# Coercion and the Neurocorrective Offer

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Abstract: According to what Douglas calls ‘the consent requirement’, neuro-correctives can only permissibly be provided with the valid consent of the offender who will undergo the intervention. Some of those who endorse the consent requirement have claimed that even though the requirement prohibits the imposition of mandatory neurocorrectives on criminal offenders, it may yet be permissible to offer offenders the opportunity to consent to undergoing such an intervention, in return for a reduction to their penal sentence. I call this the neurocorrective offer. In this chapter I consider the coercion-based objection to the neurocorrective offer, which claims that offenders cannot provide valid consent to undergoing a neurocorrective on the basis of this offer because it is inherently coercive. Having outlined early formulations of this argument, I point out that there are in fact two different versions of this objection, which appeal to different understandings of the concepts of coercion, consent and voluntariness.

*Keywords*: Consent, Coercion, Autonomy, Voluntariness, Neurocorrectives

A prominent debate concerning the use of neuro-interventions that are intended to have anti-recidivist or rehabilitative effects (or what I shall henceforth call ‘neurocorrectives’), has concerned the question of whether it might be permissible to impose such interventions as a mandatory part of a criminal sentence.[[1]](#footnote-1) On this model, serious criminal offenders could be forced to undergo neurocorrectives in the absence of their consent, and perhaps even despite their dissent. One salient consideration that speaks against the permissibility of this practice is that individuals are often understood to have a right to refuse invasive medical interventions, and it is not clear that criminals have forfeited this right.[[2]](#footnote-2) Indeed, advocates of this view might invoke what Douglas has called the consent requirement:

*The Consent Requirement*: Neuro-correctives can only permissibly be provided with the valid consent of the offender who will undergo the intervention.[[3]](#footnote-3)

The consent requirement safeguards an offender’s right to refuse to undergo a neuro-corrective, and is in keeping with a long tradition in medical ethics that gives prominence to individual autonomy. Those who are impressed by the consent requirement (or at least its political sway), but who do not want to forego the potential benefits of neurocorrectives might agree that although these interventions should not be imposed as a mandatory part of a criminal sentence, they might permissibly be offered to offenders as a condition of parole or early release from prison. On this model, the offender is essentially given a choice between (i) consenting to undergo a neurocorrective and receiving a reduced prison term, or (ii) receiving the normal prison term without any requirement to undergo the neurocorrective. Henceforth, I shall call this model the ‘offer model’, and the offer it involves ‘the neurocorrective offer’.

*Prima facie*, the offer model seems to be compatible with the consent requirement. After all, the offender is not forced to undergo the intervention in the absence of his consent on this model; in fact, his consent is explicitly solicited. According to Beauchamp and Childress’ influential account of informed consent, a competent individual’s decision to consent to a medical procedure is valid if it is made:

(1) Intentionally,

(2) With understanding,

And

(3) Without controlling influences that determine their action.[[4]](#footnote-4)

It seems that there is little reason to suppose that there is a particular risk of competent offenders unintentionally consenting to undergo the neurocorrective. Furthermore, if we assume (albeit somewhat contentiously) that offenders could be provided with sufficient information about the nature of the intervention, as well as its potential risks and likely effects, it seems plausible that they could consent to the intervention with sufficient understanding.

 Despite this, many have objected to the implementation of the offer model in the context of offering chemical castration to sex offenders, with a number of opponents claiming that the offer model is incompatible with the consent requirement. The thought underlying their opposition is that the offender cannot provide valid consent to the intervention in this context because the offer coerces the offender into consenting to the intervention; in turn, it is claimed that coercion amounts to a form of controlling influence that undermines the validity of the offender’s consent.

 The debate surrounding the offer model in the context of using chemical castration in sexual offenders is likely to have widespread implications for the way in which other neurocorrectives might be used in criminal justice. However, it is also a deeply polarised debate, not only in terms of the moral conclusions that different theorists draw regarding the permissibility of the model, but also with regard to the way in which the concepts of coercion, voluntariness and consent are used. At one level of the debate, theorists have been concerned to establish that the neurocorrective offer is coercive, and take that conclusion to entail that offenders cannot validly consent to the intervention on this model. However, in a recent exchange of articles, John McMillan and Alan Wertheimer and Franklin Miller have reached diametrically opposed conclusions regarding the possibility of coercive offers, even though they both agree that the neurocorrective offer does not threaten the validity of the offender’s consent to the neurocorrective.[[5]](#footnote-5)

In view of the polarised nature of this debate, my aim in this chapter shall be a modest one. I shall not argue that the offer model is or is not inherently coercive in a way that would serve to invalidate the offender’s consent. Rather, I shall elucidate the theoretical grounds underlying the coercion-based objection to the offer model, and argue that there are two importantly different versions of the objection, each based on a different understanding of the relationship between coercion and voluntariness. I shall explain that this means that some of the objections that have been raised against the coercion-based objection are misplaced. However, I shall also claim that both versions of the objection still face important challenges.

Prior to beginning this investigation, I must limit the scope of my discussion in two ways. First, in discussing the coercion-based objection to the offer model, Jesper Ryberg has suggested that many of the conclusions that theorists have drawn regarding the permissibility of the neurocorrective offer are premature because they fail to acknowledged penal theoretic considerations in their arguments.[[6]](#footnote-6) For Ryberg, establishing that the neurocorrective offer invalidates the recipient’s consent is not sufficient for establishing that the offer is impermissible in the criminal justice context; moreover, establishing that the offer is compatible with the recipient’s providing valid consent is not sufficient for establishing that the offer should be used in the criminal justice context. Whilst I am sympathetic to Ryberg’s claims, I shall not discuss penal theoretic considerations here. Suffice to say that my conclusions regarding the coerciveness of the neurocorrective offer should only form one part of an analysis of the justification of implementing the offer model in criminal justice.

 Second, in this chapter I shall focus solely on the question of whether the neurocorrective *offer* is coercive. As John McMillan has suggested in his discussion, there are other models for using neurocorrectives in the criminal justice system that would obviously involve coercion, perhaps because they incorporate the use of proposals that would constitute coercive threats on any plausible theory of coercion.[[7]](#footnote-7) Here though, I am interested only in what I have termed the neurocorrective offer, since the question of whether this offer involves coercion is far from settled.

## I Early Versions of the Coercion-Based Objection

One problem with assessing the coercion-based objection to the offer model is that its proponents are not always clear about *why* they believe the offer model involves coercion. In this section, I shall describe one common way in which early versions of the coercion-based objection to the offer model have attempted to explain why the model is inherently coercive. I shall suggest that the approach that I describe here faces two important problems, before going on to explain potential solutions to these problems in later sections.

Perhaps the most common way in which opponents have attempted to establish that the offer model is coercive is by appealing to the fact that the offender to whom the offer is made has to make their choice against the background of highly restrictive circumstances. [[8]](#footnote-8) For instance, William Green writes:

The convicted rapist is faced with two options – a lengthy prison sentence or even death on the one hand and Depo–Provera or surgical castration on the other. Freedom of choice is impossible because the convict’s loss of liberty constitutes a deprivation of such a magnitude that he cannot choose freely and voluntarily, but he is forced to give consent to an alternative he would not otherwise have chosen.[[9]](#footnote-9)

In a related vein, Farah notes that the problem with the offer model is that since sentencing options are ‘rarely appealing’, they introduce implicit coercion.[[10]](#footnote-10)

Notice that Green claims that the offender’s deprivation of liberty means that he ‘cannot choose voluntarily’; here, we can understand Green to be implicitly making the claim that coercion rules out the possibility of the offender providing voluntary, and *a fortiori,* valid consent to the intervention. This claim is often treated as an enthymematic premise in coercion-based arguments against the offer model; that is, those who press the coercion-based objection tend to provide arguments for the claim that the offer model is in some way coercive, but then fail to explain why they think that this matters morally. Of course, the most natural way of reading the objection is that coercion invalidates consent, and that it is wrong to carry out a medical intervention following coerced consent; it might even be claimed that to add this premise to the argument is merely to state the obvious. Later in this chapter, I shall explain why this cannot simply be assumed in this way. At this point though, I highlight this premise because it serves to illuminate an important flaw in these versions of the coercion based objection to the offer model, which attempt to establish that the neurocorrective offer is inherently coercive on the basis that it involves an individual making a choice against limited background conditions.

