Ethic Theory Moral Prac (2014) 17:113–127
DOI 10.1007/s10677-013-9419-2

Consent Under Pressure: The Puzzle of Third Party Coercion

Joseph Millum

Accepted: 11 March 2013 / Published online: 28 March 2013
© Springer Science+Business Media Dordrecht (outside the USA) 2013

Abstract Coercion by the recipient of consent renders that consent invalid. But what about when the coercive force comes from a third party, not from the person to whom consent would be proffered? In this paper I analyze how threats from a third party affect consent. I argue that, as with other cases of coercion, we should distinguish threats that render consent invalid from threats whose force is too weak to invalidate consent and threats that are legitimate. Illegitimate controlling third party threats render consent invalid just as they do in two party cases. However, knowing that the consent is invalid is not sufficient to tell the recipient of consent what she may or should do. I argue that when presented with a token of consent from someone whom she thinks is experiencing an illegitimate controlling threat, the recipient may act on that token if and only if doing so represents a reasonable joint decision for her and the victim of coercion. The appropriate action for someone faced with third party coercion therefore depends on the other options open to her and those open to the victim of coercion.

Keywords Coercion · Consent · Applied ethics · Medical research

It is a commonplace that coercion by the recipient of consent renders that consent invalid. It is also commonly held that the pressure of natural misfortunes does not invalidate consent that is given as a result. But what about when the coercive force comes from a third party, not from the person to whom consent would be proffered? Consider the following cases, drawn from the experiences of physicians and health researchers while obtaining informed consent.

> *Teenager*. A 16 year old male is participating as a healthy control in an epilepsy study. He is articulate and thoughtful, and clearly understands the study well. When asked why he agreed to participate he replies: 'My mom thinks I should do the study while I'm here. If I don't, she'll be mad, so it's easier just to go along with it."[1]

[1]Case adapted from interviews with adolescents at the Clinical Center at the National Institutes of Health. Danielle Bromwich, personal communication.

J. Millum (✉)
Clinical Center Department of Bioethics/Fogarty International Center, National Institutes of Health, Building 10, 1C118, 10 Center Drive, Bethesda, MD 20892, USA
e-mail: millumj@cc.nih.gov

Depressive. Mr. R is blind and suffers from severe unipolar depression that has not responded to medication. His psychiatrist recommends electroconvulsive therapy. During discussion of the pros and cons of treatment, Mr. R confides that he is terrified of ECT, but his family have told him that they will not take care of him at home any longer unless he undergoes it.[2]

Wife. A research team is recruiting participants for a genetic study of hypertension from patients who attend a health clinic in rural Nigeria. The first woman the researchers ask to participate tells them: "I have to talk to my husband. He makes those decisions." A day later she returns and says that she is willing to participate.[3]

In this paper I analyze how threats from a third party affect consent. I argue that, as with other cases of coercion, we should distinguish threats that render consent invalid from threats whose force is too weak to invalidate consent and threats that are legitimate. Illegitimate controlling third party threats render consent invalid just as they do in two party cases. However, knowing that the consent is invalid is not sufficient to tell the recipient of consent what she may or should do. I argue that when presented with a token of consent from someone whom she thinks is experiencing an illegitimate controlling threat, the recipient may act on that token if and only if doing so represents a reasonable joint decision for her and the victim of coercion. The appropriate action for someone faced with third party coercion therefore depends on the other options open to her and those open to the victim of coercion. I close by applying my analysis to a case of consent to medical research.

1 Coercion and Consent

Recent philosophical analysis of the nature of coercion focuses on interpersonal threats. Though disagreements about some details remain, there is consensus that the paradigm case of coercion involves one person (the coercer) threatening to make another person (the victim) worse off if he does not comply with the coercer's demands.[4] Thus, when a robber pulls out a gun and says "Your money or your life!" this constitutes coercion because the robber threatens to make her victim worse off (dead) if he does not comply with her demands (handing over his money).

In situations like robbery at gunpoint, successful coercion renders consent invalid. The victim's agreement to transfer his money to the robber does not actually change who has the

[2] Case adapted from Mallary et al. (1986).

[3] Case adapted from Marshall et al. (2006).

[4] I set aside a number of issues regarding the correct analysis of coercion here because their resolution should not affect the differences between the standard two party cases of coercion and the third party cases that are the focus of this paper. These include specification of the other necessary conditions for an act to constitute coercion (e.g. that the threat successfully motivates the coercee) and more contentious issues, such as the appropriate baseline for determining whether a proposal is a threat and the possibility of coercive offers. My conclusions will apply to whatever is the correct account of coercion. (On baselines see Nozick 1969; Wertheimer 1987, 202–221. On coercive offers see Zimmerman 1981; O'Neill 1991). Mitchell N. Berman (2002) has argued that it is a mistake to try to identify a single, unified concept of coercion. He identifies two distinct functions of coercion claims—to identify a particular type of wrongful action and to identify a particular type of excuse for otherwise blameworthy action—and argues that there is no relationship of entailment between them. Except when considering the particular case of promises made while under threats Berman does not directly address the effect of coercion on the exercise of autonomy rights. However, his conclusions, extrapolated to the case of third-party coercion, need not be inconsistent with mine: we could agree that both the degree of pressure and the presence of wrong-doing are relevant to how we assess the validity of the victim's consent (see his discussion on pp67–73).

(legal or moral) property rights over it; that is, the token of consent is not transformative. Similarly, if a surgeon forced her patient at gunpoint to agree to a medical procedure, he would not be giving valid consent to that procedure.

