**'Michael Garnett argues for a eudaimonic account of coercion centred around three principles. Critically assess his account with reference to one or more of those principles.'**

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# **Introduction**

What is coercion and why do we care? Coercion is widespread and used especially when raising children, but on its darker side coercion can have devastating consequences. We are worried about coercion as it can invalidate consent. This is seen in the USA where campus rape cases have soared in recent years and brought consent and coercion back to the forefront of debate. Coercion is a hotly debated legal, political and ethical concept. However, in all this debate we have seen little in the way of what coercion means exactly and how we determine it is taking place. Wertheimer and Garnett have interesting views about how coercion can be understood, from the morally wrong side of coercion to the situations where people are left much worse off because of its use. Only the morally wrong situations are subject to the law but there is a whole set of coercive situations that could take place which look bad to the outsider but are not necessarily morally wrong. This is the area of coercion I wish to discuss further.

Wertheimer states that there are two types of coercion, moralised and non moralised. Moralised coercion concerns whether it was ‘wrongful’ to propose the offer and the non-moralised notion examines whether the coerced had any other reasonable choice. In a similar vein to Wertheimer, Garnett believes that coercion has two roles, Deontic (wrong) and Eudaimonic (bad). This would vaguely map to Deontic as Moralised and Eudaimonic as Non Moralised. Garnett discusses the eudaimonic version at length believing it is relatively unexplored in situations of coercion.

This paper consists of 4 sections:

* Section 1 discusses what Coercion is
* Section 2 reviews Wertheimer’s view of Moralised and Non Moralised Consent
* Section 3 discusses Garnett’s View
* Section 4 considers a cost-benefit analysis of eudaimonically wrong situations.

In conclusion it is apparent that, in order to have a full picture of what kind of situations coercion actually covers we must not simply rely on the deontic concept. The Deontic way of looking at situations will tell us what is morally wrongful and possibly redressable in court but many situations simply sit badly with us. It is here, in this arena, that the eudaimonic concept comes into its own.

# **What is Coercion**

Wertheimer states that punishments cannot be meted out if the person states they were coerced. Also, a person can escape responsibility by stating that they have been coerced. But what does this mean?

Coercion stated in simple terms is the following:

* A (alleged coercer) is alleged to have coerced B (alleged subject of coercion) to do X (some act).

We sometimes use coercion claims to describe situations in which an agent’s action is non-volitional. In legal contexts coercion can describe situations of constrained volition. Coercion can explain or justify to others what might be a criticisable action. Basically, a coercion claim can describe the spirit in which one acts i.e. that one is not happy about one’s actions. There are two situations that Wertheimer[[1]](#footnote-1) proposes can occur here:

**Situation 1**

A proposes to do Y unless B agrees to do X or waives his right not to do X, where B has no prior obligation not to do X.

**Situation 2**

A proposes to do Y unless B agrees to do X or waives his right not to do X, where B has no prior obligation not to do X.

In both these cases we can see that something bad is happening. In situation 1, B agreeing to do X changes his moral or legal status in some way and B becomes bound by his promise to do X, B’s right not to do X is waived. In situation 2 we must ask is B blameworthy for doing X?

The following examples show an illustration of situation 1 and 2. In *Gunman* we wonder if Jones is to be held to his contract and in *Kidnap* we wonder if Jones should be found blameworthy.

*Gunman*: A gunman says to Jones, "Your money or your life." Jones, preferring his life to his money, turns over his wallet.4 Suppose the gunman says, "You don't have enough money, but I'll spare your life if you sign this contract to pay me $1,000 next week." Jones signs.

*Kidnap*: Someone kidnaps Jones's children and makes a credible threat to kill them unless Jones embezzles some money from his employer. Jones does so.

It is easy to say that Jones is coerced in these cases but it is more difficult to judge whether Jones should either be held to his contract in Gunman or whether he should be found blameworthy in Kidnap. Few would doubt that the agreement had been coerced in Gunman, so that Jones is not morally or legally bound to pay and few would say that Jones should be punished for the embezzlement. However, how can we figure out the complex cases of coercion that aren’t wrong in the eyes of the law but just seem bad?? Let’s start by looking at the types of coercion Wertheimer proposes.

# **Wertheimer – moralised or non-moralised**

Wertheimer discusses the two main theories of coercion, namely non-moralised and moralised. The non-moralised route looks at the impact of coercion and asks such question as; will B’s life be better off than if he did not accept A’s Proposal? Does B have a ‘reasonable’[[2]](#footnote-2) alternative? Would this proposal be acceptable to a rational person?