The first problem is that opponents of the offer model cannot consistently claim that this alone is sufficient to render an offer coercive in a manner that invalidates consent without ruling out the possibility of valid consent in a wide range of medical contexts. Patients suffering from severe illnesses often have to make treatment decisions against a background of severely limited and unattractive options; furthermore, life-saving treatment might involve very unpleasant side-effects that the patient would not, under normal circumstances, consent to undergoing. Call this the doctor/patient example. It seems that any account of why the neurocorrective offer is coercive that implies that the patient in the doctor/patient analogy is coerced, thus ruling out the possibility of the patient validly consenting to life-saving treatment in such circumstances, is inadequate.

In view of this, it seems that if the coercion-based objection to the offer model is to be at all persuasive in establishing that offenders cannot provide valid consent to undergoing the intervention following the neurocorrective offer, the objection must be grounded by a more convincing account of coercion. The account must explain why the offer model involves a form of coercion that invalidates consent, without ruling out the possibility of valid consent in the doctor/patient example.

In addition to the problem raised by the doctor/patient example, the coercion-based objection also faces another challenge. It is commonly claimed that a necessary condition of coercion is that it involves the use of threats, and correspondingly that offers cannot be coercive. Indeed, in their critique of McMillan’s defence of a coercion-based objection to the offer model, Wertheimer and McMillan endorse this claim, pointing out that it is supported by the plausible intuition that threats tend to decrease the recipient’s available options, whilst options tend to increase them.[[11]](#footnote-11) As I shall explain below, this seemingly plausible intuition masks a great deal of complexity; at this point though, it is sufficient to acknowledge that this claim raises an important question for the coercion-based objection to the offer model. After all, if the offer model involves making an offer to incarcerated offenders that increases their available options, then it is not clear how the offer can be deemed to be coercive.

In the remainder of the chapter, I shall outline two strategies that the proponent of the coercion-based objection to the offer model can adopt in responding to these challenges. In doing so, I shall suggest that these two strategies can be understood to give rise to two different versions of the objection. In the next section, I shall consider a strategy that, if successful, would allow proponents of the coercion-based objection to claim that the offer model involves coercion, and that the offer is therefore impermissible because it invalidates the offender’s consent to the intervention.

## II Strategy One

The first strategy that opponents of the neurocorrective offer might adopt is to develop an account of coercion that can establish that the offer model involves coercion of the sort that invalidates consent. I suggested above that if an account of coercion is to be adequate, it cannot rule out the possibility of patients providing valid consent to medical interventions in the context of severely restricted choice situations. Accordingly, in considering what might constitute an adequate account of coercion that could establish that the offer model involves coercion of the sort that invalidates consent, it is useful to start by considering the difference between the restricted choice situations of the severely ill patient on the one hand, and the incarcerated criminal offender on the other.

 The most striking difference here is that the severely ill patient’s choice set (consent to treatment, or die) has been unintentionally restricted by natural forces, whilst the incarcerated recipient of the neurocorrective offer’s choice set (consent to treatment, or serve a prison sentence) has been intentionally restricted. In turn this difference might be understood to have some theoretical importance, insofar as we might think that coercion is a solely interpersonal phenomenon. Gerald Dworkin captures this thought by claiming that “whenever coercion takes place one will is subordinated to another”.[[12]](#footnote-12)

Dworkin’s claim here seems to capture a part of what seems to be especially wrong about coercion, and which is not apparent in the doctor/patient case. Coercion, it seems, can be understood to violate a particular conception of individual freedom, namely freedom from domination. [[13]](#footnote-13) As such, we might plausibly stipulate that coercion is necessarily interpersonal, insofar as we might want to use the concept of coercion to capture this particular sort of moral wrong. In viewing coercion in this way, the proponent of the coercion-based objection can claim that the neurocorrective offer is coercive without denying the possibility of valid consent in the doctor/patient example. What matters, they might claim, is not the fact that the recipient of the offer is making their choice against a background of a limited set of alternatives; rather, what matters is that another agent has restricted their choices in an attempt to subjugate their will.

However, even if this is right, this still leaves the problem that Wertheimer and Miller raise regarding the conceivability of coercive offers. In order to investigate this further, it is illuminating to consider Robert Nozick’s seminal account of coercive threats, which heavily influences Wertheimer and Miller’s approach. Nozick provides a rich analysis of coercion that I cannot fully explore here; for my purposes though, I shall follow McMillan in summarising it as follows:[[14]](#footnote-14) We may say that P coerces Q into doing A on Nozick’s account when:

1. P aims to get Q to choose to perform action A;
2. P communicates a claim to Q;
3. P’s claim indicates that if Q does not perform A, then P will bring about some consequence that would make Q’s not doing A less desirable to Q than Q’s A-ing;
4. P’s claim is credible to Q;
5. Q does A;
6. Part of Q’s reason for doing A is to lessen the likelihood that P will bring about the consequence announced in (3).[[15]](#footnote-15)

To cash this out further, consider an archetypal example of coercion in these terms. Suppose that P is a highwayman who holds up Q at gun-point, and tells Q that if she does not hand over her purse he will shoot. Suppose further that Q obliges. In view of the above conditions, we might plausibly describe this as a case in which P has coercively threatened Q into performing some act A, in this case handing over her purse.

We may start by noting that Nozick endorses the view that coercion necessarily involves one agent intentionally coercing another; the claim that ‘Q is coerced into doing A’ is understood to be equivalent to ‘there is a P who coerces Q into doing A’. [[16]](#footnote-16) Furthermore, another notable feature of Nozick’s account is that, by virtue of condition (5), it incorporates a success condition; that is, on this view, a threat is only coercive if it succeeds in getting Q to do A.

For our purposes here though, the most interesting aspect of the account is condition (3), as it is this condition that captures Nozick’s understanding of a threat. If we follow Nozick (and for that matter Wertheimer and Miller) in claiming that coercion necessarily involves coercive threats, then it is this condition that raises an important challenge for the coercion-based objection to the offer model.

Condition (3) stipulates that a threat is a claim that indicates that if Q does not perform A, then P will bring about some consequence that would make Q’s not doing A *less desirable* to Q than Q’s A-ing. As Nozick goes on to explain, the fact that threats involve announcing a conditional intention to make some course of action less desirable has important implications for the effect of a threat on the voluntariness of a threatened agent’s choices. According to Nozick, in the case of a threat (but not offers), a rational agent [[17]](#footnote-17) would not be willing to move from their pre-proposal ‘baseline’ situation of the normal expected course of events to the post-proposal situation. The reason that they would be unwilling to do this is that the nature of the consequence that the third party announces an intention to bring about (if the recipient fails to meet the demand) is such that it would make the recipient worse off than they would have been in comparison to the baseline of their pre-proposal situation.

