# Exploitation, Deontological Constraints, and Shareholder Theory

ROBERT C. HUGHES*

ABSTRACT

*One of the central controversies in normative business ethics is the question whether transactions and economic relationships can be wrongfully exploitative despite being mutually beneficial and consensual. This article argues that anyone who accepts a shareholder theory of business ethics should accept deontological constraints on mutually beneficial, consensual exploitation.*

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## INTRODUCTION

Many issues in business ethics concern the ethics of pricing. Is it ethical for a profitable fashion company to pay garment workers in Bangladesh $2.50 for a twelve-hour day? Is it ethical for a hotel to raise the price of hotel rooms after a hurricane drives many people from their homes? Is it ethical for a pharmaceutical company in a country with no universal health insurance to charge whatever price the market will bear for life-saving drugs? Normative business ethicists divide on these questions. Some think that firms and their agents are always or almost always morally permitted to charge whatever legally permitted prices will

* Assistant Professor of Legal Studies and Business Ethics, the Wharton School, University of Pennsylvania. Ph.D. in Philosophy with a Specialization in Law and Philosophy, University of California, Los Angeles 2010. I am grateful to Thomas Donaldson, Alan Strudler, and the participants of the 2018 Georgetown Institute for the Study of Markets and Ethics Symposium on Corporate Moral Agency for their helpful comments on previous drafts. My research is supported in part by the Claude Marion Endowed Faculty Scholar Award of the Wharton School. 

maximize their financial returns.[1] Others think that firms and their agents are often morally required to deviate from a profit-maximizing strategy (or a net present value maximizing strategy) to avoid exploiting customers or workers. On this view, a transaction can be wrongfully exploitative despite being consensual and beneficial to both parties.[2]

One might think that the camps in the debate about the ethics of pricing would be the same as the two main camps in the debate about the proper ends of corporations or managers.[3] The shareholder primacy view holds that corporations' and managers' primary aim should be to promote shareholders' interests.[4] Some versions of shareholder theory maintain that corporations and their managers should be concerned specifically with shareholders' financial interests. Others acknowledge that shareholders in a for-profit corporation could have non-financial interests with which the corporation could properly be concerned.[5] According to shareholder theorists of either type, a corporation and its managers should pursue the interests of people who are not shareholders only insofar as doing so advances the interests of shareholders. Normative stakeholder theories of business ethics, by contrast, hold that corporations and managers should aim to benefit various stakeholder groups, including customers and employees as well as shareholders.[6] The interests of shareholders do not have priority over other stakeholders' interests. Stakeholder theories are compatible with norms against exploitation of workers and customers. It may seem that shareholder theorists must reject such norms. If firms' and managers' primary duty is to promote the interests of shareholders, deviation from market prices would be justified only if there were a financial benefit to doing so (e.g., paying an above-market wage to increase employees' loyalty) or if this pricing policy would advance shareholders' interests in some other way.

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1. *See, e.g.*, Matt Zwolinski, *Sweatshops, Choice, and Exploitation*, 17 BUS. ETHICS Q. 689 (2007); Benjamin Powell & Matt Zwolinski, *The Ethical and Economic Case Against Sweatshop Labor: A Critical Assessment*, 107 J. BUS. ETHICS 449 (2012). Powell and Zwolinski allow that there are contexts in which an individual may be morally required to offer a price that does not maximize her financial returns. For instance, if one person fortuitously happens on another person in need of rescue, and the rescuer would be costless for the rescuer, it is wrongfully exploitative to charge an extremely high price for rescue. They think the intuitive judgment that rescue at a high price is exploitative only applies to fortuitous rescues, not to professional operations. *Id*. at 466–67.

2. *See, e.g.*, Robert Goodin, *Exploiting a Situation and Exploiting a Person*, *in* MODERN THEORIES OF EXPLOITATION 166–200 (Andrew Reeve, ed., 1987); Michael Kates, *Sweatshops, Exploitation, and the Case for a Fair Wage*, 27 J. POL. PHIL. 26 (2019); RUTH SAMPLE, EXPLOITATION: WHAT IT IS AND WHY IT'S WRONG (2003); ALAN WERTHEIMER, EXPLOITATION (1996).

3. There are firms that are not corporations, but shareholder theory is concerned with the ethical duties of corporations and corporate managers.

4. The classic statement of this view is in Milton Friedman, *The Social Responsibility of Business is to Increase its Profits*, N. Y. TIMES MAG., Sept. 13, 1970.

5. *See, e.g.*, Oliver Hart & Luigi Zingales, *Companies Should Maximize Shareholder Welfare Not Market Value*, 2 J. L. FIN. & ACCT. 247 (2017); Lynn A. Stout, *The Problem of Corporate Purpose*, 48 ISSUES IN GOV'T STUDY 1 (2012). These other interests may include pro-social interests, e.g., an interest in preventing pollution.

6. *See, e.g.*, R. EDWARD FREEMAN, STRATEGIC MANAGEMENT: A STAKEHOLDER APPROACH (1984).

This article argues that a shareholder theory of business ethics is untenable unless it includes prohibitions on mutually beneficial, consensual exploitation. Rejecting all or most prohibitions on mutually beneficial, consensual exploitation involves accepting some form of the so-called "non-worseness principle," which holds that if a transaction or relationship is mutually beneficial, consensual, and harmless to third parties, the transaction or relationship is not morally worse than a decision not to interact.[7] The non-worseness principle has counterintuitive implications for interpersonal ethics. It implies that it is not wrong for one partner in a romantic relationship to treat the other neglectfully, provided that the neglected partner knew going into the relationship that it would be neglectful and regards the relationship as a benefit. The non-worseness principle also has counterintuitive implications for professional ethics. It implies that it cannot be wrong for a dentist to give a patient a shoddily-applied crown, provided that the patient consented to substandard care and that the patient is better off with this crown than with no crown at all. Given the counterintuitive implications of the non-worseness principle, it cannot be taken as axiomatic; it stands in need of defense. But the plausible theoretical defenses of the non-worseness principle are incompatible with any plausible defense of a shareholder theory of business ethics. Only an ethical theory that includes deontological constraints can serve as a principled ground for a shareholder theory of business ethics. Any ethical theory that rejects the possibility of wrongful, mutually beneficial, consensual exploitation must also reject the deontological constraints which shareholder theory presupposes. Thus, shareholder theorists of business ethics should endorse anti-exploitation norms which sometimes require corporations to deviate voluntarily from market prices.

