Consumer Ethics: Moral Complicity versus Social Roles

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Many people believe that consumers who purchase products made using child labor or slave labor are complicit in the immoral treatment of the workers involved (e.g. Schwartz 2012). The idea is that if a consumer purchases a product from a firm and the firm violates worker rights in the course of making the product, then the consumer contributes to the firm's activities and thereby participates (at some level) in the rights violation.

Complicity plays a central role in the way that many activists, philosophers and ethically minded consumers think about consumer ethics; however, complicity is the wrong way to think about the subject. The problem is that a complicity-based approach essentially treats consumer ethics as an extension of interpersonal ethics among unrelated actors. It implicitly treats consumers as though they were isolated actors, disconnected from other actors, where consumers enter into interaction with other actors when they make purchases. This disconnected view of the individual is an illusion that often accompanies the exercise of rights of private ownership and exchange. But in reality, consumers are *market actors*: they are part of a complex, ongoing institutional enterprise that encompasses other market actors, including workers, firms, and governments. In failing to appreciate the socially interconnected nature of market activity, the complicity approach suffers from several fundamental problems.

My goal in this paper is to set out the weaknesses of the complicity approach and to develop a better alternative. Call my view the *institutional approach*. Here is the central idea. Suppose that I announce to my class that I will be giving "A"s to excellent papers written on a certain topic. Suppose that some unscrupulous students decide to ignore their responsibilities and plagiarize other people's work. If I do my part in the enterprise, reading papers and assigning grades, I do not thereby become complicit in their plagiarism—*they* are the ones who plagiarized, not me. This is true even if I know that they have plagiarized and even if I benefit from their plagiarism in some way (e.g. their papers are more pleasant to read). When I go on reading papers and grading them, I act wrongly, but the wrong that I commit is not plagiarism or virtual plagiarism, but rather a failure to monitor and police the institution in the right way.

In a similar vein, the global marketplace is a complex institutional enterprise that defines various positions, roles and powers. Consumers are authorized to make purchases based on price-quality considerations. Firms are authorized to marshal resources to satisfy consumer demand, and firms have a duty to treat workers with respect. Governments have various regulatory and enforcement responsibilities. At some point, a firm may not live up to its duty to treat workers with respect. If consumers go on exercising their institutionally defined purchasing powers, they may be acting wrongly, but the wrong they commit is not violating workers' rights—it's the *firms* that violate workers' rights. The wrong that consumers commit is a failure to monitor and police the global marketplace in the right way.

According to the institutional approach, when it comes to workers' rights, the central duties of consumers should be understood in terms of the role or position that they occupy in the global marketplace. In particular, their duties should be understood in terms of a special duty that consumers have to monitor and police the global marketplace in the context of weak government oversight (see Hussain 2012a). Under favorable conditions, the regulatory and enforcement functions fall mainly on governments. But when governments are unable to perform these functions adequately, market participants have a special duty to assume these functions. These duties represent one aspect of a broader moral duty that I call the "duty of preservation," a duty we all have to preserve those features of a social institution that are essential to its moral legitimacy.

I begin in sections 1 and 2 by setting out and criticizing the complicity approach, focusing on the recent work of David Schwartz. In the rest of the paper, I develop the institutional account, focusing on the special duties that consumers have to monitor and police the global marketplace.

1. Schwartz's theory of consumer complicity

In *Consuming Choices*, David Schwartz develops a wide-ranging account of consumer ethics, and one part of his account focuses on complicity. Schwartz's account of complicity starts with the idea of a collective activity. Suppose that there is a group of agents in the world, A_1 through A_n, who are involved in the production, marketing, distribution, and consumption of some product P. Schwartz thinks that we can treat A_1 through A_n as participating in one complex, collective activity. Collective activities can be wrongful: for example, they can be wrongful because they involve the harming of some individual (e.g. a worker) or because they generate some bad outcome (e.g. environmental degradation) or because they involve some moral offense (e.g. racially insensitive marketing) (Schwartz 2010, 88-91).

Complicity enters the picture as a way of tying the individuals involved in a wrongful collective activity to the wrong embodied in the activity as a whole. Schwartz puts the general principle this way:

> "I am accountable for what others do when I intentionally participate in the wrong they do or harm they cause. I am accountable for the harm or wrong we do together, independently of the actual difference I make." (Schwartz 2010, 71)

For example, during the Dresden firebombing, hundreds of American and British pilots dropped bombs on German civilians, killing tens of thousands of people. Each particular pilot in the campaign may only have committed acts that killed a few people. But together, the pilots committed an atrocity. According to the complicity principle, each individual pilot is guilty of the atrocity as a whole because each one intentionally participated in a collective activity that constituted a mass killing.

Complicity in consumer ethics works in a similar way. When a consumer purchases some product P, he participates in the wider collective activity constituted by the production, marketing, distribution and consumption of P. If this wider activity is wrongful, then the complicity principle shows that individual consumers are guilty of the wrongdoing embodied in the activity as a whole. Schwartz puts the point this way:

> “ [T]the most obvious application [of the complicity principle] is to construe consumer purchases as acts of intentional participation in a collective action that encompasses the production, marketing, distribution, and consumption of particular consumer products. The collective is thus extended beyond those employed to include those who purchase the output of the manufacturing operation. This intentional participation makes the consumer complicit in—and thus morally culpable for—any blameworthy (or praiseworthy) actions of that collective.” (Schwartz 2010, 74)

To illustrate, consider the complex collective activity that consists of the production, marketing, distribution, and consumption of cars. This complex activity is wrongful because it leads to greenhouse gas emissions that contribute to destructive climate change. There are many people involved in the collective enterprise, including car companies, marketing agents, dealerships, and consumers who purchase and drive cars. On Schwartz’s view, the people involved in car culture are like the pilots in the Dresden firebombing: they may each make only a small contribution to the overall enterprise, but their personal act of involvement makes them guilty of the wrong committed by the group as a whole.

