

THE ETHICS AND ECONOMICS OF THE MINIMUM WAGE

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This paper develops a normative evaluation of the minimum wage in the light of recent evidence and theory about its effects. It argues that the minimum wage should be evaluated using a consequentialist criterion that gives priority to the jobs and incomes of the worst off. This criterion would be accepted by many different types of consequentialism, especially given the two major views about what the minimum wage does. One is that the minimum wage harms the jobs and incomes of the worst off and the other is that it does neither much harm nor much good. The paper then argues at length that there are no important considerations besides jobs and incomes relevant to the assessment of the minimum wage. It criticizes exploitation arguments for the minimum wage. It is not clear that the minimum wage would reduce exploitation and the paper doubts that, if it did, it would do so in a morally significant way. The paper then criticizes freedom arguments against the minimum wage by rejecting appeals to self-ownership and freedom of contract and by arguing that no freedom of significance is lost by the minimum wage that is not already taken account of in the main consequentialist criterion. The conclusion is that, at worst, the minimum wage is a mistake and, at best, something to be half-hearted about.

INTRODUCTION

The minimum wage is a simple policy. Legislation requires that wages per hour do not fall below a certain level and provides some mechanism to enforce this. It is also perennially controversial. Like other policies of labor regulation, the minimum wage goes in and out of fashion, but the basic arguments have remained substantially the same for decades.

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Some think the minimum wage causes unemployment while doing little to improve the position of the badly off who remain in work; others think it a good way to prevent or reduce poverty and exploitation. But while the empirical bases for the arguments have become more sophisticated, their normative bases are surprisingly underdeveloped.¹ This paper tries to develop the normative evaluation of the minimum wage in the light of recent evidence and theory about what it does. The paper claims that the best way of evaluating the minimum wage is to use a version of consequentialism that gives priority to the effects on the jobs and incomes of the worst off. However, many think other considerations count for more than consequences do. Some propose the minimum wage because they believe that employers have duties not to exploit their workers, whereas others oppose it on the grounds that it wrongly restricts the freedom of workers to contract as they choose. The exploitation argument for and the freedom argument against the minimum wage are nowhere set out in detail, so I try to present them in what is I hope an unbiased and advanced form – and then reject them.

The paper does not reach a single final judgment on the minimum wage. This is because of its consequentialist criterion. There is too much controversy among economists about what the minimum wage does, especially to jobs, for it to be clear what one should think about it in any given instance, and anyway the minimum wage can be evaluated differently in different circumstances. What the paper does is narrow the options. In the process, it goes into some detail about the controversies over the effects of the minimum wage. This is partly because if we want to know what to think about it, we should know something about these controversies, but it is also because of a point about the method of doing applied ethics or political philosophy. Taking seriously the empirical and theoretical work on some practical topic helps with an ethical evaluation in at least two ways: one can see which problems are real and which are imagined, and one can see where it is worth resolving philosophical controversies and where they can be avoided.

As usual with papers that apply normative ideas to some policy, this paper is not complete. It is not complete because of the controversy among economists just mentioned and because the ideas in this case – to do with consequentialism, exploitation, and freedom – are each complicated and a subject of dispute, and it is not possible to do justice to any of them. Instead,

¹ On the economics of the minimum wage, see Card and Krueger (1995), Gregory, Salverda, and Bazen (2000), and the references cited in both books. It is rather surprising that political philosophers have not written on the minimum wage since they have shown interest in other aspects of the labor market. See e.g. the fairly large literature in political philosophy on blocked exchanges in the labor market, such as Walzer (1983), Miller and Walzer (1995), and Anderson (1993). Shiffrin (2000) is also helpful.

I have taken the main, or what are likely to be the main, applications of these normative ideas and assessed and criticized them. The result, then, amounts to a challenge to produce new arguments to those who dispute the conclusions.

Throughout this paper, I consider only the minimum wage as a tool of domestic policy and not the related issue of minimum labor standards for foreign workers, especially those in the developing world.²

1. THE MINIMUM WAGE AND ITS CONSEQUENCES

Let us begin with a concrete example. The UK National Minimum Wage Act (1998) and a 2001 uprating requires all workers over the age of 22 who have contracts in the UK or on UK flagged ships to be paid at least £4.10 per hour. Workers below the age of 22 get £3.50 per hour. The minimum wage has wide coverage with only limited exceptions. These include the self-employed, volunteers, e.g. in charity shops or schools, members of the military, prisoners, and certain office holders, such as members of the clergy or company directors. Moreover, the national minimum wage applies across the whole of the UK. It does not vary with the very different economic conditions that one would expect in such a large economy, from the rich areas, such as the Southeast of England, to poor areas, such as South Wales.³

The minimum wage is primarily enforced by the state through the Inland Revenue, although workers can sue employers if they believe they are not being paid the minimum. The Inland Revenue can issue a notice to employers requiring payment and, in the event of non-compliance, can issue penalty notices, which fine the employer at twice the rate of the minimum wage. These fines can then be recovered through the courts, if necessary. There are understandable reasons for the state to have an enforcement role – minimum wage workers in the UK are not in a strong position to enforce their rights on their own. Even with the Inland Revenue as an enforcer, there are various illegal scams that employers have used to avoid the effects, such as firing workers who complain or unilaterally changing terms and conditions, for example by abolishing clothing allowances.⁴ Enforcement by the state makes a difference to the

² So I here leave aside Matthew Clayton's diverting suggestion that the minimum wage in rich countries is to be welcomed as a way of improving the position of the worst off, who are in developing countries, by making their products more competitive.

³ In this respect, the UK minimum wage is similar to the US Federal Minimum Wage, which does not differentiate between rich California and poor Mississippi or Puerto Rico. For the UK see the TIGER (Tailored Interactive Guidance on Employment Rights) website, www.tiger.gov.uk. This contains a full description of the minimum wage legislation in the UK. Data on the US minimum wage can be found in Card and Krueger (1995).

