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The Ethical and Economic Case Against Sweatshop Labor: A Critical Assessment

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Abstract During the last decade, scholarly criticism of sweatshops has grown increasingly sophisticated. This article reviews the new moral and economic foundations of these criticisms and argues that they are flawed. It seeks to advance the debate over sweatshops by noting the extent to which the case for sweatshops does, and does not, depend on the existence of competitive markets. It attempts to more carefully distinguish between different ways in which various parties might seek to modify sweatshop behavior, and to point out that there is more room for consensus regarding some of these methods than has previously been recognized. It addresses the question of when sweatshops are justified in violating local labor laws. And it assesses the relevance of recent literature on coercion and exploitation as it applies to sweatshop labor. It concludes with a list of challenges that critics of sweatshops must meet to productively advance the debate.

Keywords Sweatshops · Exploitation · Coercion · Minimum wage · Labor law

Introduction

As late as 1997, Ian Maitland was still able to write about *The Great* Non- *Debate Over International Sweatshops*.[1] At that time, consumers in the United States were becoming increasingly aware of the vast range of goods produced overseas and the often horrifying conditions under which workers labored to produce them. College students, activists, and certain scholars were quick to condemn "sweatshops" and the multinational enterprises (MNEs) that used them. But this initial moral condemnation was based more on an intuitive sense of revulsion than nuanced moral reasoning, and critics often demonstrated a lack of sensitivity to both the underlying economic conditions that gave rise to the sweatshop phenomenon and to the beneficial consequences of sweatshops for both their employees and the broader economies in which they functioned. As a result, economists from across the political spectrum quickly leapt to the defense of sweatshops.[2]

During the last decade, the academic debate over sweatshops has grown increasingly sophisticated. Critics of sweatshops now defend their position with nuanced arguments drawn from a variety of moral theories. And the economists' early rejoinder to critics has, at least superficially, been taken to heart. All sides to the debate now recognize that sweatshop labor often represents the best option available for desperately poor workers to improve their lives and the lives of their family, and that any attempt to reform sweatshops must proceed with caution lest the incentives that produce this benefit be destroyed.

Still, this concession has only modified, not softened, the form in which sweatshops are criticized. Scholars such as Dennis Arnold, Norman Bowie, Laura Hartman, Jeremy Snyder, Robert Pollin, and John Miller have raised a variety of new objections to sweatshops and to the arguments of those who have sought to defend them. They

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[1] Maitland (1996), emphasis added.

[2] For example, on the left, see Krugman (1997). On the right, see Williams (2004).

argue that the textbook economic models economists use do not apply to the situation in sweatshops for a variety of reasons and they attempt to articulate the economic mechanisms that undermine standard predictions. They condemn sweatshops for violating the laws of the countries in which they operate. And they charge that sweatshop labor, even if mutually beneficial, is nevertheless often or necessarily coercive or exploitative.

We focus on the arguments made by these scholars because they have wide relevance for the anti-sweatshop movement. Many of the policies advocated by individuals and groups within the anti-sweatshop movement, such as living wages and OSHA-style safety regulations, would be predicted by economic theory to generate adverse consequences for workers. The scholars listed in the preceeding, and particularly Arnold and his co-authors, have carved out a distinctive position for themselves in that they have given a defense for these policies while largely embracing much of standard neoclassical economic theory. What distinguishes their conclusions from those of standard economic theory is their belief in the existence of special moral principles or economic mechanisms that challenge the conclusions that defenders of sweatshops have drawn from their economic premises. In short, they offer the most rigorous arguments for policies advocated by many organizations in the anti-sweatshop movement. If the arguments developed by Arnold et al. are incorrect, then much of the activity of the anti-sweatshop movement will have to be questioned and refocused.

We believe that the arguments developed by the scholars listed in the preceeding are seriously flawed and ultimately unsuccessful in undermining a defense of sweatshops on economic and moral grounds. In the section on "Economic Errors", we examine the economic mechanisms alleged by critics to undermine the basic textbook economic predictions regarding the harmful effects of restricting sweatshops. The section on "Legal Regulation, Industry Codes, and Company Policies" examines different approaches to regulating sweatshop behavior, including legal mandates, industry codes, and voluntary company policies. The section on "The Case for Violating Labor Laws" argues that sweatshops are justified in violating certain local labor laws. The section on "Coercion and Exploitation" considers and rejects the claims that sweatshops are inherently coercive or wrongfully exploitative. The "Conclusions" section summarizes our arguments and the state of the debate.

Before proceeding, it is worth taking some time to set out the general character of the economic and moral perspective that informs the argument of this article. Economically, we start from the basic economic defense of sweatshops. One sweatshop critic succinctly summarized that the basic defense was "as simple as this: 'Either you believe labor demand curves are downward sloping, or you don't'… Of course, not to believe that demand curves are negatively sloped would be tantamount to declaring yourself an economic illiterate."[3] In other words, if economic agents demand less of a good the more that good costs, then any policies that raise the cost of sweatshop labor will result in less labor being demanded, i.e. unemployment. Many of the arguments we counter in the following begin from this framework and attempt to offer economic theories that describe why the sweatshop labor demand curve might be positively sloped or flat. As such, both our arguments and those of our critics fall within neoclassical economic price theory. The dispute between us lies in determining the correct understanding and implications of that framework. However, although we believe that neoclassic economic price theory provides a useful framework for analyzing debates over sweatshop labor, it is important to stress that we do not believe that markets are always in equilibrium and that all information has been discovered. Rather, markets are a discovery procedure thus we do not believe that every advance that could improve worker welfare without harming firms or other workers has been discovered.[4] This belief plays an important role in the argument that follows.

Morally, it might seem to some readers that a vast gulf separates the perspective of those who criticize sweatshops and those who defend them. But we do not believe this is the case, with respect to either our own argument or indeed to most significant defenses of sweatshops in the academic and popular literature.[5] The argument in this article, like those other defenses, does not seek to refute the case against sweatshops from the perspective of a single narrow and controversial moral theory. Instead, it seeks to show that anti-sweatshop arguments fail in one of two ways: Either they fail *internally*, by running afoul of the moral criteria to which they themselves proclaim allegiance, or they fail in a way that is *external but uncontroversial*, by succumbing to objections that any reasonable moral theory ought to view as legitimate concerns.

Our moral approach in this article is a pluralistic one. Objections to sweatshops grounded in concepts of coercion and exploitation are perhaps most at home within a deontological system of ethics, but in the final analysis, these are concerns that any plausible moral theory must take seriously. We, therefore, attempt to meet these objections on their own terms.

Still, our primary moral focus in this article will be welfarist in nature. That is to say, the main question on

[3] Miller (2003).

[4] See Hayek (1968).

[5] In the business ethics literature, the most significant defenses have been presented in Maitland (1996) and Zwolinski (2007). In the popular media, Krugman's (1997) defense is still frequently cited, as are several articles by Kristof and Wudunn (2000) and Kristof (2009).

which our moral evaluation of sweatshop labor will turn will be a question about how sweatshops and the various proposed regulations of sweatshops affect the welfare of actual and potential sweatshop workers. We have two reasons for adopting this focus. First, to the extent that there is something morally objectionable with the low wages, dangerous working conditions, long hours, and degrading treatment typically associated with sweatshop labor, the most natural explanation for this is that these conditions are *bad for the persons who suffer them*. Considerations of welfare thus play a major role in standard moral objections to sweatshops. Second, many of the persons affected by sweatshops and anti-sweatshop regulations live in conditions of desperate poverty, in which small gains (or losses) to their objective material conditions can make a tremendous difference in their well-being. Morally, we have very strong reason to take these effects seriously. This is so whether we are utilitarians motivated by considerations of diminishing marginal utility, prioritarians who hold that the interests of the least advantaged should have a disproportionately great weight in our moral calculus, sufficientarians who believe that the needs of those who do not have *enough* in some non-relative sense have a special moral claim on us, Catholics who believe in a preferential option for the poor, or believers in some principle of social justice for a host of other reasons.

Our concern for the welfare of persons affected by sweatshops includes, of course, sweatshop workers themselves. But it also includes—and this is a point we feel our opponents too often neglect—individuals who do not work in sweatshops. It includes individuals who work elsewhere in the developing world, often in worse conditions and for less pay, and who perhaps would *like* to work in a sweatshop if more jobs were available there. It includes individuals who have no jobs at all. And it includes future generations—individuals who do not yet exist but will one day benefit or suffer as a result of the economic development that has or has not taken place in the time before their birth.

Let us be perfectly explicit about this point: Our objection to bans of or regulations on sweatshop labor is not based on the claim that such bans or regulations are economically inefficient. A regulation that imposed a small cost on the very wealthy for the sake of significant gains to the working poor might not be efficient in the sense in wealth maximization or Kaldor-Hicks terms, but nothing in the argument of this article or most other defenses of sweatshops of which we are aware is committed to opposing such a regulation. This is not, however, how our opponents seem to have interpreted our position. Our opponents seem to believe that defenders of sweatshops are willing to sacrifice the welfare of the working poor for the sake of some overarching, impersonal aggregate measure of wealth, or well-being in the economy as a whole. They seem to believe that we oppose regulations on sweatshops because they decrease GDP or because they are bad for economic growth.

There is a grain of truth to this argument. To the extent that sweatshop regulations do, in fact, hinder economic growth, this really is a strong (though perhaps not overriding) reason to oppose them. But not because economic growth is an end in itself. Rather because economic growth is one of the most stable and effective ways of lifting the poor out of their poverty.[6] Economic growth is a means to an end. And the end, for us, is the welfare of the least advantaged—sweatshop workers, potential sweatshop workers, and future generations of workers and potential workers who deal with the economic aftermath of today's economic and political decisions.

One can imagine a public policy that hinders economic growth while nevertheless making the least advantaged better off. But most anti-sweatshop activity, according to our argument, is not like this. Such activity may be inefficient and at odds with economic growth, but these are not the fundamental moral reasons to oppose it. The fundamental moral reason to oppose it is that it hurts those who can least afford to be hurt.

Economic Errors

In the early days of the sweatshop debate, it was plausible to claim that many of those opposed to sweatshops were failing to take into account some of the most basic precepts of economic reasoning. Contemporary critics of sweatshops, in contrast, are aware of and accepting of these precepts, but question whether they can accurately be applied to third-world sweatshops. Specifically, scholars have challenged whether the background conditions that are necessary to make trade mutually beneficial are present in third-world countries. They have attempted to identify economic mechanisms that allow wages to be increased without causing unemployment, and have occasionally tried to separate the analysis of low wages from health and safety conditions. This section examines each of these arguments.

The Necessity of Competitive Markets

The most basic point made by defenders of sweatshops is that workers' voluntary choice to accept sweatshop employment demonstrates that sweatshops were the best alternative available to them. Therefore, activists should

[6] See, for instance, Peter Singer's discussion of the living standards of the world's poor today compared to 20 years ago (Singer 2009).

not advocate policies that could jeopardize these jobs. Critics have challenged both whether this choice does demonstrate that they were the best jobs and whether conditions and wages could not be improved without jeopardizing the jobs because the underlying conditions were not the type of competitive markets described in economics textbooks. Arnold and Hartman, for instance, argue that

> Free markets… generate many benefits; but their ability to generate those benefits presumes certain fixed conditions. For example, transactions among workers and employers optimally satisfy the interests of each only if there is a free flow of information, the transaction is truly voluntary, people are able to make rational decisions about their self-interest, and there are many buyers and sellers (e.g. no potential for exploitative monopoly exists)[7]

Let us examine each of these conditions. The free flow of information improves economic efficiency. But information itself is not free. When Arnold and Hartman elaborate, they write that workers "may not be able to make a fully informed choice because of their lack of information about what lies ahead. Furthermore such labor choices, once made, can be difficult to undo when additional information is learned 'on the job'."[8] But whatever validity this point has applies to *all* markets, not merely the market for sweatshop labor. No party to any exchange will ever have all the information about what will transpire in the future, and there will often be transactions costs of reversing course once new information is obtained.

