch argues, “we must look beyond the arrangement itself to appreciate its
coercive nature” (Panitch 2013: 333). Inability to negotiate in a contract, and that the
contract offer can disappear from the surrogate may indicate some kind of force that the
makes surrogate mothers accept whatever terms of the contract. On Panitch’s view, “an
inability to demand better terms is morally equivalent to inability to refuse” (Panitch
2013: 333). However, this is the case for many other possible agreements or transactions
on the labour market. In particular, as Wilkinson (2016: 133) shows, lack of acceptable
alternatives on its own (when not caused by coercion or other consent-invalidating
behaviour) is not sufficient to generate a serious consent problem. Hawkins and
Emmanuel similarly argue that merely possessing few good options does not undermine
the voluntariness of choice (Hawkins & Emanuel 2008: 8). For example, individuals who
need a transplant or major surgery confront a bleak set of options yet opting for a
transplant is under the circumstances neither involuntary nor coerced. Until we establish
the occurrence of coercion or other forms of manipulation, it is hard to see how the
surrogate mother’s consent is at issue. Wertheimer expresses similar views arguing that
surrogacy contracts are consensual because the offer does not threaten to make the
surrogate worse off than she would otherwise have been if she turns down the offer
(Wertheimer 1996: 109). Wertheimer further views that coercion would only happen if A
had a pre-existing obligation to improve B’s circumstances without demanding anything
in return (Wertheimer 1996: 110). Wertheimer explains his view using Nozick’s
drowning example where A come upon B who is drowning and proposes to rescue B if B agrees to pay A $10,000. Both A and B know that there are no other rescuers. Wertheimer argues that A’s offer is not coercive because B has no acceptable alternatives but rather because A may have an obligation to improve B’s situation without seeking compensation, or at least for much less (Ibid 110). A in the drowning example makes B worse off where A has a special obligation to help. This offer is not coercive in the same way a doctor does not coerce a patient when the doctor tells the patient to choose between having his or her leg amputated or risk dying. In short, for Wertheimer surrogates are not coerced because commissioning parents do not make the surrogates worse off and do not have special obligation to help the surrogate without asking anything in return. Wertheimer (1996: 111) also dismisses the background conditions as factors that compromise the voluntariness of choice. He see the problem in background conditions and not in the offer that allows B to improve on those background conditions. However, we may draw similarities between the drowning B in Wertheimer example and the surrogate mothers in India. That is, the circumstances of dire need surrounding the mothers are comparable to B in the drowning example and the same special obligation that A has to help without asking anything in return can be establish between transactors in surrogacy arrangements.

A related consent view in charges of exploitation in surrogacy suggests that surrogacy offers cannot be refused under the circumstances. That is, the Indian women become surrogate mothers out of dire socioeconomic need, or are only financially induced to agree to surrogacy contracts and thus do not genuinely consent. Wertheimer calls such
consent distorting offers seductive offers (Wertheimer 2010: 212). That is, some inducements compromise the surrogates’ consent and hence somehow involuntarily venture into surrogacy. However, payment to surrogate mothers is not different from other financial inducements in terms of payment in other forms of work. Payments largely influence all commercial agreements. For example, offering payment for digging a pit is a financial inducement for B to take the job. One may take this job without considering the long-term effects of such hard labour on the body because of the need to satisfy needs that are presently threatened. It is also difficult to sustain the view that the surrogate’s consent is impaired because the offer is something they cannot refuse. Private and international employers, for example, often offer more than local and public employers but we rarely raise an issue about consent. On such consideration, consent may not be the real problem in surrogacy because as Perdue argues, “surrogacy bears no more risk of exploitation than other money-making means, such as exotic dancing, posing for pornographic magazines” (Perdue 2011: 291). Like in any other contract or transaction, the surrogate mother expresses her consent by taking up the contract, and doing so may be a rational choice that takes into account her welfare interests and aspirations after assessing possible alternatives.

Other consent based exploitation charges in surrogacy refer to factors such as illiteracy as consent compromising. That is, surrogacy arrangements target uneducated and illiterate women to minimise costs (Panitch 2013: 283). Surrogacy arrangements are thus in these societies more problematic than in developed societies because the surrogates may lack capacity and information to give valid consent. For instance, the

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31 Wertheimer (2010: 212) defines seductive offers as “offers where the lure of short-term benefits causes B to excessively discount the long-term costs and to make a decision that does not serve her long-term interests”
contracts are often in English, a language that most surrogates do not understand and rely on brokers or recruiters for the interpretation and understanding of the contracts (Pande 2014). It may thus be difficult for the surrogates to understand what the arrangement involves including the benefits and risks. There is also a good chance that these contracts are only explained in an attractive way since surrogacy is only a business that the clinics and their agents seek to profit from by recruiting surrogate mothers.

However, while acknowledging that consent issues are a source of moral concern, I argue that lack of consent is not the basis for concluding that commercial surrogacy is exploitative. The consent arguments in exploitation miss the point because, as argued earlier, lack of consent is not a necessary condition for exploitation even though it is something that we need to pay attention to in transactions. What makes these surrogacy contracts exploitative is that A derives a benefit by taking unfair advantage of B’s vulnerability and dependence. In our case, surrogacy seekers use the vulnerability and dependence of Indian women to get cheap surrogacy services. The cost of surrogacy is cheap and without adequate regulations in countries such as India because the women are poor, illiterate and caught in circumstances where they have no access to a range paying jobs. Moreover, these women exist in the economies that tilt favourably towards men. That is, their patriarchal societies push women into their socially designed position of homemakers or minders. The agents and commissioning parents derive benefits by taking advantage of such contextual conditions. Poverty and its effects make women vulnerable and therefore become dependent on their transactors because they represent the best option available to secure their wellbeing. The women’s lack of capacity to protect their wellbeing, as they are less educated or illiterate, make them dependent on those offering surrogacy contracts to secure their wellbeing. Thus, commercial surrogacy in this context
constitutes exploitation insofar as the commissioning parents and the brokers benefit by taking advantage of the surrogate mother’s vulnerability to poverty and its related effects, and their dependence on their transactors to secure their interests.

We may find such surrogacy arrangements morally reprehensible, as it is similar to taking advantage of a blind person hinting at the basis of Goodin’s caution that we ought not to enter into games of advantage with people who are unfit or otherwise unable to play in games of advantage (Goodin 1988: 145). However, the surrogates are willing to play the game because they have real threats to their welfare interests including existential threats. The levels of vulnerability make the women dependent on these surrogacy opportunities to secure their welfare interests even when their interactor takes advantage of them. One would want to argue that these conditions are not caused by surrogacy seekers, and in fact, they should be encouraged for providing an extra option than being accused of exploiting the women. However, the way in which these women are exploited is comparable to how we may charge a passer-by of exploiting a drowning B by demanding compensation to rescue B who was out of sight of a sleeping lifeguard.32 The lifeguard flouts the duty of rescue, and the passer-by takes advantage of this omission to derive profit, in the same way, commissioning parents take advantage of the failure of a third party – the state, to fulfill its obligations towards the people (Panitch 2013: 334). Unsecured welfare interest makes the women lose their bargaining ability. In short, the exploitation of a person is not contingent on the source of their vulnerability. Chances for exploitation are present wherever conditions of vulnerability and relationships of dependence exist. Exploitation is thus more likely in the Indian surrogacy industry because the conditions of vulnerability and dependence are high and more prevalent.

32 Panitch (2013: 334) offers this variation of Nozick’s drowning example
Conclusion

The conditions for women entering surrogacy arrangements in India are a cause for concern because they provide a conducive environment for exploitation. Surrogacy arrangements are exploitative when commissioning parents and their agents benefit by taking advantage of the conditions of vulnerability and relationships of dependence that women enter. In other words, A benefits by simultaneously taking advantage of the threats to the B’s welfare interests and B’s inability to exit or refuse a relationship or interaction with A which represents the best available option for securing B’s wellbeing. The surrogacy contracts in India, as described, meet all the conditions for exploitation: benefit, conditions of vulnerability, and relationships of dependence. Thus, I dismiss underpayment, unequal distribution and lack consent as necessary to determine the occurrence of exploitation in commercial surrogacy arrangements.

Commissioning parents seek surrogacy services in developing countries because it is possible to reduce the cost of surrogacy when dealing with surrogates whose interests are threatened and lack the capacity to protect their wellbeing whether through lack of education, lack of options or legal protection among others. The surrogacy industry in developing countries thus thrives on the low costs of services and less stringent contractual terms and conditions that are premised on the vulnerability and dependence of women. In other words, the benefits that accrue to the commissioning parents (and their agents) such as low cost derive from the taking advantage of the vulnerability and dependence of the surrogate mothers. The surrogates enter into surrogacy because the contracts provide the only feasible or best option for securing their interests. The conditions as described above are not acceptable and probably do exist in the developed
countries as there exist laws and regulations to protect welfare interests of the surrogates, and in particular, the potential surrogates are not as vulnerable and dependent as their counterparts in India.

Moreover, surrogacy arrangements operate under conditions of conventional trade where the poorest or weakest producers experience different forms of injustices. Surrogacy operates in the same manner as free trade where large corporations maximise profits by minimising the payments to producers. Surrogacy arrangements are thus more beneficial to healthcare providers, agencies, and commissioning parents than they are to surrogate mothers. The regulation gap creates conditions that increase the vulnerability of women and thus enables the adverse conditions for the surrogate mothers hence exploitable by wealthier individuals. As Sarojini and her co-authors observe, commercial gestation surrogacy “has the potential to be unethical and exploitative as the seemingly free flow of people, capital, goods and services take place, and is made possible at all, within global relations that are characterized by stark economic inequalities” (Sarojini et al 2011: 2).
Chapter 6

Exploitation and Clinical Trials in the Developing Countries

Introduction

Pharmaceutical companies have adopted globalisation as a central component of their business modules especially by offshoring clinical trials to developing countries. The practice and the translation of these clinical trials raise a variety of ethical concerns over the beneficiaries of these trials; the exploitation of research subjects; and whether the increase in the number of clinical trials has improved the health of the host communities. Moreover, with HIV/AIDS reaching crisis proportions in the developing countries and in a rush to develop interventions, pharmaceutical companies flout or compromise the established international medical research guidelines. The companies use existing social and economic conditions of the research communities to justify their research conduct. The problems related to the ethics of conducting clinical research in developing countries reveal the implications of global social injustice and economic disparity over the ethics of clinical research.

The offshoring clinical research appears predatory and exploitative as pharmaceutical companies scour the earth to find sick people with whom they conduct
research with little or no regard to their welfare interests, in this case, their clinical needs. An increasing number of clinical trials in the developing countries take place against the background of poverty, limited or no access to health care and the high prevalence rates of illnesses. Illness in the absence of healthcare makes the subjects in developing countries particularly vulnerable. The subjects’ lack of better options to protect their welfare interests in health and life leads them into relationships of dependence with pharmaceutical corporations. The argument is that pharmaceutical corporations and/or their agents exploit their research subjects when they derive benefit by taking advantage of the vulnerability and dependence of the subjects (patients) and/or their communities. In other words, exploitation in clinical research occurs when pharmaceutical corporations (and their agents) pursue financial interests by taking advantage of threats to subjects’ clinical needs and/or other welfare interests and the subjects’ lack of better options for securing their welfare interests. While acknowledging that there is nothing intrinsically wrong in conducting research in developing countries, the conditions affecting the subjects are a cause of concern. This chapter holds that clinical research trials are likely to be exploitative when subjects are affected by social, economic, psychological, cultural or medical misfortunes and lack of alternatives for securing welfare interests.

This chapter employs the vulnerability theory of exploitation to demonstrate how clinical trials are exploitative by analysing some examples of clinical trials in developing countries. The chapter argues that benefits that accrue to the researchers by using placebos, applying double standards, and not making reasonable posttrial availability of drugs/interventions among others in clinical research in developing countries are possible because of the vulnerability and dependence of the research subjects. The application is to demonstrate that the vulnerability theory is a more adequate theory of exploitation to
account for exploitation in clinical research than other theories of exploitation employed in the discussion of the ethics of clinical research. This chapter also demonstrates how a vulnerability theory of exploitation addresses some of the concerns that emanate from various uses of the notion of exploitation in clinical research. For example, the argument attempts to address Alan Wertheimer’s observation that the exploitation arguments advanced in the ethics of clinical research seeking to prohibit such alleged practices move quickly without stating explicitly when a practice is exploitative or providing an account of exploitation to support their claims (Wertheimer 2008: 64). For the rest of the discussion, ‘researchers’ is used in place of pharmaceutical companies, their agents such as contract research organisations (CROs) and investigators. The terms clinical research and clinical trials are also used interchangeably.

The discussion starts by describing what constitutes clinical trials and what has propelled the proliferation of clinical trials in developing countries by describing the conditions under which these trials are conducted in the developing world compared to the developed countries. Examples of exploitative trials are outlined to explain different exploitation arguments in clinical research. These exploitation arguments are also considered to show how they are limited to account for exploitation in clinical research because they confuse exploitation with other terms or mistake specific features of the transaction between researcher and research subjects for necessary conditions for exploitation. Lastly, the chapter use the vulnerability theory to explain how or when clinical trials in developing countries are exploitative.
The proliferation and status of clinical trials in developing countries

Clinical trial refers to a phase in medical research involving the testing of products under investigations on human subjects after a long process of laboratory and animal experiments (Hawkins 2008: 22). Although there are steps in human trials, our concern is with the last phase – Phase III, where hundreds or thousands of human subjects are enrolled to determine whether a new product will be a useful treatment for the illness or condition under investigation. Clinical research also aims to generate knowledge that will lead to improvements in medical practice.