⁴ See the report by the British Trades Union Council (2000). The TUC report does note, however, that there has generally been good compliance with the Act – see p. 11. This

sort of argument needed. It is not enough to argue that employers who pay below some minimum are exploiters who should not have their contracts protected. If one wants to argue for the minimum wage, one also has to justify coercing them into paying above a certain rate.⁵

I argue that the correct way to evaluate the minimum wage is by singling out the effects of the minimum wage on the jobs and incomes of the worst off. Since any sensible view will want to take account of these effects, even if it does not regard them as decisive, it is worth going into some detail about the theory and evidence of what the minimum wage does. In this section, I describe the main views about the consequences of the minimum wage along with the important variables, with an eye to the ones that are likely to be normatively significant. In the next section, I explain why consequentialists of different types are likely, especially in the light of the evidence, to converge when judging the minimum wage. I should say it is hard even for professionals to work out the consequences, and that I am not a professional at this.

First, consider the standard textbook view of the effect of the minimum wage, in particular on employment. According to this view, if the minimum wage is at or below the competitive rate for labor, it has no effect, whereas if it is above that rate, it disemploys people.⁶ If the price of labor goes up, demand will fall. Employers will substitute capital or more skilled but more expensive labor for those who would have been employed below the minimum wage. While some workers will receive a pay rise and more experienced workers might find jobs, workers at the margin, who would be willing to work for low wages, will be disemployed – rendered unable to find work at the minimum wage employers are forced to pay.⁷ In addition, prices of some goods and services will rise and output will fall because employers are forced to use less cheap alternatives to below-minimum wage labor and/or profits will fall, depending on how much the increased costs are passed on to consumers.

There are some *a priori* reasons to doubt the standard view. Some of its critics argue that if the labor market is not competitive, the minimum wage might cause an increase in employment, as theoretically it would in

contrasts with earlier experience in the UK with industry-specific wage councils, where non-compliance was widespread. See Bazen (2000: 130–1).

⁵ Those associated with the blocked exchange literature have often been weak on this. For relevant criticism, see Waldron (1995). The remarks in the text about coercion and coverage do not apply to the US Living Wage Movement, where local government as employers pay higher wages and use their powers of contract to pressure other employers into doing the same. Coverage here is estimated to be just over 100 000 workers out of around 40 million who earn poverty-level wages. See Luce (2002: 51).

⁶ In the words of a chapter in Becker and Becker (1997: 37) 'It's simple: hike the minimum wage, and you put people out of work'.

⁷ This is emphasized by Brittan (1995: 244) and Friedman (1962: 180–1).

the case of monopsony. (A monopsony is a monopoly buyer of labor, such as the only firm in town.) Some monopsonies will take advantage of their power by paying below what the competitive wage would otherwise be. As a result, they will probably have vacancies that they would like to fill but cannot at the wage they are offering. Monopsonies would be willing to pay extra to attract workers to fill their vacancies, but on the assumption that they cannot pay new employees more than their current ones, they would rather have vacancies than pay the extra to all their employees. If the monopsonies are then forced by minimum wage legislation to pay all their workers more, some of their vacancies will be filled by people who find that higher wage enough to attract them. Consequently, the minimum wage will increase employment and increase wages.

While there is scepticism about the practical relevance of the literal one-employer monopsony idea,⁸ some economists argue that the costs of searching for jobs can generate monopsony power and drive the wage rate down.⁹ For example, some workers, such as immigrants who are illegal or cannot search for jobs due to language problems, are targeted by certain firms that can pay them less than the rate for similar work by other workers. The minimum wage might then benefit such workers by pushing their wages up to what is the competitive rate for less vulnerable workers. These are just examples and the idea of monopsony power is broader and applies in other cases where search costs are high. It is also sometimes argued, contrary to the standard theory, that the minimum wage could increase output. Firms might be 'shocked' by increased labor costs into finding more efficient methods or workers might become more productive, due to their better morale from more pay, or reduced staff turnover, or even because they have more energy from getting enough to eat or not having to take two jobs.

As we turn to empirical evidence about the effects of the minimum wage, the picture is a confused one. One of the best-known books on the topic, David Card and Alan Kreuger's *Myth and Measurement*, claims that increases in minimum wages in the US did not increase unemployment and may even have decreased it. Their most striking piece of evidence is from a comparison of employment in fast food restaurants in New Jersey, which raised its minimum wage, with those in Pennsylvania, which did not. The standard theory predicts a decline in employment in New Jersey relative both to before the increase in the minimum wage and to Pennsylvania. In fact, there was a slight increase in employment. As for the UK, the TUC points out that the period from the introduction of the minimum wage

⁸ Although hospitals are sometimes considered monopsony employers of nurses. See Fuchs (1987: 126).

⁹ See Stiglitz (2002: 10).

coincided with a fall in UK unemployment.¹⁰ Others are not persuaded. They dispute the details of studies showing a minimum wage having no effect on employment,¹¹ or they cite other studies showing that it does have a bad effect, or else they point out how hard it is to disentangle the various causes of unemployment and say that the standard theory's predictions should not be lightly overturned.¹²

Many variables affect generalizations about how much unemployment the minimum wage would cause and how bad the unemployment would be. Some of the most important ones are:

- (i) The rate at which the minimum is set. The effects of the minimum wage on unemployment would presumably vary according to the rate – the higher the rate, the worse the effect. In the UK, the minimum wage is set at a certain level (£4.10 for adults over 22) and rates vary considerably from country to country.¹³ Still, the rates everywhere tend to be fairly low and those who argue that the minimum wage does not have harmful effects limit their claims to those low rates. No one proposes a minimum wage of US\$100 per hour in 2004 prices.
- (ii) The amount of unemployment will depend on how the minimum wage interacts with other elements of the labor market. One interesting point to make here is that the force of the disemployment argument against the minimum wage does not just depend on how many are disemployed, but also on how long they can expect to be without a job. In the US, where periods of joblessness are shorter, the unemployment costs of raising the minimum might be shared across workers and this might well seem fairer than in Western Europe, where higher proportions are unemployed for the long term and where the effects of the minimum wage might be that some gain while others lose badly.
- (iii) The nature of the welfare state affects how bad unemployment is for those who experience it. Unemployment is partly bad because of its effects on incomes, which the welfare state can do something about through unemployment benefits. On the other hand, unemployment benefits cannot do much to make up for the non-income effects of unemployment – loss of self-esteem, boredom, and so forth, although how bad these are varies from person to person and culture to

¹⁰ TUC (2000: 2).