The most important cases of consumer complicity for my purposes are those that involve the violation of the rights of workers. Schwartz’s principle extends straightforwardly to these cases. For instance, suppose that The Hershey Company manufactures chocolate bars using chocolate harvested on plantations that use slave labor. The collective activity here encompasses the production, marketing, distribution and consumption of chocolate bars. And according to Schwartz's theory, each person who buys a chocolate bar becomes complicit in the collective activity, an activity that is wrongful because it violates the rights of the enslaved workers.

Many philosophers would argue that consumers play only a minor role in the wrongful collective activities that Schwartz has in mind. These philosophers might draw the following analogy. Imagine that a chemical weapons lab makes a gas that kills thousands of people. The senior managers and scientists who work at the lab and the janitor who cleans the floors at night all participate in the collective enterprise and contribute to its success. But the senior managers and scientists seem far more deeply implicated in the wrongful activity and therefore more blameworthy in virtue of their involvement in it than the janitor. So, by analogy, executives at The Hershey Company and owners of cocoa plantations are more deeply implicated in the wrongful collective activity constituted by the chocolate industry than consumers, and it follows that these high-level decision-makers are much more blameworthy.

Schwartz responds to his line of reasoning by denying that consumer involvement in the wrongful collective activities he describes is peripheral in the way that the janitor's involvement at the weapons lab is. Here is Schwartz discussing a case that involves his purchase of a shirt that implicates him in the textile industry:

> "Unlike the janitor, my purchase is *essential* to the successful collective activity of the garment manufacture, marketing, and sales; in fact, consumer participation is the primary motivation—and sole criterion of suc-

> cess—for the entire effort. Thus the criticism understates the essential nature of an individual's role in the global consumer economy, a role quite different from the role of the custodial worker." (Schwartz 2010, 82)

So on Schwartz's view, consumers are not peripheral participants in the collective wrongful activities that involve their purchases. In fact, consumers create the profit opportunities that draw firms to producing certain products, so consumers are implicated in these collective activities in a much deeper way than the janitor analogy suggests.

2. Problems with Schwartz's view and complicity more generally

Let me start with a clarification. Many philosophers, including Schwartz, articulate complicity in terms of principles that govern "culpability" and "blameworthiness" rather than the permissibility of certain forms of conduct. This leads to confusion. Imagine, for instance, that an angry mob is beating an innocent person and that I am thinking about whether to stand as a lookout in case the police come by to break it up. When I think about my reasons for not standing as a lookout, these reasons are not about *me*—my avoiding blame for the beating or my avoiding a stain on my moral ledger. The reasons have to do with the *victim*, and the fact that my standing as a lookout would constitute mistreating that person.

Think of it this way. People have an underlying interest in bodily integrity, and this interest shapes the principles of morality in such a way that these principles do not permit us to assault one another. I take it that the very same interests that rule out assault also shape the principles of morality in such a way that these principles would not allow us to defend and protect unjustifiable beatings that are in progress. So the reason that I should not stand as the lookout in the case of the mob beating has to do with the importance of the victim's interests and the importance of my acting in ways that I could justify to him and to everyone else (Scanlon 1998). It follows that principles of complicity are best understood as principles of conduct, rather than principles of culpability and blame. I will return to this point below.

Specificity and timing

One problematic feature of Schwartz's theory of consumer complicity has to do with specificity. Schwartz's view absorbs the purchasing activity of consumers into a wide-ranging collective activity. This feature of his view is a strength when it comes to dealing with cases of environmental degradation, where the damage to the environment is caused by a diffuse pattern of behavior—e.g. the use of cars or the consumption of fossil fuels. But this feature of his view is counterintuitive in cases that involve labor abuse.

The common sense view of complicity in labor abuse cases sees complicity in terms of a relationship between a particular consumer and a particular firm. Most of the time, the connection is even more specific: it is a relationship between a particular consumer and a *subset of the activities* of a firm, i.e. those activities that generate the product that the consumer purchases. For example, suppose that Starbuck's has two types of coffee beans for sale: brand "A" is fair trade and brand "B" is harvested using slave labor. The common sense view of complicity says that if I buy brand A, the fair trade coffee, then I am not complicit in the mistreatment of the workers who produced brand B. In fact, the common sense view would say that I am not complicit in the mistreatment of the workers who produced B, even if A and B are both produced by the same firm. The common sense view says my complicity is limited to the subset of the activities of a firm that actually generate the particular good that I purchase.

By contrast, Schwartz's view implies that anyone who purchases coffee, anywhere in the world, is complicit in any mistreatment of workers anywhere in the industry. After all, on Schwartz's view, there is one gigantic collective activity in the world constituted by the "production, marketing, distribution and consumption" of coffee. This activity is wrongful because it involves the use of slave labor. Anyone who purchases coffee, anywhere in the world, intentionally participates in this collective activity, so it follows that *all* coffee consumers are complicit in *all* the rights violations in the industry. I take it that this is an implausible view of complicity in labor cases, since it says that even those consumers—like me in the example—who purposefully buy fair trade to support labor rights would be complicit in the violation of the rights of enslaved workers.

Perhaps we could revise Schwartz's view to overcome the absorption problem. According to the revised view:

> A consumer is morally complicit in the wrongful treatment of workers when: (1) the consumer buys some product P from firm F; (2) F produces P through a set of activities that involve the violation of worker rights; and (3) the consumer knows (or should know) that F produces P through a set of activities that involve the violation of worker rights.

