

# The Nonworseness Claim and Oppressive Double Binds

## Abstract

The *nonworseness claim* has been a longstanding topic of discussion among business ethicists. It posits that it cannot be worse, morally speaking, to engage in a voluntary and mutually beneficial transaction, than to refrain from transacting altogether. I introduce oppressive double binds as a significant moral concern for these debates and argue that they constitute a challenge for defenders of the nonworseness claim. I argue for three main claims. First, I argue that the choice situation facing potential sweatshop employees constitute a form of oppressive double bind. Second, I argue that choice situations structured as oppressive double binds are morally problematic as they perniciously constrain the agency of those subjected to them as well as reproduce and maintain structural injustice and oppression. Lastly, I argue for a negative duty held by the beneficiaries of structural injustice to not subject the victims of structural injustice to oppressive double binds.

Keywords: Nonworseness claim, exploitation, sweatshops, oppressive double binds

## INTRODUCTION

The *nonworseness claim* has been a longstanding topic of discussion among business ethicists (see for example Wertheimer 1996; 2011; Meyers 2004; Snyder 2013; Arnold and Bowie 2003; Berkey 2020; Faraci 2019; Hughes 2024; Kates 2023; Zwolinski 2007). In short, the nonworseness claim posits that it cannot be worse, morally speaking, to engage in a voluntary and mutually beneficial transaction, than to refrain from transacting altogether (Berkey 2021). Primarily, these debates have been centred on the moral permissibility of sweatshops and wage exploitation, in which the nonworseness claim constitutes a powerful challenge to the claim that firms that operate sweatshops are guilty of wrongful exploitation (Berkey 2021). The nonworseness claim has also been the topic of important discussions in the literature on the ethics of clinical research (Wertheimer 2011; Malmqvist 2017). However, for the purposes of this article I will focus on the debates pertaining to the nonworseness claim within business ethics.

The most common accounts of what makes sweatshop labour wrongfully exploitative emphasise that the terms of sweatshop workers' employment are either unfair, or disrespectful or degrading in some sense (Berkey 2021). For example, Michael Kates (2023) recently set out to defend the moral significance of exploitation from the challenge of the nonworseness claim. He does so by arguing for a fairness-based account on which the division of the surplus of an interaction ought to be split fairly between those who took part in producing that surplus.

In this article, I draw on recent developments in feminist ethics, more specifically the conceptualisation of oppressive double binds by Sukaina Hirji (2021), to add to and strengthen Kates' (2023) and other recent critiques of the nonworseness claim. In doing so I add a novel dimension to these longstanding debates by introducing a hitherto largely overlooked moral concern. In introducing oppressive double binds, this article also constitutes

a novel challenge to the nonworseness claim. I pursue three main arguments. First, I argue that we ought to think of the choice situation facing potential sweatshop employees as a form of oppressive double bind. Second, I argue that choice situations structured as oppressive double binds are morally problematic as they perniciously constrain the agency of those subjected to them as well as reproduce and maintain structural injustice and oppression. Lastly, I argue for a negative duty to not subject the victims of structural injustice to oppressive double binds held by the beneficiaries of structural injustice as a complement to the positive duties suggested by Berkey (2021).

My argument proceeds as follows. In the next section I will discuss the nonworseness claim in more detail, before reconstructing Kates (2023) recent defence of the moral significance of exploitation in light of the nonworseness claim in section 3. Following that I will introduce Hirji's (2021) conceptualisation of oppressive double-binds in section 4 before discussing its relevancy to the debates pertaining to the nonworseness claim in section 5. In section 6 and 7, I situate the arguments I pursue in this article to the wider debates pertaining to the nonworseness claim, with a particular focus on demeaning choices (Snyder 2013) and structural injustice (Berkey 2021) before concluding in section 8.

## THE NONWORSENESS CLAIM

In his original statement of the nonworseness claim, Wertheimer formulated it as follows:

*"Look, you grant that I have a right not to transact with B. If B is better off if I engage in an unfair transaction with B than if I do not transact with B at all, it certainly can't be morally worse for me to engage in such a transaction with B. Given that I have a right not to transact with B and that transacting with B is not worse than not transacting with B, it can't be seriously wrong for me to engage in an unfair transaction with B."* (Wertheimer 1999, 289)

Understood in its most general form the nonworseness claim posits that it cannot be worse, morally speaking, to engage in a voluntary and mutually beneficial transaction, than to refrain from transaction altogether. As Berkey (2021) notes, the thought underlying the nonworseness claim is relatively simple: When both parties would benefit from a consensual transaction, it seems unacceptable for an account of morality to prefer, all things considered, that the transaction not take place. Berkey (2021, 46) goes as far as to suggest that this seems true even if the transaction in question would be less generous to the party in the weaker bargaining position than it could be, for example if it was unfair or disrespectful. Berkey (2021) grants that the general formulation of the nonworseness claim is plausible, but ultimately argues that there are grounds to think that it should be rejected. Instead, he formulates two stronger and more specific versions of the claim as he considers the moral permissibility of allegedly exploitative terms of employment. The first is explicitly formulated in terms of ‘wrongful exploitation’ (WE), and the other in terms of ‘wronging’ (W) (Berkey 2021, 46).

*Nonworseness claim (WE):* If it is permissible for A to refrain from transacting with B, then transacting with B in a way that is both consensual and mutually beneficial cannot constitute wrongful exploitation.

This version of the nonworseness claim implies that if it is permissible to refrain from hiring or otherwise benefitting a group of impoverished people in a poor country, then employing them in sweatshop conditions cannot constitute wrongful exploitation.

*Nonworseness claim (W):* If it is permissible for A to refrain from transacting with B, then transacting with B in a way that is both consensual and mutually beneficial cannot wrong B and only B.