¹¹ For a discussion of the reaction to Card and Krueger (1995), see Bazen (2000: 124–30). Bazen largely accepts Card and Krueger's claims about the fast food sector. He also says that the evidence for other sectors is less clear and more mixed.

¹² Becker and Becker (1997: 37–8).

¹³ See the list of rates in 26 countries in *The Economist* (2001: 102). The UK is fourth on the list, the US sixth. The list is based on simple conversion into US\$ and ignores different price levels in these countries.

culture. This might be the place to mention the suggestion that the minimum wage could be part of a sensible package to deal with poverty in work while those disemployed by it could be compensated through the benefits system. The suggestion cannot be dismissed out of hand, but it faces the problem that help for those who have been disemployed would have to take the form of raising benefits for all the unemployed, and there are obvious incentive and fiscal problems with raising unemployment benefit for all. Moreover, for any realistic level of benefit, many of the losers would not get enough to be compensated for the non-income harms they suffer through unemployment.

Now consider the effects of the minimum wage on the incomes of the worst off. There is some consensus that the minimum wage does not do much to reduce poverty.¹⁴ This is partly because minimum wage workers are a fairly small proportion of the total workforce and partly because many poor people are not minimum wage workers. They are often outside the workforce altogether, for instance single parents and their children, or else they are being paid above the minimum wage but have to share their money with many family members.¹⁵ The effects of the minimum wage on distribution might also be blunted, as critics from law and economics claim, by the response of employers, for instance in making jobs more onerous.¹⁶

There is an interaction between unemployment and poverty, since those who lose their jobs usually lose income too, so the variables mentioned above in the discussion of employment are relevant to the effects of the minimum wage on poverty. Some of the further interesting ones are:

- (i) The welfare state helps determine the redistributive effect of the minimum wage. For instance, a worker's final wage may not go up after a rise in the minimum wage if other social welfare benefits are withdrawn.¹⁷
- (ii) How long employment at minimum wages can be expected to last. If workers tend to be in minimum wage jobs for a short time before earning more (as one can expect of middle-class teenagers with

¹⁴ For a recent empirical paper (on the US) see Neumark and Wascher (2002). The authors say 'no' in answer to the question that is their title.

¹⁵ The overlap between poverty and low pay varies from country to country and time to time. See Nolan and Marx (2000).

¹⁶ E.g. Epstein (1995: 144–5), but see n. 6 above.

¹⁷ See Freeman (1996: 644–5).

- after-school or holiday jobs) any redistribution argument has less force than if workers are on the minimum wage for a long time.¹⁸
- (iii) How we should evaluate any price rises will partly depend on who is affected. If the products made by minimum wage workers are expensive luxury items bought mainly by the rich, it would matter less if their price went up than if the products were bought by the poor, as they might well be in the case of fast food or cheap clothing.

To conclude this brief survey of the theory and empirical evidence of the effects of the minimum wage, there seem to be two main views about the effects of the minimum wage on jobs and poverty. The first – the standard textbook view – is that the minimum wage is bad for the jobs of the worst off and not much good as a way of dealing with poverty; the second – the new economics of the minimum wage – is that the minimum wage has little effect on jobs, but also little effect on poverty.¹⁹

So much for some of the accounts of the effects of the minimum wage. We turn now to the question of how these effects should be evaluated.

2. CONSEQUENTIALIST CONVERGENCE AND THE EFFECTS ON THE WORST OFF

In my view, whether the minimum wage is a good idea depends largely on its effects on the jobs and incomes of the worst off. Since it is unlikely that anyone will deny that those effects are important, what is controversial here is the view that they are the main determinants.²⁰ This section argues that different types of consequentialists should agree that they are and later sections argue that the apparently relevant further considerations of exploitation and freedom are unimportant.

Assessing the minimum wage in terms of its effects on the jobs and incomes of the worst off is a kind of consequentialism. There are, of course, differences among consequentialists, but, as this section shows, these are unlikely to matter in forming a final judgment on the minimum wage. Consider first two important controversies within consequentialism. The first is to do with how to assess the value of jobs and incomes, whether in terms of welfare, resources, capabilities, or any of

¹⁸ For a recent empirical paper, again on the US, see Carrington and Fallick (2001). Within the limits of their longitudinal study, the authors' answer to their question is that a non-trivial fraction do. For instance, they estimate that more than 8% of workers spend at least half their first 10 post-school years working in jobs paying less than the minimum wage plus \$1. (See p. 18.)

¹⁹ For evidence that what I call 'the standard textbook view' is indeed standard and a helpful account of the significance for the discipline of the 'new economics' see Kreuger (2001).

²⁰ Even libertarian rights theorists like Robert Nozick could say and might well think that the effects count within whatever space is left by rights as side constraints. For the account of rights as side constraints on goals, see Nozick (1974: 28–33).

a number of suggestions.²¹ The second is to do with the focus on the worst off. Utilitarianism, the best-known version of consequentialism, is concerned only with maximization and critics often recommend supplementing maximization with some concern for equality or argue for giving some kind of priority to the worst off.²² However, for all their theoretical interest, these disagreements within consequentialism probably make little difference to the evaluation of the minimum wage. As far as value is concerned, jobs, incomes, and prices will figure in a consequentialist account in some way or other. As for maximization, the various consequentialist views will probably converge. Both egalitarians and prioritarions favor the worst off, but in practice many utilitarians do too because of diminishing marginal utility.²³ The thought here, then, is that when it comes to the minimum wage, there will be some consensus on a criterion giving priority to the worst off. Furthermore, whatever differences remain are unlikely to affect a final consequentialist judgment of the minimum wage in the light of what it actually does.

Consider, first, the evaluation of the effects that the standard theory for competitive markets predicts. On that theory, the minimum wage causes big losses to marginal workers and smaller losses to employers and consumers, while there are small offsetting gains to some workers. If those are the effects, then consequentialist views of any plausible kind will condemn the minimum wage. Utilitarians will argue that the loss to the marginal workers is too great, especially given that they are already badly off and so could get more welfare for given jobs and income than others would. Egalitarians and prioritarions will focus on the decline in the position of the worst off people and that, again, will lead them to condemn the minimum wage. Indeed, one reason why economists do not tend to discuss how to evaluate the effects of the minimum wage might be because, once one sets them out in this way, the very description would persuade anyone with consequentialist sympathies.²⁴ There is just no need to go into detail here about the right kind of consequentialism.