I shall say more about how we should understand an agent’s pre-proposal ‘baseline’ situation of the ‘normal expected course of events’ below. At this point though, we can illustrate Nozick’s initial suggestion regarding the difference between offers and threats by reconsidering the highwayman example. In this example, P’s proposal puts Q in a worse situation than he was prior to the proposal, because the proposal makes it clear that Q cannot both keep her purse and survive; she must choose between the two, and neither option available to her is as attractive as the option she had of keeping her purse *and* surviving prior to the highwayman’s threat. In contrast, suppose that rather than threatening Q, P offered Q an amount of money for her purse. In contrast to the highwayman’s threat, a rational agent would be willing to move from their baseline pre-proposal situation to the post-proposal circumstances in which they are able to choose between keeping their purse (and not receiving payment) or receiving payment (and handing over their purse). Crucially, this is so even if the offer is not attractive; even in the case of an unattractive offer, Nozick suggests that the rational agent would still welcome the proposal insofar as simply having an additional option that can be rejected will, *ceteris paribus*, makes the rational man better off.[[18]](#footnote-18)

The significance of this purported difference between threats and offers lies in the respective effects of each type of proposal on the voluntariness of the recipient’s choices. Since threats, but not offers, involve putting the recipient into the post-proposal situation *unwillingly,* Nozick suggests thattheir decision to perform some act in this situation is not fully voluntary.[[19]](#footnote-19) In contrast, since the rational agent would be willing to be put into the post-proposal circumstances in the case of an offer, their decision in those circumstances is usually voluntary.

In response to the account as it has thus far been stated, proponents of the coercion-based objection to the offer model might point out that offering an incarcerated individual a neurocorrective in return for reducing their sentence is importantly different from offering someone an amount of money for their purse. The difference is that in the former case but not the latter, the recipient is likely to find the offer attractive only because it is made against a the background of a pre-proposal baseline situation that is not only unattractive for the recipient, but is also one that the recipient was put into unwillingly by the party who is now making them an offer. As such, it might be argued that offering an incarcerated individual a neurocorrective in return for a reduced sentence has less in common with P offering Q money for her purse than it does with an example in which P has first stolen Q’s purse, and then offered to return it to Q for a large amount of money.

Nozick himself recognised this sort of concern. The problem with his account as I have stated it so far is that in some cases an offer can only be said to make the recipient better off because it is made to them against the background of an unattractive pre-proposal baseline situation that they have been put into by the proposing party. He illustrates this with the following example:

Suppose that usually a slave owner beats his slave each morning, for no reason connected with the slave’s behavior. Today he says to his slave, “Tomorrow I will not beat you if and only if you now do A”.[[20]](#footnote-20)

This case highlights the fact that there are different norms of expectation that can influence our understanding of a pre-proposal ‘baseline’ situation of the ‘normal’ expected course of events.[[21]](#footnote-21) On the one hand, we can understand the slave’s baseline situation in a non-normative manner, as pertaining to what he can expect to happen given certain descriptive beliefs about his situation. If we adopt this understanding, then the slave-owner’s proposal can be understood as making the slave better off than he would otherwise be, since the owner proposes to give the slave the opportunity to avoid the beating that he would normally expect to receive. With respect to this baseline then, the proposal is a non-coercive offer, and the slave can be understood to choose to accept it voluntarily.

However, the proposal can be recast as a threat if we employ a moralized understanding of the slave’s pre-proposal baseline situation. On the moralized understanding of the baseline, we must incorporate what we might morally expect to be the case into our understanding of the ‘normal expected course of events’. Insofar as enslaving and beating another person every day falls below the standard of what we might morally expect to be the case, we can understand the slave-owner’s proposal to be a threat with respect to this normative baseline. On this understanding, the slave is not fully voluntary in doing A.

Essentially, Nozick accounts for the widespread intuition that the slave case involves coercion by recasting the offer involved as a threat, by appealing to a moralized baseline. He goes on to suggest that in cases in which the moralized and non-normative baselines diverge, the baseline that the recipient prefers should take precedence. [[22]](#footnote-22) Now, it might be suggested that proponents of the coercion-based objection to the offer model could adopt a similar strategy and argue that the neurocorrective offer can be recast as a threat. However, it is far from clear that considerations pertaining to moralized baselines will be of any use for proponents of the coercion-based objection to the offer model. Indeed, in their objection to McMillan’s claim that the neurocorrective model is coercive, Wertheimer and Miller endorse an account of coercion that invokes only a normative baseline, as I shall now explain.

Whilst Wertheimer follows Nozick in claiming that coercion necessarily involves threats in his work on coercion, he departs from Nozick in his understanding of how we should distinguish threats and offers. He claims that when the concept of coercion is used in a manner that is intended to capture the thought that it can bar ascriptions of responsibility or invalidate consent, we should *always* invoke a normative baseline in order to distinguish between coercive and non-coercive proposals.[[23]](#footnote-23) In turn, the content of the normative baseline is to be determined by a framework of *rights*.[[24]](#footnote-24)

With this account in mind, Miller joins Wertheimer in claiming that:

A coerces B to do X in a way that invalidates B's consent only if A proposes or threatens to violate B's rights or not fulfil an obligation to B if B chooses not do X.[[25]](#footnote-25)

On the basis of this claim, Wertheimer and Miller are able to conclude that the neurocorrective offer is not coercive. They can concede that the proposing party put the recipient into a pre-proposal situation that they would prefer not to be in; indeed, this description seems plausible when we consider the state’s relationship to an incarcerated criminal offender. However, this is not sufficient to turn the proposing party’s proposal into a threat on this account; for that to be the case, the proposing party would have to be violating the recipient’s *rights* by maintaining them in that pre-proposal situation if they refuse the offer. Yet, if we assume that the state may justifiably and reasonably incarcerate criminal offenders, then this is not the case.[[26]](#footnote-26)

Problematically for proponents of the coercion-based objection to the offer model, it seems that this sort of problem for their objection is likely to generalize to other accounts of coercion that incorporate a normative baseline; as long as we assume that the practice of incarcerating criminal offenders does not fall below the normative threshold of what is morally expected, it is difficult to see how the neurocorrective offer could be recast as a coercive threat on a normative account of coercion.

To take stock, I have explained that one problem with the coercion-based objection to the offer model is that coercion is often understood to necessarily involve the use of threats. I have illustrated one way in which proponents of the objection could meet this challenge by describing how certain offers can be recast as threats by appealing to moralized baselines. Nonetheless, I suggested that this strategy is unlikely to be of any use for proponents of the coercion-based objection to the neurocorrective offer, insofar as we believe that it is morally permissible to incarcerate criminal offenders.

Should we follow Wertheimer and Miller in concluding that this is the end of the matter? I shall suggest that we should not. As I shall go on to explain in the next section, proponents of the objection can adopt a different strategy in support of their objection that does not seem vulnerable to the problems associated with the normative baseline. However, before delineating this strategy, I shall explain what seems to be a promising line of argument that could be used to support the first strategy that we are currently considering, and that has received scant attention in the literature on the coerciveness of the neurocorrective offer.

Although moralized accounts of coercion such as Wertheimer’s and Nozick’s can account for our intuition that Nozick’s slave case involves coercion, they have also been criticized on the basis that they fail to accord with our intuitions in other cases. More seriously, critics have charged that the moralized account is not congruous with our normal understanding of voluntariness. For instance, Serena Olsaretti points out that just because the state does not infringe a justly imprisoned individual’s rights by keeping them in prison, we do not believe that the prisoner is thereby incarcerated voluntarily.[[27]](#footnote-27) Similarly, David Zimmerman suggests that moralized accounts are disconnected from the claim that coercion is wrong because it undermines freedom.[[28]](#footnote-28)

Whilst I do not mean to suggest that these are unimpeachable objections to moralized accounts, these challenges are important to acknowledge because they indicate a way in which proponents of the coercion-based objection to the offer model might provide a more convincing theoretical foundation to their objection. As Zimmerman suggests, perhaps the explanation for why we believe that Nozick’s slave case involves coercion is not that the proposal is really a threat when it is considered against a moralized baseline; rather, Zimmerman suggests that we should understand the proposal as an offer (in accordance with the non-normative baseline approach) and simply claim that some offers can be coercive. On this approach, an offer is coercive when the recipient’s pre-proposal situation is one in which they are being prevented from being in an alternative situation that they would strongly prefer to be in by the proposing party.[[29]](#footnote-29) The offer is only attractive by virtue of the fact that the recipient is in this particular pre-proposal situation. On this formulation, the slave-owner’s proposal is a coercive offer by virtue of the fact that the slave owner is preventing the slave from being in an alternative pre-proposal situation that he would strongly prefer to be in, namely one in which he is not beaten everyday.

