

# Coercion as Enforcement\*

Scott A. Anderson

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scottand@interchange.ubc.ca

In this talk, I will provide a way of thinking about coercion that is rather different from the ways that are predominant in recent philosophical writing, and perhaps different from current popular usage of the term. My preferred way of thinking is actually somewhat old fashioned, and harks back to more traditional approaches to political philosophy, in line with that of Hobbes and Kant, but also with that of political theorists writing as late as the 1960s. At the end of the talk I will give some reasons to think that this older way of thinking is more useful than more recent approaches when it comes to certain purposes in law and ethics. My main purpose, however, will be to show that there are actually different ways of thinking, and that the older way is has a certain kind of priority over the more recent way. Unless one presumes that things stand as the older way of thinking suggests, then the more recent way of thinking about coercion won't make any sense. In that way, the older view of coercion is more fundamental than its more recent usurper.

Looking at philosophical writings of the last 40 years, we can see that philosophers and theorists have developed two distinct, competing views of the nature of coercion, and that the relative dominance of the two views has shifted over time. The older view holds that coercion is best understood as one agent's acting to determine, through enforceable constraints, what another agent will or won't do. The sense of enforceability here is exemplified by the way that force, violence, and the threats of the same allow an agent to constrain, disable, harm, or undermine

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\* Visiting Scholar, The University of Chicago Law School, and Assistant Professor of Philosophy, The University of British Columbia. This essay has profited immensely from helpful comments from Sylvia Berryman, Dominic Lopes, and audiences at Simon Fraser University, The University of British Columbia's Ethics Workshop, and the University of Chicago Law and Philosophy Workshop and the Work in Progress Workshop (among others whom I'm no doubt forgetting at the moment).

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another agent's ability to act.<sup>1</sup> The newer concept of coercion holds that coercion is integrally connected to the making of threats (or conditional proposals more generally).<sup>2</sup> On this view, direct uses of force or violence do not count as acts of coercion, nor are they specially related to the subject—force and violence are just two of many consequences one can threaten to bring about. You can see that the resultant concepts of coercion are distinct, since (for one thing) the former concept regards grabbing, manacled, and imprisoning a person to prevent him from acting as paradigmatically coercive. The latter concept regards such actions as entirely outside of the bounds of coercion.

The old concept of coercion, which belongs to what I'll call the "enforcement approach," was dominant within the political and philosophical literature for a long time up until the early 1970s. But this approach has been largely supplanted by what I'll call the "pressure on the will approach" (or "pressure approach" for short). Though some have argued explicitly for this switch, most theorists seem not even to recognize that the pressure approach amounts to something of a novelty, or that the other concept was once widely assumed in discussions of coercion.<sup>3</sup> It may seem that I am giving a lot of attention to just a word, and that there's no good reason why we should focus on "coercion" rather than, say, "compulsion," "force," or "pressure." In some sense that's right, and I do not mean to fight over proper linguistic usage. Nonetheless, a robust set of debates has sprung up around the proper understanding of coercion, so my intention here is to intersect with those other philosophers and theorists who have

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<sup>1</sup> Unless otherwise qualified, I will use "force" throughout to refer to physical means to move, manipulate, invade, or constrain a human body. I will treat "violence" as a special case of force, in which one intends to injure, incapacitate, or cause pain to a person through physical effects on her body. Omitted from my usage of "violence" is damage to property; included within "violence" are uses of drugs or other chemicals that have the requisite intended effects. I also note that force is frequently used on people consensually (e.g., to transport them), although consensual violence is fairly unusual.

<sup>2</sup> The words "threat" and/or "threaten" can be used to refer both to unconditional propositions and to conditional propositions accompanying a demand. For the sake of clarity, I'll use the terms, *sans phrase*, to refer only to situations in which an agent (R) makes a demand to another (E) that E do (or not do) some action (A) and accompanies this demand with a claim or indication that if and only if the demand is unfulfilled, R will act or bring about events contrary to E's interests. These uses can be distinguished from "plain threats," i.e., unconditional claims by R that R will act contrary to E's interests at some point in the future, regardless of other contingencies; but plain threats will play no role in the discussion of coercion here.

<sup>3</sup> For an account of this history, see my "How did there come to be two concepts of coercion?" in David Reidy and Walter Riker, eds., *Coercion and the State*, Springer, 2008.

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attempted to think seriously about this topic. What seems clear enough to me is that we have use for a concept or family of concepts that reference situations in which one agent attempts to alter or constrain the actions of another through some form of imposition. This paper attempts to give something of a map of these cases, and in particular to single out a range of such impositions which are of special social, political, and ethical significance.