This article proceeds as follows. Section I explains why skepticism about wrongful, mutually beneficial, consensual exploitation is often explained in terms of the so-called "non-worseness principle." This principle has counter-intuitive implications and thus stands in need of defense. Section II argues that the most promising way of defending the non-worseness principle is an appeal to an ethical theory that rejects deontological constraints. Such an ethical theory is incompatible with a shareholder theory of business ethics. Section III argues that one of the most prominent deontological theories of ethics, namely Kantian ethics, is incompatible with the non-worseness principle.[8] Kantian ethics supports the view that

7. The non-worseness principle is compatible with anti-exploitation norms that concern cases in which the parties to a transaction have a moral obligation to transact, independent of any agreements they have made with each other. For example, if there is a duty of easy rescue, the non-worseness principle is compatible with a prohibition on charging high prices for morally obligatory rescues. But the non-worseness principle can be used to support the rejection of anti-exploitation norms in almost all business contexts. Conversely, it is unclear how one could reject all anti-exploitation norms in contexts in which transaction is not obligatory unless one accepts the non-worseness principle.

8. In labeling Kant's ethics "deontological," I adopt a certain view of deontology. A deontological constraint is an ethical constraint on the pursuit of an end or goal that would normally be good to pursue. *See infra* Section III. A deontological moral theory can include a theory of the good, as Kant's does. When Barbara Herman argues that "Kantian ethics is not a deontology," she is using the term

mutually beneficial, consensual transactions and relationships can be wrongful. Section IV explains why other ethical theories that include deontological constraints are unlikely to be able to support both the non-worseness principle and a shareholder theory of business ethics.

## I. THE NON-WORSENESS PRINCIPLE

Whether there is such a thing as mutually beneficial, consensual, wrongful exploitation is a matter of debate. The type of exploitation this article addresses is exploitation in transactions and economic relationships between individuals or organizations. A relationship or transaction is wrongfully exploitative if one party benefits unfairly in relation to the other.[9] This conception of wrongful exploitation leaves open the question whether there is such a thing as exploitation that is not wrongful. Since this is a relational conception of wrongful exploitation, it allows for the possibility that there could be wrongful exploitation in a society that has just institutions and a just distribution of resources. Conversely, there could be fair, non-exploitative transactions in an unjust society. The question at issue is whether one party to a transaction or relationship can benefit unfairly in relation to the other if both parties consent to the terms and both parties benefit.

The debate about the possibility of wrongful, mutually beneficial, consensual exploitation has often been framed as a debate about the non-worseness principle. The non-worseness principle is used to defend the view that mutually beneficial, consensual transactions and relationships do not wrong the parties. Alan Wertheimer, who introduced but does not endorse the non-worseness principle, has presented it as follows:

> It cannot be morally worse for A to interact with B than not to interact with B if: (1) the interaction is better for B than non-interaction, (2) B consents to the interaction, (3) such interaction has no negative effects on others.[10]

Given two modest assumptions, the non-worseness principle implies that there is no such thing as wrongful, mutually beneficial, consensual exploitation in typical business contexts. The first modest assumption is that in typical business contexts, it is permissible for one market participant to decline to transact with another.[11] Typically, e.g., an employer is not morally required to give a job to any particular person; a buyer is not morally required to form a contract with any

"deontology" in a different and narrower sense. *See* BARBARA HERMAN, THE PRACTICE OF MORAL JUDGMENT 210 (1993).

9. I take this characterization of exploitation from WERTHEIMER, *supra* note 2, at 16.

10. Zwolinski quotes this formulation from an unpublished conference paper of Wertheimer's. Zwolinski, *supra* note 1, at 708. For Wertheimer's discussion of the non-worseness principle, see WERTHEIMER, *supra* note 2, at 289–93.

11. It can be wrong to decline to transact with someone for a particular motive, e.g., race discrimination, though it would not be wrong to decline to transact with the same person on other grounds.

particular supplier. The second modest assumption is that wrongful acts are morally worse than permissible acts.[12]

Suppose A offers B an employment contract, B correctly judges that taking this contract is better than not taking the contract, and B consents. Suppose further that the contract has no negative effects on third parties. Then, since A would have been morally permitted to decline to offer B any employment contract, the non-worseness principle implies that A's offer is not morally worse than a permissible choice—non-transaction. So, the non-worseness principle implies that A's offer is morally permissible. It is permissible, according to the non-worseness principle, even if the terms of the employment contract appear very unfair to B. Offering a job with low wages, long hours, and dangerous working conditions is not wrong as long three conditions are met: the job makes employees better off than they would have been, absent an offer; the employees give informed consent; and third parties are not harmed.[13] The non-worseness principle has similar implications for market transactions of other types.[14]

Many ethicists who study exploitation find the non-worseness principle attractive. Some defend it.[15] Others reject it but find it intuitively compelling; they think that rejecting the non-worseness principle requires explanation.[16] The widespread appeal of the non-worseness principle is surprising, since its implications outside of ordinary business contexts are bizarre.

Consider the implications of the principle for romantic relationships. Suppose that A and B are in a romantic relationship, and that A often neglects B and B's needs. A is capable of treating B better but chooses to treat B with neglect. B was not coerced into this relationship, and B entered the relationship with open eyes; it was clear that A intended to treat B in this way. Because of B's strong feelings for A, B prefers being in a neglectful relationship with A to being single or to being in a relationship with someone else. The relationship between A and B does not harm third parties. Perhaps because they keep the relationship secret, perhaps because they are socially isolated, or perhaps because A's poor treatment of B takes place only in private, others do not notice A's poor treatment of B. The relationship does not interfere with any obligations A or B have to third parties.

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12. For discussion of this assumption's merits, see Benjamin Ferguson, *The Paradox of Exploitation*, 81 ERKENNTNIS 951 (2016).

13. If there is harm to third parties, but the contract is mutually beneficial and consensual, a supporter of the non-worseness principle would presumably conclude that the transaction is possibly wrongful but not wrongfully exploitative, since the wrong involved is not a wrong to the employee. Some additional assumptions would need to be added to get this conclusion from the formulation of the non-worseness principle above.

14. It will not rule out the possibility of wrongful exploitation when a market participant has a moral obligation to transact. For example, perhaps the owner of the only well in a desert has an obligation to sell drinking water to all thirsty travelers. Since it would be impermissible to turn away customers, the non-worseness principle is compatible with the view that it is wrong for the well's owner to charge an unfairly high price.

15. Zwolinski is one of its supporters. *See* Zwolinski, *supra* note 1, at 708–10.

16. *See* Ferguson, *supra* note 12; WERTHEIMER, *supra* note 2.