The point about convergence holds even given the rather different picture presented by some of the evidence summarized in the last section. Instead of condemning the minimum wage, consequentialists will be half-hearted about it. This is partly because it is unclear what the minimum

²¹ The suggestions here typically occur within the large debate known, after a paper by Amartya Sen, as 'equality of what?' See Sen (1995). Two of the best-known papers, rejecting welfare and endorsing resources, are by Ronald Dworkin and reprinted as chs. 1 and 2 in Dworkin (2000). Ch. 7 of that book makes a further contribution to the debate.

²² See the classic article by Parfit (2000).

²³ See e.g. Brandt, (1996: 206–9). For a criticism of attempts to get equality out of diminishing marginal utility, see Broome (1991: 175–7).

²⁴ P. S. Atiyah notes how persuasive this reasoning has seemed to British courts since about 1980, and indeed he seems persuaded himself. See Atiyah (1995: 29–30).

wage does and partly because, whatever it does exactly, it does not appear to have much effect on jobs or distribution.²⁵ Consequentialists should be inclined to look elsewhere for measures to deal with unemployment, poverty, and maldistribution.²⁶

The criterion defended so far assesses the minimum wage by its consequences for the jobs and incomes of the worst off. This criterion holds that the gains and losses caused by the minimum wage are comparable. What counts is their size and how badly off the person is who suffers or gains. A \$1/hour gain to A is as good as a \$1/hour gain to similar B; a job loss to A is as bad as a similar loss to similar B; and in principle, losses of jobs to some can be compared with gains in income to others. The final decision about the minimum wage is then based on some kind of cost–benefit sum. This criterion is controversial because it ignores exploitation arguments for the minimum wage and freedom arguments against it.²⁷ Those arguments could be taken as criticizing consequentialism and opposing a cost–benefit calculation altogether, or as calling for a richer version of consequentialism, where the effects on freedom and, less comfortably within consequentialism, exploitation are included in the cost–benefit sum along with the effects on jobs and incomes. But it does not matter whether we take them as criticizing consequentialism or enriching it, because, as the next two sections will try to show, the exploitation and freedom arguments are not persuasive. We have seen that the consequentialist focus on the jobs and incomes of the worst off provides one main criterion that should be used to evaluate the minimum wage. The aim in the rest of the paper is to show that the other suggested criteria should not be used. The next section criticizes an exploitation criterion for evaluating the minimum wage, and the following criticizes a freedom criterion.

3. THE MINIMUM WAGE AND EXPLOITATION

According to the exploitation argument, the minimum wage is justified because it helps prevent employers from exploiting their workers. The

²⁵ The prospects for consensus here might be overstated in two respects. First, egalitarians might measure inequality in ways that permit losses to the badly off that would be ruled out by utilitarianism and prioritarianism. Second, egalitarians and prioritarians who are concerned about complete lives might evaluate data on duration of joblessness and mobility differently from those concerned with inequalities at particular times. See Temkin (1993) on the measurement of inequality and the significance of time.

²⁶ The differences between utilitarians, egalitarians, and prioritarians might be more important in evaluating these other measures, such as basic income, labor market deregulation, and skills investment.

²⁷ In other contexts, consequentialism is controversial because it ignores desert but I doubt that matters here because it is unlikely that there are significant differences in deservingness among the groups affected by the minimum wage.

thought is that if people are going to hire workers, they ought to pay them a decent wage, and, if they do not, they are exploiting their workers. Moreover, the thought must be, the duties not to exploit are properly enforceable through the minimum wage. Reducing exploitation is not only often explicitly cited as a reason for the minimum wage,²⁸ it is, I shall now argue, required to supplement other arguments to do with needs and poverty.

Some say that people ought to get a minimum wage because, in general, nobody should be poor, or people's needs should be met. On the face of it, this is a confusion of aims and methods. There are many ways to prevent poverty or meet people's needs, such as the state's providing an income subsidy, and while the minimum wage might be part of a poverty-reduction strategy, it need not – indeed, it does not seem to play much of a role in alleviating poverty. These remarks apply too if one thinks there is something especially bad about poverty in work. No doubt one reason why the minimum wage has more popularity than one would otherwise expect in the US is because it is thought that people who work full-time deserve to have enough to live on. On this view, badly off full-time workers are the deserving poor, not dole bludgers. Even so, why relieve their poverty through minimum wage legislation, which puts the burden of providing a living wage onto the employer and consumer? Why not, say, pay income subsidies out of general taxation?²⁹ There needs to be more than just a concern for the poor – even the deserving poor – and the gap is plausibly filled by the exploitation argument. The reason the duty to provide a living wage should fall onto employers and consumers is because otherwise they would be exploiting the workers. It is to prevent their wronging the workers that the enforceable duty of the minimum wage falls on them.

While the exploitation argument might supplement the arguments from poverty or needs, it might come apart from those arguments. It is quite possible that the low-wage workers who are exploited are not poor – say teenagers or married women from the middle class – yet the exploitation argument for the minimum wage would still apply, whereas the needs or poverty arguments would not.

To summarize, it is because employers and consumers specifically have duties not to exploit that the conclusion is a minimum wage rather than other measures to deal with poverty. It is because of the duties that even middle-class low-wage workers should be paid a minimum wage.

²⁸ See e.g. TUC (2000: 1) and Dworkin (1986: 55). Dworkin, somewhat hesitantly, defends minimum wages as a device to bring wages closer to what they would be in a just society. He does not mention the disemployment argument against them.

²⁹ Edmund S. Phelps argues for income support for workers to deal with the problem of poverty in work in Phelps (1997).

