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**BRIDGING EXPLOITATION AND STRUCTURAL INJUSTICE
THE EXAMPLE OF CLINICAL RESEARCH**

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BRIDGING EXPLOITATION AND STRUCTURAL INJUSTICE THE EXAMPLE OF CLINICAL RESEARCH

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ABSTRACT

Health research enterprises in low-and middle-income countries have frequently been associated with the moral wrong of exploitation. Accounts that predominate in the current research ethics literature frame exploitation as a transaction-specific concept irrespective of its structural context. This has led to the common notion among applied philosophers that sponsors, –usually pharmaceutical companies and national research agencies from wealthy countries–and other agents are not responsible to remedy structural injustice. This paper addresses the conceptual connection between exploitation and structural injustice in the context of off-shored international health research. I offer a new account that conceptually links structural injustice to a subset of exploitative transactions I will call “systemic exploitation”. To advance my position, I will juxtapose structural theories and transactional approaches to exploitation and seek a new account that gives credit to the structural concerns without animating the transactional critique. This has considerable implications for the moral vindication to remedy background injustice.

Keywords: exploitation, structural injustice, off-shored clinical research, international drug research, research in poor populations.

RESUMEN

Los emprendimientos de investigación en salud en países de ingresos medianos y bajos han sido frecuentemente asociados al problema moral de la explotación. Las teorías que predominan en la literatura ética actual enmarcan la explotación como un concepto específico de las transacciones independiente de su contexto estructural. Esto ha llevado a la noción común entre quienes practican la filosofía aplicada según la cual los *sponsors* – usualmente compañías farmacéuticas y agencias de investigación de países ricos- y otros agentes no son responsables de remediar la injusticia estructural. Este trabajo se concentra en la conexión conceptual entre explotación e injusticia estructural en el contexto de la investigación clínica internacional *off-shore*. Ofrezco una nueva teoría que conecta conceptualmente la injusticia estructural con un subconjunto de transacciones explotativas que yo denominaré “explotación sistémica”. Para defender mi posición, combinaré teorías estructurales y enfoques transaccionales sobre la explotación y buscaré desarrollar una nueva posición que le dé crédito a las preocupaciones estructurales sin ser vulnerable a la crítica transaccional. Esto tiene considerables implicaciones para la defensa moral del deber de remediar la injusticia de trasfondo.

Palabras clave: explotación, injusticia estructural, investigación clínica *off-shore*, investigación farmacéutica internacional, investigación en poblaciones pobres.

1. Introduction

Exploitation in international health research is a recurrent moral concern among moral philosophers and activists. They are concerned that research participants, usually impoverished individuals from low-and-middle income countries (LMICs), can easily be made targets of exploitative transactions initiated by economically more powerful researchers and sponsors, most notably from the affluent world (Emanuel et al. 2004, Hawkins and Emanuel 2008, Wertheimer 2010, Mitra 2013, Malmqvist 2013, Wenner 2016). Accounts that predominate in the current

research ethics literature frame exploitation as a transaction-specific concept irrespective of its structural context. This has led to the common notion among applied philosophers that sponsors –usually pharmaceutical companies and national research agencies from wealthy countries– and other agents are not responsible to remedy structural injustice.

My aim of this paper is threefold: First, I want to inquire what role (if any) structural injustice conceptually plays for the correct understanding of exploitation in different theoretical frameworks by juxtaposing traditional structural accounts of exploitation and transaction-specific theories. Second, my main goal is to offer a novel conceptual account that “reconciles” structuralists and transactionalists rather than siding with one of the two positions. Third, I will discuss the ethical and practical implications that result from my account applied to the case of international health research; and most notably, the moral concern to remedy structural injustice.