Arnold and Hartman (2005) are holding up an unreasonable standard of "perfect competition" that never exists in any real world market and that, indeed, assumes away the very problems the market has to solve. Only in the idealized end state of perfect competition is all information fully known. The real competitive market process is about discovering opportunities for gains from trade. The bidding by buyers and sellers reveals the information about people's willingness to supply and demand all products, including labor. It is this very market process that discovers the previously unknown knowledge.[9] Rather than being a flaw of markets, the lack of perfect information is one of the essential reasons we need markets.

As a general rule, we believe outright fraud should be illegal. In practice, identifying harmful fraud can be difficult. In some cases, government mandates for wages or working conditions may push total compensation above the level that employers can profitably employ workers. In such a situation, advertising conditions that comply with the law, when the defacto conditions do not, may be beneficial for the employees. We discuss The Case for Violating Labor Laws in fourth section. There is also a gray area around failure to disclose information compared to outright misrepresentation of it. Here, it would depend on what local implicit contract custom is and this can vary considerably between countries. Things that we might expect to be disclosed in the United States might not be expected to be disclosed in poorer countries. For example, working with a chemical that causes cancer in 70-year-olds might be expected to be disclosed in the United States but not in a country where the life expectancy is only 50 years.

We endorse a version of what Arnold (2010) describes as the context-specific reasonable person standard for disclosure. Arnold objects to this standard because he finds it "incompatible with basic human dignity and the rights to life and survival."[10] However, as we argue in "Coercion and Exploitation" section of this article, there are good reasons to believe that Arnold's account of rights is too rigid both in its refusal to permit interactions that are beneficial to workers but not as beneficial as his account of rights would require and in its insistence that workers' rights to certain standards of treatment be non-waivable. As Matt Zwolinski (2007) has argued, genuine respect for workers' dignity requires recognizing their freedom to decide for themselves issues of central importance to their lives.[11] If it is genuinely true, as Arnold himself claims, that workers "with relatively short life-expectancies who have lived and worked their entire lives in such circumstances would not regard the failure to be provided information about carcinogens and other harmful substances that would affect their lives as unreasonable," then this tells us that these workers themselves see these potential harms as insignificant, at least compared with the tremendous benefits promised by the work. Taking this fact into account in a standard of reasonable disclosure is not an affront to the dignity of workers, but a recognition of it.

Defenders of sweatshops do assume that transactions are voluntary.[12] Arnold and Hartman probably correctly describe the situation of many workers when they write that "workers may agree to labor under poor conditions, but only because they have no other option for securing income."[13] But this does not make their acceptance of sweatshop labor involuntary, at least in the sense required for our argument. The key premise in our defense of

[7] (Arnold and Hartman 2005, p. 208).

[8] Arnold and Hartman (2005, p. 209).

[9] See Hayek (1945).

[10] Arnold (2010, p. 635).

[11] Zwolinski (2007, pp. 691–693).

[12] "Voluntary," at least, in the sense that their choice is not coerced. We discuss the concept of coercion and its application to sweatshop labor in the section on "Coercion and Exploitation".

[13] Arnold and Hartman (2005, p. 209).

sweatshops is that sweatshop labor represents the best alternative available to workers. The fact that workers' choice sets are severely constrained by poverty is, of course, of crucial importance to the workers themselves, and, depending on the cause of their poverty, may be a matter of grave injustice. But this does not challenge the truth of our premise. Nor does it challenge our claim that workers must be free to choose from *within* their severely constrained set of options. If sweatshop labor is the best choice within that constrained set, then workers are likely to be harmed if that option is made less feasible.

Defenders of sweatshops need not assume that the model of *homo economicus* accurately characterizes most, or any, human beings. We do think that people tend to choose what is in their best self-interest and that it is impossible for outside observers to know the subjective tradeoffs made by other human beings.[14] Sweatshop workers have much more local knowledge of their particulars of time and place than first-world scholars and activists do and those workers certainly have the incentive to choose what is best for them.[15] The claim that their consistent tendency to choose sweatshop labor over other available alternatives is ″irrational″ would thus require considerable evidence to sustain, evidence that those opposed to sweatshops have so far failed to provide.

Arnold has also written that defenders of sweatshops "assume that multinational corporations always act with instrumental practical reason aimed at self-interested profit maximization. Such a view is empirically inaccurate."[16] But this is a strawman. Defenders of sweatshops do not assume that corporations, or anybody else, *always* act with *perfect* instrumental reason at the aim of profit maximization. The fact that they do not, however, fails to undermine our argument for two reasons. First, it says nothing about whether corporations have a strong and reliable *tendency* to behave in profit-maximizing ways. It is important to recall in this context that profit maximization means maximization of the present value of the future stream of profits—not just maximization of short-run profits. So profit maximization leaves plenty of room for things such as ethical branding or other sweatshop improvement policies that may decrease short-run profits but enhance long-run profitability through brand image. Citations to companies pursuing such policies do nothing to undermine the general profit maximization model.

Second, the defense of sweatshops is entirely compatible with the fact that market actors act with imperfect information and imperfect rationality. Competition is itself a discovery procedure in which market actors struggle to discover new opportunities.[17] When Arnold and Hartman document voluntary innovations that companies have made in worker health and safety, they are performing a valuable service and contributing to the market's discovery process.[18] But the fact that not all innovations have been discovered is hardly a flaw in the market process; it is, in fact, one of the cornerstones of the justification of that process. If all opportunities had already been successfully exploited, competition would cease to be necessary.

Finally, Arnold and Hartman question whether markets are beneficial if there are not a large number of buyers and sellers.[19] He writes that "defenders of sweatshops such as Matt Zwolinski and Benjamin Powell, assume that such labor markets are competitive, but it is not clear that such an assumption is warranted. In many nations employers have monopsony power over the workers."[20] But there need not be a large number of buyers and sellers for markets to produce efficient results.

If there is freedom of entry, a monopoly (monopsony) can produce results identical to a competitive market. If employers systematically pay workers less than their marginal revenue product, then there is an incentive for new firms to enter the market and bid the workers away from the underpaying firm because in the process they will earn more than normal profits. As a result, even a single firm, when threatened with entry, pushes wages towards workers' marginal contribution to revenue.[21]

What if there is not freedom of entry? Countries with sweatshops often suffer from numerous government regulations and interventions into the market. Even if there is a government regulation that prohibits or raises the cost of entry, we should recognize that an individual sweatshop is better than none at all. If the single sweatshop disappeared, the regulation would be restricting labor market competition even more. Rather than protest the sweatshop, inefficient regulations that inhibit the market process should be opposed.

Efficiency Wages

Arnold and Hartman argue that the existence of efficiency wages means that firms can raise wages without

[14] See Stringham (2010).

[15] A point recognized by Arnold himself in his discussion of moral imagination (see Arnold 2003, p. 79).

[16] Arnold (2010, p. 637).

[17] See Hayek (1968).

[18] Powell (2006) praises them on exactly this point.

[19] Arnold and Hartman (2005).

[20] Arnold (2010, p. 651).

[21] Economists refer to this as contestable markets theory. There is also a large experimental economics literature that shows small numbers of buyers and sellers achieve results that approximate what a perfectly competitive market is supposed to achieve.

unemploying workers.[22] Similarly, Pollin et al. argued that "wage increases are likely to arise in correspondence with other changes in workplace or labor market conditions that can cause the labor demand curve to shift. These include increases in productivity."[23] They do not specify whether the increase in productivity is exogenous, but a charitable reading would interpret them to mean that it was endogenous, possibly through and efficiency wage.[24] Arnold and Hartman are more specific, writing that "there is evidence to support the claim that positive MNC deviants who voluntarily pay employees a living wage (or a 'fair wage') will achieve increases in worker productivity and loyalty. The most obvious ways in which wages affect productivity are captured by nutrition models of efficiency wages."[25] Yet nutritional needs cannot justify efficiency wages from profit-maximizing firms.

Malnourished workers are less productive, so employers should want to pay enough to ensure productivity. Arnold and Hartman state that because workers will spend income on other members of their family, firms may need to pay a worker two to four times the amount necessary to meet the minimum daily caloric intake for the worker. The increased productivity from an efficient diet may not offset the increased cost of paying two to four times the cost of that diet, however. More importantly, when the difference between malnourished and healthy worker productivity does justify paying enough to ensure a minimum caloric intake, firms can more efficiently provide those calories through free or subsidized meals at work. Although Arnold and Hartman grant that this is a possibility, it is in fact always the case.[26] An efficiency wage is never necessary to improve caloric intake because workers will spend some portion of their earnings on things other than their own food. Thus, employers can always provide the calories directly at a lower cost.

They also claim, "A second economic model emphasizes the gift-exchange nature of employment relations, as opposed to the pure market exchange of such relations. On this model, employees who are compensated at rates significantly higher than the wages demanded by the market are seen as making a gift to workers, who reciprocate with greater productivity and greater loyalty."[27]

A gift-exchange style efficiency wage may be necessary when the labor market is tight and monitoring employee productivity is difficult. If a firm pays an above market wage in these cases, then the employee has something to lose if he is caught underperforming, hence he will work harder. In most sweatshop jobs, monitoring employee productivity is simple, and most of the jobs exist in labor markets that have substantial unemployment or underemployment. Absent these two key characteristics, Arnold and Hartman are wrong to assume that an employee will work harder because higher wages are seen as a "gift" from the employer. Employees already work as hard as they are going to because labor market alternatives are poor and monitoring is intense.[28]

Efficiency wages may sometimes be necessary to achieve profit maximization. However, the conditions necessary for efficiency wages to work are not widespread in third-world sweatshops. When they are present, managers will have every incentive to voluntarily adopt efficiency wages. Arnold and Bowie anticipate that one might object that their efficiency wage "analysis implies that MNE managers are unaware of the correlation between wages and productivity, and that such ignorance on the part of MNE managers is implausible."[29] Unfortunately, they do nothing to assuage us of this fear.[30] We have no reason to believe that pushing for higher wages will result in higher productivity in most sweatshop jobs and thus the standard economic model that predicts higher wages will lead to lower employment still holds.[31]

[22] See Arnold and Hartman (2005, 2006). Arnold and Bowie (2007) equivocate on this issue. They grant their critics that the effect of efficiency wages on worker productivity is indeterminate "for the sake of argument" (p. 142).

[23] Pollin et al. (2004, p. 156).

[24] Pollin et al. (2004) also list improvements in product quality, marking, and overall expansion of product market demand. In most cases, these are likely exogenous and thus violate the ceteris paribus clause and thus do nothing to undermine the economic theory that predicts mandating higher wages reduces employment from what it otherwise would have been.

[25] Arnold and Hartman (2005, p. 217).

[26] Arnold and Hartman (2006, n. 46).

[27] Arnold and Hartman (2005, p. 218).

[28] Powell and Skarbek (2006) show that sweatshop jobs pay wages substantially above the living standards in the countries where they exist. Thus, loss of a sweatshop job already imposes a severe penalty on a worker. An efficiency wage is not necessary to create a downside to job loss.

[29] Arnold and Bowie (2003, p. 238).

[30] Their response is simply to reassert that it is the fact the case and then point to a single study from the El Salvadoran Ministry of Labor that found companies using North American productivity standards without accounting for either different nutritional conditions or technical capabilities of local workers. This latter does nothing to show that efficiency wages would be justified and the former is just a bald unsubstantiated assertion.

[31] See Arnold and Hartman (2006) in which the authors offer three other mechanisms for how increases wages might not unemploy workers: passing on costs to consumers, cost cutting in other areas, and accepting a lower return. See Powell (2006) for a critical review of these mechanisms.