In contrast, this version of the nonworseness claim implies that if it is permissible to refrain from hiring or otherwise benefitting a group of impoverished people in a poor country, then employing them in sweatshop conditions cannot constitute a wrong of them and only them. Berkey (2021) ends up rejecting nonworseness claim (WE) and defending nonworseness claim (W). He argues that this version of the claim has significant implications for how we ought to think about the permissibility of sweatshop employment. He notes that if nonworseness claim (W) is correct, then we must accept that firms that employ workers in sweatshop conditions not only wrong those workers, but also others. This, he argues, is important because both fairness-based and respect-based accounts of the wrong of sweatshop employment typically imply that only those who are actually employed are wronged.

I will return to Berkey's (2021) more specific version of the nonworseness claim and his account of the wrong of consensual, mutually beneficial exploitation later in this paper. When doing so, I will argue that Hirji's (2021) account of oppressive double-binds constitutes a challenge for nonworseness claim (W). However, first I will turn my attention to the most recent attempt to address the nonworseness claim, namely that of Kates (2023). For this discussion, I will focus on the nonworseness claim as outlined by Kates (2023) and not the more specific formulations developed by Berkey (2021). On Kates' (2023) account, the nonworseness claim stipulates that it cannot be morally worse to exploit someone than not to interact with them when the interaction is (I) mutually beneficial, (II) voluntary and (III) has no negative effects on third parties. This, according to Kates (2023), creates an important challenge: how can it be morally worse to exploit the global poor than not to (exploitatively) transact with them at all when such exploitation is both voluntary and makes them better off?

#### FAIRNESS AND KATES' RESPONSE TO THE NONWORSENESS CLAIM

Kates (2023) develops a fairness-based account in his response to the nonworseness claim. He argues that sweatshop owners have a moral obligation to pay sweatshop workers a

nonexploitative wage even if such a wage is higher than that sweatshop workers would have accepted voluntarily. The foundation of Kates' (2023) argument is a conception of fairness as a comparative standard. Understood as a comparative standard fairness primarily concerns how much A has relative to B, rather than how much B has in an absolute sense. Kates (2023) argues that for A to defend themselves against being charged with unfairness, it would be insufficient for them to point out that B is better off than prior to their interaction, or that B have been able to satisfy their basic needs as a result of their interaction. Rather, A must show that the terms of the interaction were not illegitimately biased in their favour, which Kates (2023) argues is the case in instances of wage exploitation.

However, the questions remain how to determine whether one party has too much or too little by way of comparison. Kates (2023) argues that if one has a claim to a particular good then one is, from the point of view of fairness, eligible to receive that good. Following Broome (1990) he notes that fairness is concerned with claims, and with mediating between conflicting claims from different people. In this sense, claims precede fairness in order of explanation. Once a person's claim to a good has been established, the fairness of how they are treated depends on the extent to which their claim to that good has been satisfied in comparison to other claimants. Kates (2023) draws on Broome again (1990, 95) to argue that "claims should be satisfied in proportion to their strength", and that the stronger one's claim is the more one is entitled to, and vice versa. I.e. the more one contributes to a collaborative endeavour, the greater share of the benefit one ought to receive.

On this account both sweatshop owners and workers have claims to the benefits of their cooperation and those claims should be satisfied in direct proportion to their strength. Kates (2023) remains agnostic whether sweatshop owners and workers have equal claims to the social surplus of their collaboration in virtue of their respective contribution or whether one of them is morally entitled to a greater claim than the other. Instead, Kates (2023)

emphasises that the important takeaway of his argument is that sweatshop workers are entitled to a certain division of the social surplus of their employment, even if that is more than what they voluntarily accepted. Relatedly, it would be unfair if they were to get a smaller share of the benefits than what is required by their claim.

Thus, Kates's (2023) position can be understood in the following way: Sweatshop owners have a moral obligation to pay sweatshop workers a nonexploitative wage because not doing so would be to fail paying them a wage that is proportionate to the strength of their claim, and in doing so unfairly extracting comparatively too much of the jointly produced social surplus. Thus, Kates (2023) argues that the moral obligations of sweatshop owners towards their employees does not hinge on whether a market clearing wage is beneficial enough for sweatshop workers. Nor is it morally relevant whether the sweatshop owner is doing more than anyone else to help the sweatshop worker escape poverty. What is morally relevant is that the workers gain a share of the benefits of the joint endeavour as required by the strength of their claim to them.

Kates (2023) argumentation has further important implications for the wider debates on wage exploitation and the nonworseness claim. His account attaches no fundamental moral significance to the wage which was agreed upon by the sweatshop owner and the sweatshop worker. Rather, Kates (2023) argues that the worker ought to be provided with a level of compensation that meets their claim to the division of the social surplus generated through their sweatshop labour, even if that is more than what the sweatshop owner is willing to pay them. This entitlement, on Kates (2023) picture, goes as far as to trump any lower compensation to which a sweatshop worker might have consensually agreed. Kates (2023) notes that this is why it's a mistake to defend the nonworseness claim by appealing to the fact that sweatshop workers in certain situations are paid more than workers in other sectors (cf. Powell 2014). The relevant issue is not whether sweatshop workers gain relative to non-

interaction, or whether they are better off than others. Instead, he argues that the relevant issue is whether the distribution of the social surplus between sweatshop owners and sweatshop workers itself is fair.

In sum, Kates (2023) account provides a plausible fairness-based defense of the moral significance of exploitation from the challenge posited by the nonworseness claim that focuses on the division of the surplus and benefits produced through the exploitative endeavour. However, Kates (2023) account, as well as other challenges to the nonworseness claim, can be further strengthened by a more nuanced analysis of the choice situation facing the potential sweatshop employee when deciding whether to enter sweatshop employment, rather than on the outcomes of the joint endeavour. Such an analysis allows for the development of an even more substantial challenge to the nonworseness claim, which I will begin by drawing upon recent developments in feminist ethics and particularly Hirji's (2021) recent work on oppressive double-binds.