According to the non-worseness principle, A's neglectful relationship with B is not morally worse than a decision not to enter a relationship with B at all. Since it would have been permissible for A not to enter a relationship with B at all, the non-worseness principle implies that A's neglectful treatment of B is permissible, and that B has no legitimate complaint about A's conduct. This implication is absurd. B plainly has a legitimate complaint about A's neglect. That A had no obligation to enter a romantic relationship with B does not justify A's mistreatment of B. It is permissible to choose to be single or to decline any person's romantic advances. But if one chooses to be in a romantic relationship, one has a moral obligation to treat one's partner with concern, not with neglect.[17]

The non-worseness principle also has counterintuitive implications for professional integrity. It implies that professionals who have no obligation to provide a service cannot have an obligation always to provide service that meets minimum quality standards. Suppose, for instance, that a dentist does not have an obligation to give a certain patient a crown. The dentist offers to provide a shoddy crown and frankly admits to the patient that the crown on offer will be shoddy work, likely to need replacement sooner than a properly applied crown would. The patient regards a shoddy crown as a benefit and consents to this procedure. According to the non-worseness principle, either the dentist does nothing wrong by applying the shoddy crown, or the dentist's application of the shoddy crown is wrong only because it harms third parties.[18] But the dentist does not wrong the patient. This is a counterintuitive result. Intuitively, dentists should not knowingly do shoddy work. They should only provide crowns that are up to professional standards. A dentist could choose not to take on a given patient, and thus have no obligation to give this patient any crowns, properly or improperly applied. But if the dentist takes on this patient and decides to give the patient a crown, the dentist has an obligation to give the patient a properly-applied crown.

Given the surprising implications of the non-worseness principle, this principle stands in need of justification. When an alleged moral principle conflicts with intuitive judgments about specific cases, one cannot justifiably continue to accept the principle simply because one finds it intuitively attractive. One must have further reasons to accept the principle in the face of this conflict. There are broadly two ways in which the non-worseness principle could be motivated theoretically. One possible approach would be to make a more general argument against the existence of deontological constraints. Section II will discuss this approach. The

17. Wertheimer discusses a proposal of marriage in which it is understood in advance that the distribution of financial resources and household duties will be exploitative. He argues that exploitative marriage is a possible counterexample to the non-worseness principle. WERTHEIMER, *supra* note 2, at 290. Powell and Zwolinski suggest that intuitions about the case are unreliable because it is too abstractly described. Powell & Zwolinski, *supra* note 1, at 470. The example of neglect is not susceptible to this reply. There may be disagreement about what constitutes neglect of one's partner's needs, but neglecting one's partner is indisputably wrong.

18. Perhaps it wrongs the dentist who would have received this patient's business had the first dentist chosen to turn away this patient altogether. Or perhaps it wrongs the patient's insurance company, its shareholders, and its other customers (who may face higher premiums as a result of waste).

other approach, discussed in Sections III and IV, would be to accept the existence of deontological constraints but to give some reason that these constraints only apply to actions that cause net harm to someone or actions that involve a non-consensual violation of a right.

## II. SHAREHOLDER THEORY PRESUPPOSES DEONTOLOGICAL CONSTRAINTS

Deontological constraints are ethical limitations on the permissible pursuit of ends or goals that would normally be good to pursue. For example, if there is a deontological constraint against lying, one should not lie to achieve one's ends, even if those ends are good ends. Deontological constraints may be absolute (e.g., "Never lie") or pro tanto (e.g., "Only lie if it would achieve a very great good or prevent a grave evil"). Whether a deontological constraint takes an absolute or a non-absolute form, it does not function in the same way as an ethically obligatory end. If avoiding lies were an ethically obligatory end but not a deontological constraint, one would be justified in lying to prevent five other people from telling lies. A deontological constraint on lying, by contrast, prohibits telling lies for the sake of preventing others from lying.[19] Not all moral requirements are deontological constraints; moral requirements to adopt certain goals or ends are not deontological constraints. For instance, if there is a general moral duty to care about other people's interests, that duty is not a deontological constraint.

Some moral theories deny that there are deontological constraints. These theories hold that all moral requirements tell people what ends they should pursue, instead of telling people which means are permissible. One reason to reject deontological constraints is that they conflict with the widely-held view that rationality is concerned with maximizing the goodness of outcomes.[20] If some action, e.g., lying, is bad, maximizing rationality would imply that it is good to reduce the total number of occurrences of this action by committing an action of that type (e.g., lying to prevent lies). If the maximizing conception of rationality is correct, and if there are thus no deontological constraints, there is a straightforward way to defend the non-worseness principle. Absent deontological constraints, it is always permissible to perform an action that will produce better effects than another permissible action would. Assume, controversially but not implausibly, that the only effects that matter are effects on the welfare of humans and other sentient creatures. Assume, as before, that in normal business contexts, it is permissible to choose not to transact with someone. It would follow that in normal business contexts, it is permissible to transact with someone in a way that benefits that person and harms no humans or other sentient creatures. A bit more would need to be said to defend the non-worseness principle as expressed by

19. For discussion of deontological constraints and the contrast between deontological constraints and "utilitarianism of rights," see ROBERT NOZICK, ANARCHY STATE AND UTOPIA 28–33 (1974). Nozick calls deontological constraints "side constraints."

20. *See* Samuel Scheffler, *Agent-Centered Restrictions, Rationality, and the Virtues*, 94 MIND 409 (1985).

Wertheimer; some permissible acts might be morally worse than others.[21] But a sound argument against deontological constraints could very likely be extended to provide an argument for the non-worseness principle or something very much like it.

The strategy of defending the non-worseness principle by rejecting deontological constraints is not available to those who accept any form of shareholder theory as a theory of business ethics. Recall that a shareholder theory of business ethics holds that either managers or corporations (or both) have an ethical duty to promote the interests of shareholders, possibly to the exclusion of other people's interests.[22] Shareholder theories of business ethics contrast with some other theories that could be labeled "shareholder theories." For example, the view that government should *regulate* firms so as to motivate managers to promote the interests of shareholders is not a shareholder theory of business ethics. It does not address the *ethical* question what corporations or managers ought to do.

Shareholder theories of business ethics are compatible with deontological constraints. The only claim common to all shareholder theories of business ethics is a claim about what goals or ends corporations and managers should pursue: they should pursue (some subset of) the shareholders' ends. This claim leaves open what deontological constraints, if any, should constrain corporations' or managers' pursuit of shareholders' goals or ends. The most famous shareholder theory, Milton Friedman's, holds that there are, in fact, deontological constraints on a manager's pursuit of financial returns for shareholders: the constraints of "law and ethical custom."[23] It is less obvious that shareholder theories of business ethics *must* implicitly accept deontological constraints. They thus cannot defend the non-worseness principle by rejecting deontological constraints.