None of this is to say that low-wage workers actually are exploited, something defenders of capitalism might well deny.³⁰ We need a way of deciding whether low-wage workers are exploited. The guiding idea of exploitation is 'taking unfair advantage'.³¹ Applying this idea to wage work requires some principle of what a fair transaction would be and some way of telling whether that principle has been satisfied.³² The most well-known theory, or theories, of exploitation, are to be found within Marxism.³³ One strand holds that the underlying principle is 'to each according to his labor contribution', and that the measure of contribution is the quantity of labor, itself to be measured by the labor theory of value.³⁴ (The principle might be sound even if the labor theory of value is not.) Outside Marxism, some writers say that the prices offered in a perfectly competitive market should be the guide to fair wages. Some ambitiously argue that wages in a competitive market reward desert and, on this view, exploitation is the failure to pay people what they deserve.³⁵ Others less ambitiously believe that while hypothetical prices are a poor indicator of desert, they are a reasonable indicator of fairness in transactions even if background conditions are unjust. On this view, transactions at market prices at least have the merit that no one is taking special advantage of others.³⁶ Although there is not the space here to decide between the various accounts of exploitation, we can go some way to answering the

³⁰ One might argue that low-wage workers could not typically be exploited on the grounds that they voluntarily accept a wage bargain that makes them better off than their alternatives. Since I go on to criticize exploitation arguments for the minimum wage, I do not need to assess this argument. Still, I do not believe it.

³¹ Alan Wertheimer reports a near-consensus on this in the literature. See Wertheimer (1996: 10).

³² Not all charges of exploitation presuppose fair and unfair terms. Some ways of exploiting a person might be beyond price, as critics of commercial surrogacy or prostitution sometimes argue. See Wilkinson (2003: chs. 3, 8) for a good discussion. However, that is not plausible for low wage work in general and, if it were, boosting earnings through the minimum wage would be a strange response.

³³ The Marxist theory of exploitation is supposed to produce the conclusion that the labor market should be abolished, not the much more limited one that low wages should be higher. See Buchanan (1985: 90–5). But that does not mean that the Marxist theory could not also be used to justify a minimum wage.

³⁴ I say 'one strand of Marxism' to try to avoid controversies among Marxists about the best way of taking the classical doctrine. For an account along these lines, with a criticism of the labor theory of value and its relevance to charges of exploitation, see Cohen (1988). Cohen has subsequently argued that the principle that underlies the norm 'to each according to his labor contribution' is self-ownership, and he has criticized that principle and argued that, in being committed to it, Marxism is normatively incoherent. See Cohen (1995: esp. chs. 6, 10).

³⁵ Miller (1989: chs. 6, 7).

³⁶ Wertheimer (1996: 233).

main question of this section: How far do considerations of exploitation support the minimum wage?

If exploitation occurs only when people get less than the value of what they produce, we cannot conclude from their wages alone that low-wage workers are exploited. This could be true even on the labor theory of value, where the measure is not the labor actually contributed but the amount of socially necessary labor time required when the good or service is marketed.³⁷ And low-wage workers might not be exploited if the measure of exploitation is given instead by competitive prices. Perhaps what is produced for low wages really is not worth more in the market because of the nature of the work and the numbers willing to do it. The question of exploitation on this competitive price model is not whether the wages are low but whether the wages are low in virtue of some failure of competition. This means that deciding whether avoiding exploitation – on any plausible view of what exploitation is – is a good reason for the minimum wage requires a tricky empirical assessment to see to what extent low-wage workers are exploited and whether they and other exploited workers would be less exploited as a result of the minimum wage. If no low-wage workers were exploited, there would not then be an exploitation case for the minimum wage. If lots are, and they would be helped, the exploitation case is that much stronger.

We also need to ask how important exploitation is morally. As far as jobs and incomes are concerned, the minimum wage will be good for some workers and bad for others. What difference does exploitation make to the consequentialist evaluation of these effects? I want to raise doubts about the moral significance of exploitation and its relevance to the minimum wage, and then argue that, even if significant, exploitation probably does not support the minimum wage.

Imagine two workers who do the same kind of work at the same low wage. Suppose they are doing the work voluntarily, it is equally arduous to them, and they are equally deserving (in the sense that one has not deliberately squandered her human or other capital, their families are of equal size, they are of similar ages etc.). All that varies is the market conditions in which the firms operate, so that we can say the first is exploited and the second is not. How much more important is it to help the first than the second? My intuition is that it is not much more important. Suppose now that the minimum wage would lead to a pay rise for the first worker and a loss of job for the second and have no other effects. In that case, the minimum wage would have reduced exploitation but I would say that, assuming the loss of a job is worse than forgoing a small pay rise, the overall effect is nonetheless morally worse. The judgment here is based simply on the comparison of jobs and incomes and information

³⁷ Cohen (1988).

about exploitation does not seem as if it ought to make much difference to the consequentialist evaluation of the minimum wage. When important matters like the voluntariness of workers' choices, and their deserts, needs, and labor burdens are set aside, the mere difference in market conditions does not seem to justify giving much – if any – extra consideration to those who are exploited.

It might be said that my judgment wrongly treats benefits and burdens that are the result of injustice as no more weighty than benefits and burdens that are not. Exploitation is a kind of injustice or unfairness, and so it is more important to address harms caused through exploitation than the consequentialist view says. However, even if exploitation is unjust, its injustice seems more a matter for the exploiters than the state (leaving aside the state's role as an employer). We saw earlier that the most plausible way to understand the exploitation argument is as holding that there are certain duties that arise from the relationship between employers (and consumers) and workers. If there are those duties, it would be sensible to argue that it would be wrong to exploit a worker even if that were a condition of helping a badly-off third party. But it does not follow that the state should enforce the agent-relative duties of the would-be exploiters.

Still, although it does not follow, nor is it ruled out that the state is required or permitted to enforce, via the minimum wage, the duty not to exploit. However, the costs to third parties of insisting on a minimum wage should figure differently for the state than they do for the would-be exploiter. The state should give greater weight to third party interests – such as the interest in not being disemployed – in deciding whether to enforce than the would-be exploiter should in deciding whether to exploit. This follows from the surely correct claim that agent-relative duties have more force for the agent whose duties they are than for others, although saying how much force they have for the others requires more work on the rather neglected questions of when and why someone's agent-relative duties should be enforced.

It could be argued that the state does after all have an agent-relative duty not to exploit that is relevant here because, in upholding property and contract law, it makes exploitation possible.³⁸ But what follows would be a duty to abstain from exploitation, perhaps by refusing to enforce below-minimum wage contracts, rather than the duty to stop others exploiting that the legally enforced minimum wage represents. So even if there are reasons of justice against exploitation by employers, there is a gap between that and the claim that the state should prevent exploitation via the minimum wage.