### OPPRESSIVE DOUBLE BINDS

Hirji (2021) builds on Marilyn Frye's (1983) influential discussion of oppressive double binds to develop an account on which the central feature is that an agent's own prudential good is bound up with their ability to resist their own oppression. Both Frye (1983) and Hirji (2021) view oppressive double binds as both products and mechanisms of oppressive structures. Hirji (2021) theorises oppressive double binds as choice situations in which no matter what the agent do they become a mechanism in their own oppression. Conceived in this manner, oppressive double binds constrain an individual's agency, while at the same time preserving their autonomy.

Oppressive double binds create a choice between pursuing a short term prudential good by co-operating with an oppressive norm, or resisting and suffering harms or



punishment which may affect one's long-term ability to resist oppression (Dunne & Kotsonis 2023). Regardless of which of these two choices is made the end result is the same: the existing oppressive structure remains and the individual making the choice becomes a 'mechanism in their own oppression' (Hirji, 2021, 653). Hirji (2021) illustrates the oppressive mechanism in play in oppressive double binds using the following example:

*“Imagine you are an untenured professor and the only woman and person of color among the faculty in a philosophy department. You are frequently approached by students, typically women or members of other underrepresented groups, looking for mentorship and emotional support as they navigate their academic experience. While you believe this service work is valuable with a view to increasing the representation of minorities in philosophy, it is also emotionally draining and takes significant time away from your own research. You feel trapped. If you do this sort of mentorship work, you help diversify the field in a way that will be better for you and other members of underrepresented groups. Moreover, if you refuse to do this work, you indirectly help to maintain a status quo in which women and people of color like yourself remain dramatically underrepresented and underserved. But by doing this service work, you compromise your own research and reinforce a system where disproportionate burdens are placed on women and people of color, making them less likely to succeed in the profession.”*

(Hirji 2021, 643-644)

This example Hirji (2021) takes to be a paradigmatic example of an oppressive double bind. It illustrates how oppressive double-binds are not simply choice situations in which there are no good options available, as each of the options available to the untenured professor carry at least some value. Rather, oppressive double binds are choices situation in which the agent is situated as a mechanism of their own oppression no matter what choice they make. In the example above, the agent either indirectly helps maintain the status quo for

underrepresented groups in the profession, or they reinforce a system where disproportionate burdens are placed on marginalised individuals. The individual's agency is curtailed as they are presented with an imperfect choice situation in which no matter what choice they make, they undermine their own interests. In genuine oppressive double binds, the agent is forced to choose between cooperating with or resisting an oppressive norm, and because of the way their prudential good is bound up with their ability to resist oppression, they end up reinforcing their own oppression no matter what they do (Hirji 2021). This is the core mechanism of oppressive double binds. They are choice situations in which the agent, no matter which choice they make, compromise their own prudential good and ultimately their ability to resist oppression.

Oppressive double binds are not necessarily choice situations in which the agent is forced to choose between a morally preferable and a prudentially preferable option. Rather, there are morally and prudentially relevant considerations in favour and against each of the options available. It would be a mistake to think that the choices available to the professor above are meaningless or futile. Each of the available choices include important considerations, both moral and prudential, and harbour the potential for significant value to both the professor themselves and others. For example, choosing to spend one's time on mentorship might prove to be of real significance to the graduate students that seek support, and could play an important role in some of them remaining in the relevant academic field. Whereas choosing to focus on one's own research and limit the time one spends to further the interests of others can bring about both significant epistemic and personal benefits. So, while double binds to some extent position the agent as damned regardless of which choice is made, it would be wrong to think that each available choice is bad in the same way and therefore the choice is meaningless (Hirji 2021).

One of the main strengths of Hirji's (2021) account is that it centres that agents can find themselves in double binds even if they are not coerced or manipulated. Rather, many oppressive double binds involve fully informed, rational agents freely choosing from a range of distinct options, but nonetheless finding their agency constrained and themselves becoming a vehicle of their own oppression.

One might worry that it is farfetched to compare choice situations facing untenured professors choosing whether to help their students with those facing potential sweatshop workers. However, I am not interested in a comparison here, but rather the underlying oppressive mechanism. Oppressive double binds are ubiquitous across many domains (Hirji 2021), and as I will argue in the next section, including in cases of wage exploitation. The underlying mechanism of oppression, I will argue, is the same in the choice situations facing, at least some, potential sweatshop employees. While the mechanism of oppression is the same, the change in context of the choice situation from educational settings in North America to sweatshops, makes the moral stakes of the choice situations facing potential sweatshop employees even more alarming. Structural and contextual factors, often in relation to the situatedness of the agents involved in an interaction, influence how morally concerning that interaction is, and when it comes to sweatshop employment the moral stakes are undoubtedly high.

Oppressive double binds, I will argue, constitute a significant challenge for those defending the moral permissibility of sweatshops and wage exploitation, and in extension for the nonworseness claim. The arguments I pursue in this article not only home in on this challenge, but can also fruitfully be situated alongside the most refined of the extant challenges to the nonworseness claim, such as those levied by Kates (2023) and Berkey (2021). Thus, my aim here is not only to develop a novel challenge to the nonworseness

claim, but to develop an account that also adds further force to what I take to be the strongest arguments against the nonworseness claim.

#### OPPRESSIVE DOUBLE BINDS AND THE NONWORSENESS CLAIM

By drawing on Hirji's (2021) conception of double binds, it is possible to cast doubt on the claim that it cannot be worse, morally speaking, to engage in a voluntary and mutually beneficial transaction, than to refrain from transacting altogether. Particularly in cases that take place under conditions of structural injustice, such as those discussed by Berkey (2021). Bringing together Hirji's (2021) account of oppressive double binds and the extant literature on the nonworseness claim highlights morally salient dimensions of wage exploitation that have hitherto received comparatively little attention.