However, not all threats invalidate consent. Suppose the robber were armed only with a sharp tongue and threatened: "Your money or I mock you!" Assuming that is really all that her victim thought she would do, we would expect him to resist such a weak threat. It would be strange for him to claim that he had been forced to hand over his money. Threats that the person threatened could reasonably be expected to resist do not render consent invalid.[5]

Why can powerful threats invalidate consent, whereas weaker threats cannot? The most straightforward explanation has to do with control. When someone makes a powerful threat, like "Your money or your life," she takes control of her victim's decision. But this is a decision that is the victim's to make, since he is an autonomous person.[6] Hence, this sort of coercion violates the victim's rights. Control is a matter of degree: we can control our decisions (or other people's) to a greater or lesser extent. In cases where the threat is much weaker, then, the person issuing the threat does not have very much control over her victim's decision. Ruth Faden and Tom Beauchamp say that for consent to be valid the person giving consent must act in a way that is "substantially noncontrolled" (Faden et al. 1986, 259). This does not rule out some control by other people—some pressure may still allow the person to exercise his autonomy—but it rules out control over a certain level.[7] In the following, I reserve the term *coercion* for just those threats that are *controlling*, that is, sufficiently powerful to render consent invalid. I use the term *pressure* to include any proposal to make another worse off, whether or not it is controlling.

Sometimes a threat can be controlling, but still not invalidate consent. For example, suppose that Flora is tired of her boyfriend lounging around the apartment all day and not contributing to the rent. "Pay rent or we break up!" she might tell him. If, as a result of her threat, Ivan gets a job and gives Flora rent money, his transfer of money to her is still valid. This is true even though the threat may be controlling: it might be much worse for Ivan that his girlfriend break up with him, than that she break his nose, but the first is permissible and the second a serious violation of his rights. Thus, a *legitimate* threat will not invalidate consent.

[5] Compare the case of Kaplan v. Kaplan in which the court ruled that a threat of embarrassment is insufficiently powerful to render a contract invalid. The court held: "Even if we assume … that the threat of an outraged and humiliated wife to publicize the affair of her husband is wrongful … we are not prepared to say … that a threat of personal embarrassment … was such as to control the will of the plaintiff." (*Kaplan* v. *Kaplan*, 182 N.E.2d 706, 710 (1962) cited in Wertheimer 1987, 11–12).

[6] When I say that someone is "autonomous," I mean that she has the capacity to act autonomously, that is, to reason about what to do in the light of her values and make decisions on the basis of that reasoning. I take the existence of this capacity to be the ground for ascribing people autonomy rights, such as the right to decide for themselves whether to undergo invasive medical procedures, the right to freedom of movement, and the right to own property. To "respect someone's autonomy" entails, at a minimum, avoiding violating her autonomy rights. The violation of someone's autonomy rights need not involve damaging her capacity to act autonomously; more commonly, it will involve overriding some attempted exercise of those rights, for example, by imposing medical treatment on her against her will. This is how coercion can be wrongful.

[7] We can draw an analogy with the legal notion of duress. Where such arguments are admissible, the claim that one acted under duress can excuse certain actions that would otherwise not be permitted. However, not just any pressure is sufficient for this to be an acceptable defense—it must be pressure over a certain threshold. See, e.g., Benn and Weinstein, who write:

> A plea of duress in criminal law works in the same way; the accused excuses himself by claiming that he was not free to obey the law, on account of some more immediate threat that he could not reasonably have been expected to disregard. (Benn and Weinstein 1971, 208)

There is an open question about exactly what constitutes a legitimate threat. Some theorists will deny, for example, that it is always permissible for someone to threaten to do something that she has a right to do.[8] Some, who think coercion always involves a proposal to do something wrongful, will deny that there can be any legitimate threats at all. On such an account, all such apparent threats would really be conditional offers not to do what the person issuing the "threat" had a right to do.[9] None of these disagreements needs to be resolved in order to analyze third-party coercion; their resolution will just make a difference to the content of the set of threats that are legitimate and so do not render consent invalid, or to the label we give to one set of proposals that have the surface appearance of threats. What I call legitimate threats therefore simply constitute a subset of the proposals that it is permissible for one agent to make to another (the subset of proposals that are experienced as or judged to be threats).

The foregoing discussion implies that there are at least two cases where someone may be pressured by a third party into tokening consent, but where the pressure will not render his consent invalid. First, it will not invalidate consent when the pressure is so weak that the victim's actions remain substantially non-controlled. In this case, even if the third party is doing something wrong, the consent remains valid and *ceteris paribus* the recipient of the consent may proceed. The *Teenager* case above probably falls into this category: if there is no reason for the researchers to think that the boy will experience more serious consequences if he disobeys, then they might reasonably expect him to be able to resist his mother's pressure.

Second, third party pressure will not invalidate consent if it is legitimately exercised, even if it controls the victim's decision. This is because the person exercising the pressure has the (moral) authority to control the decision. Again, *ceteris paribus* the recipient of consent may proceed in the face of such pressure. Depending on the details of the case, the man in *Depressive* may be in this situation: he is threatened with a consequence that is very serious, but it may be that his family have the right to refuse to take care of him if he will not try the recommended treatments for his illness.

2 Illegitimate Third Party Coercion

The most interesting cases of third party pressure are those in which someone is threatened with a consequence severe enough to compromise voluntariness and the threat is illegitimate. In a standard two party case, the victim's consent token would then be invalid and the recipient of consent would not be permitted to act on it. I now argue that illegitimate and controlling third party threats also invalidate consent; however, what the recipient of consent may or should do depends on further factors.