Before proceeding, I would like to make some clarifying remarks. The charge of exploitation in research usually addresses voluntary and mutually advantageous yet exploitative interactions. Consider the following reconstruction of an exploitative clinical trial that mimics frequently discussed cases in the literature (Ballantyne 2005, Hawkins and Emanuel 2008):¹

Clinical Trial: B suffers from a serious but treatable disease. Because he is poor and lives in a country that doesn’t provide its citizens with basic health care, he lacks access to effective treatment. Pharmaceutical company A wants to conduct a clinical trial of a new and promising treatment for B’s condition. In order to reduce costs and get more convincing results, A prefers to test the treatment against a placebo rather than against an existing active treatment. However, A predicts that a placebo-controlled trial wouldn’t pass ethical review

1. I reconstruct Erik Malmqvist’s (2013, 558) case example *Clinical Trial*.

in a country where patients receive the existing treatment because it would require withholding that treatment from subjects who would otherwise get it. So, it is decided to conduct the trial in B's country instead. When approached with the offer to participate in the trial, B accepts. He is fully aware of what participation entails. He knows that he will only have a 50% chance of receiving the experimental treatment, but figures that a 50-50 chance is better than no chance at all [...]" (Malmqvist 2013, 558, edited)

The so called transactional or transaction-specific view on exploitation interprets *Clinical Trial* as a paradigmatic case of wrongful exploitation because party A, the pharmaceutical company, takes unfair advantage of party B, the research subject. That is, A treats B unfairly, degradingly, or in some objectionable way within a particular transaction.² Such transaction-specific theories of exploitation have excessively been represented in current applied ethics debates. At the same time, they are often claimed to obfuscate the importance of structural injustice for the concept of exploitation. To give an example, Wertheimer's (1999, 2008) theory of exploitation seems to prevail in the standard literature related to clinical research, even though it is one of the most controversial accounts (Emanuel et al. 2004, Emanuel et al. 2008, London 2005, Mitra 2013, Snyder 2012, Malmqvist 2013).

Many structural opponents to a purely transaction-specific account of exploitation argue that exploitation cannot solely be framed as a moral wrong within the narrow limits of a particular transaction, but must be considered as a direct consequence of so called structural or "background" injustices (Wenner 2016, Young 2011, 2013, Cohen 1988, 1989, 1995, Roemer 1996, Sample 2003, see Zwolinski 2012). Background injustices subsume a wide range of structural factors, such as

2. In section II, I will offer a brief overview of transaction-specific accounts of exploitation.

lacking education, insufficient access to health care, political and economic instabilities, or distributive inequalities (Malmqvist 2013, 560).

To develop my own account, I will proceed as follows. In section 2, I will present a brief overview of different concepts of exploitation, this is, *structural* and *transactional* accounts. I will reconstruct the conceptual disagreement in the debate between defenders of the transaction-specific and advocates of the structural accounts of exploitation. I conclude that the critique, urged by transactionalists towards structuralists makes sense: exploitation cannot be made the *necessary* or *sufficient* result of background injustice. In section 3, I will support the structuralists' main moral intuition, namely, that background injustice matters to exploitation. Therefore, I will introduce a probabilistic framework that aims to conceptually link background injustice and a subset of exploitation I will call "systemic" exploitation. Part of my account is to distinguish between "systemic" exploitation characterized as pervasive exploitative events that are probabilistically induced by background injustice, and "non-systemic" exploitation framed as exploitative events that remain uncorrelated to structural concerns. In section 4, I will discuss the implications of my account with respect to (i) the importance of background injustice (ii) moral responsibilities of different actors to prevent and remedy exploitation, and (iii) the legal implications to permit or ban exploitation, as well as how these implications apply to international health research.

2. Transactional and structural accounts of exploitation

When referring to the concept of transaction-specific exploitation, authors claim that there exists a morally wrong, non-reciprocal relationship between two individual agents A

and B.³ In the example *Clinical Trial*, the exploited party B voluntarily yields a net benefit from the exploitative transaction. However, what is morally wrong about such mutually beneficial and consensual yet exploitative transactions? A general answer is given by the following formula of transaction-specific exploitation (Wertheimer 1999, 232):

A wrongfully exploits B if A “takes unfair advantage” of B.

Philosophers disagree about the specific content of this formula. Some hold that the essential wrong of exploitation as “taking unfair advantage” consists in the violation of some norm of fairness (Wertheimer 1999, 2010; Mayer 2007, Valdman 2009). This is widely known as the “transactional fairness” approach. For instance, Wertheimer’s theory of exploitation as transactional unfairness has had a huge influence on biomedical research ethics (Wertheimer 2010, Emanuel et al. 2004, Hawkins and Emanuel 2008, Malmqvist 2013). In turn, the Kantian approach argues that exploiters wrong their victims not because they treat them unfairly, but because they fail to respect them as persons (Wood 1995, Sample 2003). Others put forward what might be called the domination view, which conceives of exploitation as domination for self-enrichment (Vrousalis 2013, 2016). Finally, there are some authors who combine these approaches, holding that exploitation cannot be captured by a single interpretation of “taking unfair advantage” (Wilkinson 2003, Snyder 2012).⁴

3. Here, I follow Wood’s (1995) claim that any conception of exploitation always points at a morally wrong relationship between two parties A and B. This account is opposed to more general interpretations of exploitation that are morally neutral (see Feinberg 1989).