It is likely that the choice situations facing individuals considering whether to accept working in sweatshop conditions constitute genuine double binds. This seems particularly likely in cases taking place under conditions of structural injustice. It seems that prospective sweatshop employees are facing a choice situation in which they either 'opt in' to being exploited working in sweatshop conditions, or they actively choose to avoid exploitation but in doing so maintain the destitution that led to sweatshop employment being a beneficial option for them. In this sense, the prospective sweatshop worker's prudential good is bound up with an oppressive norm, in this case wage exploitation and their willingness to be exploited. Regardless of which of the two choices the prospective sweatshop worker makes, the existing oppressing structure and norm remains. They either accept working in sweatshop conditions and being exploited and thus reaffirm that there are agents willing to accept such working conditions or choose to remain in such destitution that accepting exploitation and sweatshop employment would be prudentially beneficial. In this sense, it seems plausible to think that prospective sweatshop workers find themselves in choice situations where they are made mechanisms of their own oppression.

Conceiving of the choice situation facing individuals considering sweatshop employment as oppressive double binds allows for a further strengthening of Kates (2023) response to the nonworseness claim. It is possible to grant both of Kates' (2023) main claims, and yet put further pressure on the ethical soundness of the nonworseness claim. I will do so by offering an account of what is wrong, morally speaking, with the choice situation facing the potential sweatshop employee. I will begin my argument from three important considerations pertaining to the nonworseness claim elucidated by Kates (2023).

Kates (2023, 683) notes the centrality of the question of how it can be morally worse to exploit the global poor than not to transact with them at all when exploitation is both voluntary and makes them better off? When conceiving of the choice situation, or at least some of the choice situations, facing the global poor considering exploitative employment as oppressive double binds, an immediate answer arises: It can be morally worse as it creates a choice situation in which the agency of the global poor is perniciously curtailed, and they are made into vehicles of their own oppression as their choice is between continued destitution or exploitation. The choice situation facing the prospective sweatshop worker is one between cooperating with an oppressive norm, in this case sweatshop exploitation, or resisting, but in choosing to resist they suffer harm. Because of the way the agent's prudential good is bound up with their ability to resist oppression, they end up reinforcing their own oppression no matter which choice they make. Thus, while the autonomy of the prospective sweatshop worker is largely intact, the 'imperfect choice' they face nonetheless constrain their individual agency. In this sense, the oppressive double bind is particularly pernicious as it co-opts the agency of the individual agent while providing an illusion of freedom (Hirji 2021).

Without understanding the structures underlying oppressive double binds, it might be tempting to locate responsibility at the level of individual agency, rather than at the level of the oppressive structures that make it impossible for an agent to not be complicit in their own

oppression (Hirji 2021). This calls into question accounts defending sweatshop employment that emphasise the consent of the employee to enter such an employment arrangement (Zwolinski 2007). It also calls into question the nonworseness claim itself given the central role of consent in the majority of formulations of the claim. This is instance in which my concerns align with and extend those of Kates (2023), who argues that consent is a necessary, but not sufficient condition of the moral permissibility of market transactions. Kates (2023) emphasises that this is a particularly relevant consideration in cases of sweatshop employment given the likely weak bargaining power and lack of acceptable alternatives of the sweatshop worker.

As noted in section 3, Kates (2023) argues that sweatshop owners have a moral obligation to pay sweatshop workers a nonexploitative wage that is proportional to the strength of their claim to the social surplus of the joint venture. However, the normative reasons underlying the moral obligation that Kates (2023) argues for might be even stronger than he allows for. There is reason to think that the moral obligation to pay a nonexploitative wage can also be based on a duty to avoid placing marginalised individuals in oppressive double binds. Paying a fair or non-exploitative wage as argued for by Kates (2023) would, at least *prima facie*, dissolve the double bind of the choice situation facing the prospective employee, as their choice would no longer be between destitution and cooperating with the oppressive norm of exploitative employment, but between destitution and fair employment. Thus, one might consider that not subjecting agents to oppressive double binds is part of treating them fairly.<sup>1</sup> Conceptualising the choice situations facing prospective sweatshop employees as oppressive double binds thus allows for granting Kates (2023) main claims, or

---

<sup>1</sup> Thank you to Linh Mac for pointing this out.

even adopting his conception of fairness, while at the same time same placing further strain on the soundness of the nonworseness claim.

However, Kates (2023) account is not the only account challenging the nonworseness claim that can be expanded and strengthened through a detailed analysis of the choice situation facing prospective sweatshop employees. A natural starting point for such a discussion is previous arguments that emphasise the ethical significance of these choice situations such as that of Snyder (2013) to which I turn now.

### OPPRESSIVE DOUBLE BINDS AND DEMEANING CHOICES

Snyder (2013) expands the debates around the wrongness of exploitation by highlighting a set of additional ethical concerns that can arise in cases of mutually beneficial exploitation. In doing so, Snyder (2013) explicitly addresses the nonworseness claim while further exploring the moral terrain of exploitation. Similar to the account I develop in this article, Snyder (2013) is mainly concerned with the choice situation facing prospective sweatshop employees. This sets our discussions apart from many of the responses to the nonworseness claim that are focused on the terms or the outcomes of interactions between sweatshop owners and sweatshop workers.

According to Snyder (2013), cases in which persons desperately seek out and gratefully accept exploitative interaction raises special moral concerns, and that the voluntariness of the interaction is key to understand how and why some exploitative interactions become degrading to those exploited. As noted above, Snyder (2013) emphasises the moral importance of the choice-situation facing the potential exploitee. He argues that exploitative offers that do not allow the exploitee sufficient progress towards a decent minimum of human functioning creates a ‘demeaning choice’. Demeaning choices are choice situations in which the potential exploitee either has to accept a status quo that is insufficient

for a decent minimum of human functioning, or an offer that insufficiently improves the exploitee's progress towards a minimum of decent human functioning.

Snyder (2013) highlights the active participation of the demeaned person in demeaning interactions and argues that voluntary participation has been used to disguise moral wrongdoing of other parties to the interaction. Importantly Snyder (2013), like Hirji (2021), notes that the exploitee may be acting rationally when opting into exploitation given a lack of preferable, or even good, options. In Snyder's (2013, 350) own words: 'exploitees voluntarily go along with the wrong because it is the best of a range of terrible—or what I call demeaning—choices.' This is an obvious similarity between my account of the choice situation facing potential sweatshop employees as oppressive double binds, and Snyder's (2013) conception of them as 'demeaning choices'. Another important shared insight is that Snyder (2013), like Hirji (2021), recognises that these choice situations play a role in the continuation and entrenchment of unjust structures and institutions.