The few people who address illegitimate third party coercion do not articulate the justifications underlying their views. Paul S. Appelbaum et al. think that consent given under such circumstances is invalid. However, they give no argument for this claim, but

[8] The so-called "paradox of blackmail" arises in cases where it is judged to be wrongful to make a conditional threat (e.g. "I will reveal your affair unless you give me $1000") even though it would not be wrongful to carry out the act threatened, nor for the victim to give the blackmailer what she asks (see, e.g., Feinberg 1988, 238–258).

[9] For example, Wertheimer restricts the term *coercion* to just illegitimate threats (Wertheimer 1987, 202–221). I preserve the more common use of the term, such that there are cases in which someone can permissibly coerce another. However, the success of my later analysis is not dependent on this choice of words: the argument could be re-written using Wertheimer's definition of coercion and the same conclusions would follow.

seem to simply assume that third party pressure must have the same effect on voluntariness as the same pressure would in a two party case (Appelbaum et al. 2009).[10] On the other hand, Stephen D. Mallary et al. assimilate third-party coercion to other strong negative stimuli (such as physical illness) that may lead someone to consent.[11] Likewise, Franklin G. Miller and Alan Wertheimer think that the consent in such cases is valid. They appeal to the following case, which I use as the starting point for my analysis:

> *Pimp*. C tells B that he will beat her up unless she earns $500 this evening. B proposes to A that they have sexual relations for $100. A accepts. (Miller and Wertheimer 2010, 96)

In analyzing *Pimp* they write:

> It might be thought that B's consent *cannot* be transformative if B is coerced into having sex, but that seems much too quick. The standard cases of coercion are those in which the coercer is also the recipient of consent. Here, B is coerced by C, not A, and whatever else we might think of A, we do not think A is guilty of rape. (Miller and Wertheimer 2010, 96)

They claim that this judgment holds even if A knows about C's coercion.[12]

Thus, Miller and Wertheimer seem to think that our intuitive responses to cases like *Pimp* show that even illegitimate third party pressure cannot invalidate consent. I think their moral verdict on *Pimp* is mistaken; B's consent is actually invalid. In fact, I now argue, all cases of illegitimate, controlling third party pressure render consent invalid. However, that is not always sufficient to answer the question of what the recipient of consent ought to do.

Note, first, that there are cases of third party coercion where it is clear that the consent is invalid and where that fact makes a difference to the duties of the recipient of consent. Consider the following:

> *Cash transfer*. Coercer tells Victim that he will beat her up unless she gives Recipient $500. Victim gives Recipient the cash, which he puts in his mattress for safekeeping. Later, having escaped Coercer's clutches, Victim asks Recipient for the money back.

[10] Appelbaum and colleagues do not explicitly state their view about illegitimate third party coercion. However, it seems reasonable to ascribe this view to them on the basis of other statements they make. They claim that consent to research is involuntary, in general, "only if it is subject to a particular type of influence that is external, intentional, illegitimate, and causally linked to the choice of the research subject" (Appelbaum et al. 2009, 33). When discussing illegitimacy they note:

> Of course, many people intentionally influence the treatment or research decisions of others. Physicians encourage patients to consent to research studies, and family members may urge potential research subjects not to enroll in a clinical trial. The impact of such influences on voluntariness is not of concern unless these influences are also illegitimate—that is, the person exerting the influence does not have the right to act in this way according to generally accepted moral norms. A spouse may have the right to say, "Unless you get treatment for your drinking problem by entering this research study, I'm leaving," since spouses are generally free to terminate marital relationships and are given considerable latitude in influencing each other's behavior. (Appelbaum et al. 2009, 33)

[11] They write:

> We regard Mrs. R.'s husband's coercion as a fact-about-her-life with which she must contend, much as a victim of appendicitis must contend with her abdominal pain in deciding whether to consent to an appendectomy. In each case, the patient's decision is determined by a strong negative stimulus for which the physician bears no responsibility and over which the physician has no control. (Mallary et al. 1986, 125)

[12] They write: "It might be objected that the transformative power of B's consent turns on whether A knows (or should believe) that B is coerced by C. We think not." (Miller and Wertheimer 2010, 97)

Here, the moral verdict seems clear: Recipient ought to give back the money. Moreover, intuitively, the reason he ought to do so is that the cash transfer was not legitimate in the first place. This implies that the consent Victim gave (to the transfer of ownership) was invalid.[13]

There is a simple explanation of why the consent in *Cash transfer* is invalid. Assume that Coercer's threat is controlling and illegitimate. That means that Coercer is effectively making Victim's decision for her, by leaving her with only one option she can reasonably take, but that he lacks the moral authority to make that decision. His actions cannot, therefore, constitute an exercise of her autonomy right. The person who has the moral authority—Victim—is not making the decision to exercise that right herself, because she is being controlled. (She decides to do what is reasonable, but that is not the same as exercising a right.) But valid consent requires that the person who has the authority to make a decision make that decision herself. Hence, the consent token is invalid.[14]

This explains why the handover of money to Recipient is not legitimate. However, the explanation I gave makes no reference to any facts that are distinctive of *Cash transfer*: it mentions only features that are common to all cases of illegitimate, controlling third party pressure. It therefore implies that all cases of illegitimate, controlling third party pressure invalidate consent.

3 Responding to Third Party Coercion

The explanation I just gave, and consideration of cases like *Cash transfer* might lead us to think that illegitimate third party coercion always makes it impermissible for Recipient to accept Victim's consent token when he knows about the coercion. But that would be too fast. Consider *Tattoo*:

> *Tattoo*. Coercer threatens to beat up Victim unless she gets a tattoo from Recipient's tattoo parlor. Recipient has no particular interest in tattooing her, but he cannot otherwise prevent the threat from being carried out, and, although she would otherwise not want a tattoo, the beating is clearly worse for Victim than the tattoo. When she explains the situation to Recipient, Victim confirms that she prefers that he tattoo her than take any other action.