A moralised theory however, asks the following sorts of questions: Does A have the right to make his proposal? Should B resist A’s proposal? In order to look further into these questions, we must first examine what the Moralised approach and Non-Moralised approach consist of.

Moralised

The moralised approach is seen as relative to relative to rights. This is similar to Nozick stating that an individual is rendered unfree when prevented from doing x only if he has a right to do x. If A were to do something that were within his own rights then this would not be violating any of B’s rights by consequence. However, if A were to do something outside what would be considered his rights then this may well impact B. In this situation A’s proposal can be wrongful in a number of ways and to understand B’s position we need to know what A is morally required or not required to do for B.

Consider the following two cases: [[3]](#footnote-3)

*Private Pharmacist.* B urgently needs some medicine. A, a private pharmacist, offers to make up and sell B the medicine in return for $50, a price that is easily affordable to B and entirely reasonable with respect to A’s costs. B pays the $50.

*Corrupt Pharmacist.* B urgently needs some medicine. A, a publicly funded pharmacist required to dispense the medicine for free, demands a $50 kickback in order to hand it over. B pays the $50.

If the private pharmacist agrees to provide B’s medicine for a fee then this is construed as an offer as A is not violating anyone’s rights here. Nothing untoward is happening here. The corrupt pharmacist is saying that he will give B the medicine for a fee and this proposal is coercive because A has violated B’s right to the medicine. This example continues along the same vein as the deontic argument that Garnett makes for a “wrongful” type of coercion. However, what we are interested in is the other side of coercion – the non-moralised theory.

## Non moralised

The Non-Moralised approach focusses on whether B’s life will be better off than if he did not accept A’s Proposal. Does B have a ‘reasonable’[[4]](#footnote-4) alternative? Would this proposal be acceptable to a rational person? Even on these questions there is disagreement as many courts have upheld cases where B has made a contract under pressure but, on the other hand, many courts have enforced agreement where B reluctantly consents. In the non-moralised approach, we start to consider cases that do not seem extremely wrong per se but appear to be manipulative, exploitative or just don’t sit right with our view of right and wrong. Consider the following example:

*Dinner:* A is in a relationship, with, B which B would do anything to stay in. B does not like cooking very much. A demands B cook dinner 7 times a week or A will leave.

This does not on the face of it seem wrongful or coercive in the moralised sense but it seems like something bad is going on. A seems to be subjecting B to their will in some way that we cannot yet categorise. B does not want to cook 7 days a week but reluctantly agrees because they fear that A will leave otherwise. The term duress would be most appropriate to use here I think. Examining the two types of duress might give more information as to what is going on here.

Under the current view, two types of duress are identified:

1. The choice prong
2. The proposal prong

Type 1 occurs, for example, if “A were to move B’s hand to sign something”[[5]](#footnote-5)[[6]](#footnote-6) and Type 2 occurs when duress consists of “threats that cause such fear to induce the exercise of volition, so that an undesired act is done” [[7]](#footnote-7). Essentially this is based on two independent tests for duress that we will look at in the next section.

Two pronged theory of Duress

The two-pronged theory of duress, as stated above, consists of two independent tests for duress of which both are necessary and jointly sufficient. The basis of the first prong, the ‘choice ‘prong is that B has been in some way prevented from exercising free will and judgement or has no acceptable alternative to succumbing to A’s proposal. In the ‘Proposal’ prong we have to show that A’s proposal is wrongful in conjunction *and* that it is not wrongful *simply because* it deprives B of free will and judgement[[8]](#footnote-8).

### **Choice prong**

The choice prong distinguishes between wrongful[[9]](#footnote-9) coercive and non-coercive situations. If we understand the choice prong to consist of the overbearing of B’s will it is difficult to identify specific psychological facts that it would apply to. An issue here is where do we set the bar for duress- a personal embarrassment or an unmotivated promise? The law, as always, returns to the ‘reasonable man’. Here we determine duress is present if it would overcome the will of the ‘reasonable man’. The choice prong condenses down into B having a ‘reasonable choice’.

The choice prong can be examined as a type of trade-off. Imagine that I have to choose a savings account. Bank 1 offers 5% interest and Bank 2 provides 6% interest. In the absence of any other choice elements I would clearly go to Bank 2. However, choices can become much more complex than this. Imagine that I have a portfolio of shares and I have to decide which shares to choose to go into this portfolio. The shares have both a profit and risk dimension.



Here I must determine how I will make a choice based on the different options. Do I want low risk and, as a consequence, lower profit, or do I want a higher projected profit despite the high risk? Here I have to weigh my choices up. I could also change risk on this chart to go from good to bad and determine how bad an option I would be willing to take to reach a high profit. This is expanded upon in the following example:

*Chairman*: A Chairman offers B, a graduate student, an assistantship iff she goes to bed with him. Preferring the assistantship over going to bed with A, B does so.