However, there are important differences in how Snyder (2013) thinks of the structure of the choice situation facing potential sweatshop employees compared to the account I develop drawing on Hirji's (2021) conception of oppressive double-binds. For Snyder (2013), when a person A offers terms of transaction that are less favourable to another person B, than those that A is obligated to give B, A merely adds another morally unacceptable option to B's already morally unacceptable set of alternatives. This holds even if the offer A presents is better compared to other existing alternatives. These options, for Snyder (2013), are demeaning in the sense that they treat B as if they have a lesser moral claim to resources necessary to achieve basic human functioning than other human persons or is less entitled to the benefits of just social and political institutions. Thus, for Snyder (2013, 350-351), a demeaning offer takes place when:



- (I) Person B is below the threshold level for well-being in some dimension X or unjust institutions reduce B's access to X.
- (II) A presents B with an offer that will make B worse off against a baseline of what B should receive from A for X, where X will remain below the morally acceptable threshold.

Principally an action will be demeaning towards another if it establishes them as of a reduced moral standing (Snyder 2013). In cases of demeaning choices, by offering B worse terms for a transaction than they are entitled to, A acts in accordance with a standard where B has lesser moral standing and weaker claims on A's actions than that to which others are generally entitled (Snyder 2013, 351). In cases of mutually beneficial exploitation, the exploiter might indeed increase the opportunities and welfare of the exploited party through the exploitative transaction, but the increased range of options does not suffice to discharge the exploiter's obligations towards the exploited. Snyder (2013) notes that there are many ways in which an action can demean another person, often dependent on contextual factors. However, he suggests that these interactions typically involve an exploitee who lacks a threshold level of well-being in some dimension of human functioning relevant to the transaction, or someone who is relevantly disadvantaged by unjust institutions.

One of the benefits of conceptualising the choice situations facing potential sweatshop workers as oppressive double binds rather than as 'demeaning choices' lies in that doing so centres agency, rather than Snyder's (2013) emphasis on decent human functioning. Snyder's (2013) focus on decent human functioning, while undoubtedly a very important consideration, opens up space for substantial disagreements of what constitutes the threshold for 'decent human functioning', and thus will undoubtedly give rise to debate over demarcations. In contrast, my account sidesteps such debates all together, while retaining the strength of the ethical challenge pertaining to the choice situations that potential sweatshop employees find

themselves in. On my view, one does not have to commit oneself to a specific position of what the threshold for decent human functioning is. Rather, by conceiving of these choice situations as oppressive double binds, we can assail the morality of these choice situations on the basis of how they shape the agency of potential sweatshop employees, and their role in maintaining structural injustice and unjust institutions. A topic I will return to in the next section.

As noted above, cases of mutually beneficial exploitation can be rationally accepted by those exploited as they do provide some benefits. It is important to note that Snyder (2013), much like Hirji (2021) is explicit that there is no reason to call into doubt the voluntariness of these interactions, nor to think of them necessarily as cases of coercion. Rather, these are choice situations that make the exploitee an active participant in an interaction that serves to demean them. The exploited individual's situation is for Snyder (2013) partly demeaning because they have chosen that state for themselves, albeit from a selection of equally, or even more, degraded states. Snyder's (2013) account and mine are similar in the sense that we both see something morally problematic in that the exploitee's being made active participants in their own debasement, or in Hirji's (2021) words, made a vehicle for their own oppression.

On Snyder's (2013) picture mutually beneficial exploitation wrongs the exploitee not only by making them worse off than they ought to be, but also by making them participants in their own degradation. Snyder (2013) argues that these are cases in which a situation is created where the exploitee's participation in the interaction contributes to its demeaning quality, as it creates a form of 'surface endorsement' of the treatment they receive. That is, through their choices exploitees assist in expressing that they have less value than other persons and are not owed the material goods needed for basic human functioning. Conceiving of the choice situations facing potential sweatshop employees as oppressive double binds

allows us to further explore the relevant moral terrain here. It is not only through accepting the offer of sweatshop employment that one becomes an active participant in demeaning oneself. Rather, thinking of the choice situation as an oppressive double bind highlights that no matter which choice the agent makes, they become a vehicle of their own oppression. Either they ‘opt in’ to exploitation, or they choose to avoid exploitation but in doing so further their own destitution. Thus, thinking of these choice situations as oppressive double binds illustrate that the choice situations have a demeaning quality no matter what choice is made, and not only if exploitation is the actual preferred choice.

Thinking of the choice situations facing potential sweatshop employees as oppressive double binds also plausibly provides reason to reject the claim that it cannot be morally worse for A to make a mutually beneficial exchange with B than do nothing at all for B. As Snyder (2013) notes, when defenders of certain exploitative interactions note that these interactions are voluntary and mutually beneficial, they merely confirm the imperfect choices available to the potential exploitee. The fact that some who engage in exploitative interactions choose exploitation, and are glad to do so, should not be taken as a morally meaningful endorsement. In fact, as Snyder (2013) rightly points out, what matters morally is whether they should have been left with that set of choices in the first place. Caching out the choice situation facing potential sweatshop employees as oppressive double binds, or as demeaning choices if one accepts the normative commitments that come with Snyder’s account (2013), highlights how interactions between two parties can be voluntary, mutually beneficial, and yet deeply morally problematic.