For the sake of argument, and contrary to my claims so far, let us grant that exploitation is morally significant and its significance is of

³⁸ Andrew Williams suggested this argument.

a kind that could support enforcement of agent-relative duties through the minimum wage. Let us also grant that the minimum wage is a good way of reducing exploitation for those in work. Exploitation still may not support the minimum wage or, if it does, considerations of justice, of which exploitation is one, may not. Whether it does depends on what happens to those outside work as well as those in it. Most tellingly, any who become unemployed might count as exploited. Some argue that, insofar as some unemployment keeps the capitalist economy efficient, to the benefit of capitalists and those with jobs, the unemployed, who do not benefit, are taken unfair advantage of.³⁹ But even if one does not accept this point, low-wage workers probably suffer other injustices, including exploitation outside work, such as the unfair denial of educational opportunities. The marginal but not exploited worker who loses a job through the minimum wage might already be a victim of more injustice than the exploited worker would be in the absence of a minimum wage. So while it is plausible that benefits and burdens that arise from injustice should be given special weight, this does not clearly tell in favor of the exploitation argument or against the consequentialist evaluation of the minimum wage.

The conclusion is, then, that the exploitation argument does not make much of a case for the minimum wage.⁴⁰ I gave reasons for doubting that exploitation of the kind involved here (voluntary; dependent on market conditions) is particularly important. And even if exploitation is important, the minimum wage may not be an appropriate way of responding to it (the point about duties being agent-relative) or may not be a good way of reducing it (the point about the unemployed and others being victims of injustice). That leaves the freedom argument.

The aim of this and the next section is to show that exploitation and freedom should not be used as major criteria for evaluating the minimum wage, thus leaving as the sole main criterion the consequentialist evaluation in terms of the effects on the jobs and incomes of the worst off. This section has been concerned with exploitation; the next section is concerned with freedom.

4. THE MINIMUM WAGE AND FREEDOM

Samuel Brittan writes, 'Above all, minimum wages are a denial of the human right to sell one's labor to a willing buyer and to make one's own decisions about whether or not to take paid work at going rates'.⁴¹ But is there really a human right against the minimum wage? Losing one's job

³⁹ Jerry Cohen suggested this to me.

⁴⁰ For related doubts about the exploitation case, see Wertheimer (1996: 301–4).

⁴¹ Brittan (1995: 244). This is no throwaway remark: Brittan has emphasized the human right to freedom of contract in several articles and reviews as the main case against the minimum wage. See the republication of these at <http://www.samuelbrittan.co.uk>.

because of the minimum wage might well be a bad thing, but is it also bad because it comes about through the violation of a right? Brittan thinks there is such a right, based on freedom of contract, and others think that there is a right, based on self-ownership. I shall explore these ideas here. As in the previous sections, a lot of complexity has to be ignored and other views of freedom or rights may not get fair treatment. But I think the main argument I offer against the arguments from self-ownership and freedom of contract will apply to any freedom argument against the minimum wage. This main argument is that there is nothing valuable about the freedom lost by the minimum wage over and above its non-freedom effects (typically, those on jobs and incomes).

A preliminary distinction will help. Rights or freedoms can be justified because of their instrumental value, that is, because of the value of the options they make available. They can also be justified for non-instrumental reasons. This might be because they are logically required by some justified principle or because they intrinsically realize some value. Take the right to sell one's labor. This could be justified because it is an instrumentally good way for sellers and buyers to get what they want, and because it is logically required by a principle of self-ownership, and because it honors or promotes the sellers' autonomy.

In this section, I shall argue that the minimum wage does not conflict with any right of the worker. I shall defend the claim that the minimum wage is, at most, instrumentally bad for some workers, and that this does not justify saying that they have a right against the minimum wage. The defense takes the form of arguing that non-instrumental justifications for the alleged right, namely self-ownership, freedom of contract, and autonomy, do not work, and that reflection on certain cases makes it intuitively implausible that there is a right against the minimum wage. The argument is that, in these cases, nothing of non-instrumental value in the alleged right can be found. I must stress that my arguments do not rely on the false general claim that there is never anything of value in a right over and above the value of the options it makes available. The argument is merely that there is nothing of value over and above the options it makes available in this case, that of the alleged right against the minimum wage.

The first idea I consider is self-ownership. The self-ownership thesis says that we have a property right in ourselves. As its most prominent modern believer puts it, the thesis views 'each person as having a right to decide what would become of himself and what he would do, and as having a right to reap the benefits of what he did'.⁴² Applied to the minimum wage, the claim would be that workers, who own their labor, are prevented from transferring it as they would wish to willing buyers. A minimum wage consequently violates or overrides workers'

⁴² Nozick (1974: 171).

property rights in their labor. Exactly what follows for the minimum wage depends on how one takes these rights. Some rights can be justifiably overridden, so long as compensation is paid, while some cannot be justifiably overridden.⁴³ If the minimum wage really does conflict with workers' ownership of their labor, then they would either have to be compensated (perhaps making the minimum wage infeasible) or the minimum wage would be ruled out altogether.

Is it true that the minimum wage conflicts with self-ownership and, if so, is this a major objection? The answer depends in part on what self-ownership is. To cut a long story short, it is common to distinguish full self-ownership from something more limited.⁴⁴ Full self-ownership consists of two kinds of weighty rights: (1) certain control rights over one's own mind and body that, amongst other things, prevent people intentionally forcing one to sacrifice one's life, or body, or labor and (2) rights to transfer one's ownership and receive the full income one can gain from using one's body and mind in the market or on one's own.⁴⁵ The first question to ask is whether full self-ownership conflicts with the minimum wage and the second is whether we have the entitlements of full self-ownership.

Consider this argument, which is designed to show that even full self-ownership does not conflict with the minimum wage.⁴⁶ The minimum wage targets employers, not workers. The employers are the ones who break the law and are liable for sanctions if they pay below the required rate. It is not the workers whose self-ownership is infringed upon. The effect of coercing the employer might be that the worker does not get a job, but the worker does not have a right to a job. It might be granted that the worker has a right to accept the offer of a willing employer, but that is not violated if the employer is coerced into not being willing.⁴⁷

I am not sure what to make of this argument. There are circumstances in which it seems disingenuous. If the state decides to punish a dissident by preventing anyone hiring her, that seems like a violation of her

⁴³ Nozick (1974: ch. 4).