For instance, in the law, it may be a crime for one private agent to coerce another. Coercion may also exacerbate the wrongfulness of an otherwise lesser criminal act (turning, say, a larceny into a robbery). An agent who is coerced to act may also avoid being held responsible for the normal consequences of that act (say, her acts of embezzling may be exculpated, her contractual obligations extinguished, or her confession or plea suppressed). In more theoretical discussions, one might object to certain government actions on the grounds that they are paternalistically coercive; one might also reject the legitimacy of a government and/or its laws if it fails to protect one against the private use of coercion by others. In thinking about these matters and others, it can be useful to know what is being discussed under the heading of coercion—that is, what sorts of impositions count, and how one might tell. So part of my goal here is to show how we can conceptualize coercion in a way that can explain its apparently portentous implications, and so we can recognize it when it occurs.<sup>4</sup> Contrary to much recent writing about coercion, I will argue that there is an important and useful sense of coercion in which the making of threats is not necessary for coercing, and in fact is only a subsidiary and derivative part of the topic. This is so because, if we are to understand the coerciveness of a coercive threat, it must be understood as grounded in broader relations of power between coercer and coeree. The ability to make a successful conditional threat is usually a manifestation of this background relationship. These facts, combined with a fuller appreciation of the enforcement approach to coercion, give rise to an argument for the superior importance of the enforcement

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<sup>4</sup> I will not assume, in advance of argument, that one and the same account of coercion is appropriate for meeting the various tasks just described; it remains a question for investigation whether this is so. I will make arguments later that the approach defended here does answer to these needs.

approach: it is very difficult to use the newer, threat-focused concept to pick out an interesting, coherent class of phenomena without presupposing that things stand as described by the older concept. In that sense the older concept is more fundamental than the newer one.

My talk divides into three sections. First I will delineate the two approaches to coercion, and describe the considerations motivating each. I will then offer arguments that suggest that the enforcement approach tracks something that is integral to our interest in the concept of coercion which the pressure approach misses. In the final portion of this talk, I will argue that the enforcement approach is comparatively better suited than the pressure approach to support some implications we commonly attribute to coercion.

### **1. Two concepts of coercion, and their motivations**

I'll illustrate the divergence in the two approaches to coercion by quoting two writers about the relationships between threats, force and the concept of coercion. H. J. McCloskey writes in 1980:

I suggest that the core notion of coercion is that of power exercised by a determinate person, persons, or organizations(s), by the use of threats backed by sanctions in terms of evils to be imposed, benefits withdrawn or not conferred.<sup>5</sup>

After associating coercion with threats, he also goes out of his way to deny that direct uses of force belong within the ambit of coercion:

When subjected to force, one does not act at all; rather one is acted upon; things are done to one or *via* one. ... The person who is subject to force, the physical force of another, or to natural forces, has things happen to him. ... By contrast, the coerced person acts... He may well not like doing what he does and may much prefer to act in other ways; and he may do what he does only because he is coerced. Nonetheless, he, the coerced person does what he does; he chooses to do it.<sup>6</sup>

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<sup>5</sup> H. J. McCloskey, "Coercion: Its Nature and Significance," *Southern Journal of Philosophy* 18 (1980): 335-352, p. 340. McCloskey is by no means the most original or influential of the more recent coercion theorists. That distinction goes to Robert Nozick, for his essay "Coercion," in *Philosophy, Science, and Method: Essays in Honor of Ernest Nagel*, eds. Sidney Morgenbesser, Patrick Suppes, and Morton White (New York: St. Martin's Press, 1969), pp. 440-472, with Alan Wertheimer now the leading exponent of this approach. Nonetheless, McCloskey's view here is notable for its clarity, and his position is representative of many other recent writers.

<sup>6</sup> *Ibid.*, p. 336. The denial that direct force is a mode of coercion is explicit in accounts by Hans Oberdiek, Mark Fowler, Michael Gorr, Joel Feinberg, Onora O'Neill, and Mitchell Berman. It is implicit but unmistakable in Robert Nozick's account and in most of the considerable number of theorists who have taken their bearings from him, most

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Here, McCloskey is objecting explicitly to an approach to coercion advocated by earlier thinkers such as J. R. Lucas, who writes in 1966 that,

[W]e are concerned with the *enforcement* of decisions: we are considering the conditions under which decisions will be carried out regardless of the recalcitrance of the bloody minded. We therefore define *force* in terms of bloody-mindedness, of what happens irrespective of how recalcitrant a man is, of what happens to him willy-nilly. ... A man is being *coerced* when either force is being used against him or his behaviour is being determined by the threat of force.<sup>7</sup>