In the Starbuck's example above, the revised view would say that Starbuck's customers are only morally complicit in the enslavement of workers if they purchase the particular coffee beans that were produced using slave labor and they do so knowing that these beans were produced through slave labor. A view along these lines would fit more closely with the common sense view of consumer complicity in cases of labor abuse.

A problem with the revised version of Schwartz's view has to do with timing. In the Starbuck's case, whatever rights-violations occurred in the production of brand B *have already occurred* when I go to buy the coffee. It is very hard to see how my actions could retroactively make me a participant in the wrongful activity. Think back to the case of the Dresden firebombing or the case where I act as a lookout for the angry mob. In each of these cases, the rights-violations are ongoing, so complicity makes sense as a form of participation in and contribution to an ongoing enterprise. But it is very hard to see how I could become complicit in the Dresden firebombing after it is over or how I could become complicit in the mob beating if it was already finished. The issues connected with timing are obscured when we frame the principles of complicity in terms of "culpability" and "blameworthiness," rather than first order moral permissibility.[1]

[1] Some of the intuitions that support the complicity approach stem from a different moral idea. The core case of complicity, as I see it, is the case of the Dresden firebombing or the mob beating, where the rights-violation is ongoing and morality prohibits people from participating in or protecting or otherwise lending support to the unjust enterprise. I take it that there is a distinct moral principle that prohibits people from *seeking or accepting benefits that stem from past injustices*. The point of the "no benefit" principle seems to be connected with the dangers of creating an environment in which people would have an incentive to violate other people's rights. But this does not involve any sort of *participation* in or support for an ongoing effort to violate people's rights.

The core case

This brings us to what I think is the core case. The complicity approach is most compelling in cases where the interaction between the consumer and the abusive firm is *ongoing*. Suppose, for instance, that I go into Starbuck's every day, and each time I go into the store, I choose to buy the slave-harvested coffee rather than the fair trade coffee. Although it is true that in each instance the rights-violations that occurred in the production of the coffee have already occurred, the defender of the complicity approach might contend that there is an ongoing cooperative interaction between myself and the abusive firm. In effect, by consistently purchasing coffee from the same firm, I provide the company with the financial incentive to enslave the workers and I provide the company with the financial means to do so. In this way, I am like the lookout protecting the angry mob: I am mistreating the enslaved plantation workers through my ongoing support of the firm's activities.

The first thing to note here is how little activity in the global marketplace actually takes the form I just described. Most price-signaling in the marketplace does not involve ongoing interaction between a particular consumer and a particular firm, but an interaction between an individual consumer and a constantly changing constellation of firms around the world. A consumer buying the very same coffee week after week usually interacts with a different cast of characters each time. The firm that owns the brand is looking for suppliers all around the world, buying beans from one set of suppliers one week and another set of suppliers the next. The suppliers themselves are interacting with different buyers week to week; the buyers are interacting with a different middlemen; and the middlemen are buying beans from different plantations. The brand itself might change hands several times. Of course, there may be some cases where firms that market coffee to consumers are "vertically integrated" in such a way that these firms can also be understood to be the agents who carry out abuses on coffee plantations. But there is a great deal of variation in this regard.

The second problem is that even when the consumer buys coffee directly from the same abusive firm (or constellation of firms) week after week, it does not follow that the consumer enters into the kind of cooperation with the firm that would make him complicit in the abuses that the firm commits. Here we need to draw a distinction between two cases: (1) the consumer buys a certain good that was placed on the *open market* by an abusive firm, and (2) the consumer enters into a *private supply contract* with the abusive firm and supervises the firm.[2] Buying a product in the open market is morally different from hiring and supervising a firm to produce a product for you, even when you make the same purchase every week.

A central difference has to do with the role of the government. Firms are continuously dumping tons and tons of goods into the open market. When consumers (and other firms) enter the open market to purchase goods, they do so with a general expectation that they can rely on the government (or several governments) to articulate standards for appropriate behavior and monitor compliance. Among other things, they rely on governments to set out standards for workplace safety and appropriate treatment of workers, and they rely on governments to provide everyone with a legitimate basis to expect others to

[2] Schwartz recognizes this distinction, but never addresses its moral implications. He treats (1) and (2) interchangeably. See his discussion of the case of Ted and Alice (Schwartz 2010, 11).

comply. All those who enter the global market to buy goods enter a social arrangement that presupposes that there is an agency that is fulfilling certain basic regulatory and enforcement functions.

The open market contrasts with the case where the consumer enters into a private contract with a firm to provide him with a certain good and takes steps to monitor the firm's activities. Given the proper degree of oversight, the consumer effectively enters into an *employment relationship* or a *quasi-employment relationship* with the firm, where the firm effectively operates as a subcontractor. In these cases, the firm is not putting its product out into an anonymous, public market, where everyone relies on the government to provide oversight. In this case, the consumer and the firm withdraw from the public market and engage in a private scheme of coordination. Here the government is no longer responsible for guaranteeing to the consumer that the firm's activities will conform to the appropriate labor standards; instead, the consumer takes on a duty to ensure that the firm will conform to these standards.

