

The Minimum Wage and Justice

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The minimum wage debate is too often arranged on empirical grounds, focusing on the perceived effects of an increase in the minimum wage. The spotlight is on those who maintain that an increase in the minimum wage will cause unemployment versus those who maintain that an increase in the minimum wage will provide much needed income assistance to the working poor. This narrow empirical focus eclipses the necessity for a sincere inquiry into the ethical grounds of a minimum wage policy. The question of whether the minimum wage is a just policy is obscured by the debate about what is the socially optimal amount of the minimum wage. In response to the lack of discourse in this area, this paper engages the reader in a philosophically grounded analysis of the minimum wage.

The minimum wage debate should be rooted in conceptions of justice rather than in empirical cost-benefit analysis and should proceed from the premise that justice should drive policy implementation. The discussion of efficacy should not displace the central question regarding the ethicality of the minimum wage. True moral inquiry into the minimum wage has been concealed by the mere assumption that it is a just policy, a position that this paper seeks to discredit. This is not to say that any conception of justice that affirms the minimum wage as a just policy lacks substance out of hand, but rather that upon strict scrutiny conceptions of justice that embrace the minimum wage do so upon grounds that limit the scope of property rights and therefore personal liberty.

It has been misleading to say that arguing for or against the minimum wage on empirical grounds is anti-philosophical. On the contrary, examining the effects of the minimum wage and estimating costs and benefits is actually part of the regimen of consequentialism in general and act utilitarianism in particular. Consequentialism is a value-based moral theory that classifies an action as right or wrong depending on the consequences of the action.<sup>1</sup> The moral permissibility

of an action is determined by comparing “the overall intrinsic value of the consequences of the action compared to the overall intrinsic value of the consequences associated with alternative actions.”<sup>2</sup> Utilitarianism is a type of consequentialism that specifically defines what has intrinsic value as relating to human welfare or happiness.<sup>3</sup> According to act utilitarianism, an act is morally right if and only if it produces at least as much happiness (utility) as any other possible action.<sup>4</sup> The principle of utility must be applied to each individual situation to ensure that one maximizes the welfare of all the individuals who are affected.<sup>5</sup>

Examining the minimum wage according to consequentialism results in a discussion about whether the minimum wage will result in net better or worse outcomes for the most people. This goes beyond the theoretical assessment of the minimum wage and requires that one examine the actual empirical evidence of the costs and benefits of the minimum wage in the real world. According to Alan Krueger, a professor of economics and public affairs at Princeton University and former Chairperson of the Council of Economic Advisers, the supply and demand model of the minimum wage is a “*model of reality, not reality itself;*” thus, its projection about minimum wage laws need to be rigorously verified.<sup>6</sup> “Statistical analysis of observational data always leaves a certain level of ambiguity and that reasonable people can, and do, disagree about the significance of recent findings indicating that moderate minimum wage increases have a negligible effect on employment.”<sup>7</sup> The limitation of this kind of evidence is that it fails to account for the counterfactual: i.e. employers that never entered the market because of the minimum wage or employers that hired fewer employees because of the minimum wage, and Krueger concedes this point.<sup>8</sup> This is the crux of the consequentialist debate: does the minimum wage cause more harm than good? If not then the minimum wage is a just policy.

For Krueger and many others assessing the minimum wage by consequentialism is sufficiently compelling in affirming the morality of the minimum wage. However, others can look at the same evidence and determine that the minimum wage is unjust. This discrepancy occurs because consequentialism is an assessment of all the costs and benefits, which can be quite complicated to evaluate. However, those in favor of a minimum wage because they believe that workers are entitled to a living wage notwithstanding the consequences, a position that will be further explored later in this paper, should not endorse the utilitarian analysis of the minimum wage. There is no reason for these people to base their assessment on the dueling studies and statistics that both those for and against the minimum wage present because the utilitarian case will only coincidentally support the same conclusion as those who believe workers are entitled to a living wage. Advocates of the minimum wage claim that studies suggest that minimum wage laws do not affect employment, but it is rather the overall state of the economy that influences employment decisions in the market. Accordingly, advocates claim there is no substantial evidence that increasing the minimum wage increases unemployment. On the other side, those in favor of abolishing the minimum wage argue that historical evidence confirms that mandating a legal minimum wage rate causes a surplus of labor among the poorest members of society. It could come to light with new and compelling evidence that the minimum wage does have more harmful side effects through the perpetuation of unemployment than benefits from bolstering the wages of minimum wage workers. Through this example it can be seen that the utilitarian summation is no friend of those who argue that workers are entitled to a living wage because the empirical evidence could swing the other way and contradict rather than support a minimum wage.