Here, it seems that Recipient does no wrong by proceeding (and, perhaps, has a duty to do so).[15] It therefore suggests that illegitimate third party coercion does not

[13] Assume that Recipient took the money entirely innocently, that is, he had no reason to think that Victim was being coerced. What if he has spent the money by the time she comes to reclaim it and cannot easily get it back? Now it is not so clear that he ought to repay her. In this case, it seems to me, both Victim and Recipient have a complaint against Coercer, and further moral analysis is needed in order to work out how they should distribute the cost he has imposed upon them. My thanks to Alan Wertheimer for this variation on the case.

[14] This explanation assumes the "autonomous authorization" model of consent, which Miller and Wertheimer are arguing against in the paper in which the *Pimp* case appears. However, the reader's intuitive response to *Pimp* is supposed to serve as evidence in favor of their alternative account. I am therefore not begging the question against their view of informed consent by rejecting their verdict on *Pimp*.

[15] It might be argued that the tattoo artist would be complicit in wrong-doing here if he were to tattoo Victim. That consideration might ground a duty or a liberty not to proceed. However, complicity in wrong-doing is itself only *pro tanto* wrong: it can be outweighed by a sufficiently good outcome for the victim of the wrongful act (Lepora and Millum 2011). Thus if the idea that the recipient of consent in *Tattoo* ought to decline to proceed on the grounds of complicity is appealing, I invite the reader to invent a similar case where the good consequences of proceeding are sufficient to outweigh the wrong of complicity and see if my analysis holds for such a case.

entail that it is impermissible to proceed with the act consented to even if it means that the consent is invalid. But what explains why Recipient is permitted to proceed? Two factors appear morally relevant: the other options available to Recipient, and what Victim wants Recipient to do. Contrast *Tattoo* with a case in which Recipient has an option other than proceeding on the token of consent that would be preferred by Victim and that he could easily take.

> *Pimp without pay*. Coercer tells Victim that he will beat her up unless she has sexual relations with Recipient. Victim proposes to Recipient that they have sexual relations in a private room—Coercer will infer what has happened. Recipient agrees.

In this case it seems clear that Recipient ought to go with Victim to the private room, but no more than that. To actually have sex with Victim would be terrible. Indeed, given that he has other options that he could easily take, to have sex with Victim under these circumstances would constitute coercion by Recipient, as well. In effect, he would be threatening to let Coercer carry out the beating if she did not have sex with him.[16]

In general, if Recipient has another option available to him, which he could easily take, and which Victim would prefer to him going along with Coercer's demands, he should not proceed on her token of consent. Recipient thereby respects her autonomy by giving her as much control over her consent decision as he is able. If, instead, the option that Victim would prefer is for Recipient to act on her token of consent, as in *Tattoo*, then he can respect her autonomy by proceeding.[17] In either case, a wrong has been committed by Coercer. But Recipient is not culpable for this wrong: he has done the best he could in non–ideal circumstances.

Consideration of the foregoing cases suggests that there are actually two ways to describe the quality of Victim's consent token in cases of third party coercion. The explanation I have proposed says that Victim's consent is always rendered invalid by third party coercion, but that, depending on the circumstances, what Recipient ought to do with respect to that invalid token of consent may vary. Thus, in *Cash transfer* Recipient ought to return Victim's money, in *Pimp without pay* he ought not to have sex with her, and in *Tattoo*, despite her invalid consent, he ought to tattoo her. An alternative explanation would say that the consent granted to Recipient in *Tattoo* is valid, since Recipient respects Victim's autonomy as much as he is able. However, her rights are still violated in the same way as if her consent were invalid, since Coercer has made her get a tattoo against her wishes. This interpretation would

[16] Note that this explanation makes use of a moralized baseline to infer that Recipient would be threatening Victim. If he had no duty to prevent Coercer's threat from being carried out, then his proposal would not be a threat and so he would not be engaged in coercion. Recipient's situation is analogous to that of a would-be rescuer who declines to pull a drowning man from the water unless he agrees to sign over all his property to her.

[17] Compare Christine Korsgaard's discussion of Bernard Williams' example of Jim and the Indians (Williams and Smart 1973, 98–99). She writes:

> This is why it is important to establish, if you can, what the Indians themselves think should happen. Suppose the oldest Indian steps forward and says "Please go ahead, shoot *me*, and I forgive you in advance." This doesn't make things wonderful but it does help. *Very* roughly speaking, you are not treating him as a mere means if he consents to what you are doing. Of course the Indian does not in general consent to be shot, and his gesture does not mean that after all he has not been wronged. In the larger moral world he has. But if you and the Indians are forced to regard Pedro and the Captain as mere forces of nature, as in this case you are, then there is a smaller moral world within which the issue is between you and them, and in that world this Indian consents.(Korsgaard 1996, 296)

still say that if Recipient proceeded in *Pimp without pay* Victim's consent to Recipient would be invalid. Victim's rights would then be violated by two people: Coercer, who creates the threat, and Recipient, who uses the existence of the threat to have his way with Victim.