4. This reconstruction is based on a yet unpublished manuscript “Exploitation and Joint Action” by Erik Malmqvist. Furthermore, I would like to emphasize that, although listed among transactional accounts, some authors also endorse the structural viewpoint: e.g. Snyder (2012) and Sample (2003) are not only committed to the transaction-specific, but also to the structural interpretation of exploitation.

Instead of dwelling on the different conceptualizations of exploitation, I would rather emphasize the common “transactional” feature these accounts share. They are concerned with defining a moral wrong specific to the transaction between two parties, A and B, which is different to the structural context in which these transactions take place. To state it upfront, my discussion of (transaction-specific) exploitation in this paper aims to remain neutral among competing theories of exploitation. Thus, I will refrain from putting forward any substantive theory of exploitation. My aim is limited to inquire about the relationship between transaction-specific exploitation and background injustice.

Contrary to transactionalists, structuralists have argued that exploitation is not best understood as a mere feature of individual transactions, but should be conceived as a structural phenomenon. Authors such as Iris Young (2011, 2013) or neo-Marxists such as John Roemer (1996) and G.A. Cohen (1988, 1989, 1995) are well-known contemporary philosophers who make structures the major focus of exploitation theory. While analytical Marxists such as Cohen and Roemer understand background injustice very narrowly as a matter of distributive injustice between capitalists and workers regarding the means of production (see Vrousalis 2014, 152f), Iris Young (2013) offers a far more comprehensive account, including gender and race discrimination, education, and other “faces” of oppression. What these structural accounts have in common is that they draw on a Marxian understanding of exploitation that starts from unjust background structures to explain the moral illegitimacy of exploitation. It seems, however, that Alan Wertheimer’s theory and other transactional accounts have replaced the structural view and thus led to a considerable paradigm-shift towards transactional exploitation in applied ethics (Zwolinski 2012, 151). To explain this trend, we need to understand the rationale of transactional theorists to reject structural accounts as follows.

Broadly speaking, the structural accounts I am primarily interested in⁵, most notably represented by Roemer (1996) and Cohen (1988, 1995), contend that the contextual features of exploitation are intimately connected to structural inequalities that systematically render some groups of people, such as B, to being taken advantage of by others. Yet exploitation remains a transaction-specific concept. However, background injustice is necessary and sufficient for exploitation, as one can distinguish just from unjust unreciprocated takings by appealing to the legitimacy of the background distribution (Vrousalis 2014, 152f). Roemer (1996) concludes that we should, therefore, focus on structural injustice being the primary *locus* of moral concern, instead of extensively analyzing the unjust transaction that necessarily and sufficiently results from it.

The transactional critique toward structuralists, such as Roemer and Cohen, consists in the argument that background injustice is neither necessary nor sufficient for an exploitative transaction. Valdman (2009) and Vrousalis (2013, 2014, 2016) have repeatedly argued that the structural account does not hold for many cases of wrongful, but mutually consented and beneficial exploitation, as the following example shows.

Antidote. Person B is bitten by a rare poisonous snake while hiking in a remote forest. His death is imminent. Fortunately, another hiker, A, happens by and offers to sell B the antidote [...]. Though it retails for \$10, A insists that he will accept no less than \$20,000. Since B would rather lose his money than his life, he accepts A's offer. Here A wrongly exploited B. Indeed, this is about as clear a case of wrongful exploitation as I can imagine."⁶ (Valdman 2009, 3)

5. Iris Young (2011, 2013) puts forward that legal and economic institutions themselves are exploitative, and not the particular interactions within the context of those structures. I will leave this account aside, as my focus is the conceptual relation between transactions and structures.