Moreover, there are many problems with consequentialism and utilitarianism that need not be overlooked. As John Rawls explains in *Justice as Fairness* utilitarianism is deeply misguided.<sup>9</sup> Rawls explains that utilitarianism could pardon any form of oppression as long as the advantages outweighed the disadvantages. For example, utilitarianism allows someone to argue that slavery is just because the advantages to the slaveholders and society outweigh the disadvantages to the slaves. Rawls believes that the advantages to the slaveholder and society through the institution of slavery should not be acknowledged in the first place because the gains accrued cannot in any way mitigate the injustice placed upon the slaves.<sup>10</sup> Rawls argues that slavery is always unjust and there can be no question whether these gains outweigh the costs because the gains should carry no weight whatsoever.<sup>11</sup> The principle of summing up the advantages and disadvantages of one's actions and netting them together cannot provide that slavery is always unjust except by coincidence. In other words, utilitarianism and consequentialism deny that there is something inherently wrong with the institution of slavery, regardless of its relative advantages and disadvantages. That such a moral theory would not detest slavery out of hand for its aggressive nature seems troublesome at best.

It is true that one could apply utilitarianism to the minimum wage and decide whether it is just or not based on the results of implementation. On one side, the minimum wage increases wages to those who have employment. On the other side, is that some people may become unemployed or will be less likely to receive employment. Determining whether the minimum wage is a just policy then and if it should be enacted, one must examine the effects of the minimum wage and determine if more people are better off with a minimum wage than without it. Putting aside controversial evidence from empirical studies, the utility model determines if

something is just by examining a maximization principle without regard to whether such policy violates the rights of individuals.

Deontological moral theories address utilitarianism failure by holding that the moral content of an action is not dependent on its consequences. This is not to say that deontologists do not take consequences into account at all; on the contrary, deontologists find it necessary to provide evidence that the duty commanded will be possible, but they do not argue for maximizing aggregate welfare. Kantian moral theory is one such example. Kant offered a duty-based theory that classifies an action as right or wrong depending on an analysis of whether such action passes or violates the categorical imperative.<sup>12</sup> While the categorical imperative is the basic principle of Kantian moral theory, Kant himself offers alternative variations of this principle, namely the Humanity formulation and the Universal Law formulation.<sup>13</sup> For simplicity of application, the Humanity formulation will be used for this discussion, though either could reach the stated conclusion. The Humanity formulation holds that an action is deemed right insofar as it treats people as ends in themselves and not as mere means.<sup>14</sup> This raises the question, however, of what it means to treat someone as an end in themselves as opposed to as a mere means. According to Kant, coercion interferes with another's voluntary informed consent and treats her as a mere means.<sup>15</sup>

Coercion interferes with voluntary actions because coercive acts manipulate people to do something against their will either through force or threat.<sup>16</sup> Coercers remove their victim's ability to make a real choice between consent and dissent because the victim is unable to refrain from whatever the coercive party is proposing without harm to his or her person or property or danger thereof.<sup>17</sup> Because this risk of harm disallows the possibility for unadulterated, voluntary decision making, coercion treats persons as a mere means and is morally prohibited. In the case

of slavery, it becomes obvious that slaveholders are acting coercively by holding other people as slaves. It is clear that the slaves never gave their consent to give up their autonomy, and that the slaveholders are treating them as a mere means. Kant cautions that morality should be determined by the “categorical imperative; and woe to him who creeps through the serpent-windings of utilitarianism.”<sup>18</sup> Kant believes that human life would be worthless if justice were to be “bartered away” for the *greater good*, and that an individual must never be “dealt with merely as a means subservient to the purpose of another.”<sup>19</sup>

One of the main justice-based arguments made in favor of the minimum wage is that a person who works deserves to be paid a *living wage* for her efforts. During his 2014 State of the Union Address President Obama declared that “Americans overwhelmingly agree that no one who works full time should ever have to raise a family in poverty.”<sup>20</sup> There are indeed a growing number of people who believe that employers should pay employees, of whom many believe that employers should be required to pay employees, a living wage, that is, a wage adequate to meet the basic needs of workers and their families.<sup>21</sup> A living wage allows an individual to work one full-time job while supporting herself and her family according to the general standard of living in society, covering the cost of living, including housing, food, transportation, health care, and child care.

The moral argument behind a living wage is that low wages for the working poor results in deprivation for families, particularly single parent families with multiple children.<sup>22</sup> From this concern comes the idea that employers should be required to pay employees a living wage through the implementation of a legally mandated minimum wage. However, if the goal is to ensure that all people have a living wage, the minimum wage alone will surely disappoint. There are two main ways to ensure that every worker is paid a living wage: (1) wage supports and (2)

non-wage supports. Wage supports are essentially income supplements, the minimum wage is a wage floor and would fall under this category. Non-wage supports are in-kind benefits, i.e. goods and services as opposed to cash. For example instead of paying employees a certain amount of money for child care, employers could provide free child care to their employees. Employers will often offer subsidized health insurance too. The government also utilizes non-wage supports, such as public housing, food stamps, Medicaid, Head Start for childhood nutrition, and the Earned Income Tax Credit.