The process of inventing new, safe, and effective lifesaving medication is expensive. Pharmaceutical corporations and other interested investors pay for the research and development of new drugs/interventions as well as for elaborate testing and the subsequent approval process. Considering the possibility of loss on such investments if newly developed medical products turn out to be unsafe or not effective enough, it is only prudent for investors in medical research to minimise the costs in the production process. Clinical researchers like automakers and apparel manufacturers, thus aim to minimise costs by looking elsewhere, namely, the developing countries, where the conditions are more favourable for reducing costs and profit making (Shah 2006: 7). The developing countries attract clinical research because they mostly have a readily available pool of subjects and less regulatory burdens than developed countries (Shah 2006: 7). For example, in 2004, GlaxoSmithKline’s CEO claimed $200 million a year in savings due to the relocation of around thirty percent of its trial business to “low-cost” countries such as Poland and India (Shah 2006: 9). In addition to the mounting financial and regulatory burdens of research in wealthy countries, David and Sheila Rothman attribute the increased shift of conducting studies in the Third World from the 1990s to the HIV/AIDS
epidemic (Rothman & Rothman 2006: 53). That is, the AIDS crisis in developing
countries has contributed to the growth of drug research to a multi-billion dollar global
business. The vast majority of people infected with HIV live in low-and-middle-income
countries with an estimated 66% living in the sub-Saharan Africa (UNAIDS 2018). The
presence of the HIV/AIDS epidemic, not to mention poor or lack of healthcare provision
in developing countries and weak regulations, have attracted investors to conduct research
in these countries. Specifically, the availability of a pool of subjects increases the speed
at which trials are carried out unlike in developed countries. The lack of or limited
healthcare also contributes to trouble-free recruitment of participants because the subjects
view clinical trials as probably the best available opportunities to secure their clinical
needs by receiving treatment. For instance, in South Africa, Quintiles recruited 3,000
volunteers for an experimental vaccine study in just nine days (Shah 2006: 9). Lack of
health care also guarantees that the subjects cannot drop out midway of a trial. For
example, an executive of New Delhi-based industry trial centre boasted a 99.5 retention
rate of their enrolled subjects (Shah 2006: 9). Weak or ill-defined regulations for clinical
research also incentive researchers and investors as less legal red tape saves time and
therefore costs in the research process. In short, the described conditions in the developing
countries have contributed to their becoming “a great, global lab” (Ijsselmuiden 2003
cited in Shah 2006: 10). Clinical research has therefore evolved into a huge business
finding its stronghold in developing countries.

Sources of ethical issues in clinical research

Clinical research can be subject to unethical practices like all endeavours
involving the generation and control of enormous financial resources (Okonta 2014: 188).
For instance, clinical research offers an opportunity to create new brand-name drugs to replace drugs whose patents run out more to serve the corporations' financial interests rather than the clinical needs of the subjects and their communities. Some critics point out that it is a common practice that “by adding minor variations to their blockbuster drugs, companies try to put a ‘new’ product on the market by the time the patent of the old drug has expired, thereby preserving their revenue stream” (Fahsi 2013). Such practices are possible because pharmaceutical companies enjoy some monopoly protected under international patenting laws. Further, the economic power of the pharmaceutical corporation is enormous in the face of developing countries such that pharmaceutical companies have the capacity to dominate and subjugate people in developing countries. The inequality of wealth between these corporations and developing countries also has implications on the influence of policy and bargaining as evident in the attempts to halt the government promulgating legislation it had passed in 1997 in the PhRMA vs. South Africa case (See Fisher & Rigamonti 2005). In other words, researchers can make profit in the intersection of medical innovation and various forms of inequalities such as inequalities of wealth and income and the greater the inequalities the greater the chances for profit making. There are striking economic disparities between some developing economies and some of the large pharmaceutical corporations. For example, the 2017 revenues for GlaxoSmithKline and Bayer were $39bn and $29bn respectively (Sagonowsky 2018), whilst the World Bank reported that the GNIs for Malawi and Lesotho in the same year were $6.16bn and $2.896bn respectively (World Bank 2017). Such inequalities create and sustain an environment in which the financial interests of

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33 Pharmaceutical companies withdrew their lawsuit in 2001 in a decision that was widely viewed as a South African victory. See Sidley 2001
researchers matters more than the interests of the communities in which they conduct their studies. In such an environment, the clinical needs of the subjects in developing countries are often secondary as they are often not the actual beneficiaries of the products of the clinical trials.\textsuperscript{34} This is similar to how locals were not primary and true beneficiaries of colonial systems. Thus, the burden of risks of experimentation that subjects shoulder has remained the same or perhaps grown. As Shah (2006: 37) observes, “where there is a gap between risks and benefits, the global poor who are the subjects of today’s body hunt pay the price.”

The above views partly form the bases for some critics’ claims labelling clinical research as “pharmaceutical colonialism” because researchers wield similar power as the colonial powers of previous centuries. Tanya Lyons (2009: 1) describes pharmaceutical colonialism as “the activities of some pharmaceutical companies and their contract research organisations (CROs) that involve exploiting the sickness and poverty of weak and/or developing states.” Jean-Phillipe Chipaux (2005) considers such actions of pharmaceutical corporations in developing countries as a form of ‘strategic imperialism’ where foreign forces (pharmaceutical companies), target a particular resource (poor, sick, treatment naïve populations) to extract the profits (data for new drug approvals) without colonising an entire country. Lyons further describes the activities of pharmaceutical companies in Africa as amounting to what she terms ‘Globonialism’:

\textsuperscript{34} It is important here to acknowledge that since the 1990s anti-retroviral (ARV) drugs have become widely available in developing countries, so in this particular case people in developing countries have benefitted from the associated clinical research. However, despite some notable efforts in some of these countries to use domestic funding and access generic products, responses to HIV/AIDS remain hugely donor driven. As a consequence, developing countries are, strictly speaking, beneficiaries of philanthropic donations, since the researchers sell the drugs to these donors rather than making the ARVs reasonably available. Philanthropic donations have notably increased after a 7% decrease in funding from developed countries between 2015 and 2016 (UNAIDS 2017).
“a combination of globalization hindering state strength to benefit only global corporations, in the process of extracting clinical data from sick patients in vulnerable communities, to support scientific evidence to gain approvals for drugs mainly designed to be marketed in Western countries, but in drugs trials that would either not be approved ethically in the West, and if they were, receive no volunteers” (Lyons 2009: 1).

The above shows that the ethical concerns about conducting clinical research revolve around issues of conflict between the financial interests of researchers and the clinical needs of the subjects and their communities. There are also concerns about the effects of inequalities in bargaining situation and how the subjects that are weakened by their socioeconomic conditions. Such general concerns form the bases for different exploitation arguments.

Examples of exploitative clinical trials in developing countries

The following are examples of clinical trials conducted in developing countries that involves violations of basic moral norms and flout international medical research guidelines. They are also considered exploitative but for various reasons as will be explained in the attempt to establish why the trials are actually exploitative on the vulnerability account.

1. *HIV/AIDS Drug Trials:* In the search for an effective and affordable drug for the prevention of mother-to-child transmission of HIV/AIDS (PMTCTT - also known as prevention of vertical transmission), the World Health Organisation (WHO) in 1994 approved randomised
control trials (RCTs) of shorter and simpler regimens of Zidovudine (AZT) against a placebo control. These trials were conducted after the AIDS Clinical Trial Group (ACTG) study 076 discovered and validated the preventive use of AZT as an active drug. The average cost for the full AZT regimen was $1000 per woman. The regimen was out of reach for most infected women, the majority of whom live in developing countries with approximately $10 or less per person annual health budgets (Grady 1998: 35, cited in Hawkins & Emanuel 2008: 1). For example, around the period of the study, Uganda’s annual health budget was as low as $3 per person while in Malawi; the cost of the dosage for one HIV-infected woman around the same time was more than 600 times the annual per capita allocation for health care (Varmus & Satcher 1997: 1004).

Sixteen trials were designed, and fourteen were conducted in eleven developing countries that could not afford the available standard treatment (Hawkins & Emanuel 2008: 2). All trials in developing countries involved the use of placebos except in one conducted in Thailand where a shorter regimen of AZT was used. In the other two trials of the sixteen performed in the United States, subjects in all the study groups had access to AZT and other antiretroviral drugs (Lurie and Wolfe 1997: 853). The use of placebos in developed countries such as the United States is not allowed when a proven effective drug exists (Shah 2006: 21). The use of placebos is also against the Helsinki Declaration, which requires that trial
participants receive the best-proven therapy as a comparator in clinical trials (World Medical Association 2013 section 33). A variety of similar clinical trials using placebos continues to be carried out with the aim of gaining approval for marketing for new drugs when other effective drugs exist. The new drugs or interventions more often than not tend to be too expensive to be reasonably available and affordable for the indefinite future in the host countries. This means that such trials lose track of their objective to develop effective but affordable drugs in addition to that these types of trials are not permissible in developed countries.

2. The Havrix Trial: In 1990, Smithkline Beecham Biologicals conducted tests for Hepatitis A vaccine (Havrix) on 40,000 Thai children. Due to competing vaccination priorities and the available health care budget in Thailand, and considering the cost of a newly developed hepatitis A vaccine, it was unlikely that Havrix would be included in Thailand’s national immunisation program in which vaccines are provided to the population at no cost in the near future (Hawkins & Emanuel 2008: 56). The researchers made no commitment to provide free Havrix vaccine to Thailand after the trial, and it was recognised at the start of the trial that the largest market for Havrix would be travellers from developed countries to developing countries. Critics accused the Thai government and medical community of national betrayal in allowing the exploitation of Thai children (Hawkins & Emanuel 2008: 58).
3. *The Surfaxin Trial*: In 2000, a United States drug company planned to conduct a trial for a new drug for Respiratory Distress Syndrome (RDS). The drug company and the Federal Drug Agency (FDA) deliberated on an acceptable study design to demonstrate the superiority of Surfaxin to existing drugs such as Exosurf. However, after some considerations, a placebo-controlled trial was proposed to be conducted in Bolivia, where RDS continues to be responsible for at least 30 percent of neonatal deaths (Hawkin & Emanuel 2008: 59). A placebo of sham air was used in the study when there were already four proven surfactants. Surfactant therapy costs about $1100 - $2400 precluding it as a viable option for most infants in Latin America where per capita annual health spending ranges from $60 to $140. “The principal target market for the drug was the United States and Europe, and the sponsor had no specific plans for marketing Surfaxin in Latin America” (Hawkins 2008: 61). In a similar trial, children in Zambia shouldered the burden for Nitazoxanide's development as a treatment for *Cryptosporidium* and *Giardia*, but they are hardly beneficiaries of the advantages of the drugs. Five years after the University Teaching Hospital had run the trial for Romark, they still had no supply of the drug and clinicians do not even bother trying to diagnose Cryptosporidiosis in children with diarrhoea. Further, the drug is not licensed for use in the country (Shah 2006: 35).
Exploitation in Clinical Research

Lessons from clinical studies such as the Nuremberg, Tuskegee, and Willowbrook research projects have led to significant changes in medical research conduct. These studies represent some of the medical research horrors in the long history of abuse and maltreatment of human subjects in biomedical research that are also considered exploitative. The Nuremberg trials involved gross violations of medical authority and basic moral norms by Nazi doctors’ experiments on nonconsenting concentration camps inmates, which culminated in the Nuremberg trials of 1946 (Wendler 2017). The Tuskegee trial was a 40 years-long study of untreated syphilis on poor Black men in America running between 1932 - 1972 merely to study the natural progression of the disease (Brandt 1978: 21 – 29). The Willowbrook hepatitis experiments involved the use of mentally disabled children by deliberately infecting the kids with a hepatitis virus to track the development of the viral infection and to test the effectiveness of gamma globulin injection as protection for hepatitis (Krugman 1986: 157 -162).

Despite the significant changes to address the ills of clinical research occasioned by these historic cases among others, the charge of exploitation continue to feature in contemporary ethics of clinical research. This may not be surprising because clinical research trials comparable to three described clinical trials continue to be carried out in developing countries. Clinical trials in developing countries are often carried out in ways that may not be permissible by international clinical standards that aspire to protect subjects from abusive research. In other words, some of the clinical trials in the developing countries can to some the extent be called them the new ‘Tuskegee’ trials. For

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35 See Shah 2006: Chapter 4 for a description of the history of medical experiments on humans in the developed countries
example, in the late 1990s, a Tuskegee-like government trial was exposed in India, in which researchers purposely withheld treatment from eleven hundred mostly illiterate women with precancerous lesions on their cervixes to study the inevitable progression of the disease (Shah 2006: 112 – 113). Shah also reports that at least fifteen different trials, testing experimental interventions to block mother to child HIV infection in developing countries, compared active drugs (even half doses of it) with a placebo which in her view is similar to purposeful withholding of treatment (Shah 2006: 90). Medical anthropologist and physician Jim Yong Kim considers this continuing trend of research as the exploitation of “the other”, a type of “global Tuskegee experiment” (Farmer 1999: 35).

When are clinical trials exploitative?

There are a variety of ethical concerns about clinical research in developing countries including the worry that some clinical trials exploit the research subjects and their communities. However, the meaning of exploitation in clinical research is as contested as the occurrence of exploitation is determined by different conditions. As noted in the Chapter 1, the concept of exploitation remains a source of debate, as there is no uniform meaning or consistent use of the concept even in specified fields such as bioethics. That is, even in fields such as bioethics, the concept of exploitation is misused or confused with other concepts such as coercion, lack of informed consent and harm. Nevertheless, utilising the concept of exploitation has helped to unify “diffuse, disjointed, and even incoherent concerns about research in developing countries into a single, clear issue” (Hawkins & Emanuel 2008: 13). Several trials have been pronounced exploitative over the past three decades by some international guidelines albeit not having a uniform
interpretation of exploitation. Some views about exploitation in clinical research simply make reference to international guidelines such as the Declaration of Helsinki of the World Medical Association, or the World Health Organization Guidelines for Good Clinical Practice, and others refer to the Council for International Organisation of Medical Sciences (CIOMS) guidelines to mention a few.

One prominent argument on what makes clinical trials exploitative or not utilises the idea of informed consent. Briefly, the argument holds that clinical trials are not exploitative when the subjects give their informed consent to participate in clinical trials. In other words, exploitation does not occur in clinical trials that obtain the informed consent of the participants by making them aware of all the risks involved in the clinical trial. For instance, Miller and Brody (2002: 5) argue that subjects are not exploited when they are adequately informed and understand that they are volunteering to participate in an experiment and they are not exposed to excessive risk. Perhaps underlying such views is the thought that harm is not done to patients that are informed and consenting as captured in the ancient saying ‘no injustice is being done to the willing’. However, some critics have argued that in the context of developing countries, this view faces significant problems because the subjects are usually poor and uneducated which may compromise consent or make it non-existent altogether. Firstly, informed consent is compromised because illiterate subjects simply cannot grasp what is presented to them (Campbell 2009: 1). Since the subjects are mostly ‘uneducated’, they cannot understand things such as aims or instruments of the study. For example, the documents for informed consent have

evolved from promoting ethical research to more of legal documents that are difficult to read and decipher its contents and more or less used to indemnify the researchers from litigation because of the increasingly litigious culture emerging in Western societies. Secondly, under the subjects’ conditions of poverty, where there is little or no healthcare, is it possible to obtain informed consent while at the same have questionable voluntariness of choice because the subjects have to choose between an opportunity to healthcare and none at all. That is, even when the subjects give standard informed consent to participate in trials, they may not necessarily volunteer because of their context where there are no acceptable options for basic health care. While concerns about illiteracy and poverty are worthy consideration in clinical trials, lack of informed consent or compromised informed consent due other reasons does not provide a good basis for a charge of exploitation as exploitation can occur even when subjects give informed consent to participate in the trials. In addition, lack of acceptable alternatives on its own is not sufficient to generate a serious consent problem (Wilkinson 2016: 133). Merely possessing few good options does not undermine the voluntariness of choice (Hawkins & Emanuel 2008: 8). The explanations of the stranded motorist and factory examples illustrate how the occurrence of exploitation does not depend on lack of informed consent. B in both examples is exploited regardless of the fact that B makes a decision to enter into a transaction well aware of the factors surrounding their choice including the lack of acceptable options.