Here B is willing to take a fairly bad choice for a high payoff. The offer also seems exploitative. However, both parties experience a positive payoff as both their goals have been met. Sleeping with A is far less a negative outcome than having to work hard for a long time to get an assistantship that B could get just be sleeping with A. On the balance of preference B then sleeps with A. Here A experiences a positive payoff or no change and B experiences either a small negative payoff (sleeping with A) or a large negative payoff (having to work hard).

However, if we contrast this example with another in terms of payoff we see some differences emerge.

*Lecherous*: B’s child will die unless she receives lifesaving surgery for which the state will not pay. A, a millionaire, proposes to pay for the surgery if B becomes his mistress.

Here we can see that there are no negative payoffs for A. He either gets B as his mistress or not and getting her a mistress is his goal so is a positive payoff, if he doesn’t get B as his mistress then his situation stays the same. B however, is on the wrong side of the power balance. To become A’s mistress has negative payoffs but the scale of these is outweighed when she thinks that her child might die. Here B would pick the least negative payoff which would be to become A’s mistress. A makes an offer here that he is not morally required to do. B sees this situation as having no acceptable alternative as she would not want her child to die. However, none of the examples are coercive proposals as A is not violating any of B’s rights and B does have a choice. B may not see that there is another choice due to the gravity of the options they are faced with. In *Lecherous*, B’s situation has been manipulated by A and then A took advantage of this.

### **Proposal prong**

On the choice prong, we see that B’s contract is only made under duress if B has no choice. This is not sufficient for the non-moralised view so we must examine the Proposal Prong. Under the Proposal Prong B’s contract is not made under duress unless A’s proposal is wrongful.

Consider the following two examples:

*Stock market*: A realises B is about to lose a large sum in the stock market. A tells B that he will help B avoid the loss iff B gives him 15 percent of the amount he would have lost.

*Ambulance*: A comes upon a car accident and an injured B on a desolate stretch of road. A tells B that he will call an ambulance iff B gives him £100.[[10]](#footnote-10)

In *Stock market* A is actually making B better off with his offer. In *Ambulance* on the balance of the situation A makes B better off as even though B loses some money the other choice, death, is not preferable. We can look at moral and immoral threats and offers as a better/worse off relationship as we shall see in the section on Beauchamp. Here we must separate A’s actions from the elements of the situation that are simply B’s background. In the proposal prong, whether B is acting under duress depends upon the consequences. Because of the difficulty in determining whether someone is actually under duress it is difficult to be consistent in court cases. This is illustrated at length in Wertheimer[[11]](#footnote-11). On this account of the proposal and choice prong it does appear that both prongs are necessary in order to debate coercive theory fully.

# **Garnett’s View**

Garnett presents two main concepts of coercion, Deontic and Eudaimonic. According to Garnett, Deontic coercion is where claims of coercion indicate weighty prima facie wrongs. A good example of coercion might be the Highwayman’s demand of “your money or your life”. You do not want to give your money to the highway man but in order to avoid death (which seems worse) you hand over your money.

Eudaimonic coercion is present, according to Garnett, in situations where we see unfreedom or personal subjection. Garnett proposes that this type of coercion would also allow us to analyse so called ‘coercive offers’. As we see in Wertheimer we have moralized and non-moralised coercion. These broadly map to deontic and eudaimonic cases of coercion. Consider the example *Dinner* from earlier where we could see something was not quite right. I propose to use the eudaimonic approach to explain this example.

## Deontic Coercion

First let us examine what Garnet specifies as deontic coercion:

1. A acts at least prima facie wrongly
2. It is at least prima facie wrong to hold B fully responsible for doing x
3. It is at least prima facie wrong to hold B to x

(where x is the giving of consent)

Now consider the following cases: [[12]](#footnote-12)

*Private Pharmacist.* B urgently needs some medicine. A, a private pharmacist, offers to make up and sell B the medicine in return for $50, a price that is easily affordable to B and entirely reasonable with respect to A’s costs. B pays the $50.

*Corrupt Pharmacist.* B urgently needs some medicine. A, a publicly funded pharmacist required to dispense the medicine for free, demands a $50 kickback in order to hand it over. B pays the $50.

Garnett states that only in the Corrupt Pharmacist example is coercion present, however, in both cases B must pay. In Private Pharmacist, it seems little or no morally interesting aspect exists. We assume B can afford the price and that A has set the price fairly. This is a standard transaction. In Corrupt Pharmacist A has already been paid to dispense the medicine but has demanded a kickback from B for it – which is unfair, but is it coercion? B had a prior right to the medicine but A extorted more money before the medicine was handed over. This, as stated earlier would count as coercion as B’s rights have been violated.