6. See also the case "Rescuer" or "Ant and Grasshopper" in Vrousalis (2013, 148&150).

Antidote is construed in a way that disconnects exploitation from structural (distributive, relational, and other) concerns. The transactional account shows that structuralists illegitimately abstract from the personal wrongdoing exploiters commit in transactions when making structures the *locus* of moral concern. This also attacks the idea of structuralists that exploitation persists even without ill-will on the part of individuals who participate in exploitative systems. I concede that the general critique urged by transactionalists towards structuralists makes sense: background injustice cannot be made the *necessary* or *sufficient* condition for exploitation. Furthermore, I contend that transactionalists are right to say that exploitation needs to be framed as a moral wrong specific to the transaction, as reducing exploitation to structural injustice eschews the moral liability and individual responsibilities of the transacting parties.

3. A new account for structural injustice and exploitation

In the following, I accept the transactional critique towards structuralists. Cases such as *Antidote* should be reason enough for this commitment. Nevertheless, I think that many of us feel a strong discomfort when (some) transactional theorists such as Wertheimer (1999, 2010) argue that structural injustice should be completely left aside in a theory of exploitation. To underpin this discomfort, let me start by an intuition that shall direct us toward a new conceptual account that aims to revive structural concerns without animating the transactional critique. *Clinical Trial* represents real world incidences of exploitation that appear in repeated patterns and that are characterized by a high degree of “structural pervasiveness”. Lacking access to health care, malnutrition, and general structural poverty actually make it possible that exploitative health research excessively occurs in LMICs (Malmqvist 2015).

The important question is whether single and isolated events of exploitation, such as *Antidote*, capture all the relevant case features of *Clinical Trial*. It seems that while structural features are of no concern in the first case, they still matter for the latter one. In the following, I will offer a new account that suggests that a purely transaction-specific account based on single and isolated exploitative events misses out a crucial dimension of exploitation in clinical research, namely, its “pervasiveness”.

3.1. Accounting for the pervasiveness of exploitation

To finally come up with a new account for the conceptual connection between background injustice and transaction-specific exploitation, I consider it to be a key strategy to conceptualize the pervasiveness of exploitation, which seems to be a decisive characteristic of exploitative cases, such as *Clinical Trial*. Such cases repeatedly occur in unjust contexts, precisely because structural injustice makes it easier for exploiters to achieve exploitative deals. The pervasiveness of exploitation plausibly corresponds to the frequency with which exploitative events occur, given a specified body of transactions, and can subsequently be conceptualized as an event with a certain *expected relative frequency or probability of occurrence*.⁷

I argue the following to give credit to the role background injustice plays for the pervasiveness of exploitation: Given the universe of possible fair and unfair transactions Ω , let $Z \in \Omega$ be an exploitative transaction and $p(Z)$ its probability of occurrence. Now, I claim that it is true for some (but not all) Z that the

7. The relative frequency of an event $Z \in \Omega$ is defined as the number of times that the event occurs in a specified context divided by the total number of events.

probability of mutually consented and beneficial exploitative transactions Z under unjust background conditions is higher than the probability of mutually consented and beneficial exploitative transactions Z given just background conditions.

$$p(Z|| \text{injustice}) > p(Z|| \text{justice}),$$

where ‘justice’ reflects a structural background with no or low structural injustice and ‘injustice’ a highly unjust structural background. Note that this is a hypothetical comparison of two possible background conditions, given that all other variables and factors are stable at a given point in time t_0 .

The baseline of a minimum number of exploitative events is given by the conditional probability under just background conditions $p(Z|| \text{justice})$. Thus, I assume that exploitative transactions can even happen in the context of just background structures. Since we can never completely eliminate the occurrence of these cases, $p(Z)$ never drops to zero. The intuition is simple. An unjust background is neither necessary nor sufficient for exploitation, but its existence conditions the probability of occurrence of exploitation. This means that the conceptual connection between background injustice and exploitation can be established through the relative expected frequency of exploitative events. A single exploitative event may be conceptually independent of background injustice by relations of necessity and sufficiency, but its frequency of occurrence is not, as “injustice” *increases* the conditional probability of unfair transactions Z. Some philosophers have put forward a theory of probabilistic causation underling this “probability raising” relation (Reichenbach 1956, Suppes 1970, Cartwright 1979)⁸. Opting for a causal theory seems plausible

8. For a detailed overview of theories of probabilistic causation, see Hitchcock (2018), accessible via <<https://plato.stanford.edu/entries/causation-probabilistic/#ProbRaisTheoCaus>>.