And:

[I]mprisonment is the paradigm form of coercion.... Even if it were not regarded as a penalty, it would still be effective in frustrating the efforts of the recalcitrant to prevent a judicial decision being implemented.<sup>8</sup>

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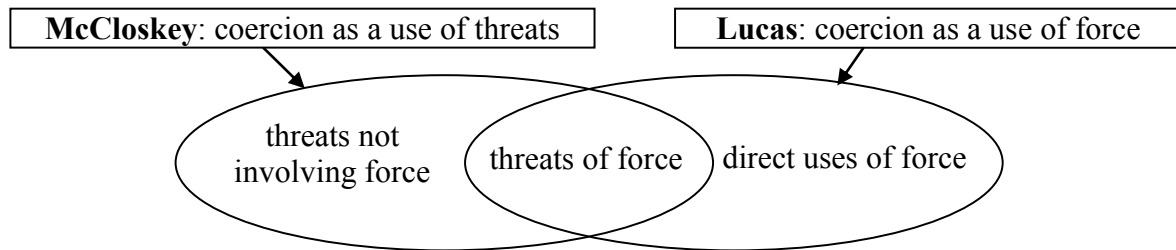
notably Alan Wertheimer. See Hans Oberdiek, "The Role of Sanctions and Coercion in Understanding Law and Legal Systems," *American Journal of Jurisprudence* 21 (1976): 71-94, p. 82; Mark Fowler, "Coercion and Practical Reason," *Social Theory and Practice* 8 (1982): 329-355; Michael Gorr, "Toward a Theory of Coercion," *Canadian Journal of Philosophy* 16 (1986): 383-405; Joel Feinberg, *Harm to Self* (New York: Oxford University Press, 1986), especially chapter 23; Onora O'Neill, "Which are the Offers You Can't Refuse?" chapter 7 in *Violence, Terrorism, and Justice*, eds. R. G. Frey and Christopher Morris (Cambridge: Cambridge University Press, 1991), pp. 170-195; Mitchell Berman, "The Normative Functions of Coercion Claims," *Legal Theory* 8 (2002): 45-89; Nozick, "Coercion"; Alan Wertheimer, *Coercion* (Princeton: Princeton University Press, 1987). Felix Oppenheim, in *Dimensions of Freedom* (New York: St. Martin's Press, 1961), offers a forerunner of the pressure approach. One of the very few in later years to connect the concepts of force and coercion explicitly was Virginia Held, "Coercion and Coercive Offers," in *Nomos XIV: Coercion*, eds. J. Roland Pennock and John W. Chapman (Chicago: Aldine-Atherton, Inc., 1972).

<sup>7</sup> J. R. Lucas, *The Principles of Politics* (Oxford: Clarendon Press, 1966), p. 57. (Emphasis in the original.) Lucas' definition of "force" is clearly broader than merely the physical means normally associated with the term, but his subsequent discussion makes clear that physical force is the principal form with which he is concerned.

<sup>8</sup> *Ibid.*, p. 60. Like McCloskey, Lucas is less prominent than others who share his view. But one can see that his view was widely shared by briefly surveying some standard sources of political and legal theory in the decades leading up to 1970. Hans Kelsen directly connects the coercive order of the state to its use of force: "As a coercive order, the law is distinguished from other social orders. The decisive criterion is the element of force—that means that the act prescribed by the order as a consequence of socially detrimental facts ought to be executed even against the will of the individual and, if he resists, by physical force." *The Pure Theory of Law*, trans. Max Knight (Los Angeles: University of California Press, 1967), p. 34. (Original German first edition published 1934; second edition, 1960.) Kelsen later identifies as coercive those acts of state involved in detaining those suspected of crimes, detaining for protective custody, detaining of the insane, detaining in internment camps potential enemies of the state, and the confiscation or destruction of property. *Ibid.*, pp. 40-41. Alf Ross defines a national law system as "the rules for the establishment and functioning of the state machinery of force." *On Law and Justice* (London: Stevens and Sons Limited, 1958), p. 34. Christian Bay writes, "When a person wants to do something (or remain passive) and is forcibly restrained (pushed), we speak of 'coercion.' The same word is used also if he is still able to do what he wants but has to suffer as a consequence a severe punishment or the loss of a very important reward. It is also convenient to consider less severe or 'noncoercive' punishments under this heading, which refers to restraints on what I call *social freedom*." Bay, *The Structure of Freedom* (New York: Atheneum Press, 1965), pp. 16-17. (Originally published 1958.) Also, "[C]oercion in this study means (a) the application of actual physical violence, or (b) the application of sanctions sufficiently strong to make the individual abandon a course of action or inaction dictated by his own strong and enduring motives and wishes." *Ibid.*, p. 93. Dennis Lloyd writes in a collegiate primer on law, "[I]s law really conceivable, or at least possible in any practical sense, when it is not ultimately