A more complex case that many think is coercive in the deontic sense is *Organ Sale.*

*Organ Sale*: B is in extreme poverty, a situation for which A bears no direct responsibility. A offers to pay B $1,000 for one of B’s kidneys, a sum far below its general market price. Seeing no other possible source of income, B accepts.

On the face of it, many people believe that there is coercion in this example. However, A is not forcing B to give him his kidney, B freely chose to accept the offer. B has a choice here but is the other choice unacceptable to B? Garnett believes that this case does not involve coercion and I agree with this. I agree with Wertheimer’s statement that “hard choices that arise from injustice are not coercive in any important moral sense”.[[13]](#footnote-13) Here Garnett says that A acts badly and that B suffers from being on the wrong side of the power relation. This could be seen as exploitation rather than coercion however, it is viewed by Garnett as eudaimonically coercive. This gives rise to Garnett proposing to generate a picture of both ‘wrong’ and ‘bad’ coercion, or Deontic and Eudaimonic coercion.

## Eudaimonic Coercion

In the exploration of the theory of coercion Garnett now supplements the deontic view with a concept of “eudaimonic coercion”. This is similar to what Wertheimer calls the non-moralised type of coercion. Similar questions are asked here such as: Is B subject to A’s will? How well is B’s life going? If we take another look at Organ sale with this in mind we can see if anything develops in the argument.

Garnett’s framework for eudaimonic coercion is below:

In doing x, B has been subjected to A’s will if

P1. B does x on the basis of a belief that doing x is her sole available means of avoiding an eventuality that would, in relevant respects, surpass some appropriate threshold of badness;

P2. A has successfully acted so as to get B to do x, either by helping to make B’s belief true (if it is true) or by helping to make B have the belief (if it is false); *and*

P3. it is not the case that, in getting B to do x, A is motivated only by a set of considerations that effectively motivates B to do x.[[14]](#footnote-14)

Let us now re-examine *Organ Sale* by using the above framework.

*Organ Sale*. B is in extreme poverty, a situation for which A bears no direct responsibility. A offers to pay B $1,000 for one of B’s kidneys, a sum far below its general market price. Seeing no other possible source of income, B accepts.

B wishes not to starve and A has made an offer that will let B avoid starvation. B accepts thereby suggesting that not starving is more important to them than a kidney so we might think here that B’s life is improved by this offer. A is not violating any of B’s rights.

By P1 - B has sold his kidney thinking it is the sole means of avoiding starvation.

By P2 – we do not see any evidence of A having helped to make B’s view true

And by P3 A has successfully acted to get B to sell his kidney.

The fact that B was offered below the market rate puts B on the wrong side of the power balance. As we have seen before, B has chosen the least negative option in this situation – the least negative being to gain money to buy food and the most negative option is to starve.

Let us now re-examine *Dinner.*

*Dinner:* A is in a relationship, with, B which B would do anything to stay in. B does not like cooking very much. A demands B cook dinner 7 times a week or A will leave.

Here A has subjected B to their will and made B perform an undesired act out of fear of the relationship ending. However, B may have just felt coerced by A. B may have had another choice that they did not view as acceptable i.e. to leave the relationship.

Here are two ways of looking at a situation, one way is to determine whether one party has wronged another and whether B should be held responsible for making the agreement and the other way is to examine how well B’s life is going.

Using Garnett’s definition above:

P1 is satisfied

P2 is satisfied

P3 is satisfied

Therefore, we could say from this that B has been eudaimonically coerced. We could also lay out the logic of the above example something like this: “a proposal involves the subjection of another” (and so is bad in eudaimonic terms) if, and only if,

i) the person making the proposal could reasonably be expected to foresee that the offer will make the offeree do something they would prefer not to do in the absence of the offer.

ii) the offeree would prefer the proposal not to have been made.

iii) the proposal does make the subject do the thing in question that they would prefer not to do.[[15]](#footnote-15)

This would also hold with the dinner example in the following framework:

i) A knows B doesn’t like cooking

ii) B would prefer to not have to cook and doesn’t want the relationship to be at risk

iii) B cooks from fear of the relationship ending.

This begins to paint a picture of how a situation can be eudaimonically wrong. There may be no interestingly moral points here but we now have a way to describe many other cases that would not necessarily be of interest under the deontic umbrella.