Both descriptions can diagnose the wrong that is done to Victim (the violation of her rights) and determine what Recipient ought to do. The goals of this paper therefore do not require choosing between them. However, the explanation according to which the consent is always invalid has two advantages that lead me to adopt it here. First, it appears more parsimonious, since it preserves the view that a token of consent is either valid or invalid *simpliciter*. Second, and more importantly, it captures more clearly the different ways in which the victim of coercion can be wronged and harmed. When Coercer forces Victim to token consent to an act over which she has an autonomy right, he wrongs her. This is true even if the act to which she tokens consent does not actually occur. If that act does occur, then she experiences a harm over and above the wrong of being coerced. For example, if Coercer forces Victim to agree to sexual relations at the point of a knife, then he has wronged her. If he drops dead of a heart attack immediately after issuing the threat then he still did something wrong, but she has been spared the harm of having sex against her will. In the case of third party coercion, describing the token of consent as invalid allows us to capture this distinction. If Coercer forces Victim to agree to sexual relations with someone else, and they have sex, then she will have experienced the harm of having sex against her will, whether or not Recipient is acting permissibly. In the case of *Tattoo*, Recipient acts rightly by tattooing Victim, but she still has her bodily integrity violated, and she would be better off if Coercer's threat disappeared before the tattooing took place.

4 Costly Alternatives

We can now see why it is problematic for A to have sex with B in Miller and Wertheimer's *Pimp* case. If A has $100 to spend on sex with a prostitute, it seems likely that he has $100 that he could do without. Instead of having sex with B for $100, he could just give her the money. Thus, it seems like he has at least one option that he could easily take that B would prefer to having sex with him. Assuming he knows about C's coercion, not to offer her this option would be tantamount to coercing her into sex: just like in *Pimp without pay* it is as though he proposes to allow her to be beaten if she refuses to have sex with him. Now, this does not entail that A actually has the duty to give her the money, simply because he has been propositioned. It might be that A is also permitted to just walk away from the encounter without giving B anything at all (a question to which I return shortly). However, it does entail that he may not take advantage of her situation to exchange the $100 for sex.[18]

Pimp is an easy case, since it is hard to imagine that the recipient of consent cannot spare the $100 that he would otherwise spend on commercial sex. But in other cases the recipient may have alternative options that the victim of coercion would prefer him to take but which are costly to him.

[18] But wouldn't it be worse if C were to have sex with B without any agreement from B at all? Perhaps, but that would not imply that the sex would be consensual; it would just indicate that some cases of non-consensual sex are worse than others.

Bike sale. Coercer threatens to beat Victim unless she sells her bike for $100. Recipient is moving to a new city and could do with a bike to get to work; he can't afford to give away $100 because then he will not be able to afford a bike.

Here, we may suppose that Victim would prefer Recipient to just give her $100 but let her keep the bike. But this is not a very good alternative for Recipient: he could give away the $100, but then it would be very difficult for him to get to work. Again, it might be that Recipient is permitted to refuse to transact with Victim altogether. But it also seems plausible that he is permitted to proceed with the sale. How should this be explained?

In cases like *Bike sale*, the preferences and options of both Victim and Recipient are relevant to the ethical analysis. Each ought to respect the other person, which includes taking account of the costs and benefits for each of their possible decision pairs. Recipient may be permitted to walk away, but he is not permitted to act on Victim's token of consent without proper consideration of what she wants. Victim, on the other hand, may not demand excessive sacrifice from Recipient in order to deal with her coercive situation. If they are going to transact, they therefore ought together to select an option that represents a reasonable *joint decision*. Joint decision-making involves each party taking the viewpoint of the other as seriously as her own and deciding on this basis what to do. If they do that, then neither Victim nor Recipient takes advantage of the situation of the other.

Consider how we might work out the most reasonable joint decision in *Bike sale*. Keeping Coercer's threat fixed and ignoring any other-regarding preferences and values, Victim's options, in preference order from best to worst are:

(1) *Gift*. Victim doesn't give bike to Recipient & receives $100 for Coercer.
(2) *Sale*. Victim gives bike to Recipient & receives $100 for Coercer.
(3) *Beating*. Victim doesn't give bike to Recipient & Coercer's threat is carried out.

Recipient's options, in preference order from best to worst are:

(1) *Sale*. Victim gives bike to Recipient & receives $100 for Coercer.
(2) *Beating*. Victim doesn't give bike to Recipient & Coercer's threat is carried out.
(3) *Gift*. Victim doesn't give bike to Recipient & receives $100 for Coercer.

Victim has no reasonable alternative to Sale or Gift (Beating is ruled out, since the consequences are too bad for her). Recipient has no reasonable alternative to Sale or Beating (Gift is ruled out, since the consequences are too bad for him). Both can blame Coercer for their predicament. But Victim should no more ask Recipient to make the gift than Recipient should recommend that she take a beating. The best option for them to take jointly is Sale, and this is therefore the option that allows both to respect each other's autonomy to the greatest extent possible, given their circumstances. Thus it is permissible for Recipient to proceed with purchasing Victim's bike despite the coercion she is experiencing. The contrast with *Pimp* here is stark: it is hard to believe that the best joint action in *Pimp* is for A to give B $100 and for her to have sex with him (that is, if each were taking the point of view of the other as seriously as his or her own, we would not expect this to be the decision they reached). It is therefore implausible in that case that by proceeding on her consent token A respects B's autonomy within the constraints of the situation in which C has placed them.

To sum up, when Recipient knows that he is transacting with a victim of third party coercion, he becomes able to respect or disrespect Victim's autonomy in a way that he could not before, because he understands the constraints under which she is operating. He can act with her by deciding jointly what they should do. If a reasonable joint decision involves him

acting on her token of consent then it is permissible for him to do so. Alternatively, he can usurp her decision just as Coercer has by making use of the threat she is under to obtain something to which he has no right. Either way she will be coerced by Coercer. But Recipient's actions determine whether or not he also coerces her.