Wages and Working Conditions are Jointly Determined

Some critics of sweatshops want to separate the analysis of wages from the analysis of working conditions.[32] Some will admit that mandating higher wages may result in unemployment but want to maintain the health and safety can be improved without unemploying workers. However, the two are jointly determined.

Arnold has seemed to flip flop on this issue. In 2003 he writes, "in the case of the Salvadoran factory the question of whether or not the workers are exploited is tied primarily to the terms of employment rather than to wages… However, it is arguable that as an element of employee compensation, the terms of employment are an element of the labor contract."[33] Then in 2006 with Hartman he writes, "defenders of sweatshops typically do not distinguish between issues such as the health and safety conditions in the factories, the number of working hours of employees, compliance with local labor laws, wages, and benefits. Indeed, they appear to assume that improvements in any one of these areas will result in inevitable and dire consequences for workers. However, these assumptions are unwarranted."[34]

Then when responding to Sollars and Englander (2007) and their criticism of his analysis of wages, he and Bowie write, "if, as they suppose, raising wages will cause inevitable increases in unemployment, isn't the same true of adhering to local labor laws and improving working conditions?"[35] Although Arnold and Bowie (2007) seem to believe (incorrectly) that there will not be dire consequences for workers, they are correct to equate the analysis of wages with that of working conditions.

Compensation can be paid directly as wages or indirectly as benefits, which may include health, safety, comfort, longer breaks, and fewer working hours. Some indirect payments can raise worker productivity. Obviously, employing healthy workers who can perform their jobs positively affects profits. Some firms may thus choose to provide subsidized lunches, health care, and on-the-job safety that increases worker productivity. In fact, it is in firms' best interests to contribute this form of indirect compensation. If these benefits cost more than the revenue gain from increased productivity, however, then firms do not increase their profits because of them. In these cases, the firm regards such benefits as costs that come off their bottom line, just like wages. A profit-maximizing firm is indifferent to compensating workers with pay or with health, safety, leisure, and comfort benefits of the same value when productivity is unaffected. The firm simply cares about the overall cost of the total compensation package.

Workers, on the other hand, do care about the mix of compensation they receive. When overall compensation goes up, workers are more likely to desire more non-monetary benefits. Comfort and safety are what economists call "normal goods" for most people. Workers demand more of these goods as their income increases. Unfortunately, many workers have low productivity, so their overall compensation level is low. As such, they demand most of their compensation in wages and little in health or safety improvements.

This presents a problem for those who wish to separate safety and working conditions from pay. Both are limited by the same factor—the worker's marginal revenue product. Firms are indifferent about whether to pay monetary wages or in-kind benefits after adjusting for those benefits that improve productivity. Workers do care about the mix. As such, firms have every incentive to provide the mix of benefits and wages that their average worker desires to attract the best employees possible. This means that the mix of compensation is really driven by employee preferences (limited by their overall productivity), not by the preferences of multinational corporations.

Clark and Powell survey Guatemalan sweatshop workers on precisely this question and finds that few of them are willing to sacrifice any wages to receive more health and safety benefits.[36] Employees were asked about ten improvements in working conditions and if they would be willing to accept lower wages to improve any of these conditions. On eight of the questions, more than 90% of the workers answered "no." Paid vacation was the most popular improvement but even here more than 81% of the workers answered that they would not sacrifice any amount of wages for it. Nearly 65% of workers surveyed answered that they were unwilling to sacrifice any wages for each of the ten improvements. Similarly, Skarbek et al. interviewed El Salvadorian sweatshop workers. Their findings that workers were satisfied with their job and working conditions compared with their prior employment is broadly consistent with Clark and Powell's results.[37]

[32] For instance, Bama Athreya, from the International Labor Rights Fund, admitted that wages in sweatshops were typically higher than in domestic industry but argued that it is the working conditions that need to be addressed in a public debate with Benjamin Powell at Grand Valley State December 1, 2008. Another example can be found in Arnold and Hartman (2006).

[33] Arnold and Bowie (2003, p. 253).

[34] Arnold and Hartman (2006, p. 8).

[35] Sollars and Englander (2007).

[36] Nicotex and Sam Bridge were surveyed because they were identified as sweatshops and protested by the National Labor Committee. Powell and Clark (2010).

[37] Skarbek et al. (2011).

The issues of wage compensation and safety, comfort, and other benefits are intimately related. If activists push only to improve safety in factories, then either they are implicitly pushing for a reduction in monetary wages that workers have already demonstrated they prefer more than safety or they will unemploy workers by raising their total compensation more than their marginal productivity. This is why economists do not separate the analysis of safety, health, comfort, and other in-kind benefits from wages. If any of these factors raise total compensation more than worker productivity, the worker will be unemployed. Alternatively, if total compensation stays the same and reformers demand better working conditions, wages will decrease.

Labor Costs are Small and can be Absorbed by Consumer Price Increases

Most of the mechanisms identified in this section are theoretical. However, empirical objections to the standard defense of sweatshops can also be raised. Labor demand curves may slope down, but not steeply. Garment demand too might slope down but not steeply. Economic theory would still operate as predicted, but depending on the magnitude of these slopes, the empirical effect might be small. It is theoretically possible that a large mandated wage increase might be met with laying off only 1% of workers, whereas the other 99% were made better off. Depending on one's normative framework, it would then be at least possible to deem the unemployment effects a tolerable cost.

Pollin et al. make an empirical argument that because the wages are a small fraction of the total product cost, large wage increases could be made and absorbed through charging higher consumer prices without harming workers. They estimate that for USA and Mexican firms, a 100% wage increase would only require a 2–6% increase in the retail price of the garments. They compare this with polling data that indicated that US consumers were generally willing to pay between 15 and 25% more to ensure that products were not made under sweatshop conditions. They responsibly note that "Of course, consumers may not be willing to help finance good conditions for garment workers when faced with the prospect of actually spending more money rather than just responding to a poll." Yet they remain optimistic that spending would match survey results.[38]

A more recent empirical study of the effect of actually mandating increases in the minimum wage casts serious doubt on Pollin et al.'s predictions. Harrison and Scorse examine the effect of increasing the minimum wage in Indonesia and found the unemployment impact that economic theory predicts. In response to anti-sweatshop activism and the US government's threat to remove special tariff privileges if human rights issues were not addressed, the Indonesian government made increasing the minimum wage a central component of its labor market policies in the 1990s. The real value of the minimum wage more than doubled between 1989 and 1996. What happened to manufacturing employment? Harrison and Scorse estimated that a 100 percentage point increase in Indonesia's minimum wage was associated with a decrease in employment between 12 and 36%. They also found that wage increases led to plant closures among small exporters. They conclude that "the significant negative impact on employment needs to be seriously considered in any campaign to increase the mandated minimum wage or to increase compliance with the minimum wages."[39]

The magnitude of unemployment effects varies with context. In some cases, consumer demand for ethically produced products may shift out to compensate for increased labor costs, but there is no reason to expect this condition to be universal. The section on "Legal Regulation, Industry Codes, and Company Policies" considers the scope for ethically branded niche products compared with across the board wage mandates. For now, it is enough to note that the best available empirical evidence indicates that large across the board minimum wage mandates unemploy a significant number of workers.

Cost of Safety Improvements Relative to Revenues

The prior section argued that businesses should improve health and safety conditions, and would have the incentive to do so, when their employees prefer their package of compensation shifted in that direction. Arnold takes a different view,

> business owners have an obligation to improve workplace safety beyond the minimal standards legally mandated by many developing nations under two circumstances: first, when doing so can be done at little or no cost and, second when the cost as a percentage of revenues of doing so is marginal in comparison to profits as a percentage of revenues.[40]

[38] Pollin et al. (2011, p. 155).

[39] Curiously, Harrison and Scorse (2010, p. 263) go to great lengths to cast anti-sweatshop activism in the most favorable light. Most of the article emphasizes how they do not find any *additional* unemployment effects from anti-sweatshop activism beyond the unemployment effect of the minimum wage. Yet it is anti-sweatshop activism that was in large part responsible for increasing the minimum wage.

[40] Arnold (2010, p. 639).

If a business could improve health and safety for literally no cost, then they should do so for simple profit-maximizing reasons: It would lower the wages they have to pay workers as long as the workers valued the increased safety. If it comes at little cost, then employers need to weigh the trade-offs between how much workers value the safety relative to wages. Otherwise, increasing safety would harm workers rather than help them. Arnold seems to assume safety would be improved and that employees would suffer no consequences.

The fact that some safety improvements may be small as percentage of revenues compared with profits as a percent of revenue is utterly irrelevant in determining how profit-maximizing firms would adjust to the increased safety costs. When costs are smaller compared with profits as a percentage of revenue, it does not mean that firms suddenly do not care about maximizing profits *on the margin*. All economic decisions are made on the margin. Increasing safety costs may not cause the firm to close if they are small as a percentage of revenue but it will change the firm's other marginal decisions such as how many workers to employ or how much to pay workers. The fact that overall costs are small compared with profits does nothing to change this fact.

What proof does Arnold offer that this would not harm workers? "The examples of such companies [those that improve health and safety without laying off workers] are, perhaps, the best responses to those social theorists who cling to the idea that economic growth in developing nations must inevitably come at the cost of the safety and welfare of workers."[41]

The existence of some firms who do improve health and safety standards is not proof that more universal adoption of such standards would not lead to the adverse consequences economic theory predicts.[42] The firms who improved conditions could have experienced employee productivity growth and employees preferred their increased compensation in the form of safety rather than wages. Companies could have been successfully pursuing ethical branding and shifted out the demand curve for their product by improving workers' safety. As David Vogel put the point in another context,

> CSR is best understood as a niche rather than as a generic strategy: it makes business sense for some firms in some areas under some circumstances. Many of the proponents of corporate social responsibility mistakenly assume that because some companies are behaving more responsibly in some areas, some firms can be expected to behave more responsibly in more areas.[43]

Individual cases do nothing to undermine the general economic theory that predicts widespread adoption of such policies would lead to adverse consequences for workers. This leads us to the importance of differentiating between company policies, industry codes, and legal regulation.

Legal Regulation, Industry Codes, and Company Policies

The case for or against reforming sweatshops cannot be adequately assessed until both sides are clear regarding precisely which institutions or behaviors associated with sweatshops are meant to be reformed. Reform could take place at the legal/regulatory level or at the level of individual voluntary company policies. Most of the arguments from scholars who defend sweatshops are targeted at the legal/regulatory level, and it is with these sorts of reform with which we have the greatest concern. Some arguments also apply at the level of voluntary company policies, but at this level, there can be substantial common ground between advocates for sweatshop reform and those who are critical of reforms at the legal/regulatory level.

Reform at the legal/regulatory level includes host country laws and regulations such as minimum or living wages and workplace health and safety regulation. This level also includes laws adopted by wealthier countries that would use trade regulation to limit or prohibit products made in factories in host countries that do not conform to particular wage or working condition standards.[44] At this level, all the standard arguments developed in the economic defense of sweatshops apply. We maintain that any nationwide law or regulation that mandates higher wages or health and safety standards, set at a high-enough level to have any effect, will raise the cost of labor and thus end up unemploying some workers and moving them to less desirable alternatives.[45] Businesses employ labor up until the last marginal laborer no longer generates profits. Any law that raises the relative price of third-world labor will unemploy at least some marginal workers and close some marginal firms. How big the effect is depends entirely on

[41] Arnold (2010, pp. 641–642).

[42] Similarly, just because Cadillac can profitably put leather seats in its cars does not prove that all firms could profit more by putting leather seats in their cars.

[43] Vogel (2005).

[44] Some critics of sweatshops advocate global rather than national regulation to avoid so-called "races to the bottom." We lump global and national regulation together because the standard economic defense of sweatshops is the same in both cases. In either case, the automation of production and shift from low-productivity to high-productivity countries leads to adverse consequences for poorer workers.