Return now to the case where I buy the slave harvested coffee from Starbuck's week after week. It is true that my purchasing activity provides a certain kind of support for the unjust activities that unfold on the coffee plantations. But the question is, who has the duty of oversight in this case? According to the institutional view, the duty of oversight falls primarily on the government. In this case, I am not employing the firm that makes the coffee beans; I am only buying these beans on the open market. Because I buy the beans on the open market, it is the duty of the government (whether the government in the country where I buy the coffee or the government in the country that has the plantations) to ensure that the coffee producing firms comply with appropriate labor standards

A third problem: permissible harms

The two points just raised with respect to the core case show that complicity is not an adequate basis for thinking about the responsibility of consumers in the global marketplace. But I want to add a third point which I think goes much further in showing why complicity is inadequate.

Imagine that a consumer is considering a choice between buying two cars, a Ford and a Toyota. Suppose that there is a historical pattern of purchasing in the car market that has lead employees at Ford to make certain types of investments: employees have invested time and energy developing firm-specific skills; they have bought houses near the factories; they have put their kids in local schools; and so on. If individual consumers each start making choices to buy Toyotas instead of Fords on a mass scale, this will change the historical pattern of consumption, which can lead to massive disruption in the lives of workers. People will lose their jobs, lose their houses, be forced to relocate, and so on. The damage that results from these changes in consumer purchasing patterns can be enormous: just consider the situation of Detroit, Michigan, a city that has been decimated by (among other things) worldwide changes in consumer buying habits.

When consumers in the car market change their patterns of consumption in the way that I described, they clearly cause harm to the workers who have made investments based on these patterns.[3] Some might argue that workers have brought these harms on

[3] Some defenders of the complicity approach might argue that in the case of changing buying patterns, consumers do not intend to disrupt the lives of workers, whether as a means or an end. This may be true, but it is equally true with respect to most consumers buying slave harvested coffee. These consumers also do not intend to enslave workers,

themselves by making decisions based on consumer purchasing patterns when they had no right to rely on consumers maintaining these patterns. But the reality is that most people in market societies must work for a living, so they have no option except to make investment decisions based on the purchasing patterns of consumers: if not the patterns of consumers in one market, then the patterns of consumers in another.

Changes in consumer purchasing patterns constitute cases of collective harm, that is, cases where consumers participate in a wider activity that results in massive costs being imposed on large numbers of people. But the important point for my purposes is that these are *permissible harms*. Workers in the United States may suffer because of the choices that consumers make, but within the framework of a suitably structured car market, consumers are permitted to impose these costs on workers (and other parties). We might say that the market is an institution that resembles a contact sport: the things that happen on rugby pitch or in a boxing ring would constitute an impermissible assault in most any other context; but within the structure of the institution, these activities are permissible. By analogy, Detroit today may look like the target of a bombing campaign, and the damage to the city may have been caused by consumer purchasing decisions, but the harm that results from these consumer decisions—or, more precisely, some portion of this harm—is a permissible feature of the global marketplace.

The problem with the consumer complicity approach is that it does not address an important set of questions about what is and is not permissible in the global market. The

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whether as a means or an end. In both cases, it is the firms or the executives involved that adopt policies that harm workers or violate their rights, and the consumer's decisions effectively create a context that encourages and supports these actions. Since the two cases are structurally similar, if there is complicity in the case of the slave harvested coffee, then there should be complicity in the case of car buying decisions as well.

complicity approach takes for granted that certain kinds of harms are immoral forms of abuse in general, and it focuses on tying the consumer to these abuses. But the permissibility of certain kinds of harm is a complicated question that does not have a simple, "across the board" answer. We cannot take the immorality of certain forms of conduct in ordinary circumstances to determine whether these forms of conduct are impermissible within the context of the market. Actions that result in the destruction of entire cities and ways of life may be permissible within the framework of the global marketplace, even if these types of actions would be impermissible in most other contexts. A compelling account of consumer ethics in the global marketplace must engage with fundamental questions about what sorts of harms are legitimate parts of the market. The institutional approach to consumer ethics addresses this dimension of consumer ethics in a way that most complicity based approaches do not.

3. A new beginning: morally legitimate institutions

I have considered the complicity approach to consumer ethics and found that it suffers from several fundamental problems. Complicity is plausible mainly in cases where a particular consumer's purchasing habits consistently support ongoing rights violations committed by a firm and the consumer interacts directly with the firm that performs the rights violations. Even in these cases, consumers are typically not complicit in rights violations because consumers make purchases in anonymous public markets, where they rely on governments to perform certain regulatory and enforcement functions. Finally, the complicity approach fails to address an important feature of the global marketplace, which is that many harms that consumers cause or contribute to are actually permissible in the context of the institution.

The various problems of the complicity approach are tied to an implicit view of consumers as disconnected actors. The idea is that consumers have no special connection to other actors until the moment when consumers initiate an engagement through their purchasing decisions. This perspective fails to appreciate the degree to which our activities are already shaped by the wider pattern of market activity before we take any positive steps to initiate interaction with others. For instance, many people in the developing world face a global distribution of assets and a global pattern of buying habits such that the best strategy for them to pursue is to focus on developing their skills and talents to produce goods for sale in rich countries. Similarly, many people in rich countries face a distribution of assets and patterns of purchasing such that the best strategy for them is to invest a substantial portion of their savings in multinational corporations that produce goods for sale around the world. These interrelated strategies have a deep impact on social life, shaping early education and lifelong training, so that many segments of the population are extremely vulnerable to changes in other people's behavior. Any coherent moral theory of consumer ethics must appreciate that market activity involves a web of interconnected investments and expectations that cannot be properly understood in terms of ethical principles that apply to interaction among unrelated actors.

I will now set out the main elements of a theory that gives proper consideration to the interconnected nature of market activity. Let me start with some basic ideas. A *social* *institution* is a collective activity defined by a set of rules.[4] The rules typically define various positions, and they assign various rights, duties and powers to these offices. When there is full compliance with the rules, people make the system of rights, duties and powers effective an effective framework for individual thought and action.