# **The Cost-Benefit approach**

As we saw in the choice prong there is something eudaimonically wrong about certain situations such as *Chairman* and *Lecherous*. We saw that the balance of power inn the exchange and some sort of payoff matrix seemed to be at work here. Also, manipulation of choices can be used in order to have B agree to a situation because they feel they have no acceptable alternative.

Beauchamp[[16]](#footnote-16) uses the terms undue influence and undue profit to describe this type of situation. I do not feel that the following is an objection to Garnett or Wertheimer I think it is another way of describing a eudaimonically wrong situation in slightly different terms. In his definition, he states that monetary offers seem unproblematic if the offers are welcome and risks are everyday risks. He states that this becomes problematic if the lack of available alternatives or the subjects economic background is disadvantaged. Do they feel compelled to accept these offers they would not otherwise accept? An attractive offer is a necessary condition of undue inducement but this condition by itself is not sufficient. In addition, there must be a risk of harm of sufficient seriousness that the persons welfare is negatively affected. We could apply this logic to *Organ sale* in which B would probably not have accepted this offer has another had been proposed and that B’s economic background was such that it forced B’s decision. Undue profit arises from too small a payment rather than an attractive larger payment, in this case the subject receives an unfair payment and A receives more than can be justified. This clearly applies to Organ sale where A offered much less than the market value and therefore made a large profit in terms of a cheaper kidney. However, there are problems with this approach, as Beauchamp states, it is very difficult to decide how we might set levels of payment to avoid both issues of exploitation by underpayment and exploitation by undue inducement. These kinds of offers are not coercive as there is no threat of harm but they could be viewed as manipulative. Living in a capitalist society as we do it is extremely difficult to consider a way in which all parties would get fair payment and this goes back to the balance of power of the participants not only within these situations but within society.

# **Conclusion**

This paper draws together explanations from Wertheimer, Garnett and Beauchamp in order to show that deontic coercion is not the only way to recognise coercion and that eudaimonically wrong situations paint a more full and rich picture of the overall concept of coercion. We encounter many situations, that although may not be morally wrong, nevertheless do not sit right with us. Here I propose that the framework we have established for a situation to be eudaimonically wrong can be applied to these situations. Garnett’s framework being more logical and Hugh Lazenby’s framework being more readily applied to a situation. Both however, work well in categorising eudaimonic coercion. We can examine these types of situation in a cost-benefit way as Beauchamp has done or by determining the balance of power within a situation such as Wertheimer has proposed. For example, someone on the wrong end of the power balance may well end up being coerced in some way.

The non moralised and eudaimonic views can both be parsed in the way that Beauchamp suggests with the cost-benefit and power balance approach. Indeed, Wertheimer does propose a cost benefit analysis in his own text. The three principles that Garnett provides us with in order to judge whether a situation might be eudaimonically wrong are, in my opinion, all fully relevant and while we may argue other whether they are all necessary or sufficient the framework, as we have seen above, works.

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2. There has been much discussion over what constitutes an ‘acceptable’ or ‘reasonable’ alternative. Authors such as Nozick and Olsaretti have also broached this subject but currently we do not have a definition to rely upon. [↑](#footnote-ref-2)
3. Garnett, M. (2017). Coercion: the wrong and the bad. [↑](#footnote-ref-3)
4. There has been much discussion over what constitutes an ‘acceptable’ or ‘reasonable’ alternative. Authors such as Nozick and Olsaretti have also broached this subject but currently we do not have a definition to rely upon. [↑](#footnote-ref-4)
5. These types are rare [↑](#footnote-ref-5)
6. Wertheimer, A. (1987). *Coercion*. John Wiley & Sons, Ltd. [↑](#footnote-ref-6)
7. Wertheimer, A. (1987). *Coercion*. John Wiley & Sons, Ltd. [↑](#footnote-ref-7)
8. Free will and judgement is another concept that is not particularly well defined in literature as it is such a complex concept [↑](#footnote-ref-8)
9. Contract law holds that it is one things for A to cause B’s dilemma and quite another to take advantage of a background for which B is not responsible. Reference Case: Hackley V Headley 8.N.W.511,514(1881) [↑](#footnote-ref-9)
10. Wertheimer, A. (1987). *Coercion*. John Wiley & Sons, Ltd. [↑](#footnote-ref-10)
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14. As regards this last condition, it should further be specified that B’s motivations for doing x are not themselves the intended or foreseen effect of some prior instance of interpersonal subjection [↑](#footnote-ref-14)
15. (Baseline with respect to which ii) should be measured is: that the outcomes mentioned in the offer do not obtain and other things remain relevantly similar.) Reference H.Lazenby [↑](#footnote-ref-15)
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