To see this, consider first those forms of shareholder theory that assert a duty for *corporations* to put shareholders' interests first. This duty may be distinct from any duties *managers* have to shareholders. No doubt corporations can have ethical duties, and these duties may be distinct from the duties of any human individual. After all, there are things a large organization can do that no human individual, including the organization's leader, can achieve through individual action. That said, an ethical duty for corporations to promote shareholders' interests would be idle if it were not supported by an ethical duty for at least some agents of a corporation to assist the corporation in promoting shareholders' interests. Presumably, these duty-bound agents must normally include high-level

21. If motives are relevant to the moral evaluation of actions, then a permissible act with an evil motive could be morally worse than a permissible omission with an innocent motive or no motive.

22. One could hold the view that managers should promote shareholders' interests while denying that the purpose of business, as a social practice, is to promote the interests of shareholders (or investors more generally). For instance, one could argue, as Donaldson does, that the purpose of business as a social practice is to serve customers and to provide employment, but that there are conceivable economic contexts in which business collectively benefits customers and workers most if managers focus on providing returns to shareholders. THOMAS DONALDSON, CORPORATIONS & MORALITY 56 (1982).

23. *See* Friedman, *supra* note 4.

corporate managers. So in practice, there can be no duty for corporations to promote shareholders' interests, possibly to the exclusion of other people's interests, unless high-level managers have a duty to help their corporations promote shareholders' interests.

Consider, then, the claim that *managers* have an ethical duty to put shareholders' interest first when making decisions on behalf of the corporation. This duty must itself be justified on the basis of some higher ethical principle. Some ethical claims can reasonably be accepted without further explanation. For example, one could reasonably accept, without further explanation, that suffering is bad, and that people have pro tanto reason not to cause suffering. The claim that managers' end should be to promote the interests of shareholders is not plausibly foundational in this way. It may be logically possible for managers to have a free-floating duty to maximize value for shareholders, a duty not grounded on any broader ethical principle, but it is extremely unlikely. If managers have a duty to maximize shareholder value, or more generally to promote shareholders' interests potentially to the exclusion of other people's interests, this duty must have some more foundational ground.

What could this more foundational ground be? Perhaps a duty to maximize shareholder value is grounded in a reason to promote some other end. A strong managerial duty to maximize shareholder value could not be grounded in managers' self-interest. Doubtless if corporate governance structures are well-designed, it will often be in managers' interest to do what is in the shareholders' interest. It is not difficult to imagine scenarios in which a manager's interests diverge from the shareholders' interests, both in the short term and in the long term. Consider a narrowly self-interested manager who is a skilled criminal and can defraud the company without detection. Fraud may be in the manager's interest, both in the short term and in the long term, but it is clearly not in the shareholders' interest. The interests of managers and shareholders can also diverge in contexts involving no crime, as the literature on agency theory shows.[24] It may be in a manager's interest to do things that will make the job much more pleasant but will not optimize the firm's financial performance: making extensive, costly use of perquisites, for instance, or simply not working with the greatest possible effort.[25] It may sometimes be in a manager's interest (and other employees' interest) to keep a firm or a division in operation, though it would be in the interest of diversified shareholders for the firm or the division to be liquidated.[26] Shareholder theory, as a theory of managerial ethics, asserts that when managers' personal interests conflict with the interests of shareholders, their ethical responsibility is to put the

24. *See, e.g.*, Michael C. Jensen & William H. Meckling, *Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure*, 3. J. FIN. ECON. 305 (1976).

25. *Id.* at 313. It might also be in a manager's interest to avoid choices that are in shareholders' financial interest but that will create interpersonal friction between the manager and subordinates.

26. *See* J. B. Heaton, *The 'Long Term' in Corporate Law*, 72 BUS. LAW. 353 (2017).

interests of shareholders first.[27] This duty could not be grounded on self-interest alone.

A parallel problem prevents a duty to maximize aggregate welfare from grounding a managerial duty to maximize the satisfaction of shareholders' interests (whether limited to shareholders' financial interests or not). Sometimes, perhaps often, attempting to maximize the satisfaction of shareholders' interests is the best way for managers to maximize the aggregate welfare of all human beings.[28] Focusing on shareholders' interests is likely to increase investors' trust, both in one's own company and in equity investment in general. It is thus likely to increase investments in productive enterprises that benefit customers and employees. Nevertheless, there are cases in which managers clearly can increase aggregate welfare by doing something that advances shareholders' interests less than alternative actions. Consider Peter Unger's example of the wealth manager who can secretly embezzle some money from a billionaire and use that money to save lives with a donation to an efficient charitable organization. If the wealth manager is right to think that he can embezzle undetected, this theft will be welfare-maximizing.[29] The embezzlement certainly reduces the value of the billionaire's investment, and it is extremely unlikely to promote the satisfaction of the billionaire's interests overall. If the billionaire wanted to use this money for charitable purposes, the billionaire presumably would have done so.

As a real-life example, consider Merck's investment in developing ivermectin as a drug to treat river blindness and its later decision to donate the drug.[30] It was clear at the time of the decision to invest in developing ivermectin that if the drug trials succeeded (as they did, and were likely to), and if the drug was then distributed, it would save hundreds of thousands of people from blindness. It would also enable farmers to return safely to fertile land near rivers. Thus, unless Merck could have used its money in a way that would do even more good for human health, the decision to invest in the drug could be expected to maximize aggregate welfare. Likewise, the later decision to donate the drug (after failing to find an NGO sponsor) could be expected to maximize aggregate welfare. It was far from clear, at the times Merck made these two decisions, that developing or donating ivermectin would be financially good for the company. The firm could not expect to profit from sales; river blindness patients could not afford $1 per pill, let alone the $3 normally charged for a dose of an anti-parasitic drug. The firm might have benefited financially either from positive publicity or from increased morale among its research scientists, but both potential benefits are speculative and difficult to quantify. What shareholder theories demand in this situation is empirically unclear, but what act-utilitarianism demands is perfectly clear: invest in the

27. *See* JOSEPH HEATH, MORALITY, COMPETITION, AND THE FIRM 31–36 (2014).

28. Or the average welfare of all human beings, or the aggregate welfare of all sentient beings.

29. PETER UNGER, LIVING HIGH AND LETTING DIE 64 (1996).

30. *See* Kimberly Layne Collins, *Profitable Gifts: A History of the Merck Mectizan Donation Program and Its Implications for International Health*, 47 PERSP. BIO. & MED. 100 (2004).

drug.[31] Act-utilitarianism would make the same demand if it were clear that Merck would take a small financial loss (not a bankruptcy-inducing loss) by investing in ivermectin.