when variables (here injustice and exploitation) stand in a causal- explanatory relationship.⁹ Consider the following example:

Smoking. The fact that the conditional probability of lung cancer is increased in smokers does not mean that smoking (logically) necessarily or sufficiently leads to lung cancer. Not every smoker develops lung cancer and not every cancer patient smokes. Nevertheless, there is a probabilistic connection: the probability to get cancer is higher in smokers. Moreover, there is a causal explanatory connection: We may explain that smoking has caused cancer in a particular patient.¹⁰

These insights may be transferable to the case of international health research. In perfectly just contexts in which regulations, the jurisdiction, and universal health care protect research subjects from participating in exploitative clinical studies, the risk of exploitation as a structural phenomenon may be negligible. In stark contrast, the probability of exploitation in a LMIC context is often very high when lacking regulations, poor jurisdictions and insufficiently developed health care systems pose factors that enable or *cause* exploitative clinical trials.

The conditional probability of exploitation, or “exploitation rate”, underlying injustice may even (but does not necessarily)

9. *Smoking* is thought to highlight the conceptual connection between background factors (smoking) and the occurrence of single events (cancer). This example does not appeal to any moral content.

10. Pearl (2000) has challenged a probabilistic theory of causation. He argues that the conditional probability $p(E$ represents a probability resulting from a passive observation of an event C . Indeed, observing the barometer falling increases the probability of a storm coming, but does not “cause” the storm. Consequently, Reichenbach (1956) has argued that if neither A nor B is a cause of the other, but A and B are correlated variables, there must be always a common cause C that causally explains the correlation between A and B . In this regard, we may accept a causal thesis underlying “probability raising”.

increase over time, when structural injustices are not remedied. On the one hand, the “distributive gap” between exploiter and exploitee grows over time, as the exploiter gains proportionally more, which makes the exploiter more powerful relative to the exploited. On the other hand, exploitation can become more easily an accepted practice, where exploiters are less willing to adapt to fair rules, as they are not socially or economically sanctioned.

Note that this linear connection between exploitation and the pervasiveness of exploitation does not necessarily hold. It may be logically possible that a higher frequency of mutually beneficial exploitative events can ameliorate the conditions of the worst off in the long run. To give an example, it is often argued that sweat shop labor, even though exploitative, is relatively well paid and can help individuals to get out of absolute poverty (Zwolinski 2012, 161f). This, in turn, may make them less susceptible to being exploited by others.¹¹

3.2. Systemic and non-systemic exploitation

Based on this analysis, I would like to introduce the concepts of *systemic*¹² and *non-systemic* transaction-specific exploitation (table 1). I will define an exploitative event X as a ‘*systemic*’ event if it shows the following probability pattern: the conditional probability of the exploitative event increases *significantly* under injustice, compared to a (negligible) exploitation rate under just circumstances.

Systemic transaction-specific exploitation:
 $p(X \parallel \text{injustice}) \gg p(X \parallel \text{justice}),$

11. I would like to express my gratitude to Francisco Garcia-Gibson to press me on this point.

12. For the term “structural-systemic”, see also Wiedenbrüg (2018).

where ‘justice’ reflects a structural background with no or low structural injustice and ‘injustice’ a highly unjust structural background. This is again a hypothetical comparison of two possible background conditions, given that all other variables and factors are stable at a given point in time t_0 .

The term ‘systemic’ indicates that an exploitative transaction is (mainly) probabilistically caused by unjust background conditions, compared to a counterfactual and just world. I contend that the pervasiveness measured by the relative expected frequency of exploitation should be part of the definition of *systemic exploitation*. One striking example for systemic exploitation is *Clinical Trial*, as the relative expected frequency of exploitative clinical research is significantly higher in unjust contexts. Moreover, the base line of exploitation in clinical research, the exploitation rate under just circumstances, may not be worth mentioning, as exploitative trials rarely take place in contexts of good regulations, access to health care, and general prosperity. As I mentioned before, I do not want to claim that cases of exploitative research can be fully eradicated in just societies, but they are at least not pervasive or show systemic patterns.

In turn, I will define a ‘*non-systemic*’ event Y of exploitation as an event with the following probability pattern: the conditional probability of an event Y does *not or only slightly* change under unjust background conditions compared to a just context.

$$\text{Non-systemic transaction-specific exploitation:} \\ p(Y \parallel \text{injustice}) \approx p(Y \parallel \text{justice})$$

where ‘justice’ reflects a structural background with no or low structural injustice and ‘injustice’ a highly unjust structural background.