⁴⁴ I do not discuss the question of whether the concept of self-ownership is coherent, since G. A. Cohen has convincingly shown it is. See Cohen (1995: ch. 9).

⁴⁵ Otsuka (1998: 69–70); Christman (1994: ch. 8).

⁴⁶ There is a sizable literature on the question of whether full self-ownership supports libertarian anti-redistributive conclusions, but since this concerns the potentially very rich Wilt Chamberlain, much of it does not help with the question of whether full self-ownership conflicts with the minimum wage. In this literature, although Nozick endorses self-ownership and Cohen rejects self-ownership, both think full self-ownership does support anti-redistributive conclusions. Otsuka, does not, and neither does Thomas Nagel, in his well-known review, Nagel (1995).

⁴⁷ A fuller discussion would take into account the restrictions on the freedom of the employers. It will have to do here to say that there is a moral difference between people and other factors of production that make it in principle permissible to limit the freedom of employers to contract on terms they wish with potential workers.

self-ownership. But that is a situation where the intended result of coercing third parties is to punish the dissident. According to the standard rationales for the minimum wage, the intention is to benefit a class of workers by preventing destructive competition to bid wages down or by overcoming failures of competition in the labor market. The effects on others are at most foreseen and not intended. (A parallel might be ending tariffs on imported cars, with the effect that domestic car firms no longer hire workers.) Self-ownership, as it figures in libertarian thought, does not prevent people suffering simply from the actions of others; their suffering is prevented by self-ownership only if they have some right against it. So it is not clear, even if people have full self-ownership, that the minimum wage violates any right. And in any case, I shall now argue, people do not have full self-ownership if it includes a right against the minimum wage.

If the minimum wage conflicts with rights of self-ownership, it conflicts with those in the second set, the rights to transfer and receive income, and not the first set, the rights not to have one's body and mind sacrificed. Some writers broadly agree that we have the first set of rights but not the second, so they try to drive a wedge between the two.⁴⁸ One reason for the wedge is this: The intuitions that are supposed to justify self-ownership, which are usually about the rights of individuals not to have their blood or organs conscripted or to be forced to work, do not justify the rights to transfer or receive income because these are not comparably important. The idea is that self-ownership cannot be built on nothing, but must instead be worked up from ideas about the inviolability of the individual and inviolability does not require the kinds of rights that could conflict with the minimum wage. I am sympathetic to this argument⁴⁹ and it is one that a self-ownership criticism of the minimum wage must confront.⁵⁰ However, my main argument is more specific and is that whatever is lost by the minimum wage is not important enough to merit the protection of a right and so not the protection of a self-ownership right. But that argument will have to wait to the end, because it also applies to other ways of explaining and valuing freedom besides self-ownership.

The other main argument against the minimum wage is based on freedom of contract. Workers might be said to have their freedom of contract wrongly abridged by the minimum wage. The earlier remarks about the restrictions being on employers not workers apply here too, but let us assume that the freedom of contract of workers is indeed reduced.

⁴⁸ John Rawls can be characterized as thinking we have the control rights but not the income and transfer rights because they do not make sense. See Rawls (1993: 275–81). Christman (1994: 148–60), thinks that we do not have the second set because they are not important to self-control.

⁴⁹ For more on this, see Wilkinson (2000: 29–34).

⁵⁰ Hillel Steiner, unusually, does not appeal to moral intuitions to defend self-ownership, but there is no space here to assess his account. See Steiner (1994: ch. 6).

Can this be the basis for an argument against the minimum wage? It depends on the importance of freedom of contract and whether whatever is important about it is threatened by minimum wage legislation. Freedom of contract is certainly not sacred. The interests of parties to a contract may sometimes properly have to yield to the interests of third parties if there are externalities or sound reasons of public policy.⁵¹ Except among a few self-ownership theorists, it is not especially controversial to oppose voluntary slavery contracts, the enforcement of specific performance by the threat of gaol,⁵² or unlimited access to a person's earnings from skills in the event of bankruptcy or divorce.⁵³ More controversially, some argue on grounds of autonomy against prostitution and commercial surrogacy.⁵⁴ It is not enough just to point out that the minimum wage conflicts with freedom of contract. It does conflict, but more needs to be said about why this would be wrong. But an objection to the minimum wage might be developed from the values underlying freedom of contract. In addition to self-ownership, already discussed, the two values usually mentioned are efficiency and autonomy. An efficiency argument, whatever its merits, would be just some kind of consequentialist argument of a sort that has already been considered, but there might be some autonomy argument for freedom of contract that, by extension, rules out the minimum wage.

The autonomy argument might have two different roles. The first is in an argument against paternalism – substituting the legislature's judgment of workers' interests for their own – and the second is in singling out for special protection the interests of workers who would lose by the minimum wage.

Those inclined to defend freedom of contract often label restrictions on it as paternalist and also often think that in being paternalist, the restrictions are at best suspect if not clearly wrong. Criticisms of the minimum wage as paternalistic have probably been of greatest significance in the US, where the *Lochner* era Supreme Court characterized virtually all labor legislation this way (and struck it down).⁵⁵ But whatever the wrongs

⁵¹ See Atiyah (1995: 26, 297–8) for some examples of this.

⁵² It is sometimes mistakenly thought that the court refusal to order specific performance has a long pedigree in Anglo-American law, but it does not. Imprisonment was widely used in the nineteenth century for workers who broke their contracts by, typically, changing employers. See Steinfeld (2001).

⁵³ Sterk (1993) gives an account of the restrictions and argues that many are unjustified.

⁵⁴ Anderson (1993).