Similar problems will affect any attempt to use any other form of act-consequentialism to defend a managerial duty to maximize shareholder value. For any end distinct from the end of maximizing shareholder value, there are possible situations in which managers can pursue the former end most efficiently by failing to maximize shareholder value. A general managerial duty to maximize shareholder value could not be derived from any act-consequentialist ethical theory. Nor could such a duty be derived from a non-consequentialist theory that lacks deontological constraints.[32]

The conclusion that act-consequentialism does not support shareholder theory as a theory of managerial ethics may be surprising. Some notable defenses of shareholder theory are consequentialist. Jensen, for instance, defends shareholder value maximization by arguing that in the absence of monopolies or negative externalities, profit-maximizing decisions by firms are Pareto-improving.[33] They harm no one, they benefit shareholders by producing profit, and they may benefit consumers if consumers obtain consumer surplus from their purchases.[34] Perhaps Jensen's argument could be used to defend *regulations* that encourage firms to focus on shareholder value. But this argument does not suffice to defend an *ethical* duty to maximize profits. The only managerial courses of action Jensen considers are declining to make a given product and selling that product at market prices, having made the product using resources purchased at market prices. Jensen does not consider the possibility that selling the firm's product at a below-market price or buying labor or other resources at an above-market price could maximize aggregate welfare. Jensen might reply that a firm cannot do this sustainably if all of the markets in which it participates are perfectly competitive. But then Jensen's argument only applies to firms operating in an idealized economy. It does not explain why a firm that has market power in at least one of the markets in which it operates would maximize aggregate social welfare if it maximizes its profits (or the net present value of future cash flows). An adequate act-utilitarian argument for maximizing financial returns to shareholders would need

31. This is true both for shareholder theories that tell managers to focus on shareholders' financial interests and for shareholder theories that tell managers to consider shareholders' other interests. Nearly ten years after Roy Vagelos's decision to have Merck donate ivermectin, he reported that there had been no complaints about the decision from Merck's shareholders. *Id.* at 109. It was not entirely clear at the time of Vagelos's decision that shareholders would react so favorably.

32. A theory can be non-consequentialist without including deontological constraints if its only requirement is to maximize aggregate welfare (or some other measure of the collective good), but it includes non-consequentialist permissions or "agent-centered prerogatives" to deviate from aggregate welfare maximization. *See* SAMUEL SCHEFFLER, THE REJECTION OF CONSEQUENTIALISM, 14–40 (Revised Edition, 1994).

33. Michael C. Jensen, *Value Maximization, Stakeholder Theory, and the Corporate Objective Function*, 12 BUS. ETHICS Q. 235, 239–40 (2002).

34. *Id.*

to take into account the diminishing marginal utility of wealth. A gain of a given sum of money typically improves the welfare of a poor person more than it improves the welfare of a rich person.[35] For this reason, if a firm's shareholders are richer on average than its employees or its customers, a business strategy that maximizes aggregate wealth may not maximize aggregate utility.

So anyone who holds a shareholder theory of business ethics cannot defend the non-worseness principle by rejecting deontological constraints more generally. To justify their claim that managers have a duty to focus on advancing the interests of shareholders, potentially to the exclusion of other people's interests, shareholder theorists must appeal to a deontological constraint. Perhaps the duty could be grounded in a duty to respect shareholders' property rights. Perhaps the duty could be grounded in a duty to avoid taking advantage of shareholders' vulnerability.[36] Or perhaps the duty could be grounded in a duty to keep an implicit promise to shareholders.[37] Whatever constraint shareholder theorists identify as the source of the duty, they will need to consider what other deontological constraints there are, and whether prohibitions on exploitation are among them. If shareholder theorists wish to deny that there is such a thing as wrongful, mutually beneficial, consensual exploitation, they will not be able to explain this position by denying the existence of deontological constraints. They will have to defend the non-worseness principle on other grounds, grounds compatible with the existence of deontological constraints.

## III. KANTIAN ETHICAL THEORY SUPPORTS ANTI-EXPLOITATION NORMS

One of the most prominent ethical theories that supports deontological constraints is Kantian ethics. It is debatable whether Kantian ethics could be used to support an ethical duty for managers (or for corporations) to put the interests of shareholders first in making business decisions. It is quite clear that Kantian ethics opposes the non-worseness principle and supports the view that there can be mutually beneficial, consensual exploitation that is wrongful. A complete Kantian account of the moral prohibition on exploitation would be beyond the scope of this article. It is possible, though, to show that Kantian ethics supports prohibitions on two specific forms of exploitation: wage exploitation and exploitation in pharmaceutical pricing.

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35. Daniel Bernoulli, *Exposition of a New Theory of the Measurement of Risk* (1738) *reprinted in* 22 ECONOMETRICA 23, 24 (Louise Sommer, trans. 1954) ("A poor man generally obtains more utility than does a rich man from an equal gain.").

36. *See* Alexei M. Marcoux, *A Fiduciary Argument against Stakeholder Theory*, 13 BUS. ETHICS Q. 1 (2003). For criticism of this view, *see* Hasko von Kriegstein, *Shareholder Primacy and Deontology*, 120 BUS. & SOC. REV. 465, 471–79 (2015).

37. Suppose that when a certain corporation makes an initial public offering, or when it sells additional shares at a later occasion, it holds itself out as a profit-oriented enterprise that would put the interests of shareholders ahead of other people's interests when in conflict, to the extent it is morally permissible to do so. Then this corporation makes an implicit promise that it will in general act in a profit-maximizing way.

Ruth Sample's Kantian account of exploitation explains the wrongfulness of certain mutually beneficial but exploitative labor contracts.[38] Sample's argument concerning wage exploitation begins with the premise that everyone has a general duty to take others' needs seriously. This duty does not require one to meet everyone's needs; that is impossible.[39] But when one chooses to interact with someone, and when one has power over the terms of that interaction, one has an obligation to structure the interaction in a way that takes this person's needs seriously.[40] If one instead structures the interaction in a way that ignores the person's needs, and one profits or otherwise benefits from the interaction, one flouts (and does not merely neglect) the duty to take others' needs seriously.[41] One thereby uses the person one interacts with merely as a means.[42] This does not entail that one ethically must ensure the satisfaction of the basic needs of everyone one interacts with, however minimally. In the context of full-time employment, however, employers often know that employees depend on wages from that job for their subsistence and that the hours associated with the job preclude other ways of making a substantial income.[43] If an employer can pay employees a living wage—one that enables them to meet their needs—but chooses not to, the employer flouts the duty to take workers' needs seriously, and treats workers merely as means.[44]

It is important to notice a limitation in this conclusion: it only asserts an obligation to pay a living wage for employers who can do so. The question whether a corporation can pay its employees a living wage is often difficult, and Sample does not attempt to answer it. In some cases, it may have no determinate answer. But there are clear cases. Presumably a corporation can pay its employees more if it is currently paying large dividends to shareholders. (Arguably, a corporation can pay its employees more if it is currently paying *any* dividends.) Presumably a corporation cannot pay its employees more if it is currently facing bankruptcy or if paying employees more would lead it to face bankruptcy.