‘Non-systemic’ shall indicate that an exploitative transaction is *not* primarily owed to unjust background conditions and stochastically (almost) independent of structural factors.

Therefore, the exploitation rate of non-systemic exploitation is approximately the same in just and unjust societies, as background injustice does not (significantly) contribute to the occurrence of these cases.¹³ The most striking example of non-systemic exploitation may be *Antidote*, where the probability of occurrence of Y is unrelated to the status of background injustice. Note that in *Antidote* the exploiter may be in a weaker social position than the exploited, as we have no information about the structural characteristics of the society they belong to.

	Systemic exploitation X	Non-systemic exploitation Y
Background conditions: unjust / just	$p(X \text{injustice}) \gg p(X \text{justice})$	$p(Y \text{injustice}) \approx p(Y \text{justice})$
Time	Exploitation rate $p(X)$ can increase over time, if (asset) distributive imbalance between exploiter and exploitee increases or if exploitation becomes an accepted practice; however, $p(X)$ can decrease if cumulative exploitation leads to a better situation of the exploitee (through gain of net benefits)	$p(Y)$ constant over time, exploitation happens isolated from other factors; no mutually reinforcing relationship between structural features and exploitation

Table 1: systemic and non-systemic exploitation

13. Here, I leave aside the view by egalitarians, such as Wolff (1998) or Rawls (1971) who argue that taking the egalitarian project seriously means that egalitarian principles of justice should contribute to the formation of people with egalitarian characters that act reciprocally. In this sense, there could be considerably less –what I call– non-systemic exploitative actions in just egalitarian societies, as people’s characters are forged by mutual respect and equal concern. I am aware of this argument, but I think that it does not conceptually invalidate the distinction between systemic and non-systemic exploitation.

Eventually, the distinction between systemic and non-systemic events of exploitation is an empirical one and needs real world input. We need to empirically examine whether a specific type of exploitative transaction (Clinical Trial, Antidote etc.) highly or only moderately correlates with background conditions. However, it still remains a conceptual undertaking to define the category of systemic or non-systemic exploitation. More specifically, we need to define more precisely the concept of justice and injustice in order to compare the respective exploitation rates. The question is: when, precisely, do we consider exploitation a systemic event whose frequency of occurrence highly correlates with background injustice? For instance, emotional exploitation in couples may be a borderline case. While emotional exploitation is surely enhanced by structural discrimination, such as misogyny or gender violence, it is possible that formally just societies with non-discriminatory and equitable institutions leave room for personal greed, revenge, and malevolence unrelated to structural deficits. It is certain that many would sustain that misogyny and gender violence are part of structural concerns. But it is also true that these concepts are not identical with socio-economic injustices. Here, a more comprehensive account is needed to explain how unjust structures impact on personal relations (see e.g., Young 2011, 2013). Hence, I would like to stipulate that I only aim to capture the difference between the most extreme types of exploitation: cases that clearly have a structural component and cases that are construed in a way that there are (intentionally) unrelated to background injustice.

4. Implications

In this section, I will discuss the implications from my previous account, most notably, for the case of systemic exploitation in international health research. These implications address the importance of background injustice within a theory

of *systemic* exploitation (4.1.), the moral responsibilities of different actors to prevent and remedy exploitation (4.2.), as well as the legal permissibility of exploitation (4.3.).

4.1. The importance of structural injustice within an account of exploitation

We may have good reasons to direct our attention to structural injustice following the original concern by Cohen-Roemer, at least as far as *systemic incidences* of exploitation are concerned (exploitative events that highly correlate with background injustice). We can push that intuition even further, as Roemer (1996) seems to do, and argue that our normative focus ought to be the remediation of structural injustice to prevent exploitation at the first place. Even though structural injustice does neither necessarily nor sufficiently lead to exploitation, the prevalence of structural injustice is probabilistically related to the pervasiveness of *systemic exploitation* through its probability increasing property. Then, background injustice regains normative weight through its connection to the structural persistence of exploitation. Similar to my outline in *section 3*, I argue that we can capture this intuition by referring to the smoking analogy.