Thomas Pogge’s (2008) example of a successful United States filmmaker and fishing boat sinking in calm waters better illustrates the above point. In Pogge’s case, the filmmaker intends to film what would happen to the crew of the sinking boat and show the documentary in wealthier countries to sensitise people on panic behaviour and a person’s survival time in ocean water (Pogge 2008: 109). While scouring radio airwaves,
the filmmaker gets a distress call from a fishing vessel at sea and proposes to the crew to flip a coin to decide whether to rescue them or film them drowning. The crew accepts the offer because the value of the 50% chance of survival is far much greater than drowning. The result of the coin flip is that she does not rescue the crew but film them drowning. The crew agreed to the filmmaker’s proposal and understood the risks or consequences, but it would be odd not to think of this as exploitation. One can argue that the situation of the research subjects in developing countries resemble that of the sinking crew. Research subjects are thus on this view exploited regardless of their consenting to participate in clinical trials because their circumstances are very peculiar in the same way as those of the boat’s crew or the man at bottom of pit facing mudslides in the deep pit example.

Some critics of the clinical trials in developing countries argue that such trials are exploitative because they exhibit some lowering of practical and ethical standards indicating the application of double standards. For example, the use of placebos instead of an existing proven drug or the established standard of care as the Surfaxin example illustrates. Researchers are not allowed to use of placebos controlled trials in developed countries when one form of effective therapy for an illness or a condition exists. On the other hand, placebos controlled trials sponsored by corporations or other investors including governments from wealthy countries are prevalent in developing countries. According to Lurie and Wolfe (1997: 885), accepting a standard of care that does not conform to the standard of care in the sponsoring country, which is often a wealth country, results in double standards. Instead of addressing the ethical concerns of placebo trials, the trials are only shipped to developing countries where the laws are weak to protect the subjects, or there are very pressing health issues that warrant overlooking critical issues in research. As Angell (1997: 848) argues, the use of placebos in developing countries
amounts to the application of double standards in clinical research that may result in widespread exploitation of vulnerable Third World populations. The principle that placebo-controlled trials are not permissible when an effective drug exist is abandoned in developing countries and conveniently changes to the availability of a proven drug in the host communities. In most cases, not even the standard effective drug is available as it is not affordable in these communities. The Nuffield Council on Bioethics also advises against the use of placebos in developing countries, as this seems to take advantage of the vulnerabilities created by poverty or lack of infrastructure and resources (Nuffield Council on Bioethics 2002). The claim here is that clinical trials that use placebos when there is a proven drug exploit the subjects in the same way the subjects are exploited by purposefully withholding already known interventions as in the Tuskegee trial. Further, some view that the subjects are exploited because they do not benefit from the study taking after the view that exploitation occurs where there is unequal distribution of benefits. That is, the subjects are only used to the advantage of the researchers. This lowering of ethical standards in the host countries also indicates a lack of equal concern for the welfare of the subjects. Lack of equal concern for the well-being of these subjects further reflects a disregard for the equal moral worth of other human beings. Consequently, according to some theories of exploitation such as Sample’s, these trials are exploitative as researchers benefit by treating subjects merely as means.

While the concerns raised above by critics such as Angell, Lurie and Wolff are genuine, I argue that the views misuse the concept of exploitation by somehow assuming that the concept is self-explanatory. For example, they argue that the lowering of standards in developing countries exemplified by use of placebos against the guidelines of international clinical conduct will lead to exploitation. Angell argues that lowering
standards may lead to widespread exploitation of vulnerable subjects (Angell 1997: 848). Wertheimer (2008: 64) expresses concern about such views about exploitation that do not provide an account of exploitation to support their claims. In other words, what is missing in views such as Angell’s is what they mean by exploitation and the absence of such an account may be misleading in that one may think the lowering of standards alone is a condition for exploitation. In part, that may be the case but it requires an elaborate account such as the proposed vulnerability account that can show how conditions of vulnerability and relationships of dependence enables the application of double standards for purpose of deriving benefits.

Advocates for placebo-controlled trials, however, argue that clinical trials are not exploitative because the research subjects benefit by participating in the trials. The view is that the trials that use placebos make the subjects better off by increasing the chance of getting medical care. The subjects in developing countries in the first place have nothing that can remedy their medical needs regarding intervention or drugs. For instance, those living with HIV in developing countries are, to say the least, condemned to death when there is little or no health care provision. The patients do not have easy access to ARVs or any other life-prolonging interventions. In other words, even when there is a proven drug, the subjects would face the same predicament of no treatment for their illness or condition since they cannot afford the available standard treatment or simply that they have no chance to access the treatment. On this thought, giving placebos to subjects that cannot access standard care such as in the Surfaxin and Hepatitis trials, makes no difference but perhaps makes the subjects important in the journey of discovering drugs that are more effective regardless of the fact that the drug may not be available to them. In addition, under these circumstances, the belief is that the use of placebos does not harm
the subjects since the subjects are not made any worse than they could have been without the trials. As Miller and Brody argue, the subjects are not exploited when they are not exposed to excessive risk and are adequately informed that they are volunteering to participate in an experiment rather than receiving medical care directed at their best interests (Miller & Brody 2002: 5). Placebo-controlled trials are also considered beneficial to the subjects as they improve the subjects’ chances of getting a drug from none. That is, when some fraction of the subjects receives an experimental drug it means there is a fraction percentage of improvement for the subjects in terms of access to drugs that they never had. Say, half of the subjects will receive the experimental drug, and the other half gets placebos, it means 50% improvement chance for getting medical care from nothing.

However, the arguments that these clinical trials are not exploitative because the subjects benefit or do not expose the subjects to excessive risks are flawed. Where one’s health and life are at threat because of an illness or condition, it may be difficult to point out what constitute excessive risks. In placebo-controlled trials, subjects have to endure no treatment and the consequences are simply dire (Shah 2006: 19). The argument of excessive harm builds on the view that the subjects are not made any worse by the trials than they otherwise would have been without the trial. In fact, the subjects are better off with trial than without the trial as they could not have had half a chance that the trials offer which is similar to how sweatshop labour benefits the workers in the Pacific Rim example where less is better than nothing. Similarly, the chance improvement to access much-needed drugs does not make the trials non-exploitative since exploitation is not merely a function of little or no benefit. The use of placebos exposes the subjects to the same risks as when they are not treated. That is, we do not have to think of excessive risks
under these circumstances when the risk is still the same as before the trial where one’s life is threatened. Further, it is rather unfair to expect participants facing a life-threatening illness not to think of clinical trials to be in their interests when there is a proven drug or a promising drug that is being tested. Moreover, it is not only the subjects that receive placebos that are exploited, but also all subjects and perhaps their communities are exploited especially when the results of the study are not accessible or available to the subjects or their communities after the study. Thus, the exploitation in the AZT as well as the Surfaxin and Havrix trials is not in the fact that the trials are harmful to the subject, that they are not as beneficial or without benefit at all. As we have established through other examples, exploitation occurs even where one benefits and no harm occurs to B. This means the exploitation arguments based on the occurrence of harm and lack of benefit to the subjects in clinical trials do not properly account for exploitation because exploitation in medical research can also occur without the occurrence of harm.

A related charge of exploitation to the above holds that clinical trials are exploitative when they fail to address the clinical needs of the host country by providing posttrial benefits to the host population. In other words, the trials are exploitative when the subjects and perhaps the host communities do not benefit from the results of the interaction. For example, Annas and Grodin (1998: 561) view that doing research with impoverished populations is exploitative unless the interventions under investigation will be made available to the host communities. The CIOMS also holds that trials may rightly be characterised as exploitative and therefore unethical if the knowledge gained from the research primarily benefits populations that can afford the tested product (CIOMS Guideline 10). Most clinical trials results (drugs or interventions) are not available posttrial often because of prohibitive costs (Glantz et al. 1998: 3). The claim is that the
poor subjects are being used to develop medical products for the wealthy and that this is exploitative as suggested by the pharmacolonial argument. Lurie and Wolfe (1997) similarly argue that exploitation occurs when the inhabitants of the host country cannot afford the drugs that have been developed by testing on their members or communities.37

Apart from the problem of reasonable availability here, there are also problems of obligations as to what is owed to the host communities and the participants, posttrial. The AZT or Havrix trials did not guarantee the availability of their results to the inhabitants of the countries after the trial if it was proven effective. This is against the CIOMS recommendation that researchers should agree in advance that any product developed through the research would be made reasonably available to the inhabitants of the host communities upon successful completion (CIOMS 2002 commentary on Guideline 15). In Annas and Grodin’s (1998: 561) view, not enough is done to guarantee that the hosts’ populations would access the developed drugs even though trials such as the AZT may have in mind the health needs of developing countries. In other words, there is usually no binding commitment from the researcher to make their products such as AZT available at affordable price. It should be noted here that even a 50 percent reduction of the cost the short-course AZT regimen would still be unaffordable in most of the host countries.38

However, lack of reasonable availability argument does not fully capture the exploitation that occurs in clinical trials. It is not enough to say that exploitation occurs because the product is not made reasonably available to those who participated in its production. Besides, there are other interactions in which the products may not be

37 See also Angell 1988.
38 The prices for ARVS have significantly fallen partly as a consequence of the failure of the court case against South Africa’s use of generic products. ARVs in developing countries are now accessible because of the availability of generic drugs and increasing competition among generic producers complementing philanthropic donations (See Medicins Sans Frontieres – Access Campaign 2014).
available to some interactors but are not considered exploitative on this basis. For example, the exploitation of the workers in cocoa fields in Ghana or gold mine workers in South Africa is not in that they cannot afford the products they produce. Moreover, it is hard to decide when a product is reasonably available to the subjects considering that there may be a conflict between researchers’ financial interests and the subjects’ welfare interests. We also run into the problem of establishing when the exploitation occurs: whether it is when subjects participate in the trials or after the trial. Thus while the reasonable availability argument intends to protect the welfare interests of the participants, it fails to adequately account for exploitation, in the same way views that focus on the lack of benefit alone fail to determine the occurrence of exploitation.

A similar view to the lack of benefit-based view of exploitation above is the view that clinical trials are exploitative because they involve unequal distribution of benefits and burdens between the interactors. That is, unlike the research subjects, pharmaceutical companies amass huge profits from the knowledge gained from the research. The subjects and their communities, plagued by illnesses and poverty, are often in a weak position to bargain with the researchers. As the pharmacolonial argument mentioned earlier holds, the benefit that researchers make in the form of drugs or knowledge and the profits made thereof resembles colonial arrangements as instances of extracting resources (data from subjects’ bodies) from developing countries for the benefit of those already unjustly privileged in the developed countries (Carse & Little 2008: 218). The argument is thus that there is unfair distribution of the benefits of clinical research between pharmaceutical corporations and their subjects and their communities. However, as argued in the previous chapter on surrogacy, unequal distribution is not an adequate basis for exploitation especially when fairness lacks a precise meaning or contingent on contextual factors.
Exploiting the vulnerability and dependence of research subjects in developing countries

The weakness of the exploitation views in clinical research explained above is that they are limited to account for other forms of exploitation in clinical research. For example, some views hold that clinical trials are exploitative when they harm or expose subjects to excessive risks as in the infamous Tuskegee Syphilis and Willowbrook Hepatitis Experiments. David Buchanan and Franklin Miller (2006: 730) associate exploitation in clinical trials with excessive risks arguing that exploitation in clinical trials does not occur if the subjects are not exposed to excessive risks. In other words, exposure to excessive risks or harms is a condition for exploitation. Miller and Brody (2002: 5) similarly hold informed consent and non-exposure to excessive risks as conditions for non-exploitation. However, using harm as the basis of exploitation is problematic because of the difficulty in determining what constitutes harm in clinical trials. Harm may remain unknown in some cases or may not be instantly established, as it might be the case in the trials of new drugs and for new illnesses. Moreover, harm seems to be restricted to what the trial has directly caused such excessive risk in terms of such things as side effects as advocates view that withholding treatment from subjects does not cause harm since the subjects would face the same outcome if they do not participate in the trial. Some may even argue that the subjects can be compensated for the additional risk that is caused by the trial (EUPATI 2015). This may suggest that where visible harm cannot be identified exploitation does not occur in a clinical trial.
Moreover, since establishing excessive risks are measured against the benefits of the research, we risk sacrificing subjects at the altar of biomedical progress by considering the benefits that may go to other people rather than the research subjects, which is controversial. That is, since the view is that exploitation does not occur if the potential benefits of the research outweigh the risks, the burdens to the subjects may be outweighed by the benefits to be enjoyed by future patients (Malmqvist 2011). Furthermore, the implication of this is rather odd in that while it is sensible to say exploitation in clinical research can be avoided by reducing the risks to the subjects, it is not sensible to say that exploitation can be avoided by increasing benefits to the future patients to outweigh the risks (Malmqvist 2011). However, as we have shown earlier, harm is not a necessary condition for exploitation in clinical trials. As Wertheimer (1996: 14) notes, some exploitation is mutually beneficial rather than harmful. In the given examples of clinical trials, except in the Meningitis trial, it appears no harm is caused by the research itself but the threat of harm to the subjects comes from the illness or condition. Thus, we need a theory such as the vulnerability theory of exploitation that is not narrow or rigid in its applications to account for different forms exploitation in clinical research.