Sample's Kantian argument against wage exploitation has two important features. First, the duty to refrain from wage exploitation does *not* derive from a duty to address the social problem of poverty.[45] The problem with wage

38. SAMPLE, *supra* note 2, at 55–96.

39. Sample accepts the standard Kantian view that there is a duty of beneficence, but the duty to refrain from exploitation does not derive from the duty of beneficence. Rather, both duties derive in distinct ways from the duty to respect persons. *Id.* at 70–71.The Kantian anti-exploitation arguments presented in this Section are altogether distinct from the argument that the Kantian duty of beneficence gives managers duties to stakeholders other than shareholders. For the latter argument, *see* Samuel Mansell, *Shareholder Theory and Kant's 'Duty of Beneficence,'* 117 J. BUS. ETHICS 583 (2013).

40. SAMPLE, *supra* note 2, at 69–70.

41. *Id.*

42. *Id.*

43. *Id.* at 81.

44. *Id.*

45. Again, Sample acknowledges that there is an imperfect duty of beneficence, but she denies that the duty to refrain from exploitation is an instance of the imperfect duty of beneficence. *Id.* at 70–72.

exploitation is a problem in the relationship between employer and employee. Sample's argument is thus entirely compatible with Friedman's view that corporations have no moral obligation to address poverty.[46] Second, Sample's conclusion implies that wrongful exploitation is possible in a market that is perfectly competitive.[47] Suppose the market for unskilled labor (or for unskilled labor of a certain type) is perfectly competitive. Different employers obtain different amounts of welfare surplus by hiring. If the market wage is $10, there may be some employers who only get $10.10 worth of benefit for each hour of unskilled labor, and there may be others who gain $20 of benefit for each hour of unskilled labor. Employers in the former category cannot pay significantly more, and therefore they do not exploit their workers (even if $10 is below a living wage in this area). Employers in the latter category may or may not be able to pay more, depending on what other pressures they face. If they can pay more and choose not to, despite the market wage being lower than a living wage, they wrongfully exploit their workers.

Sample's account of wage exploitation has an obvious limitation: as written, it only applies to full-time labor.[48] The argument could perhaps be extended to other forms of labor, such as part-time labor and contract labor, in the following way. If a form of labor has the purpose of enabling workers to meet their needs through wages—it is not volunteer work—then employers of workers engaged in this form of labor should set compensation in a way that is consistent with this labor being part of a plan for workers to meet their needs. For some forms of part-time work, the minimum fair hourly wage will be the same as the minimum fair hourly wage for full-time work.[49] For other forms of part-time work, the fair hourly rate will be a good deal higher than the minimum fair hourly wage for full-time work. For example, a professional musician typically could not perform for forty hours a week, even if the demand was there, since musicians must rehearse and travel from one performing venue to another. Fair payment for musicians would have to take this into account.

Sample's account of wage exploitation does not straightforwardly extend to forms of economic exploitation not involving employment. Nevertheless, it is possible to develop a Kantian account of wrongful exploitation in the market for certain essential goods, such as medically necessary drugs. The account builds on the principle that one should not use others in a way that inherently prevents them from exercising their agency with a minimal level of effectiveness. If one does so

46. *See* Friedman, *supra* note 4.

47. This is clear from Sample's discussion of a hypothetical involving factory workers in a developing country. *See* SAMPLE, *supra* note 2, at 8, 89.

48. *See* SAMPLE, *supra* note 2, at 81 ("Thus an employer is aware that the full-time employee will necessarily be relying solely on the wages obtained from that employer for subsistence and that accepting such employment precludes her from obtaining subsistence in other ways. If an employer fails to compensate an employee in a way that provides her with an adequate income when such compensation is possible, then the relationship is exploitative.").

49. The picture is complicated if full-time workers receive an essential benefit, such as health insurance, that part-time workers do not receive.

despite being able to structure one's interaction with those people in a way that is compatible with their exercising at least a minimal level of effective agency, one uses these people merely as means. In a money economy, the opportunity to use money for purposes of one's own choosing is a central aspect of one's effective sphere of autonomy. A person who cannot spend money on anything other than basic needs has a limited effective sphere of autonomy. This is especially true of people who cannot express autonomy through choices about how to satisfy basic needs, e.g., people who cannot make meaningful choices about what to eat or about how they will be sheltered. People do not meaningfully express their autonomy by purchasing the only available nutritious food, or by paying to use the only available source of safe drinking water, or by purchasing medicine they need to survive. To have minimally effective agency in societies like ours, one needs at least some opportunity to use money in a discretionary way.

Suppose that a firm sells a drug that some people need to survive. Suppose that all or a substantial part of the price charged for this drug will be paid for by the individuals who use it. (It is not wholly covered by the government or by insurance plans.) Finally, suppose the firm has a choice about what price to charge. There is a range of possible prices it could charge without going out of business, though there are some price points that would be more profitable than others. It may also have the option of engaging in price discrimination, making the drug cheaper to patients with less ability to pay.[50] The profit-maximizing strategy would force some patients to choose between financial ruin—being left with no money for anything other than necessities—and doing without a medically necessary drug. Other pricing strategies would not put patients in this position. If the firm chooses the profit-maximizing strategy, its chosen policy would inherently prevent some patients from exercising their rational agency within a minimally effective sphere. The firm (and its agents) would thereby use patient-customers merely as means.

So Kantian ethics implies that there are ethical limits on the pricing of certain essential goods, such as necessary medicine.[51] Note two things that the Kantian argument does *not* imply. First, the Kantian argument presents no objection to businesses that seek to get customers to pay it as much money as possible in an autonomy-expressing way. For example, there is nothing wrong with a bookstore trying to persuade people to spend as much money as possible on books, for a restaurant to try to get people to spend money on (luxury) food, or for a company like Target, Walmart, or Amazon to try to get customers to make multiple purchases from it. Second, the Kantian account does not speak to cases in which the

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50. One might doubt the claim that a corporation can adopt any pricing strategy other than a profit-maximizing strategy. But presumably it is always possible for a firm to adopt the strategy that is best for its longevity. The business strategies that maximize expected returns to shareholders can diverge from the strategies that are best for a firm's longevity. *See* Vince Buccola, *Beyond Insolvency*, 62 KAN. L. REV. 1 (2013); Heaton, *supra* note 26; Jensen & Meckling, *supra* note 24.