The living wage argument seems tremendously persuasive. In fact there are very few issues that have more public consensus than the minimum wage. According to a research study conducted by the Pew Research Center in January 2014, seven out of ten Americans (73 percent) favor increasing the federal minimum wage from \$7.25 an hour to \$10.10.<sup>23</sup> However, during the early 1900s, the courts overturned federal and state worker protection legislation time and again, including *Adkins v. Children's Hospital* (1923) and *Morehead v. Tipaldo* (1936). But in 1937, the court validated a minimum wage law in Washington in *West Coast Hotel v. Parrish*. Following the ruling, President Franklin Roosevelt advocated for a fair labor standards bill to be passed by Congress. He said that the all employers in the United States should provide “working men and women a fair day’s pay for a fair day’s work.” This statement was based on the premise that wages were established through market failure: workers had less bargaining power than the employers and employers paid workers compensation that was too far below what their labor was worth. A minimum wage would combat this market failure of unequal bargaining power by forcing employers to pay their employees closer to the value of their labor. In 1938 the Federal Government passed the Fair Labor Standards Act, which created a statutory right for workers to be paid no less than a mandated minimum wage of \$0.25 cents – \$4.08 in today’s dollars.<sup>24</sup>



During his State of the Union Address, President Obama announced that raising the minimum wage to \$10.10 will be a cornerstone of his economic agenda in 2014.

The federal poverty line is not an adequate measure for determining a living wage. Because the official poverty measurement imposes a threshold that uses outdated budget statistics and omits the rising standard of living, the current poverty rate understates the number of people who are unable to meet the basic needs of themselves and their families.<sup>25</sup> A more accurate reflection of the income needed to provide for a family's basic needs approaches 200 percent of the poverty line.<sup>26</sup> The basic needs budget approach to creating a poverty threshold takes into account the five categories of basic needs: housing, food, transportation, health care, and child care.<sup>27</sup> The basic needs budget approach creates a threshold that is the amount of income necessary to provide for these essential costs.<sup>28</sup> Those calling for employers to pay employees a living wage likely adhere to a conception of deprivation that more closely aligns with the threshold established by the basic needs budget than by the official poverty line.

Although many people invoke the moral appeal of a living wage to substantiate the minimum wage, the minimum wage is an insufficient tool to ensure a living wage. The minimum is but one policy, indeed an insufficient one at that, to be used to achieve a living wage for the poor. First and most obvious the minimum wage only touches those that have employment; its scope is limited to help only those who exchange in the market. Because of this limitation, the minimum wage fails to provide equal opportunity to the unemployed or the unemployable, those who are physically or mentally disabled and those who are too old or too young to participate in the labor market. Focusing solely on a minimum wage to achieve a living wage leaves out other resources and assistance that can be pooled with wages to provide for basic needs and an adequate standard of living.

It is clear that the current federal minimum wage of \$7.25 is not a living wage. Of course this takes for granted the fact that wages paid is not the only important variable: non-wage supports are critical too. But examining income as the only avenue for achieving a living wage shows the wide disparity between the current minimum wage, even President Obama's \$10.10 proposal, and the hourly wage needed to provide for the five categories of basic needs. For example, in Rockbridge County, Virginia a single parent with one child has to make \$36,582 a year to be able to support her family according to general standards of living in Rockbridge County.<sup>29</sup> If she works full time (2080 hours per year) her hourly rate has to be \$17.59 to be able to provide housing, food, transportation, health care, and child care.<sup>30</sup> In Rockbridge County a single parent with one child only has to make \$14,560 a year, or \$7.00 per hour working full time, to earn 100 percent of the poverty line.<sup>31</sup> This illustrates that for some, working full time in a position that pays minimum wage can result in an income above the poverty line; however, a full time minimum wage job consistently falls short of ensuring a living wage.

The minimum wage is well-intentioned to help increase the incomes of the working poor up to a living wage, which is a laudable goal. However, the question of justice is: should an individual be free to exchange her labor at any rate or should the government implement a minimally acceptable amount that she can accept? Minimum wage advocates argue that repealing the minimum wage will reduce the wages of the lowest paid workers and the least well off members of society. They espouse *fairness* as one of the rationales for maintaining a minimum wage. Those in favor of repealing the minimum wage claim to champion freedom: freedom for employers to hire and workers to labor for what salary they agree to. They claim that the minimum wage is an abridgement of the freedom of the individual to exchange her labor voluntarily. Arguing against the minimum wage is not about defending corporate profits or

economic efficiency; it's about protecting the freedom of individuals to voluntarily elect into a labor agreement. However, advocates for the minimum wage also claim to champion freedom: freedom for the poor to be able to say no to low paying jobs without fear of starvation or homelessness through sufficient equality to be able to say no to these low paying offers.

