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To cite this article: Joseph Millum & Michael Garnett (2020) Response to Open Peer Commentaries on “How Payment for Research Participation Can Be Coercive”, The American Journal of Bioethics, 20:8, W8-W11

To link to this article: <https://doi.org/10.1080/15265161.2020.1777351>



Published online: 06 Aug 2020.



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CORRESPONDENCE



## Response to Open Peer Commentaries on “How Payment for Research Participation Can Be Coercive”

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While many clinical researchers and members of research ethics committees (RECs) think that paying people to participate in research is sometimes coercive, this claim is denied by most philosophers and bioethicists who have studied coercion. In “How Payment for Research Participation can be Coercive” we distinguish two senses of coercion—*consent-undermining coercion* and *coercion as subjection* (Millum and Garnett 2019). Consent-undermining coercion involves a threat to violate another’s rights and can render consent invalid. Coercion as subjection identifies a way in which someone’s interests can be set back because they are subject to someone else’s will. Under certain conditions an offer of payment can be coercive in the latter sense but not in the former. In this way we endeavor to vindicate the intuitive idea that some payments are morally problematic because they are coercive. In making that idea precise, we also attempt to remove some misconceptions about when payment is problematic and provide guidance to avoid or mitigate it.

We thank all the commentators who read and responded to our paper for their critical and constructive thoughts. Here we respond to some of the important points that they raise.

### THE CONCEPT OF COERCION

Several commentators dispute our analysis of the concept—or concepts—of coercion. Scott Anderson (2019) argues in favor of a narrow conception of coercion, one restricted to cases in which the coercer has intentionally eliminated the coercee’s acceptable alternatives for the purpose of controlling her behavior. On our broader conception, by contrast, coercion may also occur in cases in which the coercer controls the coercee’s behavior by merely taking advantage of an

existing lack of acceptable alternatives. By presenting a conditional offer that is better than the existing alternatives, the coercer “makes it true” that accepting the offer is the only way to avoid unacceptably bad consequences (contrary to the interpretations of our view by Emily Largent et al. (2019) and Christine Grady (2019)).

Anderson’s (2019) central complaint is that our broader conception partly strips the concept of its moral seriousness. For Anderson, coercion—which paradigmatically involves violence or threats of violence—demands “brighter, harder lines” of moral and legal impermissibility than our conception allows. However, this complaint overlooks the fact that coercion as subjection comprises only one half of our account of coercion. The other half, which we call consent-undermining coercion, is restricted to cases involving intentional threats serious enough to constitute rights violations, and has precisely the kinds of deontic moral upshots that Anderson has in mind. We are doubtful whether *this* kind of coercion can be properly analyzed in nonmoralised terms, as Anderson’s discussion seems to suggest it can, favoring instead Miller and Wertheimer’s rights-based analysis. But that’s not an argument we wish to have here. Setting this aside, it seems ultimately to be a question of linguistic propriety whether the term “coercion” is to be reserved for the more deontologically serious kind or is to be allowed to apply more widely. Our view is that the broader usage helps to make moral sense of a wide range of coercion talk.

Maximilian Kiener (2019) raises a long-standing objection to the standard analysis of coercion: blackmail cases. Blackmailers do not typically threaten to make their victims worse off than they are morally entitled to be (adulterers, for instance, have no right that others help to keep their affairs secret). Yet

blackmail seems to be coercive, and in a way that can invalidate consent. Therefore, it seems, consent-undermining coercion cannot just be coercion on the basis of threats to make others worse off than they are morally entitled to be. This is a general problem case for the standard, rights-based analysis of coercion, and our aim in this paper was not to offer a novel defence of that analysis, but to show how this widely-accepted analysis can be supplemented in a way that helps to make sense of the moral concerns of RECs. An assessment of the rights-based analysis would need to look more comprehensively at the full range of cases that we expect such a theory to handle, and to be assessed in relation to other, competing analyses. It could be that such an investigation will lead us, under reflective equilibrium, to the view that blackmail does not undermine consent; or it could turn out that the standard analysis does in fact have the resources to preserve our intuitions about these cases, as some of its proponents have argued (Berman 1998). Either way, the distinction between the two types of coercion we identified will stand and blackmail cases do not provide a reason to question our analysis of coercion as subjection.