Contrary to views such as above, the vulnerability theory argues that clinical research in developing countries is exploitative when researchers derive benefit by taking advantage of the vulnerability and dependence on the part of the subjects. The argument is that clinical trials in developing countries are more likely to be exploitative because of the prevalence of conditions of vulnerability and the likelihood of relationships of dependence. Clinical trials conducted in developing countries are likely to be exploitative because the research subjects are vulnerable (have threats to their welfare interests) due to their socioeconomic circumstances. That is, in developing countries vulnerability is
high because of multiple factors present in these contexts such as extreme poverty, dire need of healthcare and nutrition, lack of political power, and lack of education or high illiteracy levels. The threats to welfare interests make the patients in developing countries appropriate subjects for research (Glantz et al. 1998: 2). For example, the subjects in the HIV/AIDS trial as well as in the other cases have illnesses that threaten their welfare interests in health and life. In the AZT trial, the threat is to the well-being of both the mother and the unborn child. The researcher takes advantage of this threat to the mother and child to enrol the mother as a subject. In other words, the threat to the subject works to the advantage of the researcher in the bargaining situation. The conditions for the research subjects in developing countries are similar to those of the surrogate mothers in India even though the threat to the subjects’ welfare interests is more serious in clinical trials, as it specifically threatens life. These research subjects also operate under conditions of limited possibilities of self-expression and development; unemployment; lack of financial resources; and low education levels among others. The research subjects’ situation thus resembles that of the man trapped in the pit example where B’s life is threatened by mudslides (illness) and can only hope for A’s rope (the drug or treatment) for survival or relief.

Further, exploitation is more likely in these clinical trials because the trials often represent the best available options for the subjects to secure their welfare interests hence making the subjects dependent on their transactors. For instance, AZT as a proven life prolonging and PMTCT drug or the unproven drug that is under investigation is the only chance available to most infected women in developing countries to prolong life of the mother and prevent vertical transmission. In other words, the clinical trial represents the best option available to the subjects for securing their wellbeing. Research subjects in the
clinical trial examples lack the capacity and alternatives for protecting their welfare interests due to a variety of reasons as indicated above but mostly because of poverty as suggested by examples of low annual healthcare allocations in developing countries. The lack of options for securing their welfare interests makes the subjects depend on the researchers through the trial to secure the threatened interests. The subjects are dependent on the researchers because the cost of exiting or refusing a relationship or transaction with the researchers is high. Specifically because the subjects’ health and life relies on goods or resources provided by the researchers through the trials. This lack of options for securing the subjects’ wellbeing that gives researchers the opportunity to insist on terms for research trials that are not as favourable to the subjects such as terms and conditions that do not sufficiently safeguard their interests.

To clarify on the conditions for exploitation, we need to compare the conditions for research subjects in developed and developing countries in the same way as Panitch (2013: 333) makes inter-contractual comparisons in surrogacy contracts comparing B to another B in similar arrangement rather than any other B. This comparison shows that research subjects in wealthy countries are not as vulnerable compared to their counterparts in the developing world. The evidence to the difference in vulnerability manifest in the retention rates of subjects, which are low in developed countries compared to developing countries (Shah 2006: 9). Laws and policies protect the subjects in the developed countries from such things as placebo-controlled trials, unlike those in the developing countries, and the subjects have options in terms of access to healthcare. The subjects in developing countries are not given the same entitlements as their counterparts in developed countries including dropping out when they so wish. As shown in the two AZT trials that were conducted in the United States, the participants had access to the
standard care or alternative drugs. Both sets of subjects in the AZT trials have welfare interests in both prolonging their existence and securing an HIV-free status for the unborn baby, which is equally threatened by the disease. However, under the circumstances that the subjects in developing countries are more vulnerable and in various ways, their lack of options make them depend on the researchers as they represent the only best option available for securing their wellbeing. The subjects in the developing countries do not have access to the preventive drug like their counterparts in developed countries, or cannot access it because it is not affordable, hence the subjects’ dependence on their transactors (researchers) for the protection of their welfare interests. Borrowing Goodin’s characterization, research subjects resemble the workers in the Pacific Rim country example, situated as a subordinate party that is in need of a resource (drugs) that only the researchers (superordinates) supply, causing an asymmetrical relationship (Goodin 1988: 175). In short, by comparison, research subjects in developing countries enrol into clinical trials under conditions of increased vulnerability because of their socioeconomic conditions and are consequently treated differently. For example in the same study as shown by the AZT trial, a study in the developing countries is justified by contextual conditions of increased lack of resources and options rather than those conducted in developed countries which are conducted with reference to specific guidelines that aim to protect the wellbeing of the subjects. This forms the basis for ethical issues surrounding the use of double standards in clinical trials in developing countries (Macklin 2004).

In the dependence relationship between the researchers and the subjects, the researchers have discretionary power over the much-needed drugs in the developing countries in Africa, Latin America, and Southeast Asia (Guenter, Esparza & Macklin 2000). A’s control over a resource that B requires for her well-being gives A an advantage
in a bargaining situation with B. B’s lack of options for the protection of her wellbeing is also to the advantage of A who can now insist on terms that B only has to put up with. In this relationship of dependence, there is conflict between the financial interests of the researchers and the clinical needs of the research subjects and their communities. The pursuit of financial interests involve coping with increased competition for inventing new drugs and for new markets demands by reducing time and costs in conducting the trial (Shah 2006: 4). The presence of a large population of patients that is readily available in developing countries in need of drugs or interventions and without options for securing these clinical needs is conducive for relationships of dependence. A relationship of dependence entails that B has no other options but to transact A to secure his or her welfare interests such that the cost of exiting the relationship with A is high for B. The lack of options for B makes it impossible to refuse to enter into or exit a relationship with A. A is under the circumstances the only one that can best secure B’s wellbeing.

Noteworthy here is the fact that for B both no interaction and exiting the arrangement are not options because the risk of doing so is very high since life itself is threatened. Using Lovett’s theory of domination to describe the relationship between researchers and research subjects, it is a relationship of dependence in which the cost of opting out of the relationship is greater for the research subjects that the researcher (Lovett 2010: 50). In other words, the cost for exiting is greater than zero. In the context of clinical research, lack of options for the subjects tips the balance of the cost of not entering into or exiting the relationship against the subjects rather than the researchers. Thus, the subjects would rather participate in a clinical trial than not as this is the only opportunity to secure their wellbeing. The existence of a vast pool of people with HIV in developing countries, on the other hand, makes it is easy for researchers to recruit research subjects
without much cost to their financial interests than for the subjects to find an alternative to the research trials as an opportunity for medical intervention.\textsuperscript{39} In other words, the cost for not enrolling these research subjects or opting out of this relationship is on the part of researchers is low and less threatening as their financial interests can be met by recruiting other research subjects elsewhere. This in my view explains Goodin’s view that the A’s actions and choices have a have a great impact on B’s interests (Goodin 1985b: 779). A has more impact on B’s wellbeing rather than vice versa when A represents the best option for B to secure his or her wellbeing. As is the case in these clinical trials, researchers can discontinue their trials at any point when there is a threat to their interests to the detriment of the research subjects. The subjects’ decision to discontinue participation in the research on the other hand also has a great impact on the subjects’ wellbeing rather than the researchers who may have options for securing their interests. Due to the relationships of dependence, the interests of the subject can be sacrificed on the altar of biomedical progress. Pfizer’s infamous clinical trial of a meningitis drug in Nigeria in 1996 illustrates this point as Pfizer left town after conducting the trials while the epidemic was still going on (Okonta 2014: 189).\textsuperscript{40} These kinds of clinical trials are not any different from business investments such as sweatshop factories in developing countries that can fold up when there are obstacles to the interests of the investors without regard to the welfare interests of the workers and their communities.

The other issue about clinical trials in developing countries is whether they benefit the subjects. The argument that trials are exploitative because they do not make drugs or

\textsuperscript{39} According to the U.S. National Library of Medicine (2018), about 48\% of clinical trials are being conducted outside the United States, mostly in developing countries. See https://clinicaltrials.gov/ct2/resources/trends

\textsuperscript{40} Pfizer settled a legal suit for a conducting a trial for a meningitis drug in Kano, Nigeria which faced the biggest meningitis epidemic. During, the trials, several children died and others acquired disabilities. See Okonta 2014
interventions developed from the trial reasonably available points to the view that these trials do not benefit the subjects and/or their communities. While subjects in developing countries are exposed to the risks of research, access to the benefits of new, effective drugs or interventions goes to the people in developed countries and profits goes to the pharmaceutical corporations. These trials fail to provide fair benefit to the subjects because the knowledge, inventions and finances go to others rather than the subjects and/or their communities. However, some argue that clinical trials are mutually beneficial as research sites in developing countries benefit from increased capacity development and investment. That is, developing countries benefit by training healthcare and research personnel, access to modern medical equipment, construction of health care facilities and other physical infrastructure (Participants in the Conference on Ethical Aspects of Research in Developing Countries 2002). Advocates for clinical trials argue that reasonable availability of the research products embodies a narrow conception of benefit that overlooks the mentioned benefits and insisting on reasonable availability precludes the community’s deciding which benefits it prefers (Ibid). On the vulnerability account, the amount or type of benefit to B is not necessary for the determination of the occurrence of exploitation. That is, while communities may benefit as clinical trials raise research standards, bring health improvements, and badly needed investment, they are still exploitative insofar as the benefit accruing to A is derived by taking advantage of the vulnerability and dependence of the subjects. That is in fact the essence of mutually beneficial exploitation. The vulnerability account looks at how the benefit to A is derived. If the conditions of vulnerability and dependence have been used to derive that benefit then the transaction is exploitative.
The implication of the benefits view in the preceding paragraph is that exploitation in these clinical trials can be avoided by giving adequate consideration to the subjects’ welfare interests. That is, adequately securing the welfare interests of the subjects by making available a resource – a drug or intervention, which is essential to the protection of the welfare interests that are threatened. The failure to protect the welfare interest of vulnerable and dependent subjects can be established counterfactually, by the existence of the possibility to interact with the exploited under better terms and conditions that can adequately protect their wellbeing. Focusing on the other benefits such as those that accrue to the community, in general, only prevent us from seeing the exploitation in the trial, which is not seeing how the trials are benefitting the researchers without by inadequately benefiting the subjects because of their vulnerability and dependence. For example, the Pfizer’s meningitis trial in Nigeria may have benefitted the society through capacity building or training of research personnel, but the results of the trial did not benefit the subjects. That is, in addition to the fact that the subjects were exposed to a bigger risk of taking meningitis treatment orally rather than the standard and effective intravenous means. Furthermore, the fact that in most of these trials the subjects receive medication only during the trial and posttrial access is not guaranteed, their welfare interests remain threatened as they cannot access or afford a drug that they took part in developing. In the case of HIV/AIDS, it implies that the subjects’ welfare interests have not been secured as infection and transmission rates will increase after the trial. By the vulnerability theory, benefitting the subjects means securing the welfare interests that are threatened. Thus, researchers in clinical trials can avoid exploiting the subjects and their communities by adequately securing their welfare needs in the best way possible rather than taking advantage of the vulnerability and dependence to benefit themselves.
The view that research subjects’ welfare interests should be adequately addressed resonates with Siegel’s theory of exploitation that is guided by Kantian ethics. Siegel argues that clinical trials exploit subjects in developing countries when they do not benefit the subjects. In his view, not benefiting the subjects violates the duty of beneficence and therefore reflects an agent’s indifference to the needs of another qua human agent. Subsequently, acting with such disregard fails to recognise the other agent as an end in herself. On Siegel’s account:

“A exploits B when A secures benefit from B by acting toward B on a maxim that (1) subverts the conditions for B’s rational agency, (2) fails to acknowledge needs that are essential to B qua rational agent, or (3) demean or degrades B despite the fact that preservation of B’s agency is not at issue” (Siegel 2008: 181)

Siegel points out two modes of exploitation discussed in clinical research. First, exploitation involving subversion of the rational agency where researchers subvert rational agency when they do not obtain informed consent from the subjects. Second, exploitation involving degradation when researchers advance their interests at the expense of the subjects’ interests (Siegel 2008: 182). The importance of informed consent in clinical research is consistent with the Kantian imperative that we ought not to act in ways that subvert rational agency. For example, employing deceit, coercion or any forms of manipulation of a person’s will to enrol in trials violate this Kantian maxim (Siegel 2008: 182). Illiteracy, unfamiliarity with medical concepts, or unfamiliarity with procedures typical of informed consent are also barriers to satisfying the requirement of informed consent (CIOMS 1993 Guideline 8). In other words, proceeding to conduct research where such obstacles are not dealt with subverts rational agency since the subjects cannot give valid consent. Another obstacle to informed consent as identified by
Annas and Grodin (1998: 562) is the absence of healthcare in developing countries, which makes any offer of medical assistance acceptable since it is better than nothing. The argument is that research subjects are induced by the prospect of having access to healthcare through participation, which in essence compromises their consent. However, as argued elsewhere, informed consent is not enough a condition for a charge of exploitation as individuals can be exploited consensually. That is, subjects can make an informed choice even under harsh circumstances in the same way a stranded motorist can make a rational and informed decision in choosing to pay the tow truck driver than to remain stranded. By the vulnerability account, exploitation is not about the lack of informed consent, or in the failure to acknowledge the needs of a person qua human being but the conditions of vulnerability and dependence that make subjects consent and the exploiter not to consider the needs of the subjects. The stranded motorist or Pogge’s sinking boat crew consent to transacting with the tow truck driver and the filmmaker, respectively, but they are exploited. The tow truck driver and the filmmaker take the vulnerability and dependence of their interactors as an opportunity to derive benefit without fair consideration of their interactors’ welfare interests.

Siegel’s second limb of the argument of exploitation resembles Wood and Sample’s views that benefits derived through inequalities in bargaining power are degrading to the weaker party (Siegel 2008: 184). Both views hold that treating another person without regard to their moral worth is degrading. Wood’s exploitation account holds the view that we violate the proper respect due to persons when we treat their vulnerabilities as opportunities to advance our interests or projects (Wood 1997: 15). In Siegel’s view, we disrespect human dignity when we display indifference to B’s needs by withholding help or aid in the absence of legitimate reasons for doing so. According
to Siegel (2008: 189), the only valid reason for withholding support or aid is when doing so would make oneself in need of the beneficence of others or that when doing so would jeopardise one’s own status as an agent. This reasoning also spells our responsibility and its limits to vulnerable others similar to Peter Singer’s (1972) suggestions on the limits of our responsibilities to the global poor. Now considering the disparity between researchers and their subjects with respect to resources, the researchers withhold drugs to the subjects in developing countries without legitimate reasons. It is clear that in Siegel’s (as well as Wood’s) view, researchers are seen to be advancing their interests by taking advantage of the vulnerability and dependence of the subjects. The union of illness and poverty serves as an ideal opportunity for inexpensive and efficient testing of drugs for the market (Siegel 2008: 184). In the context of clinical research, conducting research on subjects that are vulnerable and dependent when they cannot access or afford the results of the trials is by Siegel’s account being indifferent to the needs of human beings. Then again, exploitation is not in this indifference to the needs of others since exploitation can occur even where the needs of others have been considered. For example, in the surrogacy example, the needs of the surrogates are protected yet remains exploitative.