John Rawls argues that the role of justice is to create a system of rules that promote fairness, so that society will be a “cooperative venture for mutual advantage.”<sup>32</sup> Social cooperation should never occur at the expense of some people's good; this violates the notion of reciprocity, which is that social cooperation is for mutual advantage, or in other words that society should benefit each and every member.<sup>33</sup> Rawls' conception of justice follows from the social contract theory, endorsed by Kant, Locke, and Rousseau, but differs from their conceptions because Rawls' principles of justice are not based on a contract in regards to an actual society or for a particular government but are rather the guidelines that would have been established by free, rational, and mutually disinterested people in the original position.<sup>34</sup> Rawls' original position corresponds to the state of nature in the social contract theory and is a hypothetical situation where all agents would choose the rules for assigning rights and duties and for determining how benefits and burdens are to be distributed in harmony with the idea of reciprocity.<sup>35</sup> In other words, “each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override” such that the liberties decided in the original position are not subject to sacrifice for the good of society.<sup>36</sup>

Rawls also stipulates that the principles of justice chosen in the original position would take place behind a veil of ignorance, so that everyone would have an equal bargaining position because no one would know her conception of the good or the “nature of society, or their place in it.”<sup>37</sup> Since no one knows what will advantage or disadvantage them, the veil of ignorance

eliminates any possibility for someone to bargain for a particular advantage for herself. In the original position behind the veil of ignorance, rational people will select the principles of justice that result in the provision of social goods that is sufficient for them, regardless of their position in society, to be able to pursue their conception of the good. Thus, in this initial situation people will establish a threshold for primary social goods, which include rights and liberties, powers and opportunities, and income and wealth.<sup>38</sup> Because Rawls believes that his principles of justice are the ones that would have been adopted by all free and rational people in the original position behind the veil of ignorance, i.e. his rules would have been “agreed to in an initial situation that is fair,” Rawls calls his conception of justice “justice as fairness.”<sup>39</sup>

Rawls proffers two principles of justice that he believes would be chosen in the original position: (1) the principle of liberty and (2a) the principle of fair equality of opportunity and (2b) the difference principle. The principle of liberty maintains that “each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others.”<sup>40</sup> Basic liberty includes the right to property, political liberty, including the right to vote and to be eligible for holding public office, freedom of speech and assembly, liberty of conscience and freedom of thought, and freedom from arbitrary arrest and seizure.<sup>41</sup> Rawls also announces a hierarchy among his two principles, with the principle of liberty being preeminent. The priority of these principles prevents social rules from developing that would override individual liberty.

Both parts of the second principle deal with arranging social and economic inequalities in such a way that inequalities are (a) “attached to positions and offices open to all” and (b) “reasonably expected to be to everyone’s advantage.”<sup>42</sup> In part (a) Rawls’ argues that all persons should have equal opportunity to positions and offices in society regardless of their socioeconomic background. The differences in natural endowment come into play here. Some

people will be better equipped to acquire resources than others and to pursue their conception of the good because of how smart they are or how healthy they are, etc. In addition to natural contingencies, social contingencies also play a role. Some people will be better equipped to acquire resources than others and to pursue their conception of the good because of who their parents are, if their family is wealthy, and if they belong to a racial group that is in the majority.

This lottery of birth, Rawls contends, does not entitle someone to all she can get because one's natural endowments and favorable family and social circumstances is a matter of chance, of which she can claim no credit. No one deserves her initial starting place in the world, and no one deserves better life prospects because of her natural endowment. Thus, Rawls is arguing that starting position and natural endowments are arbitrary from a moral point of view.<sup>43</sup> And it is here that Rawls contends that the gains achieved by some because of random position and natural endowment can be mitigated to improve the fortune of the less well off from this social lottery, such that those who are equally talented and motivated should be able to get to the same position in society and have the same prospects for success regardless of their initial starting place in society.<sup>44</sup> This is the principle of fair equality of opportunity, i.e. social and economic inequalities should be arranged so that everyone has an equal legal right to obtain any position for which they are qualified.<sup>45</sup> In order to achieve fair equality of opportunity, inequalities resulting from natural and social contingencies must be mitigated through the provision of quality public education and public health care, etc. The alternative to fair equality of opportunity is formal equality, which occurs when the when the law treats all persons alike. Although based on the premise of nondiscrimination, formal equality fails to address real world cases of inequality because it treats individuals as equals despite unequal positions. In part (b) of the equality principle, Rawls explains the difference principle, which is that economic

inequalities will be just only if it is for the advantage of all members of society in general and to the worst-off people in particular. Rawls clearly ties the distributive justice duty to mitigating the design of the social structure. Inequalities that do not systematically result from, or are not magnified by, social rules are not a matter for distributive justice. Rawls is not a “luck egalitarian,” who believes that we need to mitigate the effects of all inequalities that people face, including disadvantages that come from random accidents and chance. Rather, he argues that systematically tying life prospects through social rules to arbitrary inequalities is the problem that needs to be addressed.