Of course, the scope of this account needs to be restricted, since there are many alternative pre-proposal situations that the recipient of an offer might strongly prefer to be in and that they are in some senses prevented from being in, but which are irrelevant to establishing the coerciveness of the proposal made to them. For example, suppose you are selling some unremarkable old CDs at a second-hand sale for a competitive price, say £5; suppose someone offers to buy them for that price. Their offer to buy your records for this competitive price is clearly not coercive, even if you would strongly prefer to sell the unremarkable CDs for a price that far exceeds their worth (say £1million), as this would enable you to retire 10 years early. As such, Zimmerman builds in a feasibility requirement into his theory, according to which we need not take into account alternative pre-proposal situations that are not historically, technologically, or economically possible.[[30]](#footnote-30) More specifically with regards to economic possibility, he suggests that the cost to the proposing party (P) of putting the recipient (Q) into their strongly preferred alternative pre-proposal situation can only count against the feasibility of Q’s preferred alternative as long as it is not the case that P “. . . actively prevents Q from being in the alternative pre-proposal situation Q strongly prefers”.[[31]](#footnote-31)

 Zimmerman’s account has thus far not been invoked in the debate surrounding the offer model. This is somewhat surprising, since it seems to offer proponents of the coercion-based objection to the model a plausible theoretical foundation upon which they might arguably base their objection. Since the account is a non-moralized account of the structure of coercion, the feasibility of an alternative pre-proposal situation is not affected by moral constraints; as such, on this account, even though we might believe that a criminal offender has been justifiably incarcerated, we can still understand them as being prevented from being in an alternative pre-proposal situation that that they strongly desire, in a way that is relevant to establishing that they have been coerced. Furthermore, the account can deal with the doctor/patient example; even though the patient might strongly prefer to be in a situation in which they did not require such treatment, it is not as if their physician is actively preventing them from being in that situation. Finally, since the account does not appeal to a moralized baseline, it seems to offer a more plausible view regarding the relationship between coercive proposals and voluntariness.

 I do not mean to claim here that we should accept Zimmerman’s account of coercive offers, or that the neurocorrective offer must be coercive by its lights, following this rudimentary analysis. Interestingly, Wertheimer gives lengthy consideration to Zimmerman’s account in his earlier work, raising a number of criticisms against it, even though he ultimately claims that there is much less difference between his account and Zimmerman’s than meets the eye.[[32]](#footnote-32)

In addition, defenders of the offer model who are attracted by Zimmerman’s theory might wonder whether it is possible to extend his feasibility criteria so that we can make the claim that it would be unfeasible for the state to allow justifiably incarcerated offenders to be in their strongly desired alternative pre-proposal situation of not being incarcerated. Such an objection would require further elaboration upon Zimmerman’s somewhat sketchy remarks regarding feasibility and the nature of ‘active participation’. Alternatively, they could appeal to some tentative remarks that Zimmerman makes regarding the importance of P’s intention in preventing Q from being in his strongly preferred alternative pre-proposal situation. In discussing his intuitions regarding two plea bargaining cases, Zimmerman suggests that for P’s offer to be coercive, P must prevent Q from being in the alternative pre-proposal situation with the intention of using these circumstances to scare Q into accepting his offer.[[33]](#footnote-33) If one’s intuitions align with Zimmerman’s here, and if it can be established that the state is not incarcerating offenders with the intention of getting them to accept the neurocorrective offer, then Zimmerman’s account might equally support the neurocorrective offer, depending on one’s interpretation of the intention condition.

Rather than try and settle these matters here, I shall now turn to an alternative strategy that proponents of the coercion-based objection to the offer model may adopt. To conclude this discussion though, I suggest that Zimmerman’s account offers an instructive theoretical approach (that has not been adequately addressed) for proponents of the coercion-based objection to the offer model who wish to establish that the neurocorrective offer invalidates consent.

## III Strategy Two

 In discussing Green’s early formulation of the coercion-based objection to the offer model, I highlighted a claim that is often treated as an enthymematic premise in coercion-based arguments against the neurocorrective offer, namely the premise that coercion invalidates consent. The first strategy that I discussed in the previous section also seems to implicitly assume this premise; in contrast, the strategy that I shall consider in this section rejects it with respect to the kind of coercion involved in the neurocorrective offer.

The first thing to note about this approach is that it takes the sting out of the doctor/patient example. On this approach, even if one’s account of why the neurocorrective offer is coercive implies that severely ill patients are coerced by their diseases, this implication does not entail that the account rules out the possibility of such patients validly consenting to life-saving treatments; after all, the coercion that the account describes does not invalidate consent. Accordingly, one might suggest that even if interpersonal coercion can invalidate consent, we can understand natural forces to coerce individuals to a lesser extent, such that it may be understood to diminish the voluntariness of one’s decision to consent, but not to the point of invalidating one’s consent. I shall say more about this below.

In order to further elucidate this approach, it is necessary to consider Joel Feinberg’s account of coercion, which provides its theoretical basis. Unlike Nozick and Wertheimer, Feinberg allows for the possibility of coercive offers. To explain this position, it is important to first consider which sorts of proposals constitute offers on Feinberg’s view. In order to distinguish threats from offers, he appeals to a non-moralized baseline according to which the ‘normal state of affairs’ that is relevant to assessing a proposal is the hypothetical state of affairs that the recipient has an epistemic right to reasonably expect, given their knowledge of what statistically happens in cases similar to the one in which the individual finds themselves, based on their experience and general practice.[[34]](#footnote-34) For instance, on Feinberg’s account, the slave-owner’s proposal in Nozick’s example is an offer, because the slave owner is giving the slave the opportunity to avoid the beating that he could reasonably expect to receive given his previous experience.

So far, Feinberg’s view is broadly similar to Zimmerman’s account, which I discussed in the previous section. However, the two theories diverge in their understanding of what it is for an offer to be coercive. Recall that for Zimmerman, a central feature of coercion is that it restricts the victim’s freedoms; accordingly, even though offers tend to increase an agent’s freedoms, they can nonetheless be coercive if the offering party has restricted the recipient’s options prior to making the offer. Feinberg, on the other hand, suggests that Zimmerman’s implicit assumption that coercion must, on balance, restrict the victim’s freedoms is dogmatic; instead, he claims that freedom-enhancing offers can still be coercive in intent and effect. Offers are coercive in effect when they “force (the recipient) to do what (the proposing party) wants him to do by creating a solitary and unappealing alternative to a course that *B* finds intolerably evil”.[[35]](#footnote-35) Offers that coercive in effect in this way are also coercive in intent when they are made with the intention of forcing the recipient to do what the proposing party wants.

Feinberg illustrates the difference between his account and Zimmerman’s by appealing to the example of the lecherous millionaire:

*B* is in an otherwise hopeless condition from which *A* can rescue her if she gives him what he wants. He will pay for the expensive surgery that alone can save her child's life provided that she becomes for a period his mistress. [[36]](#footnote-36)

Since the lecherous millionaire is not, we may assume, directly responsible for the fact that the child requires life-saving treatment, or that the woman is unable to afford it, on Zimmerman’s account, the millionaire’s offer is not coercive; he is not actively preventing the woman from being in a pre-proposal situation that she would prefer to be in.[[37]](#footnote-37) In contrast, for Feinberg, the fact the millionaire was not responsible for the woman’s unattractive pre-proposal situation is immaterial to the question of whether the offer is coercive; what matters is that the offer was coercive in both intent and effect (as defined above). In support of his view, he compares the case with one in which a gunman threatens to shoot the woman’s son if she does not sleep with him, noting that “. . . from the woman's standpoint, the millionaire's terms were as irresistible as the gunman's would have been and every bit as repugnant”.[[38]](#footnote-38)

Feinberg further refines his view by stipulating that coercive offers can be distinguished from non-coercive enticements by virtue of the fact that in the former case, “at least one of the exclusive alternatives is thought to be in itself a very great evil, and not merely a lesser good”.[[39]](#footnote-39) Furthermore, the former also involve a substantial degree of “differential coercive pressure”; that is, in coercive offers, there is a substantial discrepancy between the value of what is offered, and the cost of what is demanded by the proposing party.[[40]](#footnote-40)

Accordingly, although Feinberg and Zimmerman broadly agree about how we should distinguish offers from threats, they differ in their understanding of what constitutes a coercive offer. However, there is another aspect to Feinberg’s theory that seems to minimize the practical implications of this difference, and which is crucial when we consider the application of his account to the context of the neurocorrective offer. Crucially, for Feinberg, not all coercive offers are coercive in a manner that invalidates the recipient’s consent; indeed, he suggests that the lecherous millionaire case is a paradigm example of one such offer. Although the voluntariness of the recipient’s decision to accept the offer may be diminished if she makes her decision against the background of severely restricted circumstances, these circumstances do not diminish voluntariness to the point of invalidating her consent.

Interestingly, when Feinberg provides an explanation of why this is the case, he comes close to echoing Zimmerman’s view. He writes:

When *A* deliberately creates the circumstances of vulnerability which he later exploits with a coercive offer, his coercion virtually always reduces the voluntariness of *B*'s consent sufficiently to render it invalid. But when *A* merely exploits circumstances that he finds ready‐made, then frequently, though not always, *B*'s consent, so produced, remains valid.

As such, although Feinberg admits that his conclusions in this regard are somewhat murky,[[41]](#footnote-41) he concludes that a coercive offer normally only invalidates consent if the proposing party deliberately created the recipient’s pre-proposal circumstance of vulnerability. However, he allows for the possibility that some offers can be coercive, even if they do not invalidate consent.

What rides on this interpretation? First, it should be acknowledged that claiming that the offer does not invalidate the woman’s consent does not entail an endorsement of the claim that it would be morally permissible for the millionaire to have sexual relations with the woman; there may be other reasons why doing so would be wrong that are sufficient to justify the claim that it would be impermissible. However, denying the claim that the offer invalidates consent is still morally significant. The doctrine of informed consent is often understood to be grounded by the principle of respect for autonomy, and autonomy itself is amongst the most salient values in contemporary practical ethics [[42]](#footnote-42). For those who place a premium on personal autonomy, the fact that P got Q to perform *x* non-consensually may often be deemed sufficient to establish that P has acted impermissibly (even if *x* benefitted Q). Whilst the lecherous millionaire’s offer may involve other wrongs even if it does not invalidate the consent it solicits, it would require further argument to show that these other wrongs will be sufficient to undergird the claim that making the offer would be impermissible.

Whilst Feinberg offers a rich analysis of coercion, he leaves a number of important questions unanswered. For instance, it is not clear why it must be the case that P deliberately created Q’s pre-proposal circumstance of vulnerability if P’s offer is to invalidate Q’s consent. Whilst this view receives intuitive support from our judgement in the lecherous millionaire case, it seems that more could be said about *why* P’s role in diminishing Q’s freedom is so important from the point of view of Q’s consent. However, I lack the space to address this theoretical issue here. Instead, I shall conclude by explaining how an adequate understanding of Feinberg’s account can allow us to consider the merits of McMillan’s defence of the coercion-based objection to the offer model, which draws heavily on Feinberg’s theory.

McMillan suggests that what I have called the neurocorrective offer is analogous to Feinberg’s lecherous millionaire case. He asks us to imagine a psychiatrist who tells an offender ‘if you (agree to the intervention) there is, as we both know, a greater chance that you will be released’, and suggests:

Such a psychiatrist, like the lecherous millionaire, is not responsible for the bad situation that the sex offender is faced with, nor does he or she have an obligation to do something else to alleviate that situation. But if they used these background conditions in order to influence the sex offender's decision this could be coercive and it is therefore reasonable to worry about the possibility of this being a coercive offer.[[43]](#footnote-43)

McMillan’s appeal to this specific example is revealing because it suggests that he regards the neurocorrective offer as being coercive, but not in a manner that invalidates the offender’s consent. This is particularly interesting because it seems possible to construe the neurocorrective offer as being coercive in a manner that *does* invalidate the offender’s consent in Feinberg’s terms. For this interpretation to be applicable, it would need to be the case that the proposing party had deliberately created the prisoner’s pre-proposal circumstance of vulnerability. Of course, it is not the case that the individual psychiatrist making the offer is responsible for the prisoner’s pre-proposal circumstances in this way. However, if we understand the proposing party to be ‘the state’, rather than the individual psychiatrist, this sort of interpretation becomes more applicable. Nonetheless, although Feinberg does not explicitly raise this issue, as my discussion of Zimmerman’s account suggests, we might think that the state’s intention in incarcerating the offender is relevant to the possibility of offender’s validly consenting to the neurocorrective offer.

The above discussion of Feinberg’s account should make it clear that a number of the objections that have been levelled against McMillan have misunderstood the theoretical basis of his claims. For instance, a number of commentators have objected to McMillan’s suggestion that the psychiatrist is making a coercive offer by appealing to the doctor/patient example. However, this objection is misplaced; although McMillan suggests that the neurocorrective offer is coercive, he is not seeking to establish that it is coercive in a manner that invalidates consent. Indeed, since Feinberg claims (unlike Nozick and Wertheimer) that natural events can exert coercive pressure, it is perfectly plausible on his account to say that the patient’s choice in the doctor/patient analogy is less than fully voluntary by virtue of the coercive pressure placed on her choice by her illness.[[44]](#footnote-44) Crucially though, this sort of coercive pressure is not sufficient to render the choice involuntary, and it does not invalidate consent.

In their discussion of McMillan’s claims, Wertheimer and Miller point out that Feinberg’s use of the lecherous millionaire position supports their position rather than McMillan’s. They write:

Feinberg says that the B's consent to sexual relations is *not* invalidated by A's offer, that A could ‘hardly be convicted of rape’. Once again, there may well be important moral objections to making such offers, but they are not coercive.[[45]](#footnote-45)

This interpretation of Feinberg is largely correct. However, the second clause quoted above reveals that Wertheimer and Miller are not using the concept of coercion in the same way as Feinberg and McMillan. For Wertheimer and Miller, if an agent has been coerced into consenting to act A then their consent is invalid; they accept the view that coercion must necessarily involve a restriction of freedoms, (a view that, as I described above, Feinberg claims is held dogmatically by Zimmerman). In contrast, Feinberg and McMillan are happy to allow for the possibility that an offer can be coercive without invalidating consent. Accordingly, the observation that the lecherous millionaire’s offer does not invalidate consent is not sufficient for establishing that the offer is not coercive, at least not on the interpretation that McMillan is adopting.

 Nonetheless, in grounding the coercion-based objection to the offer model on an account of coercion that abandons the claim that successful coercion always invalidates consent, the objection loses a great deal of force. If we believe that an individual’s consent to an intervention is invalid because they have been coerced, then there is a straightforward explanation for why carrying out a medical intervention on that individual is wrong. As I illustrated in the introduction to this chapter, it is a widely held principle in medical ethics that a medical intervention may only permissibly be carried out on an individual if they have validly consented to that intervention. However, if we believe that the individual’s consent to the intervention is valid despite the fact that it has been coerced, it is not all clear what the nature of the wrong done to the offender is; indeed on some strong views regarding the moral power of consent, it may be conceptually impossible for it to be impermissible to subject A to neurointervention N if A has validly consented to N. Of course, many hold the weaker view that the moral power of consent is constrained in certain ways, such that it is impermissible to carry out certain acts even if they are consented to by the subject, perhaps because the act violates some kind of inalienable right. [[46]](#footnote-46)

 One way in which to elucidate the wrongness of coercive offers that do not invalidate consent is to focus on the coercive intent of the offer. Even if we believe that Q’s consent has not been invalidated by a coercive offer, the coercive intent of the offer may be understood as wrongful insofar as it conveys an attitude of dominance. Recall Dworkin’s claim, considered in section II that, in coercion, one will is subordinated to another. Even if coercive offers do not always invalidate consent, the coercive intent and effect of an offer may be sufficient to establish that the offering party has wrongfully subordinated the recipient’s will to their own.

 Regardless of whether this view stands up to scrutiny, this understanding of why coercion is wrong is not one that can be used to buttress the coercion-based objection to the offer model. The reason for this is that the criminal justice system engages in a number of practices which seem to amount to the domination of criminal offenders; for instance, criminal offenders might, *inter alia*, be incarcerated against their will, made to pay fines or undertake community service. Accordingly, even if we think that there is something objectionable about dominating another individual, we might also think that criminal offenders have made themselves liable to such treatment. The real question for proponents of the coercion-based objection to the offer model then is why is this form of domination morally worse than other forms of domination that are common in the criminal justice system.

Lene Bomann-Larsen has suggested an alternative way in which to cash out the wrongness of making certain offers that do not render the recipient’s consent involuntary. She claims that although an offender could voluntarily consent to the neurocorrective offer, the offer itself may nonetheless wrong the offender, insofar as it may fail to recognize him as a moral equal, thus violating the moral respect that he is due. [[47]](#footnote-47) To cash this out further, she suggests that the sort of neurocorrectives that the state may appropriately offer offenders is determined by the scope of the criminal justice system’s authority. For instance, she suggests that neurocorrectives that are narrowly targeted at behaviour for which the offender is answerable to the state may be appropriate; however, the state would not be in the right normative position to offer the offender a neurocorrective that would rehabilitate them with respect to some non-criminal behaviour, or that would render them a non-agent.[[48]](#footnote-48)

 However, whilst Bomann-Larsen’s claims may be attractive for the advocate of the coercion-based objection who endorses Feinberg’s approach to coercion, it seems that further theoretical work is necessary to make her suggestions compelling. One problem is that Bomann-Larsen’s claims rely heavily on the somewhat nebulous concept of moral respect, and she says little to elucidate the nature of this concept.[[49]](#footnote-49) Yet, the appeal to moral respect might be understood to prove too much or too little for Bomann-Larsen’s purposes. First, on one plausible understanding, treating an offender as a ‘moral equal’ might require that we engage the offender in a rational dialogue about their offence; for instance, this view seems to be compatible with communicative theories of punishment that argue that such dialogue is part of the constitutive justification of an institution of punishment.[[50]](#footnote-50) On this understanding, we might wonder if *any* neurocorrectives can be compatible with the sort of rational dialogue that is necessary for affording proper moral respect. Even if the offer itself might plausibly be construed as engaging the offender’s rational capacities, the neurocorrective that the offer concerns might only serve to reduce the offender’s risk of recidivism in a manner that bypasses their rational capacities, a feature of neurocorrectives that has been heavily criticised.[[51]](#footnote-51) If such a neurocorrective were used in place of rational dialogue with the offender about their offence, the use of neurocorrectives might plausibly be construed as failing to treat the offender as a moral equal; this in turn casts doubt on Bomann-Larsen’s claim that the state may permissibly offer neurocorrectives that are narrowly targeted at behaviours for which the offender is answerable to the state.

On the other hand, it might be claimed that the appeal to moral respect is not strong enough to rule out the permissibility of some of the neurocorrectives that Bomann-Larsen wants to rule out. To see why, consider her claim that the sort of neurocorrectives that the state may appropriately offer offenders is determined by the scope of the criminal justice system’s authority. As Ryberg and Peterson point out, whilst we might agree with this general premise, it might be argued that Bomann-Larsen’s understanding of the scope of the criminal justice system’s authority is overly restrictive. Whilst she suggests that its scope is determined by what citizens are answerable for to the state, it might be argued that the scope of the system is determined by its general purpose of protecting citizens or preventing crimes. [[52]](#footnote-52) On this definition, the state may appropriately offer many more forms of neurocorrectives than Bomann-Larsen suggests, including neurocorrectives that are aimed broadly at preventing criminal acts that an individual offender has not so far committed, but which he is thought to be at high risk of committing.

## IV

 The last critical remark on Bomann-Larsen’s account brings us back neatly to Ryberg’s point, which I alluded to in the introduction, that a full treatment of the permissibility of the neurocorrective offer must involve close attention to penal theory, since it seems that the justifiability of the offer will depend on what the aims of punishment are, and how the institution of punishment itself is justified. Nonetheless, considerations from medical ethics will also play a central role. In this chapter I have attempted to clarify what is arguably the key medical ethical debate in this context, by explaining the way in which the concepts of coercion and consent have been invoked by opponents and defenders of the neurocorrective offer. The views I have surveyed here can be briefly summarized in the below table.

|  |  |  |  |
| --- | --- | --- | --- |
| **Theory of Coercion** | **Implications for coerciveness of Neurocorrective offer** | **Implications for consent solicited by Neurocorrective offer** | **Key challenge for the theory of coercion** |
| **Attractive offers made to individuals in restrictive circumstances are coercive** (Green)  | Coercive | Invalid | Dr/Patient example |
| **Normative Accounts** (Nozick, Miller and Wertheimer) | Not coercive | Valid (ceteris paribus) | Reconciling theory with normal understanding of voluntariness |
| **Freedom-Based Non-Normative Account** (Zimmerman) | Coercive if the offering party is also actively preventing the offender from being in a feasible, strongly preferred pre-proposal situation. | Invalid, if coercive. | Adequately fleshing out the feasibility requirement, and explaining the necessity of the interpersonal prevention condition for coercion *per se*. |
| **Non-Freedom Based Non-Normative Account**(Feinberg) | Coercive if made with coercive intent and effect | Invalid if offering party is responsible for creating the offender’s circumstance of vulnerability, valid (ceteris paribus) if it did not | Explaining why P’s role in creating Q’s circumstance of vulnerability makes a difference to the validity of consent solicited if it is not necessary for coercion *per se.* |

 Perhaps the main lesson to draw from this discussion is that seemingly plausible claims about coercion can mask a great deal of complexity. This is certainly true of the frequently voiced claims that ‘coercion diminishes voluntariness’, that ‘coercion necessarily involves the use of threats’ and that ‘threats decrease the recipient’s freedoms whilst offers increase them’. Once we scratch beneath the surface of the claims, we find that they are often grounded by stipulative definitions of key theoretical terms such as (freedom and voluntariness for example) which may not be accepted by all parties in the debate.

 Furthermore, there are a number of important questions that still seem to lack a satisfactory answer regarding the nature of coercion. Naturally, one of the most significant questions is whether we should endorse a normative or non-normative approach to the concept. Yet, even if we resolve this question, important challenges remain, as the table above makes clear. To conclude on a slightly more speculative note, and to pin my own colours to the mast, I am inclined to believe that the non-normative approach is the more promising approach, although I have not had the space to defend the view here. Perhaps defenders of this approach might plausibly respond to the remaining challenge to their view by returning to Dworkin’s understanding of coercion as violating the subject’s freedom from domination. Such a response would require a deeper investigation into the nature of interpersonal domination and the nature of coercive offers than has been possible here. However, I hope to have at least elucidated the true nature of the disagreements that have arisen regarding the nature of coercion, as well as indicating ways in which the debate surrounding the neurocorrective offer might fruitfully progress.

## References

Baber, H E. ‘The Ethics of Dwarf-Tossing’. *International Journal of Applied Philosophy* 4, no. 4 (1 September 1989): 1–5.

Beauchamp, Tom L., and James F. Childress. *Principles of Biomedical Ethics*. 5th ed.. Oxford: Oxford University Press, 2001.

———. *Principles of Biomedical Ethics*. 6th ed.. New York ; Oxford: Oxford University Press, 2009.

Bomann-Larsen, Lene. ‘Voluntary Rehabilitation? On Neurotechnological Behavioural Treatment, Valid Consent and (In)appropriate Offers’. *Neuroethics* 6, no. 1 (April 2013): 65–77. https://doi.org/10.1007/s12152-011-9105-9.

Bublitz, Jan Christoph, and Reinhard Merkel. ‘Crimes Against Minds: On Mental Manipulations, Harms and a Human Right to Mental Self-Determination’. *Criminal Law and Philosophy* 8, no. 1 (1 January 2014): 51–77. https://doi.org/10.1007/s11572-012-9172-y.

Douglas, Thomas. ‘Criminal Rehabilitation Through Medical Intervention: Moral Liability and the Right to Bodily Integrity’. *The Journal of Ethics* 18, no. 2 (1 June 2014): 101–22. https://doi.org/10.1007/s10892-014-9161-6.

Duff, R. A. *Punishment, Communication, and Community*. OUP USA Studies in Crime and Public Policy, 2003.

Dworkin, Gerald. ‘Acting Freely’. *Noûs* 4, no. 4 (November 1970): 367. https://doi.org/10.2307/2214680.

Faden, Ruth R., and Tom L. Beauchamp. *A History and Theory of Informed Consent*. New York: Oxford University Press, 1986.

Farah, Martha J. ‘Emerging Ethical Issues in Neuroscience’. *Nature Neuroscience* 5, no. 11 (November 2002): 1123–29. https://doi.org/10.1038/nn1102-1123.

Feinberg, Joel. *The Moral Limits of the Criminal Law*. New York ; Oxford: Oxford University Press, 1984.

Green, William. ‘Depo-Provera, Castration, and the Probation of Rape Offenders: Statutory and Constitutional Issues’. *University of Dayton Law Review* 12 (1986): 1.

McConnell, Terrance C. *Inalienable Rights: The Limits of Consent in Medicine and the Law*. New York: Oxford Univ Pr, 2000.

McMillan, John. ‘Surgical Castration, Coercive Offers and Coercive Effects: It Is Still Not about Consent’. *Journal of Medical Ethics* 40, no. 9 (1 September 2014): 596–596. https://doi.org/10.1136/medethics-2013-101507.

———. ‘The Kindest Cut? Surgical Castration, Sex Offenders and Coercive Offers’. *Journal of Medical Ethics* 40, no. 9 (1 September 2014): 583–90. https://doi.org/10.1136/medethics-2012-101030.

Nozick, Robert. *Anarchy, State and Utopia*. New York: Basic Books, 1974.

———. ‘Coercion’. In *Philosophy, Science, and Method: Essays in Honor of Ernest Nagel*, edited by Sidney Morgenbesser, Patrick Suppes, and Morton White. New York: St. Martin’s Press, 1969.

Olsaretti, Serena. ‘Freedom, Force and Choice: Against the Rights-Based Definition of Voluntariness’. *Journal of Political Philosophy* 6, no. 1 (1 March 1998): 53–78. https://doi.org/10.1111/1467-9760.00046.

Pettit, Philip. *Republicanism : A Theory of Freedom and Government*. Oxford: Clarendon Press, 1997.

Pugh, Jonathan. ‘Embryos, The Principle of Proportionality, and the Shaky Ground of Moral Respect’. *Bioethics* 28, no. 8 (1 October 2014): 420–26. https://doi.org/10.1111/bioe.12013.

Ryberg, Jesper. ‘Is Coercive Treatment of Offenders Morally Acceptable? On the Deficiency of the Debate’. *Criminal Law and Philosophy*, 2013, 1–13.

Ryberg, Jesper, and Thomas S. Petersen. ‘Neurotechnological Behavioural Treatment of Criminal Offenders—A Comment on Bomann-Larsen’. *Neuroethics* 6, no. 1 (April 2013): 79–83. https://doi.org/10.1007/s12152-011-9146-0.

Stemplowska, Zofia. ‘Responsibility and Respect: Reconciling Two Egalitarian Visions’. In *Responsibility and Distributive Justice*, edited by Carl Knight and Zofia Stemplowska, 115–35. Oxford: Oxford University Press, 2011. http://webcat.warwick.ac.uk/record=b2481898.

Vanderzyl, K. ‘Castration as an Alternative to Incarceration: An Impotent Approach to the Punishment of Sex Offenders’. *Northern Illinois University Law Review* 15, no. 1 (1994).

Wertheimer, A., and F. G. Miller. ‘There Are (STILL) No Coercive Offers’. *Journal of Medical Ethics* 40, no. 9 (1 September 2014): 592–93. https://doi.org/10.1136/medethics-2013-101510.

Wertheimer, Alan. *Coercion*. 2nd Ed. Princeton: Princeton University Press, 2014.

Zimmerman, David. ‘Coercive Wage Offers’. *Philosophy & Public Affairs* 10, no. 2 (1981): 121–45.

1. I shall assume that these interventions are offered in response to the commission of a particular crime, and under the provisions of the criminal law. [↑](#footnote-ref-1)
2. It might be argued that individuals have particularly strong rights against the use of neurocorrectives because they are not only physically invasive (like other medical interventions), but also exert mental effects. See Jan Christoph Bublitz and Reinhard Merkel, “Crimes Against Minds: On Mental Manipulations, Harms and a Human Right to Mental Self-Determination,” *Criminal Law and Philosophy* 8, no. 1 (January 1, 2014): 51–77. [↑](#footnote-ref-2)
3. Thomas Douglas, “Criminal Rehabilitation Through Medical Intervention: Moral Liability and the Right to Bodily Integrity,” *The Journal of Ethics* 18, no. 2 (June 1, 2014): 104. [↑](#footnote-ref-3)
4. Tom L. Beauchamp and James F. Childress, *Principles of Biomedical Ethics*, 5th ed.. (Oxford: Oxford University Press, 2001), 59. [↑](#footnote-ref-4)
5. John McMillan, “The Kindest Cut? Surgical Castration, Sex Offenders and Coercive Offers,” *Journal of Medical Ethics* 40, no. 9 (September 1, 2014): 583–90; A. Wertheimer and F. G. Miller, “There Are (STILL) No Coercive Offers,” *Journal of Medical Ethics* 40, no. 9 (September 1, 2014): 592–93,; John McMillan, “Surgical Castration, Coercive Offers and Coercive Effects: It Is Still Not about Consent,” *Journal of Medical Ethics* 40, no. 9 (September 1, 2014): 596–596. [↑](#footnote-ref-5)
6. Jesper Ryberg, “Is Coercive Treatment of Offenders Morally Acceptable? On the Deficiency of the Debate,” *Criminal Law and Philosophy*, 2013, 1–13. [↑](#footnote-ref-6)
7. McMillan, “The Kindest Cut?,” 585. [↑](#footnote-ref-7)
8. K. Vanderzyl, “Castration as an Alternative to Incarceration: An Impotent Approach to the Punishment of Sex Offenders,” *Northern Illinois University Law Review* 15, no. 1 (1994); William Green, “Depo-Provera, Castration, and the Probation of Rape Offenders: Statutory and Constitutional Issues,” *University of Dayton Law Review* 12 (1986): 1; Martha J. Farah, “Emerging Ethical Issues in Neuroscience,” *Nature Neuroscience* 5, no. 11 (November 2002): 1123–29. [↑](#footnote-ref-8)
9. Green, “Depo-Provera, Castration, and the Probation of Rape Offenders.”, University of Dayton Law Review, 12:1, (1986), 16—17. [↑](#footnote-ref-9)
10. Farah, “Emerging Ethical Issues in Neuroscience,” 1126. [↑](#footnote-ref-10)
11. Wertheimer and Miller, “There Are (STILL) No Coercive Offers.” [↑](#footnote-ref-11)
12. Gerald Dworkin, “Acting Freely,” *Noûs* 4, no. 4 (November 1970): 367. [↑](#footnote-ref-12)
13. This conception of freedom is central to republican conceptions of freedom. See Philip Pettit, *Republicanism : A Theory of Freedom and Government* (Oxford: Clarendon Press, 1997), 21–25. [↑](#footnote-ref-13)
14. McMillan, “The Kindest Cut?,” 585. [↑](#footnote-ref-14)
15. Robert Nozick, “Coercion,” in *Philosophy, Science, and Method: Essays in Honor of Ernest Nagel*, ed. Sidney Morgenbesser, Patrick Suppes, and Morton White (New York: St. Martin’s Press, 1969). [↑](#footnote-ref-15)
16. Ibid., 443-444. [↑](#footnote-ref-16)
17. The important features of the rational agent for Nozick’s purposes are that he is able to resist those temptations that he thinks he ought to resist. Ibid., 460. [↑](#footnote-ref-17)
18. Ibid. [↑](#footnote-ref-18)
19. Ibid., 463. [↑](#footnote-ref-19)
20. Ibid, p. 450. [↑](#footnote-ref-20)
21. See Joel Feinberg, *The Moral Limits of the Criminal Law* (New York ; Oxford: Oxford University Press, 1984), 219-228 for a detailed discussion of the various norms that we might invoke in this context. [↑](#footnote-ref-21)
22. Nozick, “Coercion,” 451. [↑](#footnote-ref-22)
23. Alan Wertheimer, *Coercion*, 2nd Ed. (Princeton: Princeton University Press, 2014), 211–14. In later work, Nozick also came to adopt this sort of approach. See Robert Nozick, *Anarchy, State and Utopia* (New York: Basic Books, 1974), 262. [↑](#footnote-ref-23)
24. Wertheimer, *Coercion*, 217–21. [↑](#footnote-ref-24)
25. Wertheimer and Miller, “There Are (STILL) No Coercive Offers,” 592. [↑](#footnote-ref-25)
26. Wertheimer and Miller, “There Are (STILL) No Coercive Offers.” [↑](#footnote-ref-26)
27. Serena Olsaretti, “Freedom, Force and Choice: Against the Rights-Based Definition of Voluntariness,” *Journal of Political Philosophy* 6, no. 1 (March 1, 1998): 59. [↑](#footnote-ref-27)
28. David Zimmerman, “Coercive Wage Offers,” *Philosophy & Public Affairs* 10, no. 2 (1981): 122. [↑](#footnote-ref-28)
29. Ibid., 132–33. [↑](#footnote-ref-29)
30. Ibid., 132. [↑](#footnote-ref-30)
31. Ibid., 133. [↑](#footnote-ref-31)
32. Wertheimer, *Coercion*, 244–55. [↑](#footnote-ref-32)
33. Zimmerman, “Coercive Wage Offers,” 137–38. [↑](#footnote-ref-33)
34. Feinberg, *The Moral Limits of the Criminal Law*, 226. [↑](#footnote-ref-34)
35. Ibid., 246. [↑](#footnote-ref-35)
36. Ibid., 229. [↑](#footnote-ref-36)
37. I am following Feinberg’s analysis here; however, although I shall not pursue the point, it seems plausible that Zimmerman could appeal to considerations pertaining to economic feasibility in order to claim that the millionaire’s offer was coercive on his account. See Zimmerman, “Coercive Wage Offers,” 132–33. [↑](#footnote-ref-37)
38. Feinberg, *The Moral Limits of the Criminal Law*, 230. [↑](#footnote-ref-38)
39. Ibid., 234–35. [↑](#footnote-ref-39)
40. Ibid. [↑](#footnote-ref-40)
41. Ibid., 246. [↑](#footnote-ref-41)
42. Tom L. Beauchamp and James F. Childress, *Principles of Biomedical Ethics*, 6th ed.. (New York ; Oxford: Oxford University Press, 2009). [↑](#footnote-ref-42)
43. McMillan, “The Kindest Cut?,” 586. [↑](#footnote-ref-43)
44. Feinberg, *The Moral Limits of the Criminal Law*, 193. [↑](#footnote-ref-44)
45. Wertheimer and Miller, “There Are (STILL) No Coercive Offers,” 593. [↑](#footnote-ref-45)
46. See Terrance C McConnell, *Inalienable Rights: The Limits of Consent in Medicine and the Law* (New York: Oxford Univ Pr, 2000). A commonly invoked example of such an act is so-called ‘dwarf-tossing’. See H E Baber, “The Ethics of Dwarf-Tossing,” *International Journal of Applied Philosophy* 4, no. 4 (September 1, 1989): 1–5. [↑](#footnote-ref-46)
47. Lene Bomann-Larsen, “Voluntary Rehabilitation? On Neurotechnological Behavioural Treatment, Valid Consent and (In)appropriate Offers,” *Neuroethics* 6, no. 1 (April 2013): 73. [↑](#footnote-ref-47)
48. Ibid., 74–75. [↑](#footnote-ref-48)
49. For an attempt to flesh out the concept of moral respect, see Zofia Stemplowska, “Responsibility and Respect: Reconciling Two Egalitarian Visions,” in *Responsibility and Distributive Justice*, ed. Carl Knight and Zofia Stemplowska (Oxford: Oxford University Press, 2011), 115–35; I have also addressed this concept in the context of human embryonic stem cell research in Jonathan Pugh, “Embryos, The Principle of Proportionality, and the Shaky Ground of Moral Respect,” *Bioethics* 28, no. 8 (October 1, 2014): 420–26. [↑](#footnote-ref-49)
50. R. A. Duff, *Punishment, Communication, and Community* (OUP USA Studies in Crime and Public Policy, 2003). [↑](#footnote-ref-50)
51. Bublitz and Merkel, “Crimes Against Minds.” [↑](#footnote-ref-51)
52. Jesper Ryberg and Thomas S. Petersen, “Neurotechnological Behavioural Treatment of Criminal Offenders—A Comment on Bomann-Larsen,” *Neuroethics* 6, no. 1 (April 2013): 82. [↑](#footnote-ref-52)