The role of dependence in exploitation in clinical research is clear in how researchers can insist on using standards lower than internationally set standards. Dependence makes it possible for researchers to use for instance, placebos even when a proven drug is available or abandon standard and effective methods of administering drugs as in the Pfizer trial in Nigeria. This is comparable to the tow truck driver’s ability to charge the motorist above the standard towing price or the factory owner’s ability to offer anything to the workers as long as it is in the factory’s interests. The possibility to use placebos in clinical trials in developing countries, or abandoning international
guidelines for clinical research such as guaranteeing reasonable availability of drugs and interventions posttrial, or the ability to discontinue a trial at the discretion of the researcher, is only possible because the relationship between parties to this is not properly of interdependence. It is a relationship of dependence because the subjects interact with the researchers to secure their wellbeing and the cost of not transacting with the researchers is too high. On the other hand, the researchers do not necessarily have to transact with these subjects as they have other options available to them for the protection of their financial interests. Borrowing Marx’s (2013: 440) description, there is a disposable reserve army, which in this case is the availability of a surplus population of potential research subjects probably ready and willing to transact with A giving bargaining advantage to A. In other words, the researcher acts in such ways that do not adequately protect the welfare interests of the subjects because the subjects do not have better options available to them to protect their interests. The advantage to the researcher includes room for suspending or terminating the trials without considering the wellbeing of the subjects as well as not guaranteeing the availability of the drugs such as AZT posttrial. The situation for the subjects is the same as that of a drowning man whose safety or wellbeing is in the hands of a rescuer who will rescue the drowning man only when the rescuer's interests are met. Like many other trials that have been charged as exploitative because the research product is designed for or can only be afforded in developed countries, the welfare interests in health and life of the subjects come second to the financial interests of the researchers. For example, concluding clinical studies without guaranteeing the availability of the drugs such as in Pfizer’s meningitis and AZT trial indicate a disregard of the welfare interests of the subjects. In some cases of HIV/AIDS drug trials where an experimental drug is perceived to be better than the
available ones, at the conclusion of the trial, subjects have to revert to an old drug, usually
less potent, if they were on medication. This means the subjects are more at risk now than
before. Where the welfare interests of the research subjects are not secured posttrial as
described, the charge of degradation is warranted as they are treated as of less moral
wealth, treated as means, or that the welfare interests of subjects and communities in the
developing countries are less important than those of the developed countries are. While
agreeing that by the Kantian standards benefiting from transactions with vulnerable
subjects without adequate regard to their welfare interests may be degrading, clinical trials
are not exploitative because they are degrading or fail to protect the interests of the
subjects. Clinical trials are exploitative when researchers advance their interests by taking
advantage of the availability of the vulnerability and dependence of the research subjects.

Conclusion

Since contemporary medical research is a multi-billion industry, it operates to
maximise profit making. Achieving such profit margins requires strategies to minimise
operational costs such as offshoring clinical trials to developing countries. As Ronald
Bayer (1998: 568) observes, the logic of business has replaced the logic of research, “one
that is driven by considerations of efficiency above all else.” Thus, like conventional
trade, clinical research also sometimes thrives on the injustices that discriminate against
the poor and weak subjects found in the developing countries. In these situations,
researchers pursue their financial interests because of the vulnerability and dependence
of the subjects without adequately addressing the needs of their subjects and host
communities. Researchers achieve these profits because they command a position of
power and advantage unlike the subjects who lack bargaining power and options for
securing their welfare interests. In other words, because the researchers wield enormous economic power, the subjects are only as valuable as they can contribute to the interests of the researchers. Otherwise, vulnerable and dependent subjects are replaceable when their interests compete with those of the researchers. Described in this way, clinical trials in the developing world are not very different from the trials such as the Tuskegee trial in the way they are conducted and in their fundamental failure to protect the welfare of human subjects (Angell 1997). The conditions of vulnerability and relationships of dependence provide fertile grounds for exploitative transactions where the welfare interests of research subjects are not as paramount as is required by international clinical standards. As described here, exploitation is on this vulnerability theory “a function of roles or relationships occupied in a given context, of the practice in which the transaction takes place” (Carse & Little 2008: 221 – 222).

The major similarity between the past clinical research scandals such as the Tuskegee trial and those happening in the developing world is that the subjects are primarily affected by some other condition(s) on top of the illness or condition that is under investigation. That is, both sets of subjects have increased threats to their welfare interests in life and health. In addition, both sets of subjects lack better options for securing their wellbeing compared to what is offered by these clinical trials. Generally, the lack of capacity to protect the welfare interests is due to their socio-economic position, disadvantages the subjects in the bargaining process with their transactors. In other words, the subjects cannot contain the illness or condition that threatens their life or wellbeing largely because of poverty as suggested by the annual health budget figures in the developing countries. The other similarity is in that the subjects lack better options for securing their wellbeing. At best, they can only chose between the very limited access to
treatment and nothing. The promise of treatment through a clinical trial thus represent the
best option available to them even when the trial may involve unproven interventions
which in Snyder’s (2017) words constitute the exploitation of hope. The subjects are thus
on this understanding dependent on the researchers as the trial is the best option available
for securing welfare interests. The disparity between the interactors in the research
examples can be taken advantage of to secure some benefit for the researchers rather than
the subjects, which is one of the reasons why cases such as the Tuskegee trial and others
are deemed exploitative. That is, the researchers stand to benefit from the study, the
subjects do not benefit in a way that adequately protects welfare interests.

The continued existence of trials similar to the outlined cases demonstrate that
research “has not come very far from” (Angell 1997: 849). Using subjects’ vulnerability
and dependence for the benefit of others rather than themselves, is exploitative. For
example, the possibility that subjects will receive placebos in HIV/AIDS trials rather than
a proven effective drug is comparable to purposeful withholding of treatment in the
Tuskegee syphilis trials among the African American men. The concern, in general, is
that the reforms initiated by the lessons from historical medical tragedies to address the
problem such the exploitation of subjects among other ethical concerns, do not extend to
clinical research conduct in the developing world as indicated by the examples. I argue
that, exploitation in these clinical trials may not be seen because the understanding of
exploitation is wrong such as when exploitation is determined by the lack of informed
consent or excessive harm to the subjects. The vulnerability account therefore highlights
the correct necessary conditions (vulnerability and dependence) with which we can
determine the occurrence of exploitation. As Shah (2006: xi) observes, “if the history of
human experimentation tells us anything, from the bloody vivisections of the first
millennium to the Tuskegee Syphilis Study, it is that the potential for abuse will fall heaviest on the poorest and the most powerless among us.”
Chapter 7

What is wrong with exploitation in international commercial gestational surrogacy and clinical research trials?

Introduction

Earlier in the thesis I argued that exploitation in general is wrong because it involves taking advantage of vulnerable and dependent others. In this chapter, I argue that exploitation occurring at the international level might be distinctively wrong, for reasons that generally do not apply to exploitative exchanges between compatriots. These reasons have to do with the employment of double standards concerning the promotion and protection of people’s basic welfare interest. The application of double standards to arrangements such as commercial surrogacy and clinical trials among others at the international level, constitute a failure to protect adequately the welfare interests of individuals in developing countries. I argue that the practice of double standards at the international level represents a form of hypocrisy that violates the belief in the equality of people as it involves subjecting international interactions with people from developing countries to weaker moral demands while demanding stronger ones in similar transactions involving people within or among developed countries. I maintain that the prevalence of
conditions of vulnerability and the likelihood of dependence create many opportunities for exploitation at the international level. Further, these exploitable conditions in the developing world have further ethical implications that may not arise domestically because the conditions to some extent originate from historical, political and economic arrangements that are morally wrong, invented by and/or in favour of the developed world.

First, I maintain that the application of double standards in international arrangements such as clinical trials and surrogacy involve some form of discrimination that in some cases signal racial injustice. This is because most of the developing countries are former colonies of developed countries and they continue to interact in a framework that is skewed towards the developed countries. As noted by Thomas McCarthy (2004: 148), “there is a constant interplay between colonialism and racism, between the establishment of imperial domination and the formation of racial ideologies”. In short, these arrangements may pass as racist because they involve improper differential treatment of people – attaching less importance to the wellbeing for individuals from developing countries therefore treating them as of less moral worth. Secondly, I argue that exploitation at the international domain suggests and sustains colonial attitudes influenced by the associations that exist between developed and developing nations that are disproportionate due to variations in wealth and supremacy.

The chapter first explains some instances of double standards in international clinical trials, surrogacy and other comparable arrangements as the basis for a charge of hypocrisy. The second part of the chapter explains the two ethical implications of double standards in international exploitative arrangements. I conclude that the application of
doubles standards international exchanges contravenes the ideal of equality of human beings and therefore challenges the idea of global justice.

Double Standards in International Arrangements

The current practice of double standards in international gestational surrogacy, clinical research trials and other comparable arrangements involve the application of different standards to similar contracts in developing and developed countries. According to the Merriam Webster Dictionary (2018), double standards refer to the use of different rules or values for the same/similar situation; or the rigorous application of those rules to one group of people or circumstances than to another. In the two examples of international arrangements in surrogacy and clinical trials, double standards may for instance involve administering bad contracts in developing countries while meticulously administering surrogacy contracts and clinical trials in developed countries. Abandoning or not applying international standards in arrangements occurring in or involving people in developing countries also qualifies as a practice of double standards. Applying different standards rather than the established standards such as those established under international guidelines in developing countries, or not applying the established standards altogether where developed countries and/or their agents are sponsoring or conducting research may also suggest some form ‘ethical imperialism’. Macklin (2004: 4) describes ethical imperialism as when a developed country impose its own standards on a developing country where it is conducting or sponsoring research. I add here to Macklin’s view that this imposing of standards includes interacting with people in the developing countries without regard to the standards applied in developed countries with respect to certain interactions, or those standards required by international guidelines in arrangements such
as surrogacy and clinical trials. That is, heavily regulating or pronouncing certain arrangements in surrogacy and clinical trials as impermissible and/or illegal in developed countries while permitting or encouraging similar arrangements in developing countries such as India and many parts of sub-Saharan Africa is a practice of double standards and ethical imperialism. For example, conducting AZT trials in the developing world exposed the practice of a morally treacherous double standard because the trials among other things used placebo controls notwithstanding the fact that it would not be permissible to carry out a placebo trial of AZT in the developed nations (Lurie & Wolfe 1997: 853). After 1994, AZT was the standard of care in developed nations. This meant that the use of placebo controls in the mother to child transmission prevention research (e.g. in the United States) would be illegal or immoral. Most international ethical guidelines and bodies direct that trial participants receive the best-proven therapy as a comparator in clinical trials or that placebo controls should not be carried out once a form of effective treatment is existent for the condition being researched. This is a critical standard in human research promoted in international guidelines such as the Council for International Organizations of Medical Sciences (CIOMS), World Medical Association’s Declaration of Helsinki (DoH), European Group on Ethics in Science and New Technologies (EGE), Nuffield Council on Bioethics, and National Bioethics Advisory Committee (USA). Some of these guidelines such as those of the EGE include specific directions on conducting research in developing countries (EGE 2003 Opinion 17). However, against these existing guidelines, in Uganda, hundreds of people were observed in an HIV transmission and progression study for up to 30 months without treatment as well as giving them imprecise and incomplete information (Angell 2000: 967). These guidelines also suffer another limitation resulting from the problem of interpretation and
consequently the application of double standards thereby not protecting individuals from such things as exploitation.\textsuperscript{41}

The selection of AZT placebo controls for developing countries exposes a lowering of ethical standards, which consequently demonstrates a lack of proper consideration for the well-being of the subjects in the developing countries. In other words, applying one standard for developed countries and another for developing countries is against the idea of fairness and tears apart the belief that recognizes the equality of individuals. Applying such double standards is unacceptable because it constitutes the failure to protect basic welfare interests of individuals and is incompatible with the idea of human rights. This is a cause of concern that while certain minimums, usually high standards, apply for some arrangements in the developed world lower or no standards apply to similar arrangements in developing nations. Applying a single standard, not double standards, in these arrangements by use of established ethical standards or guidelines would ensure the respect for the equality of people for the protection and promotion of welfare interests for all subjects. That is if, for example, placebo controls are unacceptable and therefore impermissible in developed nations like Canada, United States, or the states of Western Europe, then they should as well be unacceptable in developing countries such as Kenya and Thailand (Angell 1997: 850).

Lessons learnt from cases such as the Tuskegee Syphilis study have been instrumental in the development of standard ethical principles to safeguard human

\textsuperscript{41} For example, the Declaration of Helsinki has been condemned for being too ambiguous and susceptible to interpretations. It has no clarifying notes and no points for discussion hence making its interpretation continually somewhat contentious. Article 33, for instance, is meant to cover the subject of standard of care, which can be very dissimilar between nations and the control of treatment received by groups in a study. See Mastrolo, I. (2015).
subjects including in international research. For example, the European Group on Ethics more generally recommends that “the fundamental ethical rules applied to clinical trials in industrialised countries are to be applicable everywhere” (EGE 2003). Article 33 of the Declaration of Helsinki upholds a similar value when it states that the use of placebos should be limited to only where no proven intervention exists. However, the frameworks and principles for research remain open to interpretation and debate. For instance, there are disagreements on how to apply established ethical standards as noted in the use of placebos in the AZT and the use of non-proven drugs in the Pfizer’s meningitis trials in Nigeria despite the existence of proven standard of care. In addition, there are disagreements on whether the proven intervention is one that exists anywhere in the globe or in the nation where the clinical trial is being conducted. The interpretation has often shifted from the best standard of care to local standard of care to justify the use of placebos in developing countries where there is often no treatment available. This lowering of standard of care indicates the use of double standards by the sponsors of such trials.