Anti-Smoking Campaigns. It is reasonable to argue that smoking increases the conditional probability of cancer. Then, it seems to be normatively appropriate to vindicate anti-smoking campaigns with the aim to prevent cancer genesis and to save lives. This, however, does not entail that preventive measures would eventually lead to a complete eradication of cancer. We have still good reasons to spend health resources on research and development of cancer treatments that directly target the disease.

Analogous to anti-smoking campaigns¹⁴, it is justified to claim that the remediation of structural injustice ought to be one major normative focus if our goal is to prevent exploitation. Without a stable structure that permits exploitation, exploitation cannot prevail, at least not as a systemic practice. However, taking up the analogy of cancer treatment, we should not lose sight of the transaction-specific focus of exploitation: we ought to remedy and morally disregard exploitative *transactions* themselves despite the importance of structural factors.

Different to Roemer (1996), I do not think that structural injustice is the ‘wrong making feature’ of exploitation *per se*, all things considered. Rather, background injustice is the ‘wrong making feature’ of the *systemic persistence* or *pervasiveness* of exploitation, measured by its *relative expected frequency*. In other words, the conceptual connection between background injustice and exploitation concerns the pattern with which exploitation occurs, not the exploitative act by itself. Here, I stick to a strict dichotomy between the moral concerns related to background injustice and transaction-specific exploitation. Contrary to Roemer, I accept that there may be other moral ‘wrong makers’ relative to the transaction in which exploiter and exploitee are involved, which makes the *exploitative act itself* illegitimate. Framed differently, exploitation is more than a sheer symptom of the moral illegitimacy of background structures.

An issue related to this discussion is that the distinction between systemic and non-systemic exploitation pays tribute to a recurrent critique in moral philosophy, namely, that ignoring real world factors in abstract case examples frequently

14. Similarly to footnote 9, *Anti-Smoking Campaigns* is an example thought to highlight the conceptual connection between background factors (smoking), its prevention, and the occurrence of single events (cancer) and its remediation (cancer therapies). This example does not appeal to any moral content.

leads to wrong moral conclusions relative to a particular context (see Wolff 1998, Wilson 2009). Indeed, what I call non-systemic incidences of exploitation mostly refer to abstract thought experiments, such as *Antidote*, that often resemble unlikely and hypothetical events brought up by moral philosophers to defend the consistency of certain moral concepts (see Wolff 1998).

But do the conclusions from *Antidote* hold for real world contexts, such as clinical research? In defense of abstract examples, we may concede that they are necessary to point to the underlying moral arguments and concerns that are of conceptual interest. Applied to exploitation, transactional theorists use abstract examples to point out that structural injustice should not be our primary moral concern when it comes to exploitation. Rather, the morally salient wrong of exploitation is that an individual party takes unfair advantage of another party.

However, I think that the distinction between systemic and non-systemic exploitation makes sense, precisely when it comes to the moral weight background injustice has in relation to exploitative transactions. The concept of systemic exploitation reintroduces the *case specific*¹⁵ of more “realistic” cases of exploitation that prevail due to unjust contexts. Hence, unjust structures have a much greater moral significance and importance for systemic exploitation than non-systemic exploitation. It seems that the distinction between systemic and non-systemic exploitation helps us understand that there can be different moral concerns (structural injustice, but also personal motives and interpersonal wrongdoing) in exploitative acts, which are sometimes more or sometimes less normatively salient.

15. James (2009) argues (regarding normative frameworks) that the factors of complex systems can make the application of moral arguments from simplistic top-down approaches invalid.

Finally, it seems to me that abstract examples related to non-systemic exploitation have then undermined the importance of background injustice and overemphasized personal wrongdoing *when applied to systemic exploitation*, which is the type of exploitation we are worried about in clinical research. This may considerably revive concerns by structuralists that (systemic) exploitation induces moral discomfort precisely because the structural background enables more powerful agents to exploit the vulnerable.

4.2. *Moral responsibilities to prevent or remedy exploitation*

My point in 4.1. has a direct impact on the moral responsibilities that agents bear to remedy and prevent exploitation. On the one hand, purely transaction-specific accounts implicitly assume that the exploiter is the only morally responsible party to prevent and remedy exploitation. Consequently, they seek remedies inside the transaction, such as more benefits for the exploitee, fairer compensation, etc. (see Emanuel et al. 2008). On the other hand, the structural account extends the realm of moral responsibility to agents other than the exploiter; that is, to all agents that are responsible for (or able to) remedy structural injustice. The intuitions drawn from structuralists suggest that the remediation of exploitation first and foremost happens through the remediation of background injustice. Fixing any sort of structural injustice should eventually be reflected in a reduced rate of systemic exploitation.