Opposed to Rawls’ conception of freedom and fair equality of opportunity is the principle that it is *morally impermissible to employ aggression against a nonaggressor*.<sup>46</sup> Aggression is the use of violence against a nonviolent person or her property that occurs in such instances as murder, rape, and robbery and is similar to Kant’s categorical imperative against using coercion. Furthermore, it is morally permissible to use violence in defense or in retaliation against violence; only the initiation of such violence is impermissible. The principle of nonaggression is not a controversial one; it seems to express an intuitive conviction among most people that initiatory violence, or aggressive violence, is not morally permitted. Where this position comes under fire is for its unwavering adherence to this nonaggression principle and its broad scope of application. It maintains that the initiation of aggression is morally impermissible in all situations. No matter how much good could be derived from suspending the nonaggression principle, the ends never justify the means.

The parallel of the nonaggression principle is the idea that an individual has a right, more specifically a negative right, to her person and to her property. According to the nonaggression principle, morality requires that each person be allowed to live her life free from aggressive

violence and entitles her to live in such a way. Because morality gives individuals an entitlement to live free from initiatory aggression, persons have a right to their person and property, and this right is inviolable and universal.

Human beings are moral agents, meaning that they are rational beings and are capable of moral decision-making, which makes them unique among all other known beings. As such, people should have moral authority over their own lives to decide what the good that they will pursue is. In order for people to pursue their conception of the good, they must be free to live their lives as they see fit, as long as they do not interfere or harm anyone else on her quest for realizing the good life. To say that people have moral authority over their own lives is to say that individuals have a right to their person and to their property. Because people have moral authority over their own lives, they have the right to live free from initiatory aggression.

The state should not interfere with the distribution of privately held benefits, including property, position, and admission. An individual does not have a moral claim to be given a benefit which is another's to bestow.<sup>47</sup> Therefore the distribution of privately held benefits violates no one's rights (because no one has a moral claim to such benefits) and treats no one unjustly.<sup>48</sup> State regulation then necessarily deprives individuals of their right to bestow benefits as they see fit because such policies force individuals to distribute benefits in a particular way. By overriding the right of individuals to bestow privately held benefits, the government unjustly violates the principle that individuals have moral authority over their lives, and it is here that true injustice is done. This is not to say that aggressive violence is the only form of immorality, but rather that anything that does not involve the initiation of violence should not be responded to with violence.<sup>49</sup>

This paper considers whether and under what conditions the minimum wage violates the right to own property. Rights are addressed to agents and are rights to particular conduct, i.e. actions and omissions. The brief description – right to own property – does not specify what claims the holder of such a right has on the conduct of other agents. In other words, it does not tell us what this right binds other agents to do and not to do. Presumably it obligates them not to engage in certain conduct that deprives others of their property. Because rights entail duties, the right to own property can be plausible only if the correlative duties are plausible as well. By examining what claims the right-holder has on the conduct of others we can specify the right to own property so that it protects persons from aggression as far as possible without making unreasonable demands on others. What moral claims does such a right give its holders against other agents? What correlative duties does it impose upon others? Under what conditions does depriving someone of her property manifest a rights violation, and which agents are then responsible for such violation? In response to these questions, I advocate a broad range, holding that depriving a person of her property manifests a rights violation. Others assert a tighter range for the right to own property. Let us try to make some progress toward resolving such disagreement.

It is hard to imagine a case of stealing that does not involve a violation of the human right to not be deprived of their property. However, a person or group may encounter problems to owning property that no other agents have causally contributed to. To clarify this idea, we must discuss the possible causes of depriving someone from her property and then identify the cases in which agents culpably play a causal role. One type of such relations is *acts* or *interactional harms*. A straightforward case of interactional harm is one where persons act in such a way that they deprive others of their property. People living upstream pollute the river, thereby poisoning



the fish that reside on the portion of the river owned by people downstream. One might deem this a clear-cut human rights violation, as the deprivation of one's property. Straightforward cases such as these abound, think about instances of burglary, vandalism, or assault.