However, Hirji’s (2021) discussion of oppressive double binds comes apart with Snyder’s (2013) account of demeaning choices in their view of responsibility of the exploited. Snyder (2013, 356) argues that demeaning choices can entail a form of wrongdoing on the part of the exploitee, which stands in stark contrast to Hirji’s (2021) emphasis that there is no

survival or success strategy to oppressive double binds that the subject can take that does not compromise their own success or security in the long run. Snyder (2013) argues that there is reason to think that the demeaned party may have an obligation to refuse, or at least offer resistance to, a demeaning choice in certain circumstance. This obligation, he argues, stems from a political obligation to help reform the structural injustices that have made them and others vulnerable to being placed in a demeaning position. In this sense, Snyder (2013), follows Iris Marion Young's (2011) argument that those disadvantaged by structural injustice may still have duties to work towards structural reforms in virtue of their participation in unjust systems and their interest in achieving reform. It is important to note that Snyder (2013) argues that there are limits to this obligation as such an obligation might otherwise become unreasonably difficult for those already in disadvantaged positions and given the potential costs of moral leadership. Rather, he argues that demeaned agents fall under a minimal obligation to work towards social change and to protest demeaning treatment when such options are available and do not require undue personal sacrifice.

Hirji (2021) in contrast emphasises how no matter what choice is made, the agent undermines their own prudential good and their ability to individually resist the oppressive system. They either acquiesce with the existing oppressive norms and system, or they reaffirm their vulnerability and status quo. Hirji (2021) notes that in situations that constitute true oppressive double binds there is no success strategy available for the individual that does not compromise either their own success or their security and well-being. This she argues means that we should be careful to criticise ourselves and others for the imperfect choices made in contexts where the only available choices are imperfect. It becomes easy to fall into fallacies of criticising members of oppressed groups for acting in ways that reinforce their own oppression, or for members of oppressed groups to criticise themselves for becoming complicit in their own oppression (Hirji 2021). As Hirji (2021) notes, with an appropriate

understanding of the structure of oppressive double binds, we can avoid locating responsibility at the level of individual agency, and instead focus on the oppressive structures that make it impossible for the agent not to become complicit in their own oppression.

This brings to the fore the role of existing unjust structures for thinking about the ethics of sweatshop labour and the wrongs of exploitation. In the upcoming section I will situate the arguments I pursue in relation to existing scholarship that also emphasises the role of structural injustice in wage exploitation. I do so with particular focus on Brian Berkey's (2021) recent account and make the case for a negative duty held by the beneficiaries of structural injustice towards the victims of those same injustices.

#### OPPRESSIVE DOUBLE BINDS AND STRUCTURAL INJUSTICE

Berkey (2021) argues that it is possible to maintain a position on which many sweatshop employees are wrongfully exploited, while at the same time accepting the claim that engaging in a voluntary and mutually beneficial transaction with a person in need cannot constitute morally worse treatment of that person than doing nothing at all to benefit her. He argues that we can do so by accepting that multinational corporations have positive duties to employ or otherwise benefit the global poor. He grounds these duties in the fact that potential sweatshop employees are likely victims of structural injustice, while multinational corporations typically benefit from structural injustice (Berkey 2021). The account I argue for across this article puts pressure on Berkey's (2021) defence of a stronger version of the nonworseness claim in that it adds further important moral considerations for how we ought to think about the morality of the choice situations facing potential sweatshop workers. However, at the same time my view is well situated as a complement the positive moral duties towards the global poor that Berkey (2021) argues for. In the following section I will explore the relationship between the two accounts, and in doing so argue that we ought to accept that sweatshop employers have an

additional negative duty, in addition to the positive duties outlined by Berkey (2021), to not expose victims of structural injustice to oppressive double binds.

Central to Berkey's (2021) account, much like my own, is the thought that sweatshop workers are likely to be victims of structural injustice. That sweatshop employees are likely to be victims of structural injustice has been a longstanding concern among scholars and has been discussed in detail by Sample (2003), Young (2004) and Preiss (2014) amongst others. Sample (2003, 82) notes that taking advantage of existing injustices constitute an important form of exploitation. Relatedly, Preiss (2014, 61-62) argues that a central flaw in the economic case for sweatshops, such as that defended by the proponents of the nonworseness claim, ignores the relevance of conditions of background justice to sweatshop relationships and worker exploitation. These conditions, Preiss (2014) notes, include the structural, historical and institutional backdrop in which employees accept sweatshop wages and working conditions. These background conditions also shape the choice situations facing potential sweatshop employees. Preiss (2014, 62) argues that for a defence of sweatshops to hold, it has to be able to address claims stating that while sweatshop exchanges might be mutually beneficial in the status quo, they are exploitative if they take advantage of structural or historical injustices. Importantly, Preiss (2014) notes that these injustices are neither natural nor inevitable, but rather a product of background political, social, and economic institutions.

As noted in section 2, Berkey (2021) develops a more specific and stronger version of the nonworseness claim than the one(s) generally discussed in the literature. He argues that whilst there are good grounds for rejecting the general versions of the nonworseness claim, there is a version of the nonworseness claim that we should accept:

*Nonworseness claim (W):* If it is permissible for A to refrain from transacting with B, then transacting with B in a way that is both consensual and mutually beneficial cannot wrong B and only B.

Berkey (2021) argues that if this version of the nonworseness claim holds, then we ought to accept that firms that employ workers in sweatshop conditions do not wrong only those workers, but also others. This puts pressure on previous accounts of the wrong of sweatshop employment that have implied that it is only those who are actually employed that are wronged.

The account I develop in this paper does indeed constitute a challenge to *Nonworseness claim (W)* on the grounds that subjecting B to an oppressive double bind is to wrong them and only them, even if it would be morally permissible to not interact with B at all. However, things are not quite as straight forward as they seem. Thinking of the choice situation facing potential sweatshop employees as oppressive double binds does, at the same time, provide further credence to Berkey's (2021) idea that it is not only those employed that are wronged but also others. In true oppressive double binds, the agent becomes a vehicle of their own oppression no matter which choice they make. Thus, an agent facing an oppressive double bind in being offered sweatshop employment is wronged regardless of whether they choose to accept or decline the offer. Therefore, it seems plausible to think that not only are those who respond to the oppressive double bind by accepting sweatshop employment wronged but so are those who reject the offer, in virtue of both being subjected to the same oppressive double bind.