A *system of mutual adjustment* is a particular type of institution, one that achieves certain objectives by structuring an interaction among autonomous actors. A system of mutual adjustment will assign rights, duties and powers to positions, along with a conception of how these powers are to be used. The expectation is that people who occupy these positions will each exercise their powers appropriately, partly in response to what other people in other positions do, and the pattern of interaction among the players will have attractive properties. For example, a course registration scheme at a university is a system of mutual adjustment. The arrangement defines powers for professors, students and administrators. Professors have the power to create classes and structure class requirements. Students have the power to sign up for classes. Administrators have the power to make rules and enforce them. As professors exercise their powers in response to student demand, and students respond to course offerings from professors, all under the watchful eye of administrators, the scheme leads to an attractive pattern of educational activity.

A social institution is *morally legitimate* when it has a justifying rationale that no one affected by the institution could reasonably reject (Scanlon 1988 and 2003; Rawls

[4] A social institution exists when the individual members of a group strive to conform to its requirements in part because they believe that the others are striving to do so as well. Importantly, however, the requirements of the institution are not established by social convention. Rather, the requirements of the institution are open to interpretation, where interpretation involves some appeal to values that would give participants a genuine reason to conform to the institution's requirements. For this view of social institutions, see Dworkin 1986 and Habermas 1996. See also Scanlon 2003.

1999). Suppose that S is a morally legitimate institution. What this means is that when the members of a community comply with the requirements of S, they will act in ways that those who are affected by their activity will have reason to endorse. Moreover, the activity will generate benefits in such a way that no one affected by the activity would have reason to reject its requirements, assuming that everyone was committed to organizing the institution in a mutually acceptable way.

The global marketplace

I will use the model of a morally legitimate institution to shed light on the ethics of the global marketplace. The global marketplace is a social institution. It is a system of mutual adjustment, much like the course registration scheme, a system that defines positions for consumers, workers, firms, and governments (among others). The institution attaches rights, duties and powers to these positions, along with an authoritative conception of how these powers may be exercised.

> *(a) Consumers*: Consumers have an institutionally defined power to purchase goods in the open market. To a significant degree, the global market authorizes consumers to make purchasing decisions based solely on price-quality considerations. This authorization allows consumers to ignore other considerations in making purchasing decisions, such as the way that their decisions may disrupt the lives of workers.

(b) Firms: Firms have an institutionally defined set of powers to marshal inputs, such as labor and capital, to produce goods for sale in the open market. To a significant degree, the global marketplace authorizes firms to make production and marketing decisions based solely on profit considerations. This authorization allows firms to ignore other considerations, such as the potential for their decisions to send other firms, such as local suppliers, into bankruptcy.

(c) Workers: Workers have an institutionally defined set of powers to enter into productive relations with other participants in a firm. To a significant, the global marketplace authorizes workers to make decisions about entering into these relations based solely on income and work quality considerations. This authorization allows workers to ignore other considerations, such as the potential for their decisions to disrupt the lives of consumers.

(d) Governments: Governments have many important powers and responsibilities in the global market. The most important responsibilities, from the standpoint of thinking about consumer responsibility, are the duties of governments to formulate labor standards and enforce them. Workers are not like other factors of production because they are not commodities: they are persons with an innate dignity that must be respected. The price system alone will not lead firms to treat workers with an appropriate degree of respect, since it may turn out that the most profitable course of action in certain circumstances will involve the firm treating

workers in ways that are inconsistent with their basic dignity.[5] So a government must formulate standards for the proper treatment of workers and encode these standards in the law. All market participants have a duty to conform to legal standards, and the government has a further duty to enforce the legal standards that it establishes, giving firms a sufficient self-interested reason to conform to the legal rules.

The global marketplace defines offices for consumers, firms and governments. Taking the various elements of the institution together, the global marketplace constitutes a morally legitimate enterprise. Under conditions of full compliance, the basic pattern of interaction that it defines has a justifying rationale that no one affected by the institution could reasonably reject.[6]

The basic rationale appeals to the material benefits that the enterprise generates. Consumers enter the open market and signal their needs and desires through their willingness to pay for products. Workers enter the market and signal their willingness to enter into production relations in exchange for certain benefits. Firms marshal resources from around the world, including capital and labor, to satisfy consumer demand at the lowest possible cost. Over time, the ongoing interaction between consumers, workers and

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[5] Treating workers with respect involves more than simply respecting the rights of workers to accept or reject contractual offers under conditions where acceptance and rejection would be voluntary. Respectful treatment may require firms to refrain from making certain kinds of offers to workers in the first place, even in circumstances where workers could accept or reject the offer voluntarily: for example, respectful treatment may prohibit a firm from offering workers certain contracts to sell their organs or engage in commercial surrogacy, even if workers could voluntarily refuse to do so.

[6] Notice that the government, with its powers of regulation and enforcement, is *part* of the global marketplace, on my view, not external to it. This is an important feature of the view that has implications for the duties of consumers and other market actors.

firms slowly moves resources around the world into a configuration that satisfies the expressed needs and desires of consumers worldwide in an efficient way. Moreover, the market performs this immense coordination task while constantly making use of dispersed information and local know-how to adjust the global configuration of resources in light of changing facts about consumer desires and the availability of inputs. No other plausible method of social coordination could perform this task as efficiently as the global market does (Hayek 1978; Buchanan 1985).