[45] Or as explained in the previous section, changing the mix of compensation away from that desired by the employees.

how far the law pushes wages and health and safety conditions beyond what the market would have produced on its own.[46]

Reforms at the level of voluntary company codes can be an inherent part of the market process that both critics of sweatshops and their defenders embrace. In fact, not only are voluntary improvements in wages and working conditions at the company level *compatible* with the standard defense of sweatshops but also they are actually an important *component* of that defense. A large part of the defense of sweatshops has always been based on the dynamic character of markets. Sweatshops bring capital and technology to the third-world countries and thereby raise worker productivity over time. More sweatshops also create more competition for labor, thus raising workers' opportunity costs. The competitive forces between firms cause them to improve compensation as productivity increases. As a result, countries develop beyond the level of sweatshop employment. The overwhelming majority of improvements in working conditions throughout the world have occurred through exactly this process. Note though, that no activism is necessary for the above process to work. Competitive forces produce the result on their own.[47] Firms may choose to spell out guarantees to workers out in a company code but explicit codes are not necessarily needed.

Explicit company codes might be voluntarily adopted when firms believe that it increases consumer demand for their product. In this case, the explicit code, and improved wages and conditions, are part of a profit-maximizing marketing strategy. Consumers would have to place higher subjective valuations on these "ethically" produced goods for the strategy to work. We believe this can be the case for some products.

Kimberly Elliot and Richard Freeman have a fairly balanced analysis of how companies can respond to sweatshop activism.[48] Using survey data, they estimate that firms face a kinked demand for their products in which consumers are not very price sensitive when firms are exposed for having bad conditions, but in which they are price sensitive when good conditions are used as a marketing strategy. In other words, firms could lose a lot if their products are identified as being made under bad conditions but they gain little from having them identified as being made under good conditions compared with a baseline where consumers know nothing about the conditions. This means there is little scope for many companies improving conditions from an uninformed baseline as a marketing strategy, but that firms may respond with positive improvements when they encounter negative publicity from anti-sweatshop activists. Whether they improve conditions, ignore the activists, or have to cease production in response to consumer activism depends on the relative changes of the costs of improved conditions and the revenue at stake. Which way a firm chooses is not a matter of a priori theory. However, even in the case where they choose to improve conditions, so long as those improved conditions are not a fixed cost, it will change the relative price of labor to other inputs and result in the firm employing fewer workers.

How do Freeman et al. judge the effect of the anti-sweatshop activism? They do not believe that many workers have been harmed, but nor do they think direct activism to get companies to voluntarily improve policies has been very successful either, noting "So far, however, the successes are ad hoc and often temporary."[49] Our analysis throughout this article is broadly consistent with their analysis of activism in attempting to get companies to make voluntary reforms. The point on which we differ, though it is one that falls outside the scope of their actual analysis, is that they seem optimistic that conditions might improve because of greater governmental awareness in response to activism. We argue that is precisely government laws and regulations adopted in response to anti-sweatshop activism that are likely to make workers worse off.

One important caution is in order when reforms come at the company policy level. A company may pursue ethical branding by advertising that its factories have certain minimum wages and working conditions, while downplaying the fact that these conditions are only met because their factories are located in relatively richer higher productivity countries than they would have otherwise been located. Such relocations away from the developing world,

[46] Many health and safety regulations and wage mandates in the first world are very close to what the market would produce anyway so they have little impact. For instance, 97.5% of all workers earned more than the US Federal minimum wage in 2005 (http://www.bls.gov/cps/minwage2005.htm). Hall and Leeson compare the per capita income in the United States when it adopted various wage and safety regulations to the incomes in third-world countries today and find that sweatshop-intensive developing countries are 35–100 years from reaching the level of development the United States was at when it adopted similar policies. See Hall and Leeson (2007).

[47] Market forces continue to be the main cause of increased safety even in countries with strong regulatory standards. For example, in the United States, the expected penalty per worker for OSHA violations amounts to only $1.34 per worker while market forces, through compensating wage differentials and workers' compensation premiums imposed costs in excess of $1,234 per worker. See Viscusi (2005, p. 851). Also see their discussion on pp. 854–860 of how safety was improved through economic growth, and the creation of OSHA had no impact on increasing the trend.

[48] Elliot and Freeman (2004).

[49] Elliott and Freeman (2004, p. 86).

we argue, harm the welfare of poorer sweatshop workers for the benefit of relatively wealthier workers. For instance, the International Labor Rights Forum, SweatFree Communities, and Sweatshop Watch jointly sponsor the "Shop with a Conscience Consumer Guide," which lists firms selling products that have been made in factories the guide has deemed "sweat-free." These sweat-free sources are either unionized or run as worker cooperatives; have healthy and safe working conditions; offer wages and benefits that will lift workers' families out of poverty; and treat the workers with respect, dignity, and justice.[50] So far, 41 factories have met these criteria and been certified. About 29 of these factories are located in the United States and Canada; only 11 are located in Latin and South America, and a single factory is in Asia. Although consumers might feel they are "shopping with a conscience," they are mostly buying products made by wealthy first-world union workers while decreasing the demand for products made in poorer countries and thus harming the employment prospects of the poorer third-world workers.

It is important for us to stress that the case for sweatshops does *not* depend on the claim that the market is necessarily in a perfectly efficient general equilibrium where all gains from exchange have been exhausted and all information is known. The market is dynamic discovery procedure that is always tending towards a final state of rest (general equilibrium) but that end point is always moving as new information is discovered, technology changes, and consumer preferences evolve. We, therefore, do not believe that every voluntary action that employers could take to improve wages and working conditions without unemploying workers has already been taken.[51]

Arnold and Hartman (2003) document the "moral imagination" exercised by Adidis-Salomon and Nike management in improving working conditions in their firms and supply chains. For them, moral imagination involves an exploratory function that lets people question the conventional ways of doing things in their own culture and using and transforming norms from other cultures. The exercise of moral imagination helps discover some of these improvements in working conditions that the market has not yet adopted.

However, we should take care not to overgeneralize from anecdotes such as this. The mere fact that there are always possibilities to improve on current market conditions does not justify mandating standards at the legal or industry level. Some individual companies may find enhanced consumer demand in response to improved working conditions while others do not. Some companies may find efficiency wages improve productivity while others do not. A filtering process that allows reforms to take place where they help workers but does not mandate them where they do not is necessary to find out what can work and what would unemploy workers. The market's competitive process is precisely that filter.

Indeed, at times Arnold and Hartman seem to recognize this very point. They describe the essential role that freedom plays in the moral imagination:

> The exercise of exploratory moral imagination provides individuals with more choices regarding courses of action and character development. As such, it allows individual the possibility of choosing paths that would not otherwise have been available to them. It must be acknowledged that the social, political, and economic structures that partly constitute a culture frequently impose constraints on the exercise of such freedom. However, only the most oppressive regimes will be successful at stifling imaginative self-creation.[52]

Economic structures place constraints on what the moral imagination can achieve because we live in a world of scarcity. Some morally imaginable actions are not practically possible and an attempt to realize the impossible would leave workers worse off. Other moral imaginations are practical. The market's filtering process is what sorts this out as long as entrepreneurs have the freedom to imagine and implement. Political and regulatory restrictions are incompatible with the exercise of moral imagination precisely because they prescribe what is to be done and take away some of the freedom to innovate.

The "moral imagination" is precisely the entrepreneurial imagination that generates profits. Although we recognize the presence of inefficiency in the status quo because not all information has been discovered by profit-maximizing firms, it is the very undiscovered nature of this knowledge that makes it crucial that reform comes from the bottom up as the knowledge is discovered. The knowledge of the particulars of time and place where particular mechanisms could improve worker welfare without unemploying others are not known to any one mind and thus cannot be imposed by regulation without also doing so in other situations where workers would be hurt.

It is not entirely clear where this leaves the work of Arnold and colleagues. Arnold and Bowie (2003, p. 239; 2007, p. 142) explicitly state that they do not take a position on increasing federally mandated minimum wages in

[50] http://www.sweatfree.org/shopping_suppliercriteria.

[51] Both Powell and Zwolinski have commended Arnold and Hartman for their work in documenting some voluntary actions firms have taken (see Powell 2006; Zwolinski 2007). We, also, believe that making these actions more widely known to other companies can help speed the discovery of improvements that can take place without harming workers.

[52] Arnold and Hartman (2003, p. 427).

developing nations. Yet Arnold's (2003) review of Varley (1998) seems to imply that he agrees with her that there is "a need for enforceable multilateral labor standards such as those advocated by the International Labor Organization" (p. 250) and Arnold and Hartman (2005) have a somewhat unclear section titled "The Case for the Mandated Improvement of Working Conditions."[53] Most recently Arnold (2010) argued that when companies were unwilling to improve working conditions on a voluntary basis, "a strong regulatory model is to be preferred. OSHA-type regulations are justified."[54]

Arnold and Bowie (2003, 2007) do argue that *all* firms can act on a maxim of paying their employees either the legal minimum or enough to live above the poverty line working a 48-h week, whichever is higher, and to do so without making layoffs. They reject the argument of Sollars and Englander that such a maxim is not universalizable because it involves a practical contradiction: The mechanism of universally increasing wages undermines the maxim's purpose of helping workers.[55] The issue of universalizability needs to be addressed on three levels.

First, Arnold and Bowie's response to Sollars and Englander misses the mark altogether. Arnold and Bowie note that it is sometimes possible to raise wages without causing unemployment.[56] But that it is *sometimes* possible for single firms to raise wages without causing unemployment is irrelevant to the question of whether a universalized maxim of raising wages above the market level would do so. It is possible for a single person to tell a lie without destroying the practice of promise-making, but the morality of an action depends (for Kant) not on the effects of any particular action but on the ability to consistently will that maxim as a *universal* law. To refute Sollars and Englander's criticism, Arnold and Bowie would have to show that a world in which *everyone* raised wages greater than the market-clearing level would not be one with significant unemployment effects, and this is something they have not attempted to tod. Thus, Sollars and Englander's point stands: A maxim of paying a subsistence wage in contexts where such a wage is higher than the market clearing one is not universalizable, and hence impermissible on Kantian grounds.

Second, if Arnold and Bowie believe that their claim that wages can be raised without causing unemployment is universal, and worker welfare is their goal,[57] why do they equivocate on mandating federal minimum wages in the developing world? They should clearly take a position in favor of mandates. As we have argued earlier, they would be incorrect to favor mandates because at the legal/regulatory level, such mandates would unemploy workers and/or change their mix of compensation in undesirable ways. This brings us to the third aspect of universalizability that needs to be dealt with.

Arnold and Bowie seem to say that everywhere every business could raise wages and not unemploy workers because of mechanisms such as cost cutting, efficiency wages, passing on costs to consumers, etc. We have argued that these mechanisms are not universal. They may be present in some cases and firms will have incentives to voluntarily adopt them in those cases. Precisely because those conditions are not universally present, the standard prediction of economics, that legally mandating higher wages (or better conditions) will unemploy some workers or change their mix of compensation in undesirable ways, is universalizible. An across the board mandate may not negatively affect workers in some firms where efficiency wages or consumer demand offset the requirements, but in other firms where this is not the case workers would be harmed, just as economic theory predicts.