Finally, Benjamin Rossi and William Smith (2019) object to our claim to have identified a non-deontic concept of coercion, citing a wide consensus on the view that coercion entails impermissibility. In response, we emphasize that our aim is *not* simply to vindicate the current thinking and practices of RECs by showing that common views about the nature and moral force of coercion are correct. To the contrary, we believe that there is a great deal of confusion on both scores. Our diagnosis of this confusion is the existence of two distinct concepts of coercion with different types of moral force. We believe that RECs are sometimes correct to label offers of payment “coercive” but are incorrect in taking this to have the automatic deontic upshots typical of other standard cases of coercion.

## COERCION AND CONSENT

On our view, coercion as subjection does not invalidate consent. Alex John London (2019) offers two arguments against this claim. The first is that if there were a *right* to freedom-as-non-subjection—a plausible entailment of the right to autonomy—then coercion as subjection would always entail consent-undermining coercion, and our distinction would collapse. London is correct to note this fact. Moreover, we agree that there is a general moral claim against

interpersonal subjection. However, we deny that this claim amounts to a *right* in the sense relevant to consent-undermining coercion. Some of the difficulties involved in treating this as a right are illustrated by our *Natural History* case. In this case patients who cannot otherwise access treatment for their HIV/AIDS are provided with treatment as part of a study aimed at comparing genetic and cellular differences between people with immune disorders and those without. If there were a right to non-subjection then this study would be coercive in the consent-undermining sense (for the reasons London explains) and thus flatly impermissible to conduct with competent adults. But it seems clearly permissible to conduct this study in this context, notwithstanding the “moral taint” that we claim exists by virtue of the fact that the participants are used as tools for the researchers’ foreign purposes.<sup>1</sup>

The same considerations apply to London’s (2019) second response. Even if interpersonal subjection of the type we analyze doesn’t amount to a rights violation, he suggests, it might still be sufficient to undermine consent; for clearly it compromises autonomy, and valid consent must be autonomously given. However, most decisions fall short of perfect autonomy: most are *to some extent* unreflective, uninformed, selected from a non-ideal option set, or influenced by external factors. If *perfect* autonomy were required for valid consent, then valid consent would be virtually impossible. Thus the task of a theory of consent is to specify exactly which degrees or modes of imperfect autonomy are sufficient to invalidate consent and which are not. Cases like *Natural History* show that interpersonal subjection *per se* does not compromise autonomy in a way that undermines consent (though we do not deny that there may be some particularly egregious cases of interpersonal subjection that do constitute rights violations and thereby do undermine consent).

## STRUCTURAL INJUSTICE

Danielle Wenner (2019) makes three objections to our view. The first is that what we call “coercion as subjection” is better understood, not as a form of

<sup>1</sup>Note, however, that there is a *different* concept of freedom as nonsubjection such that there *is* a fundamental right to it. This is a moralised, rights-dependent concept, such that what it is to be subject to a foreign will is to be subject to interference that is (independently) illegitimate. Consent-undermining coercion is a form of interpersonal subjection in this sense, and we do have a right against it. For a thorough analysis of freedom as nonsubjection in this alternative sense, see Ripstein (2010).

coercion, but as a form of domination in the neorepublican sense. However, although our concept of coercion as subjection complements neorepublican approaches, it is ultimately an account of actual interference and not one of domination. On the standard neorepublican account, A dominates B iff A has a capacity to interfere arbitrarily with B (Pettit 1997). This analysis of domination is parasitic on an account of interference: to know what it is to have a capacity of arbitrary interference, one must first know what interference is. Traditionally, republicans have taken “interference” to mean what negative freedom theorists take it to mean: physical prevention or coercion. Coercion as subjection is, in our view, a construal of interference better suited to republican aims—but a construal of interference nonetheless (Garnett 2018).