Note that the analysis of how someone may or should act in the face of consent she knows to be invalid may be complicated by other moral considerations in addition to the rights and interests of the parties to the transaction. For example, some people argue that some deceptive research studies—in which valid consent is not obtained because the research participant does not know what she is agreeing to—can be justified by the social value of the data that is collected (American Psychological Association 2010, 8.07). Here, the gain to society of the knowledge generated is thought to outweigh the wrong of proceeding on an invalid token of consent. Such considerations should already be included in the analysis of the permissibility of proceeding on a token of coerced consent. In a two party case, if it is permissible to proceed on a coerced token of consent, then that coercion will normally be *legitimate*.[19] In the case of third party coercion, the coercion might be unjustified and yet there might also be moral considerations that favor accepting the consent. For example, significant benefits to others might render it permissible for the recipient to proceed, even though he knows that the victim has been coerced. If such considerations apply to a case, they should also be taken into account when working out what would be a reasonable joint decision: reasonable here does not mean only prudential, but includes each party's moral reasons, too.[20]

5 Walking Away

The analysis so far has focused on the conditions under which it is permissible to accept a token of consent from someone who is experiencing third party pressure. Sometimes the potential recipient has low cost alternatives to acting on the victim's token of consent, which she would prefer him to take, and he is therefore not permitted to accept her token of consent. However, I alluded above to the possibility that he might still be permitted to walk away from the interaction altogether, even if that is not the option she would prefer. Under what conditions is this permissible and under what conditions does he have a duty to take one of the other options available to him?

The answer to this question depends upon the other duties that the situation imposes on the potential recipient of consent. For example, the emergency in which the woman in *Pimp without pay* finds herself and the low cost to Recipient in helping her fool Coercer might make us think that Recipient ought to help her out on the grounds that this would constitute an easy rescue. In a case in which researchers are soliciting people to enroll in their study, they might have some responsibility for the instances of coercion that result, and so have a duty to help their potential participants avoid negative consequences. Doctors and researchers might also have role-based duties or duties arising out of existing relationships with patients that entail that they are not always permitted simply to refuse to engage with the coercive situation. In other cases, there may be no duties that bind the potential recipient of consent or he may have countervailing reasons not to get involved. For example, the tattoo artist in *Tattoo* might argue that he would be compromising his integrity by tattooing

[19] We might distinguish here between coercion that is legitimate, in that the coercion does not even involve a *pro tanto* wrong (e.g. because the coercee has no claim against being coerced in this case) and coercion that is permissible, all things considered, but which still involves a wrong to the coercee.

[20] My thanks to an anonymous reviewer for *Ethical Theory and Moral Practice* for raising this point.

someone under protest, and so refuse to be a party to the coercion.[21] A complete analysis of the various reasons that might apply is beyond the scope of this paper.

6 Two Objections

It might be objected that the picture of shared decision-making that I have sketched is unrealistic. In many cases, even if the recipient of consent knows about the third party coercion, she may not have the opportunity for an extended discussion with its victim. She may therefore have limited knowledge of the victim's preferences. Moreover, even if the two have the opportunity to decide together what to do, there is no guarantee that the decision-making procedure will proceed in the way I have suggested. For example, Victim in *Bike sale* might take advantage of Recipient's willingness to compromise and manipulate him into excessive sacrifice by playing up the awfulness of her situation.

Certainly, these are sensible practical concerns. However, they do not represent a flaw in the ethical analysis. In the absence of an actual discussion, we can still ask what each person would do, if acting in good faith (that is, trying not to take advantage of the other). Recipient should then proceed according to how he judges such a discussion would conclude and can thereby do what he can to respect Victim's autonomy without martyring himself. Cases where communication is difficult or impossible, or joint decision-making is otherwise challenging, will have practical implications for how far each person should go in accommodating the other, but are not problems with the underlying theory.[22]

Second, someone might object that my conclusions are unfair to potential recipients of consent. If I am right, someone who discovers third party coercion may, through no fault of her own, have duties to act or refrain from acting in ways that she would otherwise not.[23] For example, suppose we are persuaded that there is nothing intrinsically wrong with exchanging sex for money. Then, when he discovers the coercive nature of the situation, the potential client in *Pimp* moves from being permitted to transact freely with the prostitute, to being forbidden to do so. In *Pimp without pay*, just because of the accident of his interaction with Victim, Recipient seems to have acquired the positive duty to go along with Victim so that Coercer will infer that they had sex. Since Recipient did nothing wrong, is it not unfair to single him out for these additional duties?

In response, note that the world is frequently unfair in just this way in other contexts. The innocent passerby who witnesses a crime can thereby acquire a duty to report what he saw in court. Whoever happens to walk by the shallow pond where the child is drowning thereby acquires a duty to rescue him, but, again, through no fault of hers (Singer 1972). There are also other situations in which someone's ability to give valid consent is compromised

[21] See note 15.

[22] Note that each respects the other's autonomy here by not taking advantage of her, treating her as equally valuable, and so on. This respect does not require the other's agreement: I am not suggesting that there is some sort of hypothetical consent doing the work of actual consent in cases where a genuinely joint decision is not possible.

[23] I am speaking in terms of the agent's *subjective reasons* for action here, that is, the reasons she has given her understanding of her situation. When she discovers that someone is the victim of coercion, her subjective reasons for action change. The same point could be stated instead in the language of *objective reasons*, that is, the reasons she has given her actual situation. We would then say that when an agent discovers that someone is the victim of coercion, she has found out more about what objective reasons apply to the situation. I use the language of subjective reasons because it allows us to capture more directly the blameworthiness or innocence of the agent.

through no fault of the recipient of consent, but where knowledge of the compromise changes the recipient's duties. For example, a surgeon may have innocently believed that the patient being referred to her was capable of making his own decisions. When she realizes that he is cognitively compromised and does not understand what is involved in the operation she was intending to perform, she is no longer permitted to go ahead with it. Moreover, it is plausible that her discovery entails further positive obligations, for example, that she ought to locate a suitable surrogate decision-maker for him, attempt to explain his condition and the possible treatments available at a level he can understand, and so forth. All of this is a product of her coming to know that someone she had originally had good reason to think had given valid consent, in fact failed to do so.