Double standards also show in the conditions under which research is conducted and research products are produced in developing countries that are not permissible in developed countries. These conditions are such that they usually violate the principles of biomedical ethics such as autonomy, beneficence, justice, and non-maleficence. Most of the violations occurring at the international level are justified by the contextual considerations. For example, conditions of lack of medical interventions and the scarcity of healthcare resources in developing countries are used to justify conducting unethical research such as those that include unwarranted use of placebos or unproven interventions. The conditions of most of these trial arrangements do not protect the subjects’ wellbeing from the risks of the research. Pfizer’s meningitis trials and the
Surfaxin trials exemplify the violation of these principles of bioethics as they disregard the rules and procedures for clinical research. Noteworthy here is the point that the majority of such research in developing nations is piloted or funded by the developed countries such as the United States or by pharmaceutical corporations or agencies looking for product authorization in developed countries where such research is prohibited. For instance, the Surfaxin Trial was shipped to Bolivia because the United States Food and Drug Administration could not allow it in the United States confirming the nature of moral and legal demands on clinical trials in developed countries yet the results were accepted and approved by the same body (Rothman 2000).

The distribution of the benefits and burdens of these arrangements also signify the practice of double standards. Several reports indicate that clinical trials conducted in developing countries are more beneficial to individuals in developed countries rather than the host communities. As stated earlier, for pharmaceutical establishments, it is less costly to carry out research in developing nations than it is to conduct the same studies in the developed world. The cost of production is usually high in the developed world in part because of the strict regulations and controls of such arrangements while such regulations are not in place or weak in certain developing countries. The observation is that while clinical trials should be encouraged in developing countries for new drugs for diseases that are endemic to those countries, they are hardly beneficial to protect and secure their welfare interests (Fahsi 2013). For example, as Nundy and Gulhati (2005: 1635) observe, “only 1 percent of the new drugs discovered in the past 25 years have been for tropical diseases.” In addition, most trials conducted in developing countries do not emphasize post-trial access. Failure to benefit the subjects is of particular concern in the developing countries because such failure suggest that the poor subjects only serve as guinea pigs to
establish the safety and efficacy of products that are not available to them. For example, in Zambia, the children (subjects) shouldered the burden for the development of Nitazoxanide as a treatment for Cryptosporidium and Giardia, but they were hardly beneficiaries of the advantages of the drugs and the drug was not licensed for use in the country (Shah 2006: 35). As other critics argue, “It is common for research performed in developing countries to be guided exclusively by the logic of the market, with the aim of developing medicine which may not be available in local public health systems in the future” (Garrafa & Lorenzo 2008: 2220). These practices contravene articles 19 and 30 of Declaration of the Helsinki stating that research should benefit host communities; and that sponsors and researchers of clinical trials (and host country governments) should make provisions for post-trial access for all participants who still need an intervention identified as beneficial in the trial, respectively. Failure to make this provision is a clear violation of the principle of justice in biomedical ethics, which ensures that those who bear the burden of research risk will ultimately receive the benefits of the research. Failure to benefit the subjects adequately may seem to be a case of simply targeting specific populations because of their availability or compromised positions as vulnerable and dependent individuals.

Similar double standards manifest in international gestational surrogacy arrangements. In most developed countries, there is either an outright prohibition or strict regulation of surrogacy contracts. For example, in Britain, there is clear regulation of surrogacy by restrictive rules. In the United States, surrogacy ranges from regulated contracts to complete ban depending on the state (Armour 2012: 234). Until recently, surrogacy has been unregulated in most parts of the developing world leaving a concern of a regulation gap that provides an avenue for taking advantage of vulnerable individuals.
This regulation gap gives room for advantage taking to people who have the capacity to protect and/or promote the welfare interests of the surrogates in developing countries. Unlike their counterparts in developed countries, surrogates in places like India do not enjoy conditions such as having a grace period following the birth of the child within which surrogates can change their mind; entitlement to legal representation and rights; and guarantee for payment should they fail to produce a child (Panitch 2013: 332). These conditions are only attainable when there are strict regulations of such contracts. Secondly, the contractual conditions in developed countries where surrogacy is permissible compared to the conditions in developing countries demonstrate the double standards in gestational surrogacy. The conditions available for surrogates in developed countries are not available or, are less comparable to those in developing countries. For example, the safety of surrogates ought to be paramount in all arrangements to preclude subjecting surrogates in developing countries to conditions that are harsh such as being housed and restricted in hostel. Sometimes surrogates deliver their babies through caesarian section than natural delivery to accommodate the scheduling needs of the intended parents and the clinic (Pande 2014: 122). The view here is that certain conditions ought to be constantly present in all contracts including those performed in developing countries because these conditions touch on the basic welfare interests of all surrogates. In other words, similar standards should apply where similar threats exist to the wellbeing of individuals.

When double standards are unjustifiable as in our cases, they are morally wrong because they involve hypocrisy. The hypocrisy is in demanding strict adherence to rules and regulations in arrangements such as clinical trials and surrogacy in or among developed countries and weaken or remove the rules in developing countries. As stated
above, the weakening or suspension of the ethical guidelines is often justified by the context of the arrangements. The hypocrisy in employing double standards in such arrangements lies in targeting to benefit from the absence of or weak regulation for such arrangements involving vulnerable and dependent individuals and their communities instead of including the context as a corrective to traditional ethics (Landes 2005: 11).

Hypocrisy

The rigorous application of moral demands (guidelines and regulations) to surrogacy and clinical trials contracts in developed countries serve to protect and/or promote the welfare interests of the subjects. Weakening these demands by using a different or compromised set of rules exposes subjects to violations including exploitation. Thus, if the purpose for strict regulation and prohibition of arrangements such as surrogacy and clinical research is to protect individuals’ welfare interests based on certain values, then that purpose should similarly extend to individuals in developing countries as a matter of justice and fairness. In other words, using less rigorous standards in developing countries lacks justification particularly when the subjects face similar or more threats to their welfare interests. Hypocrisy generally describes a mismatch between judgements and actions essentially undermining one’s moral authority understood as a kind of standing that they occupy within a particular moral community (Isserow & Klein 2017:193). That is, in the context of international arrangements, the mismatch is in advocating for some set of values or standards such as those outlined in a range of international guidelines and the action of only applying the ethical guidelines in some situations and reason differently in similar situations where similar or equal threats to
welfare interests exist. Our concern with the mismatch between judgements and actions is based on the notion of moral authority, which refers to a certain kind of social status that A enjoys within a particular moral community (Isserow & Klein 2017: 194). The basis on A’s moral authority is found in his or her active investment in moral issues, an investment that A exhibits by moralizing through moral criticism, deliverance of blame and praise etc. (Ibid 2017: 197). When A exhibit investment in moral issues we expect A to follow through on their commitments, perhaps especially when it does not suit them (Ibid 2017: 206). In our cases of surrogacy and clinical trials, the hypocrisy is when A from developed countries cannot transact with B from developed countries because of certain moral pronouncements on these arrangements ranging from complete banning to setting out basic minimums for such arrangements set in ethical guidelines to ensure things such as minimum wage and other terms and conditions. Yet, A can transact with B from developing countries in similar arrangements without regard to the moral pronouncements that guide the same arrangements in developed countries. In other words, hypocrisy is when A fails to live up to his or her own lofty standards or engage in the arrangements in such ways that A criticizes elsewhere which therefore undermines A’s moral authority. This mismatch between judgement and action is evident in the surrogacy and clinical trials arrangements conducted in the developing world because A from the developing world transact with B from the developing world by neglecting the lofty standards of interactions that established in international guidelines, to which most countries in the developed world are signatories. Neglecting the standards set in international guidelines when dealing with individuals in developing countries in essence violate the values justice and equality, and constitutes a failure to adequately protect the welfare interests of vulnerable and dependent individuals in developing countries.
The disregard of these values when dealing with subjects from developing countries points out the hypocrisy on the part of A as “the failure to properly value one’s own values” (Doucet 2009: 112). Individuals, pharmaceutical companies and authorising bodies are all implicated in this failure, as they no longer champion the values that guide and bind interactions in developed countries as they seek to benefit from similar arrangements in developing countries. That is, their actions or the arrangements they initiate, invest in or support in developing countries do not match their own standards indicating a failure to follow through on their moral commitments. For example, supporting the use of placebo trials in developing countries is contrary to the international commitment of saving lives with the best available drugs or healthcare procedures as required by the Declaration of Helsinki. The AZT trials in the developing countries and Pfizer’s 1996 meningitis drug trial in Nigeria, for instance, demonstrate how pharmaceutical corporations can use a non-proven drug when standard and proven treatment is available. The Pfizer case also shows how researchers can use unconventional procedures as the research administered oral drugs instead of the proven fast-acting intravenous method (Valdova 2012: 133). This is a clear violation of international protocols governing research as guided, for instance, by the CIOMS: “the ethical standards applied should be no less exacting than they would be in the case of research carried out in the sponsoring country”.

The practice of double standards is also hypocritical because it shows the inconsistency between values or standards and practice. This form of hypocrisy is morally wrong because it “offends against the commitment to the equality of persons that is constitutive of moral relations” (Wallace 2010: 308). Hypocrisy in international clinical trials and surrogacy offends against the commitment to the equality of persons when we
treat B in developing countries different from B in developed countries. In particular, the
moral wrong of international exploitation is in this kind of differential treatment of
persons that appears to attach more importance to the interests of individuals in the
developed than individuals from developing world.

Hypocrisy exposes this inconsistency on the part of developed countries’ attitudes
or convictions to protect individuals in developed countries rather than individuals from
the developing world. The developed world is implicated in wrongdoing in that while
they condemn some clinical trials and surrogacy arrangements in their countries, they
sponsor and/or benefit from, similar trials and unregulated and a morally problematic
surrogacy industry in developing world. For example, while such arrangements are
regulated or completely banned in the developed world, they are supported in the
developing countries by sponsoring research or benefiting from the surrogacy industry.
In Wallace’s (2010: 309) words, the developed world seem to be saying that such clinical
trials and surrogacy agreements “are both impermissible and not impermissible”. This
comparable to how we can call a homophobic senator caught pants down in the men’s
room or a vocal PETA advocate who occasionally sneaks in some bacon as hypocrites
because we expect persons making such pronouncements to perform those acts they lend
praise and refrain from the sorts of behaviour that they criticize (Isserow & Klein 2017:
198). Thus, conducting surrogacy and clinical trials in developing countries in ways that
do uphold international ethical guidelines falls within the structure of hypocrisy where A
condemns some behaviour that at the same time he or she engages in. This is the case
with our exploitative cases that certain activities are permissible when engaging with
people from the developing world but are not permissible when engaging with the people
from the developed countries. Benefiting from transactions that we elsewhere hold
deplorable indicate the inconsistency between the beliefs and behaviour. The inconsistency is in holding some transactions impermissible in a bid to protect the welfare interests of the individuals as human beings while at the same time allowing similar transactions occur elsewhere by either sponsoring and/or benefitting from such transactions.

The application of double standards to suit certain interests when similar welfare interests are similarly threatened shows that there is differential treatment of individuals. That is, other people’s wellbeing are given more importance than others. The one practicing double standards and therefore hypocrisy attaches less importance to the wellbeing of the person they do not regard as equal by taking advantage of her vulnerability and dependence. As Wallace (2010: 328) argues, this offends against a presumption in favour of equal standing of persons that should be fundamental to moral thought. By employing different standards of interactions in developing countries shows that B’s welfare interests are of less importance and we ascribe a less moral standing to B in the developing world.

Similar differential treatment are also clear in the distribution of benefits and burdens of these international arrangements. Unfair distribution of benefits and burdens in similar arrangements indicates unequal consideration of welfare interests. The use of double standards benefits the developed countries more than the developing countries. Giving more benefits translates to more protection for the welfare interests of subjects from developed countries than those from developing world in a biased and unjustified manner since similar welfare interests are equally threatened. To be concerned with the protection of one subject rather than another under same or similar circumstances without
a good reason as noted above is hypocritical as it allows more consideration of welfare interests of individuals from developed countries by adequately securing and protecting their wellbeing rather than wellbeing of their counterparts from developing countries. In short, unfair distribution of benefits and burdens fails to protect the welfare interests of the individuals from developing countries consequently suggesting that their wellbeing does not have the same importance or equal standing.

Unfair distribution of benefits shows in the failure to provide research outputs to the subjects and host communities. This amounts to hypocrisy as it is inconsistent with a paramount principle that justifies conducting research. In some cases, such as in the AZT trials, the research results are much needed in the host communities as suggested by the numbers of subjects that are available for a clinical trial. This failure is not essentially or entirely about technical or economic reasons but an abandonment of an integral value at the core of medical research albeit only in developed countries. Article 34 of the Declaration of Helsinki states that:

“In advance of a clinical trial, sponsors, researchers and host country governments should make provisions for post-trial access for all participants who still need an intervention identified as beneficial in the trial. This information must also be disclosed to participants during the informed consent process” (WMA 2017).

This article intends to protect subjects’ right to accessing post-trial treatment despite not stating the length for the provision of treatment and whom should be responsible for the care financial needs. The article does not state if it is permissible that subjects in a study carried out in a developing nation obtain less or no access at all to the researched treatment when the trial is over than subjects in the developed world would receive. A note on
Article 11 of the CIOMS addresses in apart that trials should aim to make new treatment realistically accessible to the subjects and the host nation when the clinical trial for the study to be considered ethical, but what might be measured as realistically accessible is not clear (Shamoo & Resnik 2009: 333). In terms of application of such a requirement, there is a shift similar to that of providing the best standard of care to providing the local standard of care noted by Angell (1997) as mentioned earlier. In light of the above requirement as articulated in both the CIOMS and Declaration of Helsinki among other guidelines, it is clear that the sponsors of AZT trials did not give assurance to the populations of the host nations of the availability of AZT posttrial, even though it was verified as effective. As other critics argue, while the examination questions may have been outlined with the health needs of developing nations in mind, not enough had been done to ensure that these inhabitants would get the drugs essentially being tried if they were ascertained to be effective (Varmus & Satcher 1997). That is, while the trials tested a cheaper dosage which would benefit developing countries, there was no pre-trial plan contracted to all the involved subjects that put out how a prosperous treatment should be established or would be employed in the host nations. There was no binding agreement from the developer of AZT to make it accessible at reasonable prices, and in many cases, the $50 cost of the short-course AZT treatment would still be exorbitant in those countries. The lack of clarity in this guideline seem to encourage practices of double standards by developed nations and their agents towards developing countries thereby giving room for advantage taking. It is also hypocritical as it moves away from the commitment of making new discoveries practically availability and providing non-discriminatory benefits. In other words, guaranteeing post-trial access to treatment to subjects in developed countries than developing countries is not only a practice of double
standards but also a case of hypocrisy because it is a failure to act on the values that guide medical research conduct.