Note that my focus is once again limited to the choice-situation facing prospective sweatshop employees, and not the moral permissibility of the conditions of employment. This I take to be one of the strengths of the account I develop in this paper, namely that it is compatible with most accounts that challenge the moral permissibility of sweatshops, including both fairness- and respect-based approaches, based on the terms of employment. For example, my view is compatible with Berkey's (2021) response to the challenge of how to capture the intuition that employing impoverished workers in sweatshop conditions is both

exploitative and morally wrong. In contrast to most of the defenders of the nonworseness claim, Berkey (2021) argues that even if we endorse a version of the nonworseness claim, that should not lead us to conclude that it is necessarily permissible for firms to employ impoverished workers in sweatshop conditions. Rather, he argues that we should reject the claim that firms that could employ workers in sweatshop conditions have no moral obligation to employ or otherwise benefit impoverished people in poor countries. This, he argues, allows us to grant the stronger version of the nonworseness claim, while at the same time maintain the claim that firms that employ workers in sweatshop conditions are guilty of wrongful exploitation. He argues, that if corporations use their superior bargaining power to make potential sweatshop employees agree to work in sweatshop conditions, and do nothing else to benefit the global poor, then they are guilty of wrongful exploitation. In light of this, firms and particularly multinational corporations, have positive duties towards the global poor. That is, they ought to use the resources and capabilities at their disposal to provide impoverished people with benefits such as non-exploitative employment opportunities, at least when doing so would not come at a significant cost.

Berkey (2021) offers a number of underlying reasons for why firms and multinational corporations have positive duties to the global poor. Berkey (2021) notes that the ability to help is often treated as an important determinant of which agents are obligated to help those in need. A number of multinational corporations control vast resources and can have significant impact on the opportunities available to millions of badly off people around the world. In many cases it seems likely that wealthy corporations have greater capacity than not only wealthy individuals but also some country governments to benefit impoverished people in poor countries.

Berkey's (2021) account offers, in my mind, the strongest reason to think that multinational corporations have positive duties towards the global poor. Namely that there are



good reasons to think that potential sweatshop employees are victims of both domestic and structural injustice, and that large corporations are likely to be the beneficiaries of such injustices. Berkey (2021) argues that such corporations, in light of being the beneficiaries of injustice, ought to take steps to improve the conditions of the victims of those same injustice, given that doing so will not be extremely costly. For example, Berkey (2021) suggests that profitable multinational corporations that have placed their production in poor countries could accept lower than maximal profits and instead use the additional income made available by locating production to poor countries to for, example, pay higher wages or improve working conditions. As noted in the previous section, raising wages to a non-exploitative level would also, at least *prima facie*, be one avenue to avoid creating the oppressive double binds facing potential sweatshop employees.

Importantly, Berkey (2021) notes while the facts about structural injustice are central to thinking that multinational corporations have positive duties to the global poor and part of the explanation for why sweatshop labour is wrongfully exploitative, structural injustice also sets limits to these obligations. Berkey (2021) recognises that these complexities require further reflection. This is particularly important as structural injustices does not only constrain the agency and opportunities of those who are its victims, but what is possible for any agent, including the beneficiaries. This, Berkey (2021) notes, is widely recognised in the literature on the ethics of sweatshop employment (See for example: Young 2004; Meyers 2004; Snyder 2008; Kates 2019). Instead, he argues that it is plausible to think that agents that benefit from structural injustice are obligated, to the extent they can, to redirect the benefits that they receive to those who are the victims of that same set of injustices. In doing so, they would at the same time diminish their role as a beneficiary of injustices.<sup>2</sup> It is noteworthy that on Berkey's (2021) view, if the constraints affecting corporations are severe enough, doing as

---

<sup>2</sup> Thank you to Linh Mac for emphasising this point.

much as they can might not actually lead to very substantial changes from existing policy and practice. Nonetheless, I agree with Berkey (2021) that is important that, in principle, we would be able to claim that corporations fail to comply with their duties towards the global poor, and more importantly be guilty of wrongful exploitation, if they employed workers in sweatshop conditions despite being able to do more to benefit the global poor.

In light of thinking of the choice situation facing potential sweatshop employees as a form of oppressive double bind, it seems reasonable to think that the positive duties for corporations to use the resources and capabilities at their disposal to provide impoverished people with benefits ought to be complemented by a range of negative duties. For my purposes here, I will suggest one such negative duty that follows from the arguments I have pursued in this article which could fruitfully be combined with other both positive and negative duties. I propose that the beneficiaries of structural injustice have a duty to not subject the victims of structural injustice to oppressive double binds. Whilst Berkey's (2021) positive duties respond to wider structural considerations, the negative duty I propose tracks the specific moral landscape of the choice situations potential sweatshop employees are facing. This duty would have far-reaching consequences for the moral permissibility of interactions under conditions of structural injustice. For example, it would entail that employers seeking to employ the global poor would, *prima facie*, be under obligation to make sure that the options available in the choice situation facing the potential employee at minimum avoids making them vehicles of their own oppression. As argued in the previous section, offering non-exploitative wage and working conditions could be one avenue for doing so.

However, the possible constraints produced by structural injustices for both victims and beneficiaries require a more nuanced account of this negative duty. The duty to not subject the victims of structural injustice to oppressive double binds, similar to Berkey's

(2021) positive duties, would have to be sensitive to the varying demands of different contexts and situations. Particularly, as Hirji (2021) cautions, in some situations and contexts it simply might be impossible to avoid the creation, or reaffirmation of existing oppressive double binds, and in extension existing oppressive structures. Therefore, I propose that that the beneficiaries of structural injustice have a *prima facie* duty to not subject the victims of structural injustice to oppressive double binds. Where this duty is conditional on the possibility of avoiding oppressive double binds, and other important considerations such as the costs involved for all parties in specific interactions.

One might worry that this would push corporations that could benefit the global poor towards non-interaction. It is important to note that this negative duty is not intended to be the only normative consideration, but rather one that sits alongside and in relation to other duties and important moral values. As Berkey (2021) notes, the positive duties he develops are not special obligations for just multinational corporations that operate sweatshops, but rather general obligations that are possessed by any agents with similar capabilities. Similarly, the negative duty argued for in this article would not constitute a special obligation, but rather a general one and one that sits alongside other obligations. Thus, when combined with for example Berkey's (2021) positive duties it would not promote non-interaction, but rather more robust and ethically sound interactions under the non-ideal conditions of a world shaped by structural injustice.