⁵⁵ See Schwartz (1993: ch. 8). The leading case here is *Adkins vs. Children's Hospital* (1923), which struck out a minimum wage law for adult women and had a devastating effect on kindred social legislation. See Schwartz (1993: 218–19). It is striking that many US writers who favor restrictions on contract are highly sensitive to the accusation of paternalism and strenuously deny that their reasons for restriction are paternalistic. See e.g. Shiffrin (2000) or Anderson (1999: 300–1, 326–31). (Incidentally, Anderson endorses and defends

of paternalism, the main rationale for the minimum wage is not to protect workers from the consequences of their own folly, as in paternalism, but to protect them from excessive competition among workers to bid wages down or ineffective competition among employers in bidding wages up. Whether or not it is a good one, the main rationale for the minimum wage is strategic: The minimum wage affects competition and thus makes better options available for workers. If that happens, the minimum wage would count on some views of autonomy as increasing workers' autonomy and so the autonomy justification of freedom of contract would not provide even a *pro tanto* reason against it. A parallel is a legal prohibition on duelling, which prevents people from being forced into a choice between honor and a high risk of injury or death.⁵⁶ I doubt anyone seriously thinks people's freedom or rights are violated by anti-duelling laws, even though some – the skilled and bloodthirsty – might lose from the prohibition. Nor could a law against duelling be sensibly criticized on grounds of the value of choice, if only because the law provides the new option of honor plus safety. To continue the parallel, the restrictions of the minimum wage can provide the new option of working for more money than one would otherwise be offered.

Let us now consider the argument that, because of autonomy, any losses incurred through the minimum wage should be given a weight out of proportion to how bad they are in a consequentialist ranking. Why should this be? One line, suggested by the role of freedom in the argument, is that the value of freedom is not reducible to the value of the options one actually gets. Those who lose by the minimum wage would lose more than jobs or incomes; they would lose freedom as well and that should be given special weight. Some version of this thought makes sense in other contexts. People might have a right to leave their houses or attend political demonstrations even if they do not want to.⁵⁷ Indeed, in the sphere of labor, the right to occupational choice is not reducible to the value of getting the job one wants. People would rightly feel aggrieved if they were directed into a job, even if it was the one they wanted to have.⁵⁸ On the other hand, the freedom to fight duels is not valuable over and above its effects. The supposed right to take a job on the terms offered by a willing buyer also only has instrumental value (or disvalue), mainly in giving access to jobs and incomes, and so there is no reason of freedom to give their interests special weight. How can this be shown? One way is to criticize

the minimum wage in two sentences on p. 325.) My sense is that non-American writers are less inclined to see paternalism as a dirty word.

⁵⁶ See Franks (1998: 228–9) for this account of dueling, along with some evidence of the risks that dueling actually involved.

⁵⁷ Mill (1985: 365–6).

⁵⁸ For the only lengthy treatment of the right of free occupational choice I am aware of, see Wilkinson (2000: chs. 2 & 3).

the application of principles like self-ownership, freedom of contract, or choice to the minimum wage, which is what I have done so far. Another is to see what we think about some specific cases, so consider two. The first is put in terms of Brittan's rights argument, which is how self-ownership theorists would put it too, and I think it shows how odd the right would be. The second tries to show that whatever freedom is compromised by the minimum wage is only of instrumental value.

Suppose that the result of the minimum wage were that unemployment fell and the earnings of poorly paid workers increased, as is possible in the event of a monopsony employer. In this example, no workers lose through the minimum wage. Nonetheless, on Brittan's view that workers have a right to accept the offer of willing buyers, the workers have presumably had their rights violated. If Brittan thought the right important, he would also have to say that it would be better for that very reason that there be no minimum wage. This view would be strange. Brittan might argue that in this example workers would waive their rights, but if the right has the importance he ascribes to it, hypothetical waiving should not be enough. Workers should have to give express consent to their rights being waived. And yet it still seems implausible to suppose that they have a right violated if the minimum wage is introduced in these conditions without getting their express consent. If a minimum wage turned out to be better than no minimum in providing access to jobs and income, then according to my intuitions and, I hope, yours, there would be nothing to regret in the alleged violation of the right. If there is nothing even *pro tanto* regrettable about the minimum wage in these circumstances, then it is hard to see that there can have been a right there in the first place.

My claim about the example in which no workers lose is that, considered on its own, we do not see a rights violation and that one would already have to have a theory in mind to feel able to detect one. For example, a defender of full self-ownership might say that the worker's right to sell labor has been violated. But even if it is true that self-ownership rights would be violated by the minimum wage, this is question-begging. Self-ownership does not rest on nothing. To be plausible, it must rest on intuitions, say about the inviolability of the body, and if we cannot find anything of significance lost in this example of the minimum wage, then we lack a reason to accept a version of self-ownership that rules out the minimum wage.

The second example is your own case. You, the reader, probably both live in a country with a minimum wage and are paid well above that minimum. If the restrictions of the minimum wage do have negative value over and above their actual bad effects, then you yourself have in some way suffered because there is a minimum wage although, in fact, it has had no effect on your pay and conditions. If you find it hard to believe you

have suffered, then you should find it hard to believe that the restrictions of the minimum wage are bad over and above their effects. And if the restrictions are not bad over and above their effects, why single out for special consideration the effects on those who lose by the minimum wage? Note that I am not saying that in general restrictions cannot be bad for someone if they have no bad effects on her options. I am saying that *these* restrictions are not bad, and that is what I am inviting you to agree when you think – uncorrupted by theory – about your own case.

These two examples would not persuade a die-hard, of course. But consider the situation we are in. The argument being criticized holds that the interests of those who lose by the minimum wage deserve special consideration because of freedom. But neither the self-ownership argument nor the more specific freedom of contract argument clearly rules out the minimum wage. So we are left in the position where we are trying to find reasons for thinking the minimum wage is bad over and above its effects. My examples suggest there are no reasons and consequently the minimum wage cannot be rejected as a wrongful infringement on the freedom or rights of workers.

5. CONCLUSION

The argument of this paper had the following structure:

1. The effects of the minimum wage on the jobs and incomes of the worst off should be taken into account. I did not defend this view because it is unlikely to be controversial.
2. There will be some consensus within consequentialism on a criterion giving priority to the worst off.
3. Whatever tension remains within consequentialism about the criterion to be used will go away when it comes to a final judgment of the minimum wage, given the facts about what the minimum wage does.
4. There are no important considerations besides jobs and incomes relevant to the assessment of the minimum wage. In particular, considerations of exploitation and freedom do not make a case for or against the minimum wage.

As for the final judgment of the minimum wage, there are roughly two views of the minimum wage. One is that it harms the position of the worst off and the other is that it does neither much harm nor much good. Bearing in mind that it is the facts that matter in a consequentialist view, and that the relevant facts might vary from place to place and time to time, the conclusion seems to be this: At worst, the minimum wage is a mistake and, at best, it is something to be half-hearted about.

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