Another possible cause of depriving someone from her property is *omissions* or *interactional failures to cultivate*. These cases are more difficult because an agent's decision may seem like a mere omission: the agent is not harming another agent, she is merely withdrawing a benefit. For example, an employer who pays her workers so little as to render their lives vulnerable may still be said to be benefiting (surely not harming) these workers by giving them an employment option they would otherwise lack. Thus, there is nothing intrinsically wrong with employing someone, even on extremely ungenerous terms. It is impossible to make our ordinary economic decisions in such a way that benefits all other agents and improves their capability to own property. Endorsing this aim is pointless because we cannot possibly live up to it because exchange is mutually exclusive, e.g. if someone hires a certain person she is thereby not hiring every other person. Ordinary economic transactions then necessarily result in benefiting some agents and not others, at least not directly. And it is these non-benefits that accumulate and result in the lack of cultivation of other agents' right to own property.

This complicates the picture. We live in a heavily interdependent world in which the effects of one agent's conduct can reverberate around the world. This is true not merely of the conduct of governments, corporations, and influential individuals. It holds for all those who participate in market transactions (all those who engage in exchange: exchange with nature – production, and exchange with other agents – trade). Daily economic decisions as shoppers or investors or as employers or workers affect the capability of other agent's to be able to foster their right to own property. These effects for any given individual may be negligible, but in the

aggregate, the tastes and preferences of agents determine the types of exchanges that will transpire. Given the extreme vulnerability of impoverished peoples, developing new types of exchanges can provide desperately needed employment while simultaneously depriving others of such opportunities. It does so by shifting demand to one group but not to another. It is impossible to know which of our decisions have such effects on people, and what its effects are exactly. This is unknowable because the effects on one singular economic decision, such as to hire this person, or to invest in this company, or to buy this particular lottery ticket, intermingle with the effects of billions of decisions made by other agents, and it is impossible to try to disentangle the impact of one decision. Furthermore, decisions have impact, in very large part, by affecting the situations and decisions of other agents, and so on.

To say that agents are morally required to benefit all other agents would be an implausible duty. Rather one might argue that this duty could be limited by a provision that required individuals to promote the capability of ensuring the right to own property to those least well-off. However, this would undermine the underlying meaning behind a right to own property, which is that an agent has a moral right to her property and no other agent can claim a moral right to it. This is not to say that a moral agent might have a duty to other agents to promote certain exchanges in a way that helps cultivate the capability for the right to own property of the impoverished. In other words, while moral rights entail moral duties, moral duties do not entail moral rights. An agent's right to own property requires that all other agents not deprive her of her property, and thus all agents have a duty not to participate in depriving her of her property is correlative to, and in this way entailed by, her right to own property. By refusing to exchange with certain individuals or choosing rather to exchange with another set of agents, one cannot be condemned as a property rights violator. One is not a property rights violator

merely for failing to benefit someone whose capability for the right to own property has not been cultivated. One violates property rights only if one deprives another agent of her property, not merely by choosing not to exchange with her. This issue is contested as many believe that a right to own property obligates agents to provide all other agents with the capability of such a right; however, as already argued above while a moral duty may exist for one to exchange with particular agents in a certain way, it is not true that this duty implies a moral right to an agent's property. And as such any requirement for her to foster another agent's capability outside of the moral sense would be a deprivation of her right to own property.

With this being said I have considerable sympathies with those who are appalled by the lack of capability of the right to own property among the poor. I agree that deprivation is morally impermissible and profoundly wrong. But I hold that cultivating another agent's capability is required by a moral duty. It is not within the purview of an agent's moral right to own property to require or force another agent into an exchange.

A wage floor is incompatible with the right to property and the principle of agency, which is that individuals should be able to pursue their self-interests free from aggression of other individuals. The principle of agency affirms that exchanges should be voluntary, i.e. individuals have the liberty or freedom to negotiate contracts with other individuals. When the state inflates wages through implementation of a wage floor, human agency is undermined. Whether the marketplace allocates resources in an equitable manner is beside the point. The minimum wage, furthermore any wage floor, deprives individuals from being able to negotiate a labor contract for a certain amount per hour. Whether or not someone would ever accept such an amount is again beside the point of justice. Embedded in the expression of agency and the right to own property is one's right to exchange, or one's right of contract. In order for one to pursue

her own self-interest she must be able to freely exchange with nature and others without interference from someone else. An employer is a property owner and has a job to offer, while the worker is also a property owner and has her labor to bargain with.

Property rights are not set in accordance with individual need or desire; rather property rights are established independently of such circumstances. The employer has the property right to establish limitations for what she is willing to pay in wages in exchange for the workers labor. Conversely, the worker has the property right to decide the minimum amount of money she will exchange for her labor. The minimum wage, then, is offensive because it violates the property rights of employers and workers by infringing upon their ability to establish the parameters for exchange. Often the violation of the worker's property rights is neglected; however, as explained above, the worker's labor is her property and the valuation of that property is her own, subject to negotiation with a willing employer.