For instance, reconsider *Clinical Trial*: Host governments or even international health and humanitarian agencies are able to improve local health care systems that make potential research subjects less susceptible to accepting exploitative offers to participate in international clinical trials (see Wenner 2016). Solely blaming the pharmaceutical companies leaves out the moral responsibilities of agents that have contributed to

a structural environment that fosters and maintains systemic exploitation. Drawing on Malmqvist (2013, 2015), these agents can be conceptualized as “accomplices” in injustice.

4.3. Legal implications: the permissibility of exploitation

The revival of structural concerns may yield implications for the (legal) permissibility of exploitation. Most notably, there is the option to make exploitation impossible with a legal ban of clinical research trials in LMICs that do not comply with the standards of ethical research. There has been much critique toward the permission of off-shored clinical research that is associated with exploitative research designs (Mittra 2013, Malmqvist 2015, Wenner 2016). However, Wertheimer (1999, 289-293, 2010) has previously challenged the demand to ban exploitative research from the international domain on grounds of the so called “non-worseness claim” (see Malmqvist 2015). In short, the non-worseness claim states that an interaction between A and B cannot be morally worse than no interaction at all if A and B are both better off, compared to a baseline of no interaction. This does not imply that it is morally permissible for the exploiter to exploit. Rather, it is wrong to prevent Pareto superior win-win transactions on the ground that such transactions are unfair (Wertheimer 2010, Chapter 5).

Two points on that. First, several authors have challenged the non-worseness claim, most notably, Malmqvist (2013, 2015) offers a structural argument unrelated to the moral wrong of exploitation, but which sets a constraint to exploitation. Exploiters, such as pharmaceutical companies, are accomplices in injustice because they maintain the unjust conditions that have primarily enabled exploitation. This can eventually serve as a moral foundation to prohibit exploitative interactions. It is certainly at hand that my account of systemic exploitation can follow this argumentative line. We may put forward that systemic exploitation should be banned

on the basis that exploitative practices themselves foster and enable the background conditions that, in turn, make systemic exploitation more likely. Following this argument, we can justify the prohibition of exploitative research.

Second, this first argument may, however, not hold in the long run. As I tried to clarify in section 3, a linear connection between the mutual reinforcement of exploitation and background injustice does not necessarily exist. The fact that exploitees gain absolutely, even though not relatively, from exploitative transactions, may possibly lead to fewer exploitative transactions. This seems especially plausible for people who live in absolute poverty and who can be helped through exploitative sweatshop labor (Zwolinski 2012). Eventually, these people will be able to ascend from absolute poverty to a minimally decent life, which renders them less susceptible to future exploitation. However, I am not entirely convinced that this argument can be made applicable to off-shored health research. Here, structural conditions seem to have a greater direct impact on the vulnerability of potential research subjects. Even if an individual research participant gains from an experimental trial, it seems that the benefits she receives do not protect her in the long run, as long as post-trial access to drugs and general health care are not provided.

In this regard, it is useful to discuss further discuss legal measures to prevent exploitation on a structural in the long run. Apart from the obvious measure standing to reason, that is, the ban of individual health research trials doomed exploitative, there may be other legal instruments in place. For instance, international responsibility may demand from wealthier countries to enact international law that significantly improves the social economic conditions in LMICs. This implies that legal steps can be taken not only at the individual but also the structural level.

5. Conclusion

This work proceeded from a moral complaint many authors have when it comes to the charge of exploitation in the context of off-shored clinical research: framing exploitation in merely transaction-specific terms leaves out the structural factors that have primarily led to exploitation. To account for this, my paper addresses the charge of exploitation from a transactional and structural point of view and seeks to offer a new account to conceptually link transaction-specific exploitation with structural injustice. As a result of my inquiry, I argue that *systemic exploitation* is the category we need to focus on when referring to exploitative research trials. This eventually yields important normative implications regarding the importance of structural concerns, moral responsibilities, and the legal permissibility of exploitation in off-shored health research.

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