Importantly, the *prima facie* duty to not subject victims of structural injustice to oppressive double binds, is not only compatible with Berkey's (2021) account but also many other accounts developed in the literature on the ethics of exploitation and sweatshop employment. For example, consider Kates (2023) recent account discussed earlier in this article. As noted in section 5, on the account I develop in this article it is possible to grant all Kates (2023) main claims, while still putting further pressure on the ethical permissibility of

sweatshop employment by conceptualising the choice situations facing potential sweatshop employees as oppressive double binds. As I argue in section 5, there are good reasons to think that the moral obligation to pay a nonexploitative wage is not only based on considerations of fairness, but also to avoid subjecting marginalised individuals to oppressive double binds. Paying a non-exploitative wage would, at least at face-value, dissolve the double bind of the choice situation facing the prospective sweatshop employees, as their choice would no longer be between destitution and cooperating with the oppressive norm of exploitative employment, but rather between destitution and fair employment.

## CONCLUSION

This article draws upon recent developments in feminist ethics to add to, and strengthen, existing challenges to the nonworseness claim. I introduce oppressive double binds as significant moral concerns, particularly in conditions of structural injustice, and argue that they constitute a significant challenge for defenders of the nonworseness claim. I develop an account of the structure of the choice situation facing potential sweatshop employees as oppressive double binds. I argue that these choice situations are morally problematic as they perniciously constrain the agency of those subjected to them as well as reproduce and maintain structural injustice and oppression.

I have argued for three main claims. First, we ought to think of the choice situations facing potential sweatshop employees as oppressive double binds. In doing so I have emphasised the moral importance of the choice situations facing victims of structural injustice, including potential sweatshop employees, thus adding to the extensive literature focused on different morally relevant dimensions of the terms and outcomes of sweatshop employment. Second, I argue that choice situations structured as oppressive double binds are morally problematic as they perniciously constrain the agency of those subjected to them as well as reproduce and maintain structural injustice and oppression. Lastly, I have argued for a

negative *prima facie* duty to not subject the victims of structural injustice to oppressive double binds held by the beneficiaries of structural injustice towards the victims of those same injustices. I think of this duty as complementing, and compatible with, other important moral considerations such as the positive duties argued for by Berkey (2021) and/or the fairness-based accounts of the wrong of sweatshop employment as argued for by Kates (2023).

## REFERENCES

- Arnold, Dennis, and Norman E. Bowie. 2003. "Sweatshops and Respect for Persons." *Business Ethics Quarterly* 13 (2): 221–42.
- Berkey, Brian. 2021. "Sweatshops, structural injustice, and the wrong of exploitation: Why multinational corporations have positive duties to the global poor." *Journal of Business Ethics*, 169, 43-56.
- Berkey, Brian. 2020. "The Value of Fairness and the Wrong of Wage Exploitation." *Business Ethics Quarterly* 30 (3): 414–29.
- Broome, John. 1990. "Fairness." *Proceedings of the Aristotelian Society* 91: 87–101.
- Dunne, Gerry, and Alkis Kotsonis. 2023. "Epistemic exploitation in education." *Educational Philosophy and Theory*, 55(3), 343-355.
- Faraci, David. 2019. "Wage Exploitation and the Nonworseness Claim: Allowing the Wrong, to Do More Good." *Business Ethics Quarterly* 29 (2): 169–88.
- Frye, Marilyn. 1983. *Politics of reality: Essays in feminist theory*. Crossing Press.
- Hirji, Sukaina. 2021. "Oppressive double binds." *Ethics*, 131(4), 643–669.
- Hughes, Robert C. 2024. "Exploitation and the Desirability of Unenforced Law." *Business Ethics Quarterly*, 34(3), 471-493.
- Kates, Michael. 2023. "Sweatshops, Exploitation, and the Nonworseness Claim." *Business Ethics Quarterly*, 33(4), 682-703.
- Kates, Michael. 2019. "Sweatshops, exploitation, and the case for a fair wage." *Journal of Political Philosophy*, 27(1), 26–47.

- Malmqvist, Eric. 2017. "Better to Exploit than to Neglect? International Clinical Research and the Non-worseness Claim." *Journal of Applied Philosophy* 34 (4): 474–88.
- Meyers, Chris. 2004. "Wrongful Beneficence: Exploitation and Third World Sweatshops." *Journal of Social Philosophy* 35 (3): 320–33.
- Powell, Benjamin. 2014. *Out of Poverty: Sweatshops in the Global Economy*. Cambridge: Cambridge University Press.
- Preiss, Joshua. 2014. "Global labor justice and the limits of economic analysis." *Business Ethics Quarterly*, 24(1), 55–83.
- Sample, Ruth J. 2003. *Exploitation: What it is and why it's wrong*. New York: Rowman and Littlefield.
- Snyder, Jeremy. 2013. "Exploitation and Demeaning Choices." *Politics, Philosophy, and Economics* 12 (4): 345–60.
- Snyder, Jeremy. 2008. "Needs Exploitation." *Ethical Theory and Moral Practice* 11 (4): 389–405.
- Wertheimer, Alan. 1999. *Exploitation* (revised edition). Princeton, NJ: Princeton University Press.
- Wertheimer, Alan. 2011. *Rethinking the Ethics of Clinical Research: Widening the Lens*. Oxford: Oxford University Press.
- Young, Iris Marion. 2011. *Responsibility for Justice*. New York: Oxford University Press.
- Young, Iris Marion. 2004. "Responsibility and global labor justice." *Journal of Political Philosophy*, 12(4), 365–388.
- Zwolinski, Matt. 2007. "Sweatshops, Choice, and Exploitation." *Business Ethics Quarterly* 17 (4): 689–727.