In the absence of the minimum wage, some individuals will receive a wage that is less than \$7.25, but those workers will choose to work at that price, and that choice is important. Choosing to work there demonstrates that they think it is best option available to them among the varying alternatives. The worker naturally wants to maximize her wage while her employer wants to minimize it. The minimum wage that the worker will accept in return for her labor is the amount that makes her as well off as she would be in the best alternative. The maximum wage that the employer is willing to pay in exchange for her labor is the amount that makes the employer as well off without the transfer. What the minimum wage does then is eliminate the individual's ability to contract her labor for a rate below the minimum wage. If she is not lucky enough to find another job that pays the minimum wage, then she is faced with an income of zero.

Advocates for the minimum wage strongly believe that employers treat employees unfairly when they are paid below a living wage. Let us grant that the employer treats the employee unfairly by paying her a wage less than the cost of housing, food, transportation, health care, and child care. Nonetheless, the labor agreement between the worker and her employer is mutually beneficial. Such agreements, even when set for a low wage, make workers better off. This improvement to the worker's wellbeing transpires even if it does not benefit her as much as critics or the worker herself think it should. Low wage labor is voluntary in the sense of being free from physical coercion: a worker will only take a low paying job when that job is the best available alternative. So in all situations of voluntary low paid work, the worker has chosen the alternative that maximizes her well-being, or at least her projected well-being. This holds true even if we grant that a worker's freedom is limited in a number of unjust ways. Poverty undoubtedly constrains options, but as long as a worker is free to choose from within her constrained set of options, she will select the job that offers the best opportunity for success.

Requiring employers to pay a minimum wage does not improve the wages for those individuals who do not have a job. The government can make it illegal to pay low wages, but the government cannot make it illegal to pay no wages by simply not hiring. Offering someone employment at a rate below the federal minimum is illegal: on this the law is clear, but the law does not give a judgment on the moral status of paying someone below \$7.25. So there are two questions: (1) is paying someone less than \$7.25 immoral? And (2) whether it is or not, should it be illegal?

Let us examine the question of morality first. Is paying someone below \$7.25 morally wrong? The worker would of course rather be paid more than that, but simply wanting more money for one's labor does not make it wrong to offer her less. Paying someone less than \$7.25

is not morally wrong because the worker does not have to work for the employer for a wage below \$7.25. In other words, the worker is not required to work for less than \$7.25; she retains her ability to decide whether to accept a wage below \$7.25; moreover, she is able to make this decision independently from force or the threat of force. If the worker thinks that her labor is worth more than an employer's offer, she is free to decline the employment and say no to the exchange. If she does accept working for a wage below \$7.25 it is because she believes she is getting more value out of her wages than from any other available alternative. In other words, she comes away from the employment agreement with more than what she gives up.

However many people believe that paying someone below the minimum wage or even a living wage, which has already been established as not being the same thing, is exploitation. Exploitation is taking unfair advantage of another's vulnerability. Defined this way, many people find that paying someone below a minimum wage is a clear example of exploitation, where employers take unfair advantage of a worker's vulnerability in order to maximize their profit. It is absolutely correct that employers want to exploit workers and pay workers as low a wage as possible in order to maximize profits. But this rationale occurs to all employers, who also want to exploit workers in this way. Pressure from competition influences employers to pay workers close to the value of work they produce, whether they want to or not. If an employer pays a worker less than she is worth, another employer will offer her a higher wage because there is profit in doing so. Even when exploitative or unfair exchanges occur, such exchange is inherently mutually beneficial because it is voluntarily assumed. Mutually beneficial exchanges create value for both parties involved because both parties willingly consent to trade and predict that they will be better off than before the exchange transpired. It is the creation of value that improves wellbeing, which results in lowering vulnerability.

Thomas Mappes argues that offering someone a low paying job is exploitative because it is a coercive offer. Mappes explores the morally significant sense of using another person impermissibly when she is used as a mere means. This conception is based on a Kantian moral theory explained earlier. Using another person is best understood by Mappes and Kant, by reference to the notion of voluntary informed consent, which excludes all instances of coercion.<sup>50</sup> Occurrent coercion is the use of physical force, where one literally has no choice in what happens.<sup>51</sup> Dispositional coercion is the threat of harm, where although one does intentionally choose a certain course of action, that choice in the face of the threat of harm is less than fully voluntary.<sup>52</sup> Coercion either removes consent entirely or undermines the voluntariness of consent. Mappes also differentiates between an offer and a threat. An offer is such that if someone does what you want, you will bring about a desirable consequence for her. A threat is such that if someone does not do what you want, you will bring about an undesirable consequence for her. Mappes does not argue that offering someone a low paying job is a threat, but rather that it is not the same thing as an offer. Mappes argues that offering someone a low paying job is a coercive offer. It is coercive inasmuch as it is extremely enticing, in essence making an offer one *cannot refuse* because the choice is severely constrained by her need.<sup>53</sup>