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Based on the above, we can diagram McCloskey and Lucas's disagreement over the meaning of coercion, and see that they use the term to refer to two different but intersecting sets of activities:



While McCloskey identifies coercion with uses of threats, which may or may not be threats of force, Lucas identifies coercion with uses of force, which include threats of force, but not threats of lesser sorts. So they overlap in seeing threats of force as coercive, but diverge over both direct uses of force, and lesser, non-forceful threats.

One might respond to this dispute by asking “why bother?” Perhaps we could just call all of the above “coercion”.<sup>9</sup> Or, maybe we should just have two concepts: coercion via threat, and coercion that works via direct force.<sup>10</sup> This would still leave some problems, since not all minor threats, even if successful, should count as coercive. But, on the other hand, few are likely to agree with Lucas that only threats of force are coercive.

I suggest that this surface dispute about the place of force in coercion reflects a more fundamental difference in thinking about the point of having a concept of coercion. The

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backed by effective force? Certainly the force of law is and seems always to have been linked with rules which are capable of being enforced by coercion; the hangman, the gaoler, the bailiff, and the policeman are all part of the seemingly familiar apparatus of a legal system.” *The Idea of Law* (Middlesex, England: Penguin Books Ltd., 1970), p. 35. (First published in 1964.) In Lloyd’s book’s index, the entry for coercion reads, “See force, sanction.”

<sup>9</sup> This might be something like the view of coercion found in H. L. A. Hart, who is something of a transitional figure between the two views. (Nozick cites two works by Hart (one *Causation in the Law* by Hart and Tony Honoré (Oxford: Oxford University Press, 1959)) as the starting points for his own reflections.) Hart seems more likely than many to associate coercion principally with the making of threats. But Hart is also clear that the state’s coercive apparatus relies upon the ability to use force to back up those threats. See, e.g., *The Concept of Law* (Oxford: Oxford University Press, 1961), pp. 84, 193-94.

<sup>10</sup> A categorical distinction between “dispositional coercion” (i.e. coercion by threat) and “occurrent coercion” (i.e. coercion by force) is drawn by Michael Bayles and by Martin Gunderson, and between “psychological” and “physical” compulsion by Grant Lamond. See Michael Bayles, “A Concept of Coercion,” in Pennock and Chapman; Martin Gunderson, “Threats and Coercion,” *Canadian Journal of Philosophy* 9 (1979): 247-259; Grant Lamond, “Coercion, Threats, and the Puzzle of Blackmail,” chapter 10 in *Harm and Culpability*, ed. A. P. Simester and A. T. H. Smith (Oxford: Clarendon Press, 1996), pp. 215-238.

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enforcement approach, represented by Lucas, seeks to track the ways that some powerful agents are able to obstruct, disable, or undermine broadly the ability of others to act. When one agent has such powers over another, the powerful agent has the ability to alter radically what it is necessary for the weaker agent to do. The centrality of force to the enforcement approach reflects the fact that the ability to wield force and violence against someone is the most important and obvious form of power by which agents are able to impose such disabilities on others. (There are, however, other such means, so not all enforcement need be backed by force or violence.<sup>11</sup>) By contrast, it seems one agent can put pressure on the will of another in some specific ways without holding any broader form of power over another's ability to act more generally. Taking McCloskey as its representative, the pressure-on-the-will approach tries to capture the many ways to pressure a person into (or out of) action. So the approaches differ over the role of force and violence because they track related though fundamentally different phenomena, with respect to which only one holds force and violence to be especially distinctive activities.

If this much is right, then advocates of the enforcement approach may reasonably resist treating direct uses of force as categorically distinct from threats thereof, thus reaffirming that we have two distinct concepts of coercion with overlapping extensions. Accepting this result, one might yet deny that either concept should be privileged; rather, we might instead let one's purposes dictate which concept to use. In due course, I will offer some arguments for why the earlier, enforcement concept is much more useful and important for political and ethical theorizing. But first it is worth considering what might motivate one to highlight the pressure aspect of coercion, and why those who favor this approach might likewise deny that the two approaches are of comparable importance.