51. A similar analysis would apply to other goods people need to survive and of which a purchase does not express a person's autonomy. Safe drinking water is an example.

motive for raising prices is not to maximize revenue or profit, but rather to get people to economize in a way that enables more people to meet their needs. To take an example from Zwolinski, a hotel manager might raise room prices after a natural disaster partly with the aim of motivating people to share rooms if they can, thereby maximizing the number of people who can take shelter in the hotel.[52] If this is the hotel manager's motive for a price increase, the hotel manager arguably does not use the customers' humanity merely as a means.[53]

So one of the most prominent non-consequentialist ethical theories, Kant's, cannot be used to defend the non-worseness principle or to resist exploitation claims. Kantian ethics implies that managers have moral reasons to avoid exploitative wages and exploitative prices for certain necessities, such as life-saving medicine. Managers should refrain from exploitative pricing not because managers should have a goal or an end other than maximizing shareholders' wealth. The moral prohibitions on exploitation are not grounded in a general duty to promote the interests of all stakeholders or in a general duty to address poverty and other social problems. The duty to refrain from price exploitation arises from underappreciated deontological constraints.

## IV. OTHER DEONTOLOGICAL APPROACHES

Of course, Kantian ethics is not the only ethical framework that supports deontological constraints. Perhaps there is another deontological ethical theory that provides principled support for the non-worseness principle (and thus for the rejection of anti-exploitation norms) and that is compatible with a shareholder theory of business ethics. This section illustrates the challenges facing two theoretical approaches to deontological constraints. Rule-consequentialism justifies deontological constraints by pointing to the good consequences of their public acceptance. It cannot be used to justify a strong managerial duty to promote shareholders' interests above the interests of others. Some ethical theories maintain that the only deontological constraints are prohibitions on interference with others' rights. These rights-based theories can defend a managerial duty to promote shareholders' interests only if they can defend a strong moral duty to respect property rights. But the most plausible grounds for a strong duty to respect property rights will also support anti-exploitation norms.

Consider rule-consequentialist justifications for deontological constraints. It may sound odd to hear rule-consequentialism described as a deontological theory. But rule consequentialism supports deontological constraints in the sense defined above: there are ethical prohibitions on actions that would, in context, promote a justified goal.[54] There are various ways of formulating rule-consequentialism.[55]

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52. Matt Zwolinski, *The Ethics of Price Gouging*, 18 BUS. ETHICS Q. 347, 362–63 (2008).

53. *Id.*

54. For further argument that rule-consequentialism is a form of deontology, *see* Frances Howard-Snyder, *Rule Consequentialism is a Rubber Duck*, 30 AM. PHIL. Q. 271 (1993).

55. Brad Hooker, *Rule Consequentialism*, STAN. ENCYCLOPEDIA OF PHIL., (Nov. 18, 2015), https://plato.stanford.edu/entries/consequentialism-rule/ [https://perma.cc/6HFW-E5X6].

One possible formulation holds that acts are right if they conform to the set of rules whose general public acceptance would have the best effects (compared with the general public acceptance of other possible sets of rules).[56] Actions that violate these rules are impermissible. These prohibitions are justified because public acceptance of these rules would have good effects, even though there may be situations in which following the rules would have bad effects. This form of rule-consequentialism cautions against extremely complicated rules, since people are unlikely to be able to act on them reliably. Public acceptance of a blanket rule against theft, or a rule against theft with one or two clear, simple exceptions (e.g. permitting non-consensual borrowing of resources to save lives in emergencies), is likely to produce better results than public acceptance of a rule against theft with twenty exceptions or with exceptions that involve complex conditions. This formulation of rule-consequentialism would also caution against most rules that include self-interested exceptions, since people are likely to decide too often that the exceptions apply to them.

Compared with act-consequentialism, which often supports managerial decisions to put other peoples' interests ahead of shareholders' interests, rule-consequentialism is likely to prohibit many acts that frustrate shareholders' interests for the sake of the general welfare. For example, rule-consequentialism likely prohibits managers from embezzling from a corporation to make donations to charities—even charities that efficiently save lives. That said, rule-consequentialism likely would not endorse a blanket rule that shareholders' (financial or other) interests should be managers' only ethical concern. There are likely to be other, relatively simple rules whose public acceptance would maximize aggregate welfare (or whatever the consequentialist takes to be the good) even more.

Consider a rule calling for managers to take actions that are likely to produce a large benefit for a group of people other than shareholders and whose effect on other people, including shareholders, is impossible to predict. The Merck case would be an instance of this rule: financing ivermectin was likely to (and did) produce a large benefit for people at risk for river blindness, and its effect on Merck shareholders was impossible to predict. The rule would also support a decision to avoid layoffs when it is clear that layoffs would harm employees but unclear whether layoffs would be more likely to benefit or to harm shareholders' long-term financial interests. It is likely that public acceptance of this rule would increase aggregate welfare, compared with public acceptance of a rule requiring managers to consider shareholders' interests exclusively (except insofar as considering others' interests tends to benefit shareholders' interests). It also seems likely that aggregate welfare would benefit from public acceptance of a norm that allows managers to make small sacrifices in shareholder returns when the benefit

56. This formulation of rule-consequentialism avoids the criticism that rule-consequentialism is practically equivalent to act-consequentialism. *Id.* at § 8. *See also* RICHARD B. BRANDT, MORALITY, UTILITARIANISM, AND RIGHTS 111–36 (1992).

of those sacrifices to other persons is large enough.[57] So rule-consequentialism probably does not support a purely shareholder-centered approach to managerial ethics.

A supporter of shareholder theory who wishes to defend the non-worseness principle and to reject anti-exploitation norms might invoke a rights-based deontology. A rights-based deontological theory maintains that the only deontological constraints are constraints on interferences with others' rights. Such a theory might allow that there are moral reasons to pursue certain good ends; for instance, it might say that there is a general duty of beneficence. But it would maintain that rights, such as rights to property and to bodily integrity, are the only moral reasons to *refrain* from pursuing a good end. On one view of rights, all rights can be waived. On this view there is no such thing as a consensual violation of a right. A rights-based deontology that takes this view of rights would support the non-worseness principle. A consensual transaction or relationship, on this view, does not violate anyone's rights. A mutually beneficial transaction or relationship that does not harm third parties has better effects than non-interaction. So, according to this rights-based deontology, a mutually beneficial, consensual transaction or relationship cannot be morally worse than non-interaction.