The global marketplace has other significant benefits as well. For instance, competition between firms over time generates a tremendous increase in the productive powers of humanity, increasing the possibilities for people to satisfy one another's felt wants and needs (Smith 1991; Marx 1978; Buchanan 1985). The global marketplace also gives people important forms of control over their lives, and facilitates and encourages the development of their talents, abilities and moral powers (Sen 1991; Smith 1991; Hegel 1991; Rawls 1999). These features give everyone a reason to accept the institution.[7]

[7] Of course, many people in the world do not benefit from the global market as things stand. The main reason is that the global market is not embedded in supporting institutions that are adequate to the task of empowering people to take advantage of their market freedoms or the task of ensuring a fair distribution of the benefits of market interaction. Despite the problems that exist with respect to these background institutions, even those who are treated unfairly under the current global social order do not have a reasonable basis for rejecting the *global marketplace* as a social institution. The reason is most any morally legitimate global social order that we could reasonably hope to achieve would incorporate a global marketplace, roughly along the lines of the one that we have now, supplementing this arrangement with background institutions that would enable everyone to enjoy its benefits. I discuss this issue further in connection with the idea of "contextual legitimacy" in Hussain 2012a.

4. The moral legitimacy of price-quality consumerism

A key feature of the global marketplace for my purposes is price-quality consumerism. The global marketplace authorizes consumers to exercise their institutionally defined purchasing powers based solely on price-quality considerations (within certain limits). This means that consumers have a certain freedom to make purchasing decisions without having to conduct an investigation into how the products they find in the open market were produced or whether worker rights were violated by firms.

What makes this freedom acceptable? One reason is that price-quality consumerism greatly expands the sphere of market exchange. International commerce would be nearly impossible if consumers were required to find out how each of the products they purchase were made and whether workers were exploited in the production process. Just think about a cell phone. Where would I even begin to identify the country of origin for all of the components, chemicals and technologies that went into my iPhone? How could I then assess the treatment of workers in the processes that produce each of these elements? The expanded sphere of global commerce obviously generates enormous benefits for consumers by lowering prices and increasing the quality of goods in the marketplace. But it is just as important that workers in developing countries also stand to benefit from this expanded sphere of commercial exchange, as it presents them with more and better employment opportunities. In effect, the expanded sphere of exchange allows workers in the developing world to share in the benefits of global economic growth.

Price quality consumerism is essential to the moral legitimacy of the global marketplace because of the great benefits that flow to all of the parties in virtue of the space that it creates for exchange at a distance. But the moral legitimacy of the global marketplace also depends on how the institution manages the freedom that it provides to consumers. Here governments play a central role. The global marketplace places a special duty on governments to set appropriate labor standards and to enforce compliance. I take it that this responsibility falls not only on the governments where firms produce goods for export, but also on the governments where goods are imported for consumption. Exporting countries can set standards for manufacturing within their borders, and importing countries can also set standards for when goods are acceptable for sale.

Without the regulatory and enforcement framework established by exporting and importing countries, vulnerable workers would have a reasonable basis for rejecting the global marketplace. Suppose that the global marketplace did not assign regulatory and enforcement functions to governments. If the institution were defined in this way, under full compliance, the authorization for consumers to make purchasing decisions based solely on price-quality considerations would create enormous dangers for workers. The authorization would effectively constitute an invitation for unscrupulous firms anywhere to exploit workers for the sake of profit. But the institution, as we know it, does in fact assign regulatory and enforcement responsibilities to governments (as well as certain first-order duties on firms). These requirements to respect the dignity of workers removes an important basis for objecting to the institution. In effect, workers stand to gain from the increased sphere of international commerce that results from consumer freedom, while the government-based regulatory and enforcement framework gives them a reasonable degree of security against abuses by unscrupulous firms.

5. Structural noncompliance

The moral legitimacy of a social institution is a function of how the institution would direct people to behave under conditions of full compliance. For the most part, however, the members of a community never comply fully with the requirements of an institution: some people, somewhere will inevitably fail to satisfy some of its demands. Generally speaking, noncompliance occurs whenever participants fail to live up to an institution's requirements.

Structural noncompliance is a special case. The moral legitimacy of a system of mutual adjustment depends on the way that it coordinates the activities of participants. In the typical case, the institution will only generate the benefits that are essential to its legitimacy when the agents occupying one position satisfy the requirements of that position, while the agents occupying the other positions also satisfy the requirements of those positions as well. Structural noncompliance occurs when a substantial number of people occupying a particular position fail to live up to its requirements. This form of noncompliance is special because when there is structural noncompliance, the attempt by the rest of the community to live up to the requirements of the institution will not generate the benefits that make the institution legitimate. In effect, the members of the group cannot appeal to the moral legitimacy of the institution itself as a basis for justifying their conduct.

Consider the course registration scheme again. Suppose that the scheme is morally legitimate. Under full compliance, the scheme leads people to act in ways that generate goods, such as educated students and personal control over class choices, which would make it unreasonable for anyone to reject the arrangement. But imagine that professors start to exercise their powers to design classes in ways that will massage their own egos instead of educate their students. If professors make decisions this way, and students and administrators continue to play their parts in the arrangement as if nothing was going on, the activity would not create the relevant benefits, and this might give some people a reasonable basis for objecting to the conduct of the members of the university community.