Wenner’s second objection is that our account focuses too much on the individual, interactional aspects of the problem at the expense of the systemic and institutional aspects (a concern echoed by London (2019) and by Jill Fisher (2019)). Instead, she proposes an analysis in terms of threat advantage that seems to bring these latter aspects into sharper relief. Yet our analysis of coercion is specifically designed to be sensitive to relevant forms of background injustice. On the standard view, existing injustices matter to the analysis of coercion only if they were wrongfully put in place by the putative coercer. On our account of coercion as subjection, structural vulnerabilities (such as poverty) matter regardless of their causes. As a result, our view allows us to view certain social structures themselves—such as institutional arrangements or economic systems—as inherently coercive, i.e. as encouraging, or as being necessarily constituted by, coercive interpersonal relations, in ways that closely resemble Fisher’s (2019) notion of “structural coercion.” Our account is therefore in harmony with a threat advantage approach. In fact, we believe that it may do a better job at directing attention to morally relevant structural features, since threat advantage *in itself* need not entail subjection or unfreedom (for example, one billionaire might have a threat advantage over another billionaire in a business deal without that being indicative of any background injustice relevant to either party’s freedom). Cases in which one must comply with another’s will due to a lack of reasonable alternatives, by contrast, do seem to track background injustice.

This said, it is true that in this paper our primary focus is on decisions facing individual researchers and REC members. Wenner’s (2019) third objection targets our claim that research studies involving coercion

as subjection might sometimes be permissible, so long as participants are amply compensated. This, she argues, is to license unbridled domination of the weak by the rich and powerful. We are sympathetic to this complaint, but see the need to sharply distinguish two questions. One concerns the unjust structural features of society, and what we are to do about them. On this, we second Wenner’s (2019) call to alleviate “the background conditions of need that result in the ongoing vulnerability of subsets of society to having their own will subjected to the desires of others.” The second question, however, concerns what individual actors are to do in the meantime. We allow that one reasonable response to the issues raised in our paper would be simply to refuse to carry out studies in relevantly vulnerable populations (“Acceptable Alternatives”). But we also recognize the force of the argument that this would be to deny these populations important benefits. Our point, addressed to those moved by this latter consideration, is that if researchers are going to go ahead with such studies they should recognize the studies’ morally compromised nature and ensure, at least, that participants are generously compensated. We take the morally compromised nature of such transactions not to be a reason for complacency in the face of structural injustice, but to be a further reason for working to remove it.

## COERCION IN PRACTICE

Several commentators address the value of our analysis for practice. David Resnik (2019) argues that most decisions that institutional review boards (IRBs) make about payment will not be about cases where there is coercion as subjection. On this, we agree: most cases in which payment is offered for research participation are not cases in which potential participants lack acceptable alternatives and so will not constitute coercion. However, the fact that coercion as subjection is likely to be rare in the research context does not undermine the value of our account. Identifying and analyzing coercion as subjection can help IRB members to diagnose what their intuitive ethical concerns may be about and how they can be resolved. Similar points apply to Grady’s (2019) worry that introducing a new type of coercion may simply “muddy the waters.”

Resnik (2019) also points out that our analysis is inconsistent with the way that many IRB members think about how payment is coercive. It is common to think that offering more money makes the offer more coercive. We deny this: once a payment is sufficient

to render one person subject to another's will, a greater payment will not make them more subject. Indeed, we argue that more payment is often ethically preferable. As we noted in our response to Rossi and Smith, we are not claiming that IRB members' intuitions are entirely accurate. Rather, we are trying to provide them with a way to think about what might be coercive about payment. Such a project is inevitably revisionary as it makes precise what coercion involves. It is unhelpful to contort the theory to fit every unreflective judgment just as it is unhelpful to deny that intuitive judgments have any face validity.

Finally, C. Maxwell Shannon et al. (2019) propose that coercion as subjection often applies in cases of "clinical ultimatums." They describe cases involving patients with severe mental illness who are pressured into acquiescing with a health care provider's wishes, but where the provider may not be proposing to violate their rights. Cases of clinical ultimatums seem like a rich source of ethically complex cases and we appreciate being directed to them. It is possible, just as Shannon et al. suggest, that the concept of coercion as subjection can help illuminate what underlies providers' discomfort with such ultimatums.

## DISCLAIMER

The views expressed are the authors' own. They do not represent the position or policy of the National Institutes of Health, the U.S. Public Health Service, or the Department of Health and Human Services.

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