7 Consent to Health Research Under Pressure

Cases of consent to health research participation (or the specific procedures that are involved) illuminate some of the complex ethical problems presented by real situations of third party coercion. The primary goal of research, in contrast to clinical care, is the generation of socially valuable data, not the well-being of the research participants. Thus, research participation often involves risks to participants that are not balanced by therapeutic benefits. However, health research may provide information of great value to the populations being studied, and enrollment does sometimes offer a benefit to individual participants that they could not obtain outside of the trial. There may therefore be good reasons for well-intentioned researchers not to simply take the precautionary measure of excluding from research all members of populations at risk of third party coercion, but to consider whether and when their consent can be accepted.

Wife nicely illustrates the various considerations that are relevant to a decision about accepting consent under pressure. First, it is certainly possible that the Nigerian woman's husband backs up his authority with threats that are both illegitimate and controlling enough to undermine the validity of his wife's consent. However, the testimony quoted in *Wife* does not tell us that for sure: it might be that asking permission is just a part of the shared decision-making that characterizes her marriage. In general, if someone is innocently ignorant that the consent she is offered is invalid, she does no wrong in acting as if it were valid.[24] But in cases like *Wife* there may be reason to suspect that something is going on, but the potential recipient of consent does not know the whole story.

Hence, second, the researchers have a duty to find out more. They need to have some understanding of the woman's culture, since understanding the way that the communities and families in this population are structured, and the way that husbands and wives are expected to interact, may help them understand what it means for the wife to ask her husband about whether to enroll in research and for the husband to say that she should. However, no matter what the cultural mores, every relationship is different. The researchers also need to find out something about how this woman, in particular, relates to her husband and how they

[24] *Money transfer* also shows that there is an important normative difference between innocently taking an invalid token of consent as valid and actually receiving a valid token of consent. This difference has repercussions for the recipient of consent when the consequences of accepting the consent are reversible (as when property is exchanged).

make decisions. This may allow them to ascertain whether her husband issues illegitimate threats of sufficient force to invalidate her consent.[25]

The difficult epistemic situation of the researchers is distinctive of third party coercion. When the coercer is also the recipient of consent, she normally knows about the coercion. But this is not true when third party coercion is involved. Each of the three cases described in the introduction could have occurred without the researcher or physician suspecting any pressure. Moreover, when the perpetrators of coercion expect others to disapprove, they are likely to try to conceal the coercion, which exacerbates the difficulty for a recipient trying to work out what to do. Worse, investigating whether coercion is taking place might also risk putting the victims of coercion in greater danger; for example, if they might be punished by the coercer for arousing the suspicion of the recipients of consent.

Third, what the woman wants to do regarding research participation independent of any threats she is under is crucial. If she originally wanted to participate, and simply got approval from her husband to do so, then she might be living in a state of deplorable subjugation, but her research enrollment would not be involuntary.[26] On the other hand, if she did not want to be in the research, but is coming to enroll just because her husband told her to, then the researchers may have a duty to explore alternatives to enrolling her.

Finally, then, if she is the victim of third party coercion the researchers must consider their duties to her, the options open to them, and discuss with her how she would like to proceed in the light of all these options. Since their request for blood samples in the health clinic led to this particular instance of coercion, it is plausible that the researchers have at least some obligation to help the woman avoid the negative consequences of disobeying her husband. If it is possible to exclude her from participation in a way that will not lead to punishment, then the researchers may have a duty to do that. For example, they could say that she was unable to participate because she did not meet the formal inclusion criteria of the study (for example, her hypertension was not severe enough). Alternatively, if the

[25] In Marshall et al's study of the voluntariness and understanding of participants in a genetic study of hypertension 47 % of the married women from Igbo-Ora, Nigeria reported that they asked permission from their husbands before enrolling (Marshall et al. 2006, 1992). Qualitative research in other communities where there are norms empowering certain men to make medical and research decisions on behalf of other people in their community or household illustrates the complexities involved. For example, Tindana et al. conducted qualitative research in northern Ghana with chiefs and adults who had been research participants in the Kassena-Nankana District along with researchers from the Navrongo Health Research Centre (NHRC) that had been carrying out research in that district for some time. According to the authors, "the status of women in this district has been described as particularly bleak in view of the social norms that give men "gatekeeping" roles in households and compounds" (Tindana et al. 2006, 2). Nevertheless, the interviewees revealed a great deal of variation regarding who actually made the decisions. For example, one woman reported what might well have constituted third party coercion:

> "I will go and tell my husband that the VAST [NHRC] people have come to ask me to join their study and so I want to let him know about it and if he says I should go then I will go, but if he refuses, I won't go. That is why when he agrees I always come and join them." (Tindana et al. 2006, 4)

Another clearly did not see her situation that way:

> "I make that decision and then my husband will also agree and then he will also ask me to participate. If I don't want to participate, my husband cannot force me to participate." (Tindana et al. 2006, 4)

And in other cases it is hard to discern what went into the decision:

> "I discussed it with my husband and he agreed for me to participate and that was why I took part in it." (Tindana et al. 2006, 4)

[26] On the plausible assumption that it is not possible to coerce someone to do what she intended to do before the issuance of the threat.