Moving from a course registration scheme to the global marketplace, we see a similar problem. The global marketplace is a morally legitimate institution. Under conditions of full compliance, no one has a reasonable basis for rejecting the institution: even workers in developing countries have reason to endorse the institution, insofar as open trade in the world improves their prospects and a government-based regulatory and enforcement structure gives them some security against unscrupulous producers. The problem is structural noncompliance: governments are not fulfilling their regulatory and enforcement functions adequately. Governments on the exporting side may set standards, but many make almost no effort to publicize and enforce these standards. Among importing countries, governments make little to no effort to determine whether the goods coming into the domestic market satisfy minimal standards with respect to the treatment of workers in the production process. It follows that when consumers and firms each play their parts in the global marketplace, participants could not claim that the moral legitimacy of the institution licenses their activities. Although the activities of these parties generates many important goods, their activity fails to conform to the requirements of the institution in a crucial way: without government oversight, consumer freedom creates a very serious threat that unscrupulous firms will abuse vulnerable workers. As such, participants in the global marketplace cannot appeal to the moral legitimacy of the institution as a way of justifying their conduct. Their activities fail to conform to the requirements of the institution sufficiently to be able to claim that the justification of the institution serves as a justification for their conduct.

Structural noncompliance implies that people participating in the global marketplace cannot claim that the moral legitimacy of the institution serves to justify their own actions. The question is, what does morality require of people in this situation? What are the duties of consumers in the global marketplace given the fact that governments are not living up to their oversight responsibilities?

6. The duty of preservation

We have a moral duty to comply with the requirements of morally legitimate institutions whenever these exist and apply to us.[8] The rationale behind this duty leads to a further duty, which I will call the *duty of preservation*.

The duty may be stated as follows:

> DUTY OF PRESERVATION: In the context of involuntary structural noncompliance, participants in a morally legitimate institution have a duty to divide the functions of the noncomplying participants fairly among themselves until such time as the noncomplying party can take these functions up again.

Here is an example to illustrate the intuitive idea. Suppose that a group of individuals are playing a game of baseball. The institution creates an office for the umpire and assigns to this office the task of calling balls and strikes. The institution then gives

[8] This is essentially a version of Rawls's natural duty of justice, which says in part that we are morally required "to comply with and to do our share in just institutions when they exist and apply to us" (Rawls 1999, 293-4).

players the freedom to concentrate on getting hits or getting outs, without having to pay attention to their own views about whether a pitch is a ball or a strike. Suppose now that the umpire in the game falls ill and has to leave for a few innings. If the umpire is not available to perform his usual functions, the natural duty of preservation says that the players in the game have a duty to divide the task of calling balls and strikes fairly among themselves until such time as the umpire can return to the game. One possibility is that the players will allow the catcher and the batter to call balls and strikes together, since they are in the best position to see home plate.

The central idea behind the natural duty of preservation is that a new division of responsibilities is required when some external factors prevents some participants from fulfilling their roles. This division of responsibilities is not meant to be a new ideal or a new institution that should be maintained for its own sake. It is rather a temporary accommodation, a departure from the strict requirements of the institution under ideal conditions that is necessary to deal with the existing circumstances.

The duty is a duty of "preservation" in the sense that it is aimed at preserving the moral legitimacy of the enterprise that the actual participants are engaged in. By requiring participants to take on exceptional responsibilities form time to time, the duty serves to maintain those features of the enterprise that allow the participants to appeal to the justifying rationale for the institution as a basis for justifying their own conduct. We might compare the duty of preservation to the duty of a spouse to preserve a marriage: the duty is not to preserve every aspect of an existing relationship, including those aspects that might be abusive, but rather a duty to preserve those features of the relationship that are central to its being a valuable and worthwhile endeavor.

What is the rationale for the duty of preservation? Morally legitimate institutions on a global scale are extremely difficult to establish. They involve millions and millions of people, spread out over different societies, cultures and continents, and they are typically the product of hundreds of years of social evolution. But these institutions contribute to people's lives in fundamental ways, such as by fostering geopolitical stability, contributing to the satisfaction of basic needs, and fostering the development of talents and abilities. We all have good reason to want people not only to comply with morally legitimate institutions, but also to take steps to preserve the features that make these institutions morally legitimate when the institution as a whole is under stress.

The natural duty of preservation answers to these considerations. It says that participants in a morally legitimate institution have a duty not to abandon the institution if there is structural noncompliance. In recognition of the goods secured by the institution and the difficulty of establishing it in the first place, the natural duty says that participants should divide the responsibilities of the noncomplying party in order to maintain the features of the enterprise that are essential to its moral legitimacy. (This assumes, of course, that the noncomplying party can recover or be replaced in due time.) The duty serves to make the moral legitimacy of legitimate global institutions more robust and thereby to protect the lives that depend on the contributions that these institutions make.

An important feature of the natural duty of preservation is that it applies mainly to involuntary structural noncompliance.[9] Structural noncompliance is *involuntary* when external factors prevent a substantial number of participants from playing their role in the

[9] This follows a distinction that Rawls makes in his approach to nonideal theory (see Rawls 1999, p. 215 and Simmons 2010).

institution. It is *voluntary* when substantial numbers are simply unwilling to play their parts. In the baseball example, structural noncompliance would be involuntary if the umpire gets food poisoning, but voluntary if he simply decides to talk to talk to some fans.[10]

7. Informal duties of regulation and policing

What does the natural duty of preservation say about the duties of consumers in the global marketplace? What duties do consumers have in the context of involuntary structural noncompliance by governments?