Arnold argues that "defenders of sweatshops tend to ground their arguments in textbook economics, rather than in actual studies of labor markets. Few studies have been conducted of labor markets in which corporations have voluntarily increased wages."[58] Studying some markets where firms did have the mechanisms available and raised wages does nothing to undermine the standard textbook economics that allows for their presence in some, but not all, situations. His argument that "the claims of sweatshop defenders are undermined by the many corporations, in a variety of industries, that routinely expend substantial corporate resources to help ensure safe and healthy working conditions for workers" is simply false.[59] It is precisely the non-universal nature of the specific instances and mechanisms he and co-authors argue for that makes the textbook economic defense of sweatshops universal. Arnold and co-authors should explicitly denounce legally mandated wages and working conditions and share our view that the market's entrepreneurial process will best enable the moral imagination to discover the particular instances where individual firms can voluntarily improve wages and working conditions. This naturally leads to the question of what should be done when there are already legally mandated wages or working conditions in the third world.

[53] Varley (1998).

[54] Arnold (2010, p. 632).

[55] Sollars and Englander (2007, pp. 121–122).

[56] Arnold and Bowie (2007, p. 139).

[57] It is, of course, possible that their goal is the welfare of the particular workers who happened to be employed by sweatshops, and not the welfare of workers in general. We shall address this possibility in "Coercion and Exploitation" section.

[58] Arnold (2010, pp. 645–646).

[59] Arnold (2010, p. 642).

The Case for Violating Labor Laws

Several times now, Denis Arnold and Norman Bowie have issued a challenge to defenders of sweatshops. One of the main elements of the pro-sweatshop position, Arnold and Bowie accurately note, is the claim that the imposition of new labor regulations on sweatshops, such as minimum wage laws or health and safety requirements, will increase the cost of labor and lead to fewer sweatshop workers being employed. But if *new* labor regulations are bad because they lead to unemployment, should not the enforcement of *existing* labor regulations be bad for precisely the same reason? Defenders of sweatshops such as Gordon Sollars and Fred Englander, who grant that managers of MNEs have moral obligations not to tolerate or encourage violations of the law,[60] thus seem to hold an inconsistent position. "A more consistent view," according to Arnold and Bowie, "would seem to be that MNE managers have duties to ignore local labor laws, ignore working conditions, and pay the lowest possible wages, so long as none of these practices deterred employees from working in MNE factories."[61]

Of course, Arnold and Bowie *do not* believe that managers have any such duties. In the statement immediately following the preceding quote, Arnold and Bowie state that the "more consistent" pro-sweatshop view is "indefensible on Kantian grounds."[62] And in a more recent essay, Arnold writes that although defenders of sweatshops must "either deny or tacitly approve the widespread violation of labor laws that take place in global sweatshops," it is nevertheless "difficult to justify widespread violations of the law."[63] Their argument is therefore best conceived as a *reductio ad absurdum.* Because the pro-sweatshop argument, if followed to its logical conclusion, entails that managers have a duty to ignore local labor laws, etc., and because managers clearly do *not* have these duties, the pro-sweatshop argument clearly must be unsound.

The challenge Arnold and Bowie have raised is an important one and is representative of the larger anti-sweatshop movement. Although anti-sweatshop groups vary considerably in the policies they advocate and their means of protest, almost all groups demand, at a minimum, that companies respect local labor laws.[64] If the violation of labor laws is entailed by the pro-sweatshop argument and is unjust, then the pro-sweatshop argument will need to be modified or abandoned. If, on the other hand, the violation of labor laws is morally justifiable, then it is incumbent on defenders of sweatshops to provide an argument for this claim. But although Arnold and Bowie are correct to note the importance of this issue, they are incorrect in claiming that the need to give an argument in defense of their position is one that defenders of sweatshops "have yet to acknowledge, let alone provide."[65] In fact, Powell responded to Arnold's challenge in an article published 4 years before the one in which Arnold made this allegation.[66] Nevertheless, the point is important enough to warrant repeating and expanding on.

The essence of our response to Arnold's challenge is that the violation of labor laws by sweatshops is indeed sometimes morally justifiable. Arnold is correct to claim that the same logic that underlies the opposition to the increased legal regulation of sweatshops also counts against the enforcement of certain existing regulation by the state, and the compliance with certain existing regulations by sweatshops. Take, for example, laws mandating certain safety conditions at the workplace. If workers would prefer larger paychecks to a package of smaller paychecks and safer working conditions, then laws that mandate safer working conditions will harm workers to the extent that the costs of providing those safer working conditions are paid from funds that would have otherwise been used to compensate workers directly. This, we believe, is at least a very strong point (though perhaps not a decisive one) in favor of the moral legitimacy of violating such laws.

This claim sounds more philosophically radical than it really is. After all, the idea that there is a distinction between what is moral and what is legal is philosophical commonplace. And if any conclusion can be gleaned from the massive philosophical literature on political authority, it is that justifying even a *prima facie* obligation to obey the law is a tremendously difficult, and possibly hopeless task. Traditional accounts of political authority, as Robert Paul Wolff has argued, seem to be incompatible with a respect for individual autonomy.[67] More sophisticated accounts of political authority, such as Joseph Raz's, have been developed in ways that avoid this problem, but because the standards they set for legitimate political

[60] Actually, what Sollars and Englande (2007, p. 115, emphasis added), actually say is that "MNEs or their managers have duties not to tolerate or encourage violations of *the rule of law*.". Arnold and Bowie assume that violations of the law are tantamount to violations of the rule of law. We will allow this assumption for the sake of the present exposition, but will return to criticize it later.

[61] Arnold and Bowie (2007, p. 139).

[62] Ibid.

[63] Arnold (2010, p. 638).

[64] See Powell (2010, Chapter 2) for a survey of the demands of the various groups in the anti-sweatshop movement. Draft Manuscript. Available on request, 2011.

[65] Arnold (2010, p. 639).

[66] Powell (2006).

[67] Wolff (1970).

authority are so much higher, it is doubtful that any actually existing states qualify as authoritative according to them. In short, as Leslie Green writes, "there are plausible objections to each of the dominant justifications for the duty to obey the law," to an even greater degree than is present for most philosophic issues.[68] And, of course, these problems plague the justification of a duty to obey even those laws that are generated by well-functioning democratic systems, and that are neutral or even benign in their effect. How much more problematic, then, must be the justification of a duty to obey laws that are generated in an autocratic or unjust way, and which are harmful in their effects on the most vulnerable segments of the population?[69]

Still, none of this means that all violations of labor laws by sweatshops are morally permissible. First, some labor laws will prohibit actions that defenders of sweatshops can, consistent with their pro-sweatshop position, hold to be indefensible on independent moral grounds. The opposition to forced labor, for instance, is not only consistent with the logic of the pro-sweatshop position but also is a *presupposition* of it.[70] Sweatshops, therefore, ought to comply with laws that prohibit forced labor—not because such laws make forced labor illegal, but because forced labor would be immoral *regardless* of its legal status. Second, it is sometimes morally obligatory to comply with even bad laws, when the costs (especially those borne by others) of noncompliance would be excessively high. For example, our position is that minimum wage laws are immoral insofar as they tend to create greater unemployment among unskilled laborers. Nevertheless, if such laws are enforced, perhaps by the imposition of monetary fines on noncompliant firms, firms might have decisive moral reason to comply with them, because doing so might be necessary to remain in business and to continue employing labor at all. In complying with the minimum wage law, the firm may be forced to employ less than the optimal number of workers, but both the firm and its employees would suffer even more if it were forcibly shut down by government enforcement efforts.

Defenders of sweatshops are, therefore, not logically committed to morally approving of all labor law violations, but the logic of their position does push toward the moral approval of some such violations. What makes the difference? As we have already noted in the introduction to this article, our argument is not, contrary to the impression that Arnold and others have given, based on a slavish devotion to "economic efficiency."[71] The mere fact that the violation of a law would be wealth maximizing in some aggregative sense does not, on our view, give anything close to sufficient moral justification for it. Indeed, we do not think the moral values that underlie our argument are very different at all from those that underlie the arguments of our opponents. Like Arnold, we hold the welfare of citizens in the developing world to be a legitimate goal of public and company policy.[72] The conclusion we draw from this, however, is different. For we believe that when laws undermine rather than enhance the welfare of workers, potential workers, and other vulnerable parties, this creates a very strong reason for companies to disobey those laws.[73] People in desperate poverty stand to derive tremendous benefit from any marginal improvement in their economic situation. On almost any reasonable moral theory, the needs of such persons will have any especially heavy weight in moral calculation. If, then, the violation of labor laws would benefit such persons, especially if they would do so without imposing a significant moral cost on others, then the case for violating those laws will be very strong indeed.

Cases that do involve trade-offs between persons or groups of persons will be more difficult to assess. Minimum wage laws are an example. In countries where labor's marginal revenue product is less than the legal minimum

[68] Green (2010).

[69] This idea is not mere idle philosophical speculation. As one referee pointed out, the Sullivan Principles of corporate conduct made violating Apartheid-era laws a condition of doing business in South Africa.

[70] Forced labor is inconsistent with both the autonomy-based and welfarist justifications of sweatshop labor given in Zwolinski (2007, pp. 691–665). Obviously, a worker who is physically compelled to work in a sweatshop cannot be said to autonomously choose sweatshop employment. Nor can it be inferred that sweatshop labor is his or her most preferred alternative (and hence likely his or her most welfare-enhancing alternative) if his or her employment is forced, and not chosen.

[71] See, for instance, Arnold and Bowie (2003) "the intentional violation of the legal rights of workers in the interest of economic efficiency is fundamentally incompatible with the duty of MNEs to respect workers" (p. 228), Arnold and Hartman (2005) on the need to move the sweatshop debate "beyond the entrenched, polarized, political narrative of economic efficiency versus increased regulatory protection for workers' rights" (p. 212), Arnold and Hartman (2006) "those who are genuinely interested in the welfare of the citizens of developing nations ought to demand that MNCs and their contractors respect local labor laws, rather than excusing those MNCs that violate local laws in the name of economic efficiency" (p. 690).

[72] Arnold and Hartman (2006, p. 690).

[73] We also believe that laws that unjustly violate the autonomy of workers and potential workers should sometimes be disobeyed. Most of what we say in the following regarding violations justified by appeals to welfare, however, will also apply to violations justified by appeals to autonomy; so for the sake of brevity, we will focus here only on welfarist arguments.

wage, respecting local labor laws will leave workers unemployed or push them into informal sector jobs. In other words, it entails that there will be some persons who are unable to find work at a wage that is equal or higher to the legal minimum, but who could find work at a wage that is less than the minimum, and who would be willing and happy to accept such work if the only available alternative is unemployment (or employment in the informal sector). Such laws, thus, undermine both the autonomy and the welfare of a significant group of persons (nonworkers), but arguably advance the welfare of a distinct group of persons (workers). How should such conflicts be addressed?

As we noted in the beginning of this article, we are moral pluralists, not utilitarians. And so we do not believe that such cases can be resolved merely by "adding up the numbers" and following whatever course leads to the maximization of aggregate utility. We do not believe, for instance, that it would be permissible to violate the moral rights of one group of persons not to be enslaved even if it would provide tremendous benefit to another group of desperately needy persons. But questions about violating the *legal* right of some persons to, say, a certain minimum wage, or certain health and safety standards, are different. First, we are not convinced (see below) that persons do in fact have a moral right to such conditions, and certainly not a moral right that they could not waive by consenting to take the job once they have been told what the wage or working conditions will be. And second, the case for respecting the legal rights of such persons must be weighed against the effects of compliance on third parties. We have no ready formula for making such comparisons. But, significantly, we do not believe that there is any compelling moral reason for companies or for public policy to weigh the interests of workers more heavily than other vulnerable persons, especially because the objective conditions of persons not employed in factory labor are often significantly *worse*. Even if compliance with the law provides some benefits for sweatshop workers, then, there may be a strong moral case for violation if it imposes significant costs (e.g., in terms of unemployment) on non-workers.