husband is insistent on her participation, then they might have a duty to fake her participation or to allow her to do so. They might give her the Band-Aid that would cover the mark she would have if she had given blood, provide her with the appropriate token of compensation for participation, and so forth.[27] Only if it is not possible to find such an alternative that she would prefer, and which would shield her from her husband's punishment, should the researchers enroll someone into their study who is being coerced to participate.[28]

8 Conclusion

Third party pressure makes the normative situation of the recipient of consent different from the situation she would face if she herself was the source of the pressure and different from the situation she would face if it were just natural misfortune that put the victim into a bad choice situation. If the pressure is both illegitimate and controlling then it will invalidate consent, just as it would in a two party case. However, unlike in the case where the recipient of consent is also the coercer, sometimes the recipient is permitted to proceed upon this invalid token of consent. She may proceed if doing so would constitute a reasonable joint decision made by her and the victim of coercion. On the other hand, were it just natural misfortune that put the person proffering consent into a bad choice situation, then his consent would be valid, and the recipient of consent would always be permitted to proceed. In the case of third-party coercion, however, if there are options open to the recipient of consent that she could easily take and which the victim would prefer, then she may not proceed, though she might be permitted to walk away.

Acknowledgments I would like to thank Kirstin Borgerson, Michael Garnett, Doug Mackay, Alan Wertheimer, two anonymous reviewers for *Ethical Theory and Moral Practice*, audiences at the NIH Clinical Center Department of Bioethics, University of Massachusetts—Boston, and University of KwaZulu Natal—Pietermaritzburg, and the members of the New Scholars in Bioethics 1st Annual Symposium for helpful discussion and comments on earlier drafts of this paper. The opinions expressed are the author's own. They do not reflect any position or policy of the National Institutes of Health, U.S. Public Health Service, or Department of Health and Human Services.

References

American Psychological Association (2010) Ethical Principles of Psychologists and Code of Conduct. http://apa.org/ethics/code/. Accessed 23 March 2013

[27] I assume here that deception in the face of illegitimate coercion is justified, that is, no wrong is done to someone who illegitimately coerces another in deceiving him about facts related to his coercion. For those who think that there is something wrong with deception, even under these circumstances, the reasons against deception would have to be weighed against the reasons that favor protecting the woman using the deceptive strategy. If deception is the only way to sufficiently protect potential research participants, and it is judged to be ethically unacceptable, then it may not be permissible to conduct the research project at all. The points made in the section above on walking away apply equally to the ethics of health research.

[28] The lengths to which researchers may have to go in order to protect participants at risk for third party coercion may have other costs. For example, having to take these precautions is likely to slow down the recruitment process and to render it more expensive. It may also make potential participants less likely to enroll, since they may be unwilling to undergo intrusive questioning or risk the disturbance of their private lives. However, the apparatus for protecting research participants is full of burdensome requirements, such as extensive review by ethics committees and complex informed consent procedures. As with all such protections for research participants, the importance of the protection must be balanced against its costs and evaluated in the light of the value of conducting this research in the first place. Thanks to an anonymous reviewer for *Ethical Theory and Moral Practice* for this point.

Appelbaum PS, Lidz CW, Klitzman R (2009) Voluntariness of consent to research: a conceptual model. Hastings Cent Rep 39(1):30–39
Benn SI, Weinstein WI (1971) Being free to Act, and being a free man. Mind New Series 80(318):194–211
Berman MN (2002) The normative functions of coercion claims. Legal Theory 8:45–89
Faden RR, Beauchamp TL, King NMP (1986) A History and Theory of Informed Consent. Oxford University Press, New York
Feinberg J (1988) Harmless Wrongdoing. Oxford University Press, New York
Korsgaard C (1996) The reasons we can share: An attack on the distinction between agent-relative and agent-neutral values. In: Korsgaard C (ed) Creating the Kingdom of Ends. Cambridge University Press, Cambridge, pp 275–310
Lepora C, Millum J (2011) The tortured patient: a medical dilemma. Hastings Cent Rep 41(3):38–47
Mallary SD, Gert B, Culver CM (1986) Family coercion and valid consent. Theor Med 7(2):123–126
Marshall PA, Adebamowo CA, Adeyemo AA, Ogundiran TO, Vekich M, Strenski T, Zhou J, Prewitt TE, Cooper RS, Rotimi CN (2006) Voluntary participation and informed consent to international genetic research. Am J Public Health 96(11):1989–1995
Miller FG, Wertheimer A (2010) Preface to a theory of consent transactions: Beyond valid consent. In: Miller FG, Wertheimer A (eds) The Ethics of Consent: Theory and Practice. Oxford University Press, New York, pp 79–105
Nozick R (1969) Coercion. In: Morgenbesser S, Suppes P, White M (eds) Philosophy, Science, and Method: Essays in Honor of Ernest Nagel. St. Martin's Press, New York, pp 440–472
O'Neill O (1991) Which are the offers *you* can't refuse? In: Frey RG, Morris C (eds) Violence, Terrorism, and Justice. Cambridge University Press, Cambridge, pp 170–195
Singer P (1972) Famine, affluence, and morality. Philos Public Aff 1(1):229–243
Tindana P, Kass N, Akweongo P (2006) The informed consent process in a rural African setting: a case study of the kassena-nankana district of Northern Ghana. IRB 28(3):1–6
Wertheimer A (1987) Coercion. Princeton University Press, Princeton
Williams B, Smart JCC (1973) Utilitarianism: For and Against. Cambridge University Press, Cambridge
Zimmerman D (1981) Coercive wage offers. Philos Public Aff 10(2):121–145