Any attempt to use purely rights-based deontology to defend a shareholder theory of business ethics faces pitfalls. A rights-based deontology can defend a robust duty to put shareholders' interests first only by appealing to a duty to respect shareholders' property rights. But then there must be some explanation why shareholders' financial interest in a corporation constitutes a property right that managers are ethically required to respect (even when they can contribute to collective welfare by violating it).[58] It will not do to appeal to Lockean natural property rights. A natural property right is a right to a specific resource that does not derive from human-created law or custom. It arises only from universal moral principles and from the actions and choices of individuals. John Locke famously argued that one can acquire a natural property right by applying one's labor to a resource, provided that one leaves "enough and as good" in common for others and that one does not allow the resources one appropriates to spoil.[59] Even if Locke is correct about the conditions under which unowned objects could be appropriated, it is clear that shareholders do not have Lockean natural property rights to shares of corporations. To see this, one need not consider the theoretical reasons for doubting that the "enough and as good" proviso is ever satisfied in

57. It is even more likely that aggregate welfare would benefit from public acceptance of a norm that allows managers to make small sacrifices to shareholder returns in order to provide large benefits to other primary stakeholders. Public acceptance of this norm might result in a reduction in financial investment in firms, but that reduction may be offset by an increase in other forms of investment in firms by other stakeholders.

58. For argument that shareholders are not co-owners of corporations, *see* Alan Strudler, *What to Do with Corporate Wealth*, 25 J. POL. PHIL. 108 (2017).

59. JOHN LOCKE, TWO TREATISES OF GOVERNMENT, bk II, ch. 5 at 285-302 (Peter Laslett ed., Cambridge Univ. Press 1988) (1690).

practice when people appropriate land, gold, and other scarce, durable resources.[60] One need only notice that the property rights at stake here, namely ownership of shares of stock in corporations, are creations of the legal system, as are corporations themselves. Thus, if shareholders' ethical claims on managers derive solely from their property rights, those claims will vary from one legal system to another.

Recognizing that any relevant property rights are creations of law, not natural rights, one might attempt to defend a managerial duty to promote shareholders' interests by appeal to the duty to obey the law. There are at least two problems with an appeal to the duty to obey the law as a foundation for a shareholder theory of business ethics. First, if managers' and corporations' duty to shareholders is grounded on a duty to obey the law, it only applies in jurisdictions where there is, in fact, a legal obligation to promote shareholders' interests. In some U.S. states and in some other jurisdictions, including the UK and Germany, there are statutes in place either legally permitting or legally requiring managers to take the interests of stakeholders other than shareholders into account.[61] Managers of corporations domiciled in these jurisdictions do not have a legal obligation to maximize returns to shareholders. In Delaware, the state of incorporation of many U.S. corporations, it is unclear whether the law requires managers to maximize returns to shareholders.[62] If it is unclear whether the law requires managers to prioritize the interests of shareholders over other stakeholders, and if the law is managers' only moral reason for adopting shareholder primacy, it is unclear why managers would be ethically required to interpret the law in shareholders' favor.

Suppose, though, that corporate law in some jurisdiction clearly required managers to put the interests of shareholders above the interests of other stakeholders. There is still a problem with using the duty to obey the law as a foundation for a shareholder theory of business ethics. The ethical duty to obey the law is generally understood to give people only a *pro tanto* duty.[63] Other moral considerations, possibly including the opportunity to produce a large benefit to others, can outweigh the duty to obey the law. So if the duty to obey the law is managers' only ethical reason to promote shareholders' interest, managers have only a *pro tanto* ethical duty to put shareholders' interests first. When a corporation can do a

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60. On this problem, *see* MICHAEL OTSUKA, LIBERTARIANISM WITHOUT INEQUALITY (2003).

61. *See* ERIC ORTS, BUSINESS PERSONS 212–13 (2013).

62. For arguments that American corporate law, including Delaware law, does not require shareholder value maximization, *see* Margaret M. Blair & Lynn A. Stout, *A Team Production Theory of Corporate Law*, 85 VA. L. REV. 248 (1999); Lynn A. Stout, *Why We Should Stop Teaching* Dodd v. Ford, 3 VA. L. & BUS. REV. 163 (2008).

63. For this characterization of standard views, *see* David Lefkowitz, *The Duty to Obey the Law*, 1 PHIL. COMPASS 571, 573–74 (2006). It is clear that sometimes breaking the law is morally permissible; indeed, sometimes it is morally required. For example, if one can save a life only if one runs diagonally across an intersection, in violation of a law against jaywalking, one should do so. I have argued that there is an all-things-considered duty to obey *some* laws in business contexts. *Breaking the Law Under Competitive Pressure*, 38 LAW & PHIL. 169 (2019). For argument that some forms of lawbreaking are morally permissible in business contexts, *see* Carson Young, *Putting the Law in its Place: Business Ethics and the Assumption that Illegal Implies Unethical*, J. BUS. ETHICS (forthcoming).

great deal of good for non-shareholders (e.g., employees or customers) by slightly sacrificing the interests of shareholders, as in the case of Merck's development of ivermectin, the ethical duty to obey the law as commonly understood yields to welfare considerations.

There are reasons to think that the moral obligation to obey property law is stronger than the moral obligation to obey law generally. Property rights give people spheres in which they can make decisions about projects to pursue without needing others' permission or good will.[64] There are ethical reasons to act in ways that are compatible with everyone having this sort of liberty. But these very ethical reasons imply that there is a problem with a legal system that enables some private resource owners to dominate others. People's liberty is constrained if the only way they can feed themselves is to accept employment on harsh terms (low wages, long hours, and the possibility of being fired on a whim and becoming indigent as a consequence). People's liberty is likewise constrained if their ability to obtain needed medicine depends on the discretionary good will of a patent owner who has the power to set prices arbitrarily. If there is a moral duty to act consistently with others' liberty, there is a strong moral reason to respect others' property rights. There is also a strong moral reason to refrain from using one's position as a resource owner to dominate others, if the legal system as presently constituted fails to prevent private domination.

## CONCLUSION

The central claim of shareholder theory is that managers and corporations have a strong duty to promote the interests of shareholders, possibly to the exclusion of others' interests. This claim is not self-evident; it stands in need of justification. Skepticism about the possibility of mutually beneficial, consensual exploitation typically rests on the non-worseness principle. The non-worseness principle is not self-evident; like the central claim of shareholder theory, it stands in need of justification. Both claims have possible justifications, but there is no plausible ethical theory that supports both. Act-consequentialist theories and other ethical theories that reject deontological constraints can be used to defend the non-worseness principle, but they are incompatible with shareholder theories of business ethics. It might be possible to defend a shareholder theory of business ethics by appeal to deontological moral principles. But the theoretical frameworks that could most plausibly be used to defend a strong duty to shareholders will also support ethical prohibitions on mutually beneficial, consensual exploitation in employment and in the markets for some goods (e.g., necessary medicine). Therefore, those who accept shareholder theory should reject the non-worseness principle. They should acknowledge that corporations and their managers are sometimes morally required to deviate voluntarily from a profit-maximizing strategy to avoid wrongful exploitation of employees and customers.

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64. For discussion of this conception of the value of property rights, *see* ARTHUR RIPSTEIN, FORCE AND FREEDOM (2009).