The duty of preservation says that all participants in the global marketplace must act as informal deputies authorized to perform the regulatory and policing functions that are normally the domain of governments. If the role of governments consists of several functions A through E, and governments are not adequately performing functions B and C, then it is the responsibility of other participants in the global marketplace to divide functions B and C fairly among themselves. Participants in this case include all market actors: consumers, firms, workers, investors, lenders, and so on. In the area of labor

[10] Why does the natural duty of preservation extend only to involuntary structural noncompliance and not voluntary structural noncompliance? The reason is that extending the duty to the voluntary case would give participants the wrong kind of control over the requirements of the institution. Suppose that umpire in the baseball game just decides to start talking to fans instead of calling balls and strikes. If the natural duty of preservation required other players to step up into an informal oversight role in exactly the same way under these circumstances as if the umpire had food poisoning, this would effectively give the umpire the power to shift his responsibilities to others. This would make the duty of preservation objectionable for several reasons: (1) it would allow merely unwilling participants to undermine the valuable division of labor that the institution originally established; (2) it would give each participant an objectionable degree of control over the duties of other participants; and (3) it would create a free rider problem, as each participant in the institution would have an incentive to gain the benefits of the institution while shifting the burden of his responsibilities to other participants. For all of these reasons, the duty of preservation does not apply to voluntary structural noncompliance.

abuse, the regulatory function of governments involves setting standards for the appropriate treatment of workers, standards that articulate the minimum requirements for proper respect. The enforcement function of governments involves creating a system of penalties to give firms an adequate reason to conform to the relevant standards.

With respect to the regulatory function of governments, I have discussed elsewhere the importance of labeling schemes as a tool that citizens in a liberal democracy can use to assert control over market life (Hussain 2012b). When there is weak oversight in the global market, the natural duty of preservation requires market participants to divide the regulatory functions of the government among themselves. Consumers, workers, and investors can do this by establishing cooperative arenas in which they, along with other representatives of affected parties, can deliberate and establish appropriate standards for the treatment of workers. These standards can then guide coordinating NGOs in developing an appropriate labeling scheme for consumer products, workplaces, and investments.

Consumers can take on part of the enforcement function of governments by using their purchasing power in ways that will create an incentive for firms to respect labor standards that have been established through an appropriate process. Suppose, for instance, that a firm has been identified as one that consistently fails to conform to an appropriate set of labor standards (such as those set out by the ILO). In the context of strong oversight, the government would step in to use its coercive power to force the firm to treat workers with respect. But in the context of weak oversight, consumers have a responsibility to step in and use their purchasing power in ways that create an economic incentive to get firms to treat workers with respect.

According to the institutional view of consumer ethics, consumers have a responsibility to take on a fair share of the regulatory and enforcement functions that are typically performed by governments. They perform the regulatory function by taking part in and supporting efforts to articulate labor standards. And they perform the enforcement function by following labeling schemes and otherwise using their consumer power in ways that will create incentives for firms to respect the labor standards.

So now suppose that a consumer goes into Starbucks and faces a choice between two bags of coffee, one made using slave labor and one that is fair trade. On my view, the consumer has a duty to purchase the fair trade coffee rather than the coffee made using slave labor. The reason is not that the consumer would be complicit in the violation of worker rights if he purchased the coffee that was made with slave labor. The reason instead is that the consumer has a genuine moral duty to do his part in preserving the legitimacy of the activity that he is engaged in. If market players do not do their parts to take on the regulatory and enforcement duties assigned to the government, these actors cannot claim the moral legitimacy of the global marketplace as a basis for justifying their own conduct.

Several important points are worth noting about the informal regulatory and policing duties of consumers in the global marketplace.

First, consumers have *a genuine duty* to use their consumer power to enforce standards for the proper treatment of workers. This means that if a consumer ignores the fact that workers are being abused by a firm or a consumer ignores the fact that governments are not in a position to perform their oversight functions adequately, then the consumer is violating a genuine moral duty. The consumer cannot claim that he enjoys the usual consumer freedoms that he has under ideal conditions because government oversight is an essential component in the justification of that form of consumer freedom. In order for the moral legitimacy of the global market to license the consumer's activity, the consumer must modify his behavior in ways that will ensure that the actual enterprise produces the goods that are essential to the moral legitimacy of the global market.

Second, the consumer in the Starbuck's case would have duty to purchase the fair trade coffee, even if the rights violations that occurred in the production of the other coffee have already occurred. The reason is that the consumer's responsibility is to create a system of incentives that is appropriately structured, and avoiding any purchases that involve abused workers would contribute to the creation of the appropriate system of incentives. There is no question of the consumer becoming retroactively complicit in rights-violations that have already occurred.

Third, the institutional approach is compatible with a more complex account of the sorts of harms that might be permitted in the context of market activity. The key would be to develop a fuller account of the special authorization that consumers, workers and firms have to ignore other sorts of considerations in exercising their institutionally defined powers.

8. Conclusion

I have argued that the complicity approach is the wrong way to think about consumer ethics. The consumer experience in contemporary liberal democracies is intensely narcissistic, and we must not let the intensely narcissistic character of this experience lull us into imagining that, as consumers, we are not part of a wider social enterprise. The institutional approach provides a clearer and more compelling account of consumer ethics that comes to terms with the interconnected character of the market activity. Under full compliance, consumers have a certain freedom to ignore considerations stemming from the interests of other market actors when they make buying decisions because these interests are accommodated and protected in other ways. But when firms are not living up to their responsibilities and governments are not able to perform their regulatory and enforcement functions, some of these regulatory and enforcement functions devolve onto consumers. Like players in a baseball game, consumers have to take up the slack when the umpire is temporarily incapacitated.

By way of conclusion, let me emphasize that the duties I have outlined for consumers are only one part of a bigger story. Given injustice in the world, we also have important duties as citizens to engage in coordinated political action to change laws and policies and to build global institutions in order to empower governments to perform their proper functions and to pressure governments to perform these functions. The point of consumer ethics is mainly to step into the global governance gap to prop up the legitimacy of the global marketplace while we tackle the much harder and more fundamental task, which is to build a more effective framework of political governance for the global marketplace.

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