Several epistemological and pragmatic considerations might be thought to recommend the pressure approach. Its principal aim in conceptualizing coercion is to explain coercion's

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<sup>11</sup> In a longer version of this paper, I consider the cases of blackmail, hostage taking, and economic coercion.

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effects in certain concrete instances of action. This is reflected in McCloskey's stipulation that the coerced agent *acts*, and it is *the action* that is coerced: if there is no coerced action (or action intentionally foregone), then there is no coercion. As a practical matter, we are often interested in making forensic judgments about whether an action was in fact coerced, for purposes of determining an agent's responsibility for it. If there's no action (or act foregone), then the question of responsibility for it seems not to arise. Moreover, actions, and especially alterations in actions, are often signals that indicate that coercion has occurred: e.g., Jones was going to keep her wallet, then she handed it over. The alteration indicates that there is something to be explained, and pressure applied to the will is one possible explanation.

By comparison, if we say that a direct physical intervention, such as imprisonment, is a use of coercion, it may be unclear what the prisoner was coerced into doing/not doing, if anything. In the wake of broad uses of force, such as grievous violence or imprisonment, there are innumerable actions the target will not be able to take as a result, though perhaps no way to say which one(s) she *would have* taken if not for the use of force against her. The ontology of coercion thus appears much more tractable if coercion is tied to particular acts willed or not willed in response to specific threats. Coercive threats, for instance, typically specify the particular act that one is coerced into or out of.

Also, while force and violence are useful for inhibiting or stopping action, threats seem much more useful for inducing an agent to engage in a particular action (*a la* the difference between dragging a horse to water vs. making him drink). To get someone to do something in particular, it seems necessary to be able to pressure her will. And while threats of force or violence can create such pressure, so can other sorts of threats. This fact suggests what is perhaps the most important attraction of the pressure approach to coercion, namely, that it picks out many different ways to use pressure to affect another's actions, but which are not specifically or noticeably rooted in the use of force. Such means of pressuring a person might include threatening to fire her, to revoke her club privileges, to spread embarrassing news about her, to deny her custody of her children, to vote against her proposal, to break a promise or contract

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with her, or to divorce her. In fact, sometimes threats of force and violence are motivationally less potent than these other kinds of threats. So insofar as the enforcement approach to coercion treats force as the gravamen or standard for recognizing coercion, it seems to have tunnel vision, since force and violence seem not especially different from other disadvantages one might threaten. Even if we accept that direct uses of force constitute a kind of coercion, there seem to be many reasons to include many more ordinary threats among the ways of enforcing a decision. If so, then the pressure approach, with amendments, appears able to beat the enforcement approach at its own game.

Before engaging in a fuller comparison, it is useful to set out more carefully what the enforcement approach holds. It analyzes coercion as the fulfilment of three claims:

1. There are (at least) two agents involved: a coercer (R) and a coercee (E).
2. R in some way creates or appropriates some form of power over E that is able to inhibit E's ability to act (where the "in some way" is to be filled in).
3. R uses that power with an intention to constrain or alter E's actions or ability to act.

On this understanding, coercion is exemplified by the motivated use of force or violence, or threats thereof, to prevent or constrain an agent from engaging in some range of activity, or to disable one from doing as one would like. I say "exemplified by" rather than "constituted by," because uses of force/violence do not exhaust the range of such powers; rather, they provide a useful depiction of what such power is like. On this account, the principal mode of coercion is *prevention*; inducement to perform specific acts is typically built upon the ability to prevent other acts.<sup>12</sup>

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<sup>12</sup> The ability to inhibit or prevent broadly an agent's actions gives one power over that agent, in that it allows one to reshape the instrumental relations among the things that the affected agent can do. If Jones has the ability, say, to kill or imprison Smith, Jones can prevent Smith broadly from achieving almost any of his ends. Given this power, Jones can then choose to make virtually any act *A* (within Smith's power) into a necessary means for Smith to achieve almost anything else Smith might wish to do. Jones cannot force Smith to do *A*, but he can decide and enforce a decision that Smith will take *no other action* unless and until he does *A*. This ability to stop broad ranges of an agent's actions may not succeed in inducing the desired action, but predictably it will succeed often enough. In many cases, an attempt to coerce an agent to do *A* is really just coercion that inhibits or threatens to inhibit, to one extent or another, the complementary set of actions. We may thus treat the claim that one was coerced into *A*-ing as elliptical for the claim that the coercer has made *A*-ing a necessary means to achieving something else, perhaps even

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While the pressure approach emphasizes certain aspects of the psychological etiology of the coercee's actions, the enforcement approach to coercion sees coercion as a specific sort of technique used intentionally by some powