Coercive Offers Without Coercion as Subjection

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The consensus among philosophers and bioethicists is that coercion essentially involves threats as opposed to offers (Wertheimer 1987, 2010, chap. 4). Nevertheless, many, including many institutional review board (IRB) members (Largent et al. 2012), believe that offers to participate in research may sometimes be coercive. Some try to explain away these intuitions (Largent et al. 2013). In contrast, Millum and Garnett (2019) try to salvage the intuitions by distinguishing two senses of coercion: coercion as subjection and consent-undermining coercion. The former is what Garnett (2018) calls a eudaimonic sense of coercion, on which the coercee is “subject to a foreign will” and thereby made worse off—at least in some respect—and the latter is what he calls a deontic sense of coercion, particularly one on which coercion, analytically, implies that the token consent of the coercee is undermined. They take the standard view of coercion to explain consent-undermining coercion, but suggest that IRB members are invoking coercion-as-subjection. Though we admire the attempt to salvage these intuitions, we doubt they are successful. Nevertheless, we wish to follow their attempt to save the intuitions.

The chief problem for their view is that there does not seem to be a nondeontic sense of coercion. When an agent claims to have been coerced by another, they do not merely claim that their welfare has been reduced, but instead that they have been wronged in some respect. Those doing conceptual work on coercion, as reviewed by Garnett (2018, 546–550), share this view. So too do those doing empirical work on views about coercive offers as evidenced by the fact that they ask IRB members whether various activities were coercive, but ask research participants whether similar activities were impermissible (Largent et al. 2012), appearing to assume these to be roughly equivalent questions. Further, the foundational documents of research ethics on which IRB members rely, such as the Nuremberg Code and the Belmont Report (Emanuel et al. 2003, 39, 36–37), suggest a strong conceptual link between coercion and impermissibility. Hence, it seems prima facie safer to assume that IRB members took coercive offers to be a deontic notion, rather than that they were operating with a previously unrecognized eudaimonic notion.

Millum and Garnett might invoke the duty of nonmaleficence, claiming that whenever there is some harming there is also some wronging (Garnett 2018, 566n2). But the duty of nonmaleficence is not so simple. Compare beneficence. There are myriad minor ways we could improve others’ utility. One might think beneficence provides us with reason to find all people with hard-to-reach itches and give them back-scratchers. Yet even if so, there is no duty to do so. So too with nonmaleficence. I might have a reason to not offer a competitive applicant a job because I...
know that another institution soon will, and I will thereby deprive that institution of an excellent employee, but I have no pro tanto duty to not offer the job. Duties, unlike other practical reasons, appear to at least have a presumptive ability to defeat other practical reasons, and the general duties of beneficence and nonmaleficence appear to acquire this ability only when very specific content is fleshed out with further context.

Is there another way to salvage IRB members’ intuitions about coercive offers? We believe that considering certain cases helps justify the general notion of coercive offers. Consider David Zimmerman’s case of an individual who strands another on a deserted island and then offers unfair wages to him in order to prevent starvation, making a coercive offer. Zimmerman contrasts this with a case of an agent who happens across an individual stranded on a desert island and then offers unfair wages to him in order to prevent starvation, which a coercive act is a threat to make the coercee worse off relatively to a moralized baseline—in particular that of all-things-considered moral entitlements against the coercer (cf. Wertheimer 1987, 2010, chap. 4; Garnett 2018). As others have noted (Cohen et al. 2015), governments coerce by threatening to penalize with fines or jail time for, among other things, not paying taxes, but in doing so, the government is not threatening an all-things-considered wrong. Further, this coercion appears deontic in nature, but does not appear to undermine consent of the coercee. No consent is involved.

Advocates of the standard view might respond that state coercion is simply different in kind from other coercion, claiming that the state’s coercion typically merely reinforces moral reasons that the agent already has (Wertheimer 1987, 255–256). Yet this is false. I may have reasons to, for example, give to the poor, but I do not have reasons to do so through the particular mechanisms of the state absent the state’s coercion. I could, for instance, have discharged my obligation by giving to a nongovernmental organization (NGO)—indeed, I might have done so better than through the state—but now the state has changed my reasons. Hence, the claim that state coercion is somehow different is unmotivated.

Hence, the standard view encounters problems whether or not one accepts the possibility of coercive offers. We think that the standard account can be improved by appealing to the notion of pro tanto wrong. Notably, in threatening jail or fine, the government is threatening a pro tanto wrong. We think a similar point can salvage intuitions about coercive offers; Early Medication Offer involves violating autonomy rights, but note that these are only pro tanto rights because their violation in Early Medication Offer is permissible. Hence, we suggest revising the standard account to take coercion as either a threat to make a target agent worse off relative to their pro tanto rights unless the agent accedes to a demand, or an offer that involves violating their pro tanto rights where the alternative to the offer, while not involving a rights violation as with threats, is not a reasonable choice for the agent. In Early Medication Offer, the physicians help make it true that the patient has no reasonable choice other than to accept their offer, but the offer itself involves a pro tanto rights violation.

While we have outlined a rough view, we cannot fully specify or defend it here. One challenge is that not just any threat to violate pro tanto rights or rights-violating offer should suffice for coercion. For instance, assuming that there is a claim against being exploited, any threat of exploitation or offer involving it would thereby be coercive, but there are clearly cases of exploitation that are not cases of coercion. Nevertheless, the problem of outlining the right sorts of rights is not unique to our view, but applies to the standard view as well.

However, to conclude, we can point to the implications it may have for monetary offers to participate in biomedical research. One might think that researchers rarely have specific obligations qua researcher to potential participants before the research process begins. For instance, everyone, including researchers, has duties to help the poor and the developing world, but those are not duties to do so through research and can be discharged in various ways—perhaps, for example, by giving to charity organizations. Hence, participants are seldom made worse off relative to their existing pro tanto rights, and as such could not meet the standard we suggest. However,
others believe that interactions between researchers and subjects do create entitlements of the subjects against the researchers, such as to give ancillary duties (Richardson 2012). If so, then research may be coercive if it violates such ancillary obligations and offers incentives that do not return subjects to the pre-violation baseline.

Of course, the means to mitigate such risks is to ensure that their offers do not involve rights violations. Additionally, Millum and Garnett are right that conducting studies in populations where participants are likely to have reasonable alternatives can reduce the likelihood of coercion, and that ample compensation can morally offset the coercion participants suffer. However, unlike Millum and Garnett, we do not believe that this avoids coercion by aligning researchers’ and participants’ reasons and do not understand the reasonability of the choice in subjective terms. Moreover, we would note that the benefits of this strategy must be weighed against the possibility of reducing benefits to developing countries or vulnerable populations by simply avoiding research on them.

Our account has two final, notable results. First, if our account is right, claims of coercion depend on further types of moral wrongs, so deliberating about whether coercion occurs involves looking for other wrongs—which may be sufficient to deem research impermissible. Second, as the cases of government coercion and Early Medication Offer show, coercion does not entail all-things-considered wrong, on our view. Hence, the mere presence of a coercive offer may not make a trial impermissible; the pro tanto wrong may need to be of a certain degree. In light of these results, claims of coercive offers may not be a broad brush with which to paint research trials as sometimes thought, but a scalpel requiring careful moral deliberation. Nevertheless, this account may save long-held intuitions about cases of coercion and research ethics.

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