Part of the explanation for the disagreement between Arnold and us on this issue is surely empirical. We believe that many labor laws are harmful to workers and potential workers, whereas Arnold has tried to argue that these harms are overstated or not necessary. But there is also, we think, a significant moral disagreement underlying this debate. That tension has to do with the way in which the relationship between moral rights, consent, and welfare ought to be understood. We believe that Arnold's proclaimed commitment to the welfare of citizens in the developing world is in tension with his strongly stated commitment to respect for workers' rights, and his claim that adherence to local labor laws is required by those rights.[74] For if one believes that violating labor laws is a violation of workers' *rights*, then the fact that doing so would improve their welfare is irrelevant. The violation of rights is morally impermissible, according to the standard view, even if it is better *for the rights-holder* for his or her rights to be violated.[75]

Of course, none of this would be a problem if the rights in question were alienable by an act of consent on the part of workers. If workers could waive by contract their right to a certain level of safety in the workplace in exchange for a higher paycheck, then the tension between respect for workers' rights and concern for their welfare could be resolved—workers could claim the protection of their right until and unless they decided that they could do better by waiving it. Most of the rights we think people have are alienable in precisely this way. And for good reason. Alienability seems superior to inalienability on both welfarist and autonomy-based grounds. Giving person the option to waive a right in exchange for some perceived good respects his or her choice in a way that disallowing it does not; and it also puts him or her in a position where he or she is able to exercise the right if and when he or she thinks that is his or her most welfare-enhancing option, but to trade it away if a better opportunity can be served by doing so. Arnold and other critics of sweatshops have not explicitly said whether they believe the workers' rights they endorse should be waivable in this way. But the kind of rights typically assigned by the OSHA-type regulations endorsed by Arnold are usually not waivable,[76] and the general tone of Arnold's Kantian moral reasoning suggests that he views the underlying moral rights as non-waivable as well. Thus, although Arnold is no doubt sincerely concerned with the autonomy and well-being of workers, the ability of his moral theory to be responsive to those values is severely limited by the way his theory of rights is developed.

Coercion and Exploitation

Even if the economic reasoning presented in previous sections is sound, there still remain two concerns that lead many to doubt the moral defensibility of sweatshop labor. The first is that sweatshop workers are *coerced*—either in their decision to accept sweatshop labor in the first place or in certain of the demands that are placed on them once they

[74] The form of problem manifests itself elsewhere in Arnold's argument, as discussed in Zwolinski (2007, pp. 698–700). Jeremy Snyder, a philosopher generally sympathetic to Arnold and Bowie's critique of sweatshops, makes a similar point in Snyder (2008, pp. 394–395).

[75] Arnold (2010, p. 632).

[76] Arnold (2010, p. 632).

are on the job. The second is that sweatshop workers are *exploited*—either by managers of sweatshops themselves or by the MNEs with which those sweatshops contract. This section explores, and ultimately rejects, the claim that these two considerations support the anti-sweatshop position.

Coercion

Coercion is a philosophically contested concept, and we will not try to settle any grand debates about its precise meaning in this section.[77] Rather, our goal is to assess the role that the concept of coercion has played in anti-sweatshop arguments from a perspective that makes as few assumptions as possible about controversial normative and conceptual issues.

Before proceeding to examine the controversial issues regarding sweatshops and coercion, however, it is worth pausing to take stock of what is *not* controversial. First, no one—not even the most ardent defender of sweatshops—condones the use of physical coercion to force individuals to work in sweatshops, or to prevent them from quitting once they have begun work. Forced labor is a serious moral wrong, and its status as such has been explicitly affirmed by almost every participant in the debate over sweatshops.[78]

Second, no participant in the current debate holds that typical workers are coerced into *taking* sweatshop jobs. That is, all of us reject the claim that individuals are "forced" to work in sweatshops by "the coercion of poverty."[79] Even Arnold and Bowie, ardent critics of sweatshops though they may be, grant that typical sweatshop workers take their jobs because "they believe they can earn more money there than they can in alternative employment."[80] Workers might wish that they had even better employment options available, but "having to make a choice among undesirable options is not sufficient for coercion" according to their analysis.[81] If there is a moral wrong in transactions such as this, it is better described as "exploitation" than as "coercion." We shall have more to say about the concept of exploitation in the following.

Still, there remain important disagreements about whether certain activities of sweatshops are properly analyzed as coercive. Arnold and Bowie, for instance, hold that coercion is "widespread" in the demands that are made of sweatshop workers *after* they have taken the job.[82] This coercion is used to force workers to work long hours of overtime, to meet production quotas in spite of physical injuries, to remain working while in need of medical care, and so on.[83] The coercion involved, however, is not physical but "psychological" coercion. Psychological coercion, as understood by Arnold and Bowie, occurs when three conditions are met: (i) the coercer has a "desire about the will of his or her victim," (ii) the coercer has an "effective desire to compel his or her victim to act in a manner which makes efficacious the coercer's other-regarding desire," and (iii) the coercer is "successful in getting his or her victim to conform to his or her other-regarding desire."[84] So, for example, "when a worker is threatened with being fired by the supervisor unless she agrees to work overtime, and when the supervisor's intention in making the threat is to ensure compliance, then the supervisor's actions are properly understood as coercive."[85]

This account of coercion has been subjected to criticism elsewhere.[86] And although the account plays no role in Arnold's most recent writing on the topic of sweatshops,[87] Arnold and Bowie have attempted to defend their account against some of the criticisms that have been leveled against it.[88] We, therefore, believe it is worthwhile to subject the theory to one more round of scrutiny.

First, it is not at all helpful to define "coercion" in terms of "compulsion," as this account does, because the latter concept is just as unclear, and raises almost precisely the same sort of philosophic questions, as the former. Essentially, Arnold and Bowie's account says that if I desire that you give me your car, and if I intentionally attempt, and succeed, in compelling you to give it to me, then I have coerced you. But what kinds of activity on my part count as "compelling you"? Arnold and Bowie make clear that they want to distinguish coercion from "rational persuasion," so presumably my trying to convince you that you have overwhelmingly good reason to give me the car would not count as compulsion of the relevant sort. And, presumably,

[77] See, for an overview, Anderson (2006).

[78] See Arnold and Hartman (2005) "No one in this debate advocates forced labor" (p. 679, n. 5), Sollars and Englander (2007) "We agree…that workers should not be physically coerced" (p. 122), Zwolinski (2007). "The truth of premise 1 [in the argument for the moral impermissibility of interfering with sweatshop labor] hinges on whether people *do* in fact choose to work in sweatshops, and fails in cases of genuinely forced labor" (p. 696)

[79] The only person of whom we are aware who does make this claim is Miller (2003, p. 97). But he does not defend the claim at any length, and has not (as far as we are aware) repeated it since.

[80] Arnold and Bowie (2003, p. 229).

[81] Arnold and Bowie (2003, p. 229).

[82] Arnold and Bowie (2003, p. 229). See also Arnold and Bowie (2007).

[83] Arnold and Bowie (2003, pp. 229–231).

[84] Arnold and Bowie (2003, p. 229).

[85] Arnold and Bowie (2003, p. 230).

[86] See Sollars and Englander (2007, pp. 122–123) and Zwolinski (2007).

[87] Arnold (2010).

[88] Arnold and Bowie (2007, pp. 140–142).

my threatening to beat you severely unless you gave it to me would count as a paradigm case of compulsion. But what if I were to offer to give you a million dollars for your car? We should hardly want to describe such an offer as "coercive," and yet in an earlier article on the subject Arnold identifies a category of compulsion that he describes as "rational compulsion," and which occurs "when an agent is forced to choose between two actions, one of which is plainly superior."[89] Unless your car is very nice indeed, the prospect of a million dollars is likely to be plainly superior to keeping it. But if my offer is really a form of compulsion, and hence coercion, then it is difficult to see how we could maintain the commonsense idea, which Arnold explicitly embraces, that coercion is as a conceptual matter *prima facie* wrong.[90] On the other hand, if we rule out rational compulsion as a genuine form of compulsion, then all that we are left with, on Arnold's account, are "psychological compulsion" and "physical compulsion." The former occurs when *A* acts in a way so as to create an "irresistible desire" in *B* to act in a certain way, and the latter occurs when *A* forcefully moves *B*'s body. But genuinely "irresistible" desires are almost certainly either nonexistent or so rare as to provide scarce basis for Arnold's claim that psychological coercion is "widespread" in sweatshops.[91] This leaves only physical compulsion, and this means that psychological coercion simply reduces to threatening to physically coerce someone, a phenomenon that Arnold and Bowie themselves admit is "comparatively rare," and which we have already noted is universally condemned by all sides of the sweatshop debate.[92] One serious problem with Arnold and Bowie's account, then, is that it fails to provide an analysis of psychological coercion that distinguishes it from physical coercion, on one side, and rational persuasion, on the other.

A second and third problem can be seen by examining Gordon Sollars and Fred Englander's criticism of Arnold and Bowie's claims regarding psychological coercion in sweatshops. These authors find Arnold and Bowie's example of a worker being threatened with termination unless she agrees to work overtime unconvincing as an instance of coercion. Of course, workers might not like to work overtime, and we can safely assume that they would prefer to keep their job without having to comply with their bosses' demands. But Sollars and Englander interpret these requests, so long as they are routine and known about in advance by workers, as simply part of the conditions of employment.[93] If Arnold and Bowie describe them as coercive, it suggests that their view really does just collapse to one in which being forced to choose between bad alternatives counts as coercion, something which, as we saw earlier, they had previously denied.[94]

In response, Arnold and Bowie object that Sollars and Englander focused their critique on only one of their three examples of coercion. Their second example involved a hypothetical account of a supervisor threatening a worker who was ill or injured with termination unless he or she meets a production quota that is either impossible for him or her to meet or impossible for him or her to meet without sustaining further injury, and their third involved an actual account of a pregnant worker in El Salvador who began hemorrhaging on the job and was not allowed to leave the factory to seek medical attention.[95]

These examples are indeed shocking. But what renders them shocking, we will argue, has to do with the perceived unreasonableness of the *substance* of what is being demanded of workers, and not with a belief that the workers are being *coerced* into complying with the substance of the demand. After all, if the demands above indeed qualify as coercive on Arnold and Bowie's account,[96] then so too does almost *any* instance of an employer demanding her employee to *X* or else be fired—even the demand that the employee show up regularly to work at the scheduled time. If these are genuine examples of coercion, then coercion is everywhere in the workplace. And an account of coercion that has this implication seems too overinclusive to be much use in moral theorizing. Nor does Arnold and Bowie's reassurance that coercion is only *prima facie* wrong do much to help. For starters, this places all the weight of determining which instances of coercion are *really* wrong, and which are acceptable, on further moral theorizing which they have not so far explained in any detail, let alone defended. But moreover, many of the actions that would qualify as coercive on their account do

[89] Arnold (2001, p. 56).

[90] Arnold (2001, p. 54).

[91] See Morse (2000, pp. 1054–1063).

[92] Arnold and Bowie (2003, p. 229).

[93] Sollars and Englander (2007, p. 123). We are not convinced that the distinction between "conditions of employment" and "informal practices" suggested by Sollars and Englander (p. 123), and picked up explicitly by Arnold and Bowie (2007, p. 141) is a helpful one. For, in the standard case, one of the conditions of employment will simply be that one comply with the informal practices of the workplace and the occasional job-related special requests of one's supervisor.

[94] Sollars and Englander (2007, p. 123) and Arnold and Bowie (2003, p. 229).

[95] These examples were originally presented in Arnold and Bowie (2003) but are reproduced in their entirety in Arnold and Bowie (2007, pp. 140–141).

[96] We leave this as an open question, because it is not clear from Arnold and Bowie's presentation which of the three possible types of "compulsion" are supposed to be at work in them. Threatening to fire an employee might qualify as "rational compulsion," but it is doubtful that it could be interpreted as either psychological or physical compulsion.

not seem wrong even in a *prima facie* sense. Telling a worker that he or she will be fired unless he or she performs the basic functions of his or her job is not something that should appear to us as wrong until we investigate further and find some other features of the situation that might justify it. It is just not wrong at all.

In conclusion, Arnold and Bowie have provided us with some examples of shocking behavior on the part of sweatshops, but they have not yet given us a satisfactory argument for why we should conclusively regard such behavior as wrong, nor have they given us a satisfactory theoretical account of what this wrongness is supposed to consist of. Our own view is that there is probably not wrong for sweatshops to demand long overtime hours, that it might or might not be wrong to demand that injured workers meet production quotas or be fired, depending on the circumstances, and that it is almost certainly wrong to refuse permission for a worker to seek urgently needed medical care. But the permissibility or impermissibility of each of these actions is not something that can be explained by appeals to the wrongfulness of coercion. The burden of proof thus remains on the critics of sweatshops to provide a compelling argument and explanation for the alleged wrongness.

Exploitation

The charge that sweatshop labor is coercive is, as we have seen, difficult to sustain in the face of rigorous philosophical analysis. And, perhaps for this reason, most current academic criticisms of sweatshops are not based primarily on this charge. Far more common is the charge that sweatshop labor is wrongfully *exploitative*.[97]

What it is for a person to be exploited is a matter of some philosophical dispute, and again the purpose of this section is not to try to resolve that dispute.[98] Most accounts, however, hold that wrongful exploitation consists in taking advantage of another person in a way that is either unfair or that fails to manifest sufficient respect for that person's dignity. Understood in this way, an interaction can be exploitative without being coercive. Indeed, an interaction can be both voluntary and beneficial to both parties (relative to how they would have fared in the absence of any interaction), while still being wrongfully exploitative. Suppose, for example, that A offers to rescue B from drowning by selling B a spot on A's boat for $10,000. Assuming we reject the "hard choices" account of coercion, and thus the claim that B is coerced into accepting A's offer, we can hold B's choice to be voluntary. And although the deal is clearly beneficial to A—we can stipulate that A values the $10,000 much more highly than the time and effort he or she must sacrifice—it is no less clearly beneficial to B. B surely values his or her life more highly than the $10,000 he or she had to give up to save it. If he or she did not, why would he or she have accepted A's offer? Still, most people (including us) would judge that A has clearly acted wrongly in making his or her rescue contingent on B's paying such an exorbitant sum. In doing so, A seems to be taking wrongful advantage of his or her monopoly on the means of rescue, and failing to treat B with the respect he or she deserves.

Can we analyze sweatshop labor in a similar way? Perhaps potential sweatshop workers are like people drowning in ponds, and the MNEs that ultimately finance their employment are like the man in the boat. The potential workers are in a desperate situation, "drowning" in poverty and perhaps unable to adequately provide for themselves and their families. MNEs have power in the form of wealth to rescue these individuals. But rather than providing that rescue out of common kindness or a sense of moral obligation, they make it contingent on an onerous payment. The MNE provides the worker with just enough money to make the employment offer attractive, and will demand in exchange the worker to toil for long hours in dangerous and unpleasant conditions. Such an offer might present the worker with a better alternative than anything else he or she has available. But so does the boatman's offer, and this does not make it any less unfair, demeaning, or objectionable.

Still, there are good reasons for thinking that the standard cases of sweatshop labor—even those involving low wages and very bad working conditions—are not wrongfully exploitative. First, it is not clear that the distribution of burdens and benefits between sweatshop workers and MNEs is *unfair*, and hence not clear that MNEs are taking unfair advantage of sweatshop workers. Part of the problem in credibly establishing the charge of unfairness stems from the immense difficulty in specifying a general principle of fair distribution, something no critic of sweatshops has yet managed to do. Even without such a principle, of course, critics of sweatshop might hold that the division is unfair in some obvious and intuitive way—perhaps because MNEs are clearly getting more than they ought to out of the transaction, or because workers are clearly getting less. But neither of the factual claims on which this "obvious and intuitive" account of unfairness rests are accurate. The rate of profit in MNEs that outsource is generally no higher than it is in other industries with a similar level of risk. The

[97] See, for instance, Arnold and Bowie (2003), Mayer (2007), Meyers (2004), Snyder (2010), and Young (2006).

[98] Some of the most influential accounts include Goodin (1987), Wood (1995), Wertheimer (1996), Sample (2003), Snyder (2008), Mayer (2007), and Valdman (2008, 2009). Wertheimer (2008) provides an overview of most of the main philosophical accounts. Snyder (2010) provides another overview with specific focus on the application of such accounts to the issue of sweatshop labor.

often cited fact that a sweatshop worker who produces, say, a pair of Reebok shoes is paid only one US dollar to make a shoe that sells for around $100 does not mean that Nike is walking away from the exchange with $99 and the worker with only $1.[99] Most of the $100 goes to paying for advertising, retailer markup, raw materials, transportation costs, and so on. The amount that actually accrues to Reebok as profit is generally no greater as a percentage of their investment than the profits in any other competitive industry. So MNEs are not earning unusually high profits off the backs of sweatshop workers. Nor is it obvious that sweatshop workers are receiving less than they ought to earn in wages. Such a claim might be credible if MNEs were, as some critics have charged, using their monopsonistic power to pay workers less than the market rate for their labor. But as we have argued earlier in this article, there is no reason to think that workers' wages are not determined, by and large, by their productivity—just as they wages of non-sweatshop workers are.

The charge of unfairness, and hence of exploitation, derives some traction in the comparison drawn between sweatshops and the rescue case described above. But on closer examination, these cases are dissimilar in ways that seem morally significant. First, part of what pulls our intuition in the rescue case is the belief that the boat owner will not be made (significantly) worse off by having to perform the rescue *gratis*. As we have tried to argue in this article, though, increases in sweatshop wages or improvements in their working conditions will usually come at a cost to someone—if not to the employer then to customers, or to potential workers. Furthermore, the rescue in the example we have provided is entirely fortuitous. The boat owner *just happened* to be there when the victim needed rescuing. Our intuitions might be different if the boat owner were there *precisely because* he anticipated that people might need rescued, especially if his being there required significant investment of time and capital. With this contrast in mind, sweatshops look less like cases of fortuitous rescue and more like cases of professional salvage operations, and it is noteworthy that admiralty law has traditionally recognized that the latter are entitled to claim significantly higher awards than the former.[100]

It is important to recognize, however, that even if sweatshops are not guilty of providing their workers with less compensation than they should, it is still possible that workers' income is lower than it morally ought to be. The claim that MNEs do not exploit sweatshop workers is entirely compatible with the claim that sweatshop workers are suffering grievous injustice, and with the claim that the income of sweatshop workers is lower than it morally ought to be as a result of this injustice.

The explanation for this paradoxical claim lies in the fact that the labor agreements between sweatshops and their employees are a product of a wide variety of factors, many of which fall well outside the responsibility of MNEs. The background political and economic institutions of the host country, for instance, shape and constrain the opportunities available to potential sweatshop workers. To the extent that those institutions erect barriers to entry to new businesses, deny workers the freedom to organize collectively, or fail to ensure that citizens have reasonable access to food, shelter, and education, workers' opportunities to advance their interests and the interests of their families will be severely limited.[101] Workers' opportunities are almost certainly further restricted by injustices in the global economic order, including the unjust seizure of land and natural resources by states and other entities,[102] and the unjust restriction of free access to Western markets by various forms of protectionism.[103] And the more limited their opportunities are, the more likely it is that an offer of sweatshop labor will be workers' most attraction option.

Sometimes, MNEs themselves will bear partial responsibility for the unjust background conditions against which labor agreements are formed. Because of the benefits that MNEs can bring to host counties, especially in the form of increased tax revenue, they are often well-positioned to influence the behavior of the host country government. MNEs can make their economic investment in a country contingent on the government's willingness to use its power to secure special benefits for the MNE—benefits that will often come at the cost of the MNEs competitors, the country's workers, and its citizens. To the extent that MNEs influence governments to act unjustly in a way that constrains workers' options, MNEs *do* bear moral responsibility for the background conditions against which labor agreements are made. In this case, however, the real wrong of which MNEs are guilty would seem to be a form of joint-coercion with the government, rather than exploitation per se.[104]

Very often, however, limiting background conditions will not be the result of any injustice assignable to MNEs. Sometimes, the main constraint on workers' options will be a poverty that owes its existence not to any positive evil but rather to the absence of the delicate combination of social,

[99] This particular version of the claim is taken from Meyers (2004, p. 331).

[100] Eisenberg (2009, vols. 15–16).

[101] We defend workers' freedom to organize collectively voluntarily which is distinct from laws that allow labor unions to organize workers where a subset of all workers has the legal right to collectively bargain for all workers even when some workers would rather bargain individually.

[102] See Pogge (2005, p. 7).

[103] Pogge (2005, p. 6).

[104] See Zimmerman (1981).

political, geographic, and other factors needed for the production of wealth and economic development. At other times, it will be an injustice perpetrated by their own government without the collusion of foreign business interests. When workers' options are constrained by factors such as these, and where the labor agreements between workers and sweatshops are not plagued by any form of procedural wrongdoing such as deception or coercion, it is difficult to see how the claim that sweatshops are taking *unfair* advantage of workers could be maintained. They are taking advantage, to be sure. But they are doing so by entering into an agreement with workers that is mutually beneficial relative to their antecedent circumstances. And although sweatshop workers might reasonably wish that their antecedent circumstances were better, and hence that their bargaining power with sweatshops were stronger, it is far from obvious that they have any grounds for complaint *against sweatshops* in circumstances such as those that we have described here.

Such a complaint could only be grounded in the claim that sweatshops, or more plausibly the MNEs with which they contract, have some kind of moral obligation to rectify the injustice of the background conditions against which labor contracts are formed. Or, at least, to try to "correct" for this background injustice in some way when forming labor agreements with workers—perhaps by entering into only those agreements of the sort that would have been formed had background conditions *not* been unjust. But as Alan Wertheimer has noted, this way of understanding what a non-exploitative transaction requires seems to place an unduly heavy burden on those interacting with the victims of background injustice.[105] Why should MNEs bear special responsibility for rectifying injustices for which they were not responsible?

Jeremy Snyder has argued that MNEs' special obligation has its origin in a Kantian duty of beneficence.[106] Part of what it means to respect other persons as ends in themselves, according to this line of reasoning, is to not merely refrain from interfering with their actions, but take positive steps to promote their autonomy. As a general matter, this duty of beneficence has an imperfect form, meaning that individuals have "considerable leeway in determining when and where to direct their resources toward supporting" the autonomy of others.[107] But Snyder's key move is to argue that when we enter into certain forms of special relationships with others, this general duty takes on a "perfect, strict form."[108] MNEs, then, that enter into relationships with particular sweatshop employees have a special obligation of beneficence toward those employees. Because they are in a direct relationship with other human beings in desperate need, they no longer have the leeway they once had in determining how to discharge their duty of beneficence. Rather, "they are required to cede as much of their benefit from the interaction to their employees as is reasonably possible toward the end of their employees achieving a decent minimum standard of living."[109]

But there is something puzzling about Snyder's position. As we have seen, sweatshop labor generally represents a more attractive option than any other option available to workers—often a significantly better option. By making such labor opportunities available, then, MNEs thereby confer considerable benefit on their workers. But why should the very act of providing such a benefit impose on MNEs a moral obligation to confer an even greater benefit? Why does providing some help to workers in the developing world confer an obligation to help more, especially

[105] Wertheimer, *Exploitation*, p. 234.

[106] See Snyder (2008, 2010). Snyder also appeals, in the first of these articles, to Iris Marion Young's account of political responsibility. It is not clear, however, exactly what work Young's account is supposed to do in an account of exploitation. After all, Young is explicit in saying that her account of responsibility is distinct from what she calls the "liability" account, and that it will generally be inappropriate to *blame* individuals or groups who bear only a "political" responsibility for injustice. This is because, on Young's account, political responsibility is borne by persons who are not "guilty or at fault for having caused a harm without valid excuses" (Young 2006, p. 119). So Young's account cannot explain why sweatshops or MNEs deserve more blame than other parties for the fate of sweatshop workers. Nor, really, does it do much to explain why they should be seen as bearing a greater responsibility to rectify those injustices, even in her own special sense of political responsibility. She argues that this responsibility arises from social connection. But the special status of social connections is never defended in an entirely clear way. Young states that the kind of social connection that generates political responsibility is "participation in the diverse institutional processes that produce structural injustice." And this might make sense if we thought that agents who participated in such structures were wrongly benefitting from them at the expense of victims of injustice. But this cannot be what Young is saying. For, if what grounds responsibility is not participation in unjust structures as such but wrongful participation in unjust structures, then Young's account would seem to collapse into a standard liability model of responsibility. One might think instead that participation matters because it provides ones with opportunities to fight the injustice. But there is no reason to think that all who participate in unjust structures will have such opportunities, nor that all non-participants will lack them. It is hard to see, then, how "social connection" could be specified in any way that would non-arbitrarily assign any kind of special responsibility to sweatshops or MNEs for remedying structural injustice. Those who own or operate sweatshops or MNEs might have the power or opportunity to work to remedy certain kinds of structural injustice, but if this power and opportunity is neither universally nor uniquely present among them, it will not generate any universal or unique obligation on their part. For a helpful discussion of these issues, see Silvermint (2011). See also Zwolinski (2012).

[107] Snyder (2008, p. 396).

[108] Snyder (2008, p. 390).

[109] Snyder (2008, p. 396).

when those who provide no help are (on Snyder's account) guilty of no moral wrongdoing?[110] Consider the following two companies:

> Company A: This company, based in the United States, outsources production to a developing country. The wages it pays are considerably higher than the wages paid elsewhere in that country, and workers' lives are greatly improved by the benefits those wages confer. Moreover, the company uses a portion of the profits it earns to fund various charitable causes in its home country. It does not, however, give to its workers as much "as is reasonably possible."
>
> Company B: This company, based in the United States, does not outsource production at all. It does, however, use a portion of its profits to fund various charitable causes in its home country.

Let us stipulate that both Company A and Company B give enough to charity to satisfy an imperfect duty of beneficence. Snyder's account nevertheless implies that Company A is acting wrongly, whereas Company B is not.[111] This implication would seem to hold even if workers in the developing country to which Company A outsources stand in greater need of aid than the beneficiaries of the charitable causes that Companies A and B fund, because according to Snyder, the perfect nature of Company A's obligations toward its employees is not a function of their need, but rather of their interaction with Company A. This seems implausible.

But suppose we agreed with Snyder that a company's entering into an employment relationship with a needy individual was sufficient to generate a strict perfect duty of beneficence on the part of the company toward that employee.[112] Compliance with such a duty, let us stipulate, would require the company to provide a benefit to its employee of amount Y. But let us suppose that the employer is only willing to provide its employees with a benefit of amount X, where $X < Y$. Would it be permissible, on Snyder's account, for the employer to make its offer of employment contingent on its workers' willingness to waive their right to benefits of amount Y? Before entering into a relationship with employees, the employer has only an imperfect duty of beneficence. No prospective employee has any valid moral claim upon its assistance. Thus, the company would not be acting wrongly if it refused to hire or assist the prospective employee at all. But if it is permissible for the employer not to hire prospective workers, and if hiring prospective workers at benefit level X is better for both the employer and the worker than not hiring the prospective workers at all, then how could doing so be wrong? If employees' claim to benefits at level Y is waivable, then employers are not necessarily acting wrongly in providing their employees with benefits at level X. If, on the other hand, employees' claim to benefits at level Y is not waivable, then Snyder's account is committed to holding that failing to benefit needy workers at all is better than benefiting them at a level which is (significantly) greater than zero but less than the morally required amount—even if workers themselves would strongly prefer and would like to choose the latter over the former.

This strikes us as a deeply implausible conclusion. The structure of our argument, of course, draws on many of the same intuitions as those invoked in Zwolinski's presentation of the "non-worseness claim."[113] And Snyder has attempted to argue that this claim is false, and hence not a threat to his theory.[114] But we are not convinced that his response succeeds. The first point he makes, that "by choosing to enter into a relationship with another person, we can take on new duties or specify existing duties beyond the duty not to harm others," is true as far as it goes but does not save him from the problem posed by the argument above.[115] For we do not deny that entering into a relationship can create new obligations. We simply hold that it is implausible to hold that those new obligations are not waivable, even when one party regards the other's waiving of the obligation to be a necessary precondition for entering into the relationship, and the other party strongly prefers the relationship without the obligation to no

[110] So long as they discharge their imperfect duty of beneficence in some other way. The point here is really a specific application of what has been called, in the literature on exploitation, the "non-worseness claim," which holds that it cannot be morally worse for A to interact with B than it is for A not to interact with B when the interaction is mutually beneficial, consensual, and free from negative externalities. See, for a discussion, Zwolinski (2007, pp. 708–710; 2008, pp. 357–360; 2009), Snyder (2009), and Wertheimer (2011, chapter 6). It is beyond this article to set out a full defense of the non-worseness claim (though see Zwolinski, "Exploitation and Neglect" for an attempt to do this). Instead, the discussion that follows attempts to press the intuitive force of the non-worseness claim in this specific context, without fully defending it as a general principle.

[111] Alternatively, Snyder could hold that Company A is guilty of exploitation, whereas Company B is not, but that Company B is guilty of some other and perhaps more serious form of moral offense. This would save Snyder's account from having to embrace the counter-intuitive claim that Company A is acting in a worse way than Company B, but only at the price of reducing the moral significance of exploitation.

[112] Actually, Snyder does not quite hold that it is "sufficient." Several other conditions must be met for the employer to have this duty, but as they do not affect the present argument these need not concern us here.

[113] Zwolinski (2007, 2008, 2009).

[114] Snyder (2009).

[115] Snyder (2009, p. 305).

relationship at all. Snyder has given us no reason to think otherwise.

Snyder's second point is an appeal to intuition: He borrows an example from Alan Wertheimer in which A proposes to marry B only if B agrees to "an unfair distribution of financial arrangements, childcare, and household labor."[116] Even if we agree that A has a moral right not to marry B at all, Snyder says, and even if we grant that an unfair marriage is better for both A and B than no marriage at all, A's proposal still seems morally objectionable, despite the fact that NWC says that it should not be.

Similar cases might be multiplied. What if sweatshops offer jobs that are better than workers' best alternatives, but that involve shocking and degrading treatment? What if workers are required to perform sexual acts as a condition of employment? Or to work 18 h days behind locked doors with no fire extinguishers?[117]

We share Snyder's intuitive discomfort with A's behavior in this case. As Snyder himself notes, however, it is difficult to know what to make of our intuitive responses to cases like this without some kind of underlying theoretical account. One possibility worth considering, however, is that our intuition in this case is a product of some contingent feature of the way in which the case is described, rather than a reflection of some deep truth about the situation itself. As Wertheimer describes the exploitative marriage case, for instance, and as we have presented it here, the only details we are given concern the unsavory aspects of the exploitative marriage. Regarding the situation of B in the absence of the exploitative marriage, we are told only that it is worse for her, without any correspondingly detailed account of what this worseness consists of. It is possible that because the non-marriage situation is not described in any detail, it does not play as a great a role in shaping our intuition as does the exploitative marriage situation. In effect, our intuitions may be 'discounting' the badness of the alternative. There is some experimental evidence which suggests that the level of concreteness with which a situation is described has a significant impact on our moral intuitions, and it does not seem unreasonable to suppose that something like this may be at work in the present case.[118]

At the end of the day, however, we are prepared to bite the bullet with respect to the possibly counter-intuitive implications of NWC. After all, we hope to have shown that the rejection of NWC entails strongly counter-intuitive implications as well. Moreover, we hope to have shown that the rejection of NWC is at odds with two core moral values that both consequentialists and Kantians must recognize: welfare and autonomy. It is clear enough that the rejection of NWC cannot be based on concern for sweatshop workers' welfare, since rejecting NWC entails rejecting transactions that are Pareto-superior. But our discussion of non-waivability above shows that the rejection of NWC cannot be grounded in concern for workers' autonomy either. After all, if workers' autonomy was a central value, then why would we not allow them to waive certain of their rights when they themselves judged that the benefits they could gain by doing so are worth the cost? Not only is the rejection of NWC counterintuitive, then, it also seems to involve a kind of paternalistic substitution of the moral theorist's own values for those of the workers themselves. Until such time as the critics of sweatshops can provide a theoretical account for their intuitions, and/or show that the balance of counterintuitiveness tilts more in their favor than it has appeared from our presentation, we are not prepared to abandon this principle.

Conclusions

We have carefully considered the arguments in a body of scholarship critical of sweatshops and found that, while going beyond the superficial objections to sweatshops raised by activists in the 1990s, the more sophisticated arguments still fail to undermine the basic economic and ethical defense of sweatshops. No economic mechanisms have been identified that would allow higher wages or better working conditions to be legally mandated without harming workers. The only meaningful type of coercion in sweatshops is the threat of physical violence if a worker refuses a job or attempts to leave. This form of coercion is relatively rare and defenders and critics of sweatshops alike condemn this type of coercion. And although the claim that sweatshop workers are often the victim of gross injustice is plausible, the claim that it is sweatshops or the MNEs with

[116] Snyder (2009, p. 305).

[117] We thank an anonymous referee for raising these questions.

[118] In one extremely interesting experiment, Christopher Freiman and Shaun Nichols presented subjects with either an abstract or a concrete description of a situation involving a distribution of resources. The abstract version asks subjects to "suppose that some people make more money than other solely because they have genetic advantages," while the concrete version asks them to "suppose Amy and Beth both want to be professional jazz singers. They both practice singing equally hard. Although jazz singing is the greatest natural talent of both Amy and Beth, Beth's vocal range and articulation is naturally better than Amy's because of differences in their genetics. Solely as a result of this genetic advantage, Beth's singing is much more impressive. As a result, Beth attracts bigger audiences and hence gets more money than Amy." Subjects were then asked whether the fact that the genetically advantaged individuals make more money is fair. Surprisingly, subjects who were given the concrete version of the case were significantly more likely to say that it is fair for the genetically advantaged individuals to make more money than those who were given the abstract version of the case. See Freiman and Nichols (2011).

which they contract that perpetrate this injustice through wrongful exploitation is difficult to sustain.

We have answered the major critiques of the standard defense of sweatshops. We hope that if scholars continue to be critical of sweatshops, they will address the arguments we raised here. Specifically we challenge them to demonstrate what economic mechanisms would allow for universal adoption of higher wages and better working conditions. Until they can persuasively argue for such mechanisms, we call on them to join us in denouncing all legal mandates for higher wages and better working conditions and to advocate only for voluntarily adopted company policies. We call on them to explicitly state under what, if any, conditions they would advocate violating local labor laws. We have argued that because they have not identified any universal economic mechanisms, opposing legal mandates for wages and working conditions, and violating them when they already exist, will often be in the best interest of the workers and thus should be advocated if worker welfare or autonomy is their goal. We challenge them to demonstrate that there is meaningful widespread coercion in sweatshops. We have argued that only the threat of physical violence counts as meaningful coercion and that our critics admit that this is relatively rare. Finally, we ask if they think that mutually beneficial exploitation (sweatshop labor that provides a benefit to workers and yet falls short of meeting the labor rights Arnold et al. want to see enforced) is worse than failing to outsource at all, and to provide a compelling theoretical explanation for the rejection of NWC. Until these challenges are met, the economic and ethical case for sweatshops has been reclaimed.

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