Further ethical implications of double standards in international exploitation

The use of double standards in international exchanges such as clinical trials and gestational surrogacy has further moral concerns in particular because of the violation of the commitment to the ideal of equality. As earlier presented, these double standards consist unjustifiable differential treatment of individuals and/or unequal consideration of welfare interests, which can form a basis for the charges of racial injustice and colonialism in international exploitation as argued in the following sections.

Racial Injustice

Racial injustice remains both explicit and implicit component of most international relationships even well after the end of slavery and colonialism. There is a widespread agreement that the legacy of institutionalised racism still exist and manifest in both local and global relations of wealth and power, which are structured along racial lines (McCarthy 2004: 148). The world remains, in some considerable measure, a legacy of the preceding centuries of colonialism and imperialism both of which are premised on the ideas of race and racism. As Lawrie Balfour (2011) states, “the modern world is begotten through racial slavery and colonial conquest” (Cited in Mills 2015: 27). The advantage or edge that the developed countries have over developing countries is an outcome of several hundred years of unfair distribution of wealth that accrued to most of the developed countries that are disproportionately former colonial powers that form the
central racial group. This distribution of wealth translates into power that has influenced the development of national and transnational structures that favour the dominant and ‘racially superior’ group of the whites. As Balfour (2011) further argues, “the racialized forms of power have defined the modern experience” (Cited in Mills 2015: 27). Considering that there are a variety of definitions and theories of racism, I agree with Alain de Benoist that racism is fundamentally “a theory of racial hierarchy and inequality” (1999: 14). Racism is about value judgement that tend to be more instrumental rather than merely descriptive as it implies denying others equality of personhood. Racism (like sexism) is a social relation of domination, which essentially structures social inequality (Juteau-Lee 1995: 1). Understood in this way, racism is a symbol of oppression and “an attitude always directed at the vanquished not the powerful” (Maduka 2004). As much as it is now widely agreed that race is not real but a socially invented category, “it is quite real in its effects of privileging, whites, disadvantaging people of colour, shaping opportunities, affecting public policy, determining life chances, impacting how nominally inclusive rights and freedoms are actually differentially operationalised” (Mills 2015: 7 – 8). These effects are not only domestic but are also quite real at the international level where they have their deep roots in the history of slavery and colonialism.

The double standards practiced in international arrangements such as clinical trials and surrogacy; operate within racially defined structures of social relations. Such arrangements, therefore, manifest racist attitudes and/or have racist effects insofar as they operate within the same structures that privilege one party rather than the other. These arrangements remain racist because of the differential treatment of the welfare interests of individuals where less importance is attached to the welfare interests of those from the developing countries. By the description of cases of international exploitation, subjecting
individuals from developing countries to conditions that do not secure and promote their welfare interests reveals differential treatment suggesting they are of less moral worth. Applying double standards where equal or similar welfare interests are threatened violates the belief in the equal moral worth of human beings. In other words, the application of double standards in international exchanges follows some hierarchical ordering of groups of individuals and consequently their welfare interests. In this case, the welfare interests of B from developing countries are given less significance unlike those of B from developed countries regardless of the fact that the welfare interests are the same. One can possibly argue that this is only a matter of taking advantage of the opportunity for exploitation, as it would occur anywhere. That notwithstanding, opportunities for exploitation at the international domain have historically occurred where racial hierarchies have existed and produced inequality. That is, the vulnerable group has often been the ‘inferior’ in a variety of ways mostly because of the racial distribution of wealth and its consequences. In other words, these opportunities for international exploitation are measurably created by the power emanating from the racial distribution of wealth. Considering this history of the development of the international order, the international structures and/or agreements continue to identify who is included, or who benefits, and to what extent. As McCarthy (2004: 148) argues, “race has functioned as a maker of inclusion and exclusion, equality and inequality, freedom and unfreedom throughout the modern period, locally and globally”.

I argue that a charge of racial injustice in international surrogacy and clinical trials is comparable to the charge of environmental racism. That is, like in environmental racism, subjects in surrogacy and clinical trials in developing countries bear the burden of these arrangements mostly to the benefit of people from developed countries.
Environmental racism refers to the disproportionate impact of environmental hazards on the people of colour (Westra and Lawson 2001: xvii). Environmental racism particularly involves the unequal distribution of environmental risks, known or potential, across demographic groups (Anderton et al. 1994: 229). Proponents of environmental justice argue that environmental racism is an injustice that is still practiced by developed countries and remains the unwritten canon behind many processes of development (Westra & Lawson 2001: xviii). These environmental risks may include waste treatment, storage and disposal facilities, chemical and manufacturing plants, and unregulated toxic waste sites. In other words, the environments of these populations are used for disposal of waste or other hazardous activities (Adeola 2000: 688).

At the international level, a sizeable amount of harmful waste produced in developed countries has ended up in developing nations since the 1980s facilitated by both legal and illegal agreements to receive waste in exchange for money. For example, through a contract with a businessperson, in 1987, four thousand tons of harmful biochemical waste from Europe ended up in Nigeria, at the port of Koko. The owner of the land received $250 monthly to store the waste. Individuals living proximate to the dump site got sick, and investigators discovered leaking cylinders of the waste on the location (The Third World Network 1989). During the same year, the Mexican marine forces thwarted using force, unauthorised dumping by an American barge in Mexico. One response to this event was that it mirrored the contempt toward Mexico as a dumpsite by some in the United States (Mandel 1999: 317). Dumping toxic wastes elsewhere when the developed countries have the capability to contain the wastes they produce within their home soil compared to their developing counterparts suggests that the welfare interests of the developing countries is less important. This double standard practice
cements a ‘not-in-my-backyard’ mentality that exposes the hosts to the threats of the toxic materials while protecting those producing and benefiting from the production of such waste. Developed countries or their agents take advantage of lax environmental and toxic waste management rules and regulations when transacting with developing countries. Sometimes developed countries or their agents influence this laxity with promise of investment, for example, in natural resource extraction. However, it is vulnerability and dependence that put these developed countries in this position of less influence and therefore at the receiving end of bad agreements that do not adequately protect and promote their welfare interests. The offshoring of morally problematic or unacceptable clinical trials and surrogacy services is similar to dumping toxic wastes in the developing countries. The practice underlines the same attitude that developed countries seek to benefit from agreements that are not permissible in their own countries or among themselves.

The charge of racial injustice in these arrangements is fundamentally about unequal treatment or concern for people because of the hierarchical ordering of groups of people. Abandoning international regulations or applying low standards when dealing with individuals from developing countries amounts to treating them as of less moral worth. In both environmental and medical research arrangements, there is a deliberate targeting of vulnerable and dependent individuals to benefit A even when these arrangements fail to adequately protect B’s welfare interests in the developing countries. These arrangements do not give proper regard to the welfare interests of the people who face both real and potential existential threats. Instead of paying proper attention to their welfare interests, the threats to their welfare interests are turned into opportunities for advantage taking. Unequal consideration of the same or similar welfare interests suggests
some disregard of the moral worth of individuals. Benefiting by taking advantage of the vulnerability and dependence of others suggest lack of respect due to all human beings as suggested by Wood’s theory of exploitation among others. Viewed this way, these arrangements exhibit some racist attitudes by developed countries and their agents towards developing countries. Such treatment of individuals in developing countries forms the foundation of opinions such as those made by a Third World research investigation group, Centre Europe – Tiers Monde (CETIM), which observed that there is less appreciation for Africa and African people amongst Western business people (Myint 2003).

The practice of double standards denies individuals in developing countries contracts with conditions that adequately secure their welfare interests. When we treat other people’s welfare interests as exchangeable or disposable, we treat them as of less moral worth. Such treatment of others, and considering how conditions of vulnerability and dependence have emerged, can be viewed as a manifestation of racial injustice because we lack any moral justification for such lack of equal respect and consideration. Exporting activities to developing countries because they are unacceptable and/or because they pose a threat to populations in developed countries, and handling the same activities in ways that would not be permissible in developed countries clearly suggest unequal regard of the populations in developing countries. In our cases, the subjects’ position of vulnerability and dependence is in part, created by a system that has developed by unequal treatment and distribution of resources. Continuing to interact with these populations in ways that fail to address adequately their welfare interests perpetrate and maintain racial injustice through hierarchical ordering of individuals and their subsequent treatment.
Conducting clinical trials such as placebo-controlled trials in the efforts to moderate additional vertical transmission in the wake of the research trial of AZT can thus be constituting racial injustice because that suggests unequal consideration as it consists a failure to adequately protect the subjects and their communities. The moral concern is with the justification or motivation for conducting or sponsoring clinical trials or surrogacy using different standards or values in developing nations. That is, subjecting individuals in developing countries to standards that contravene established research guidelines such as the Declaration of Helsinki and others that seek to protect individuals. As mentioned earlier, the interpretation of such guidelines is often fluid such that researchers justify the use of placebos in developing countries, for example, by positing that the best existing therapy is the one available where the research is being conducted, which in the case of developing countries is usually nothing (Angell 1997: 848). The fact that healthcare accessible in most developing countries offers nothing near the healthcare available in developed countries is irrelevant to the justification of placebo trials when proven treatment exist. Angell (1997: 849) points out that doing so “is merely a self-serving justification” which shows lack of equal concern for the subjects in the developing world. In effect, such interpretations result in treating the welfare interests of these subjects as of less importance and therefore racist. Moreover, the vulnerability and dependence of individuals in developing countries are an outcome of initial racial distribution of wealth that structures the circumstances of these arrangements. Angell also hold a similar view that recent clinical studies involve racism as they resemble the infamous Tuskegee syphilis study which targeted Afro-American poor men for years to study the consequences of the untreated venereal syndrome continuing even after inexpensive and effective therapy had been developed. Angell (1997: 848) maintains that
the justifications used for the recent trials are indicative of the validations utilized for the Tuskegee trials. The Tuskegee study was both harsh and hypocritical: subjects were not even offered the pretense of informed consent, and eventually, the poor Afro-American men were deliberately deprived of generally inexpensive therapy for the cure of their syphilis. The sponsors made every effort through dissimulation to make sure the subjects would not obtain access to the effective therapy. Worth noting is that only a specific type of subjects would be subjected to such kind of treatment. The subjects were hierarchically inferior and their opportunities were equally inferior. Secondly, modern interventions are not readily available or accessible to individuals from developing countries in a manner that we can equate to the purposeful withholding of treatment in the Tuskegee study. Thus the catastrophe of the international arrangements such as clinical trials and surrogacy is that they embrace a moral taint of a world financial order founded on racial abuse and continue to make such things such as effective therapies or interventions available but unaffordable for many in the developing world. As Jean-Philippe Chippaux (2005) notes, the mismatch between the poverty of developing countries and the power of the medical industry exacerbate the conflict between scientific and commercial interests in modern medical research.

International arrangements such as clinical trials and surrogacy in essence outsource subjects and operate in satellite establishments controlled by individuals or agencies from the developed world like in the manufacturing industry. Transacting with B in the examples on values and standards that are not acceptable in developed countries denies these interactors respect as equals and more importantly makes it a racial phenomenon as it targets a class and type of individuals in developing rather than in developed countries. For example, international gestational surrogacy reinforces the view
that vulnerable women in developing countries are disposable and for a price different from their counterparts in the developing world when or where surrogacy is permissible. The differences that manifest in the conditions for surrogacy contracts and benefits that accrue to the surrogates in these different worlds also deny these women equal moral worth because unlike the women in the developed world, the surrogates’ welfare interests are not properly secured. Thus, treating the surrogates without adequately addressing their welfare interests is treating them as of unequal moral worth and particularly racist when their counterparts in developing countries are protected by ethical guidelines to ensure that they are not exploited or get better benefits under better conditions that adequately address their welfare interests.

Colonialism

The practice of double standards in the cases of international surrogacy and clinical trials exemplify some power relation. Considering the social history and attitudes in the relationship between developed and developing countries, the power involved in practicing double standards is similar to colonial and imperial power. However, the exercise of this power does not require the occupation of the whole country but is dictating enough to empower the extraction of resources including knowledge, which are equally essential to individuals in the developing countries. More precisely, the exercise of power in these international arrangements is indirect, not requiring formal political control but relying on economic or monetary influences. In other words, these arrangements are instances of what critics of international arrangements call neo-colonialism to refer to the subordination of internal policy in developing countries to the demands of foreign
developed countries’ needs using finance or capital (Nkrumah 1965). I argue that practising double standards as described depends on one’s hold of power over another based on wealth and income inequalities. The use of double standards in transactions in developing countries is possible because a party from a developed country has an advantage over B from a developing country owing to her vulnerability and dependence. By the vulnerability account, A can apply double standards when transacting with B because B has threats to his or her welfare interests and B does not have any better options for securing her welfare interests other than interacting with A.

The history between developing and developed countries is marked by exploitation through colonization, military dominance, and biased trading practices. After the eras of foreign rule which saw the extraction of natural resources, the resources of developing nations are, once more, being extracted and this time round by their own governments in a bid to promote and protect the welfare interests of their citizens and also in part, to facilitate the debt accumulated to the colonialists. Over-extraction of coal, mineral wealth and oil becomes necessary to survive domestic problems such as food shortages and economic commitments to the developed nations (Rivera 2011). Debt servicing is inflicting destruction to the environment of these nations as they are obligated to utilise their natural wealth to the fullest to circumvent payment of arrears that might lead to endorsement of monetary sanctions against them. The Debt burden has re-emerged in most developing countries despite the debt cancellation initiative at the turn of the millennium. The debt levels continue to rise countries and from the present-day trend,

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42 In any particular case, the failure of a state to protect the welfare interests of its citizens, for instance by failing to enforce adequate legal and regulatory protections, will no doubt have many complex causes. For example, with regard to the two cases examined in this thesis, lax regulatory standards could conceivably result from successful lobbying on the part of local pharmaceutical research firms or providers of surrogacy services. Here, however, I hone in on a more general phenomenon, namely the neo-colonialist complicity of wealthy states in maintaining double standards.
there is a possibility for the burden to continue rising and flowing to the future generations in developing nations.\textsuperscript{43} Environmental dilapidation and pollution might turn out to be a long-term effect for the future generations in these nations, a legacy to which the developed world has considerably contributed through colonial practices and policies. As Thomas Pogge (2005: 69) underlines, the condition of developing nations was not instigated by ordinary situations but arose historically through political and economic arrangements. While these cases exploitation through coercion have disappeared, the contemporary arrangements are still exploitative as they continue to benefit developed countries as shown in the clinical trial examples. The ability to benefit depends on the wealth and income advantage that perpetrators of these arrangements have and, the vulnerability and dependence of the populations on the developing countries. Developed countries through their agents derive benefit by taking advantage of the vulnerability and dependence of the individuals.

Developed nations have been advantageously using their relationship with developing countries for their own well-being for centuries under changing garbs - from colonialism to tied aid and nowadays ‘eco-imperialism’\textsuperscript{44}. Developed countries as driven by the economic logic find it prudent for them to acquire merchandises and amenities from developing nations whenever it is more costly or destructive to produce them in their own states. However, current arrangements are similar to the extraction of wealth and resources that occurred during the colonial period albeit under different conditions. That

\textsuperscript{43} Evidence shows that despite the debt relief under Heavily Indebted Poor Countries (HIPC) Initiative, debt levels are rising. For example, the debt stock for Malawi has exceeded the debt stock before the Enhanced HIPC Initiative. The debt stock for Malawi was at MK121,213.5 in 1999 and MK1,569,794.215 in 2018 (See Reserve Bank of Malawi 2019). We safely conclude a similar increase in debt stock for other countries since not many have achieved significant development or even moved to middle income rankings.\textsuperscript{44} See. Driessen (2007). Eco-imperialism refers to the forceful imposition of Western environmental views on developing countries that may include stopping developing countries from using certain resources because of environmental risks to recommending use of certain technologies that are not available to developing countries.
is, the fact remains that by the approach more wealth and resource flow out from developing countries such as those in Africa than what is flowing in. A recent study into total monetary flows into and out of Africa explains this phenomenon reporting that Africa loses more than what it receives predominantly through loans (Sharples et al 2014). This report shows how developed nations and their agents use colonial powers on autonomous developing countries to extract wealth through profits and tax dodging. The lack of devotion to international regulations show the lack of concern in protecting developing countries from multinational corporation’s exploitative propensities and this displays the application of double standards in international interactions. This failure to protect the vulnerable and dependent ‘others’ in Pogge’s language constitutes ‘a failure of respecting their negative rights’ by denying them equal existence (Pogge 2005: 69). This denial of equal existence similarly holds for the cases of clinical trial and surrogacy arrangements. Those conducting, financing, and benefiting more from these clinical trials, surrogacy and other comparable arrangements are therefore responsible for maintaining or sustain the conditions that give them power and therefore control over their interactors. By initiating morally questionable relationships with developing countries and by withholding conditions that may work in favour of the developing countries, developed countries and their agents exercise colonial-like power over their interactors. Developed countries and their agents therefore practice of doubles standards because they have power and they seek to maintain that power over the developing countries. As Pogge (2005) earlier states, the conditions of the developing countries were instigated historically through political and economic arrangements rather than ordinary situations, developed countries seek to maintain the power and advantage realised from these historical arrangements.
Notably, clinical trials and surrogacy arrangements operate on the same principles operational in typical international trade agreements, which advance the neocolonial agenda. In other words, the same economic or trade logic applies to clinical trials, surrogacy, and environmental arrangements among others. The biasness of this economic logic against developing countries is for instance visible when we look at what defines the global environment agenda. For example, the vigorously contested conventions are those that attempt to promote and/or secure the welfare interests of inhabitants of developed nations or those directly affecting them. Concerns like damage of ozone layer, global warming, conservation of dolphins and whales are the urgent universal environmental problems attracting a high percentage of global funds. On the other hand, environmental problems affecting developing countries are repeatedly left on the back burner owing to the lack interest among the developed nations (Nath 2001: 10). For instance, the convention on fighting desertification and the agreement on habitation and settlements are diminutively discussed and less financed as they have directly to do with ecological problems facing developing nations (Nath 2001: 10). Likewise, clinical trial and surrogacy issues arising in developing countries do not attract much attention on the global level even though the same issues are aptly dealt with when they arise in developed countries. These issues mirror the double standards and, as Nath (2001: 10) further observes the domination of western countries in determining which issues are of importance or of international nature and which only directly concern developing countries. In other words, the power possessed by developed countries over their developing counterparts confers an enormous advantage and ability to set global agenda that benefits developed countries. Insofar the developed countries use their power and advantage, built from colonialism, to initiate or implement agreements that are skewed
and to their advantage, they use their power in a colonial-manner treating developing countries not as equals because they attach less importance to their welfare interests of the people in the developing world.

Conclusion

The double standards practiced in international clinical trials and gestational surrogacy cases challenge the idea of global justice because the practice violates the commitment to the principles of equality of persons and fairness. The practice is morally wrong because it involves the application of values and standards in favour of developed rather than developing countries. Disregard of the existing guidelines and agreements leads to the failure to protect and/or promote the welfare interests of the inhabitants of developing world. In addition, disregarding these standards or applying lower standards when transacting with people from developing countries suggests that their welfare interests are of less importance and are thus of less moral worth. The application of double standards to interactions with persons from developing countries in arrangements such as surrogacy and clinical trials expose the hypocrisy as the mismatch between the exploiter’s moral pronouncements or commitments and their behaviour. That is, the exploiter’s moral authority that is shown through investment of efforts and resources to come up with ethical guidelines is undermined when the exploiter cannot follow through with actions. Further, the lack of equal respect and concern for human beings in these international transactions suggests other ethical concerns of racial injustice and colonialism. That is, when A treats B without equal concern and respect by disregarding guidelines meant to ensure treatment of B with equal concern and respect, and particularly where the history interactions between A and B is tainted by racial injustice and colonialism, charges of
racial injustice and colonialism are warranted. The conditions of vulnerability and dependence that affect individuals from developing countries should not make A treat B without respect or concern, or be used as opportunities for advantage-taking. The understanding that vulnerability and dependence give power or advantage to A should caution A on how to treat B considering how these conditions come about. The vulnerability account of exploitation therefore affords us a starting point for addressing global injustices by highlighting the many opportunities for exploitation in international arrangements.
Chapter 8

Conclusion

This thesis demonstrates that the concept of exploitation is one of the overused yet misused concepts even in philosophy and other disciplinary fields. The concept of exploitation remains a misused concept because it is often confused with other concepts such as coercion, commodification and harm. Further, exploitation is used as a self-explanatory term without explaining what they mean by the term. As Hill (1994: 699) observes, exploitation “has been a catchall term with as many meanings as to those who use it”. Confusing exploitation with other concepts, or when exploitation becomes synonymous with other concepts, it risks losing its normative force. The vulnerability theory proposes a conceptualisation of exploitation that avoids such confusion with other terms or concepts.

The analysis of philosophical theories of exploitation shows diverse specific conceptions of what constitutes exploitation and its wrongness. Theorists offer different explications of what constitutes unfair benefit and/or unfair advantage taking and the attendant wrongs of such behaviour. Despite the differences, the theories generally agree that exploitation involves benefiting from taking unfair advantage of another person (Veneziani & Yoshihara 2010: 2). Marx holds that exploitation involves the appropriation of the unpaid labour of others. Roemer thinks exploitation involves an unequal exchange
caused by differential ownership of productive assets. For Steiner, exploitation occurs when there is an unequal exchange caused by some rights violations of the exploitee or a third party. Miller and Wertheimer, albeit in different ways, view that exploitation involves exchanging at prices that deflect away from the counterfactual fair price because of special advantages due to asymmetries of information or bargaining power. For Wolff, exploitation involves benefiting by taking advantage of a person’s vulnerable circumstances and some improper use or treatment of this person(s). Such specifications determine the extent to which these individual theories can identify exploitation or the forms of exploitation they can or cannot explain. As noted through the examples, the above named theories only account for some forms of exploitation cases rather than others.

The source of the theories’ limitations is mainly in their failure to identify the correct conditions for exploitation. In other words, they mistake characteristics of specific forms of exploitation for what constitutes exploitation. However, as Wolff (1985: 89) observes, the failure of these theories to account for other forms of exploitation does not mean that exploitation does not occur outside their domain. Wolff’s view that Marx’s theory of exploitation only applies to a specific model and applying outside the model leads to error is therefore insightful (Wolff 1999: 109). One can similarly employ this insight to Roemer’s theory of exploitation that it only applies where unequal exchange is occasioned by unjust initial distributions of productive assets or Steiner’s theory that it only accounts for exploitation where rights violations are involved. Outside the parameters set, the theories cannot account for exploitation. The five examples of exploitation and others demonstrate in different ways that we still have strong intuitions about exploitation where the theories fail to account for exploitation.
The vulnerability theory addresses the problems of definition and the sources of the weaknesses of the other theories of exploitation notwithstanding building its foundation on insights from the other theories. The vulnerability theory identifies the correct conditions for exploitation making it broader, applying to a range of exploitative scenarios than the other theories. As seen from analysis, exploitation is a challenging concept that is used in different ways and in various contexts. Exploitation is also a complex phenomenon occurring almost everywhere, within economic or political institutions, between individuals or groups, as well as in personal relationships. While agreeing with Wood (1995: 143) that by using vulnerabilities “many dealings between human beings can be put in an exploitative light”, my vulnerability theory insists on clarifying the notion of vulnerability and when taking advantage of vulnerability is exploitative. In doing so, the theory accounts for various forms of exploitation at various levels more than the other theories of exploitation. Further, unlike other accounts of exploitation, this vulnerability theory has an advantage since it does not require explaining the source of vulnerability to determine the occurrence of exploitation. That is, the source of vulnerability such as unjust inequality or violations of rights do not matter to occurrence of exploitation.

Taking a lead from Wolff that exploitation involves benefiting by taking advantage of another’s vulnerability; the vulnerability theory broadens the understanding of exploitation by blending insights from the structural and individual approaches in the contemporary literature on exploitation. However, qualifying the notion of vulnerability with the idea of dependence is essential to capturing the relevant insights from both structural and individual theories to account for a range of exploitation cases. Thus, on my account, exploitation occurs when A benefits by simultaneously taking advantage of
the vulnerability and the dependence of B on A. The vulnerable person must also be dependent on the exploiter for exploitation to occur. Put differently, B is exploitable only when he or she is vulnerable and dependent on A. Vulnerability and dependence are therefore necessary conditions for the occurrence of exploitation. Vulnerability denotes a condition in which B’s welfare interests or wellbeing is threatened and dependence denotes a relationship between interactors where B’s cost for exiting a relationship with A is greater than zero. Vulnerability explains the conditions that disadvantage the exploited in bargaining situations and give rise to asymmetrical relations between interactors. Dependence describes the nature of relationship between interactors for exploitation to occur: where the cost of exiting the relationship with A are high because the interaction with A is the best option available for B to secure his or her welfare interests. As argued earlier, dependence is the better depiction of the relationship in exploitation that avoids the conceptual confusion that faces r-vulnerability employed in by Goodin and Wood’s theories.

The vulnerability theory as argued is an adequate theory to account for a range of exploitation cases without being limited as other theories of exploitation. The success of the vulnerability theory can be measured using Lovett’s formula that he uses to assess the success of his theory of domination (Lovett 2010: 4 -6). First, the vulnerability theory is more general that it is able to account for a range of exploitation compared to how other theories are rigid and therefore limited to accounting only for a few or particular forms of exploitation. Thus, since the theory is not limited to a finite set of cases, it is conceptually adequate to say what is exploitative about different scenarios including whether new situations count as exploitative or not. Secondly, the vulnerability theory is both descriptively and normatively useful. A theory of exploitation should characterise
exploitation by pointing out the correct necessary conditions and use precise concepts so that the theory is neither too broad nor too narrow. The vulnerability theory gives a better understanding of what constitutes exploitation, which is also vital for normative aims required to guide human relationships and interactions. For instance, however we think exploitation is wrong we at least know that reducing or eliminating exploitation requires reducing the conditions of vulnerability and relationships of dependence. The aim of reducing the conditions of vulnerability and relationships of dependence is to ensure that individuals’ welfare interests are adequately secured through interactions such as surrogacy and clinical trials.

By highlighting the conditions of vulnerability and dependence as necessary for benefiting by advantage taking, the theory further alerts us about the occurrence of exploitation on the international arena where the theorization of exploitation has been minimal or absent. We can argue that the lack of theorization at this level in part allows for occurrence of exploitation since exploitation is not recognized and therefore not given due attention. Through the analysis of surrogacy and clinical trials, we have established that certain practices depend on and perpetuate conditions of vulnerability and dependence consequently failing address exploitation.

Further, the under theorization or lack of theorization at the international level indicates some inadequacy in the existing theories of exploitation to readily account for exploitation at the level where the necessary conditions for exploitation are more prevalent. However, this lack of theorization is not very surprising as political theories at the international level remain work in progress compared to domestic political theory that contain “highly developed theories offering alternative solutions to well-defined problems” (Nagel 2005: 113). First, this inadequate theorization suggests that the existing
theories do not recognize exploitation occurring in the international arena. Secondly, inadequate theorization consequently implies failure to interrogate and address the ills of exploitation. That is, while we may recognize and address exploitation at domestic levels for some normative aims such as to protecting the vulnerable, we fail to extend such normative projects to the international arenas where the likelihood of exploitation is even high because of increased conditions of vulnerability and dependence especially in developing countries. As demonstrated through the surrogacy and clinical trial arrangements, seeking and promoting these arrangements in developing countries including at lower standards, questions our commitments to the values that inform our decisions to heavily regulate or prohibit these arrangements in developed countries. At one level, engaging in these arrangements at the international level exposes the unjustified practice of double standards that we can classify as form of hypocrisy because it reveals the mismatch between values and actions or behaviour. At another level, because these double standards are hardly justifiable and only apply to developing countries, they appear to perpetrate historical racial injustice and carry on with colonial agenda, which only best serves the interests of the developed countries. One notable attempt to theorize exploitation at the international level by De-Shalit (1999) explaining when it is reasonable to talk about exploitation in international and transnational faces similar challenges to the other theories of exploitation that fail to identify the correct necessary conditions for exploitation. In addition, De-Shalit’s account of exploitation like other moralized views of exploitation fail to account for exploitation where the moral principle in question is not at issue which makes the theory only account for particular cases or finite cases of exploitation.
On the vulnerability theory, exploitation is primarily wrong or unfair insofar as the exploiter fails to adequately protect the welfare interests of the exploited. The failure to protect the welfare interest of vulnerable and dependent others can be established counterfactually, by the existence of the possibility to interact with the exploited under better terms and conditions that can adequately protect their wellbeing. However, the theory holds that exploitation is morally objectionable for various reasons. This means that the moral beliefs cited by other theories are only some of the reasons why exploitation could be wrong. That is, benefiting by taking advantage of others’ vulnerability and dependence can be wrong for various reasons including more than one at the same time.
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