Robert Goodin argues that the state is justified in preventing the exploitation of “those who would otherwise find themselves in desperate straits” because it is protecting the freedom of the vulnerable.<sup>54</sup> Goodin explains that exploitation arises when one person is in a strong position relative to another; in response to her greater bargaining power the person in the stronger position has a moral duty not to take advantage of her greater bargaining in dealings with the person in the weaker position.<sup>55</sup> Goodin argues that individuals not only have a moral duty to refrain from exploiting the vulnerable but also have a moral duty to protect the vulnerable by

preventing others from exploiting them.<sup>56</sup> Those invoking the exploitation argument espoused by Goodin in reference to the minimum wage would argue that minimum wage laws intercede between employers who have strong bargaining power and workers who are vulnerable and unable to negotiate for higher wages. The minimum wage thus protects the poor from “the allures of fundamentally coercive offers.”<sup>57</sup> Goodin argues exploitation as unfairness without citing that exploitation is necessarily coercive.<sup>58</sup> Specifically, offering someone a low wage need not be coercive; it may be that such a gesture is a coercive offer as earlier described by Thomas Mappes. Goodin believes that exploitation can occur despite a person’s full and competent consent.<sup>59</sup> Although others maintain that if someone consents to being used, or consents to being exploited, she is not being treated as a mere means but is rather being treated as an end in herself. Goodin argues that what makes something an example of morally impermissible exploitation is not presence of coercion or the absence of consent but a violation of the moral norm to *protect the vulnerable*.<sup>60</sup> For Goodin the negative duty people have to not exploit the vulnerable gives rise to the positive duty to prevent the vulnerable from being exploited.

This brings us to the second question, which is even if paying someone below \$7.25 an hour is exploitative and therefore morally wrong should it be illegal? And the answer is a definitive no. If paying someone below \$7.25 an hour is wrong, it is because it employers are exploiting poor, vulnerable workers. The last thing policy should do is hurt these vulnerable individuals even more. Minimum wage laws inherently create a shortage of the lowest paying jobs by outlawing the availability of jobs below the minimum rate. A minimum wage of \$7.25 an hour certainly excludes many voluntary exchanges that would have occurred in absence of such interference. However, even if the minimum wage rate was set to an amount that for the sake of argument no one would be willing to work for and therefore a minimum wage rate that does not



deter any employment, say \$0.01 an hour, it would be an unjust policy because of the principle of the minimum wage, which is that government has the authority to make otherwise voluntary and mutually beneficial exchanges illegal. The minimum wage is a well-intentioned policy: it is Congress' way of bolstering the wages of the lowest paid workers in society. But the minimum wage treats individuals as a mere means toward a social goal.

Some people argue that the freedom of contract to either accept employment or reject it is tantamount to whether or not one should eat or starve. However, this emotional statement ignores the fact the minimum wage is a violation of one's rights, as here conceived. The minimum wage violates an employer's property rights to offer another individual a certain wage, one beneath that mandated minimum. At the same time, the minimum wage violates the employee's property rights to offer her labor in exchange for goods in services at any dollar amount that she sees fit. One could argue, however, that the low wages of the working poor that result in poverty and low standards of living override the principles of individual freedom and nonaggression enumerated in this paper. However, one will have to explain why preventing voluntary exchanges in this sense is any different from depriving people of their property in other scenarios.

While a majority of people favor the minimum wage, there is no reason to conclude on majority approval alone that the minimum wage is a good policy or indeed a just one. The debate should be about whether or not to take issue with the government outlawing a voluntary wage contract between an employer and a worker. As Alan Krueger notes "it is quite defensible for one to be...opposed to it based on libertarian grounds."<sup>61</sup> Hopefully this paper was able to expose the audience to the problems of approving of the minimum wage on utilitarian grounds and show that there are severe hurdles to overcome if one is to argue that the minimum wage is a

just policy, including property rights, the principle of nonaggression, and the principle of autonomy.

Examining the moral status of the minimum wage and determining whether it is just or unjust should be the foremost issue among individuals concerned with justice. Deontological theories need not endorse the conception of rights and freedom endorsed by this author. As for the minimum wage this paper sought to espouse the common misconception that paying someone a wage below \$7.25 is immoral when such price determination is done in the context of voluntary and mutually beneficial exchange. More importantly this paper shows that to trespass on this agreement, as the minimum wage surely does, is not morally permissible because it violates the freedom of the worker and the employer to negotiate a labor contract. The minimum wage makes it illegal to hire someone below the mandated minimum wage and uses the coercive powers of the state to force employers and workers to comply. It is lamentable, but legislating a minimum wage is not compatible with the conception of freedom and justice that corresponds to the right to own property and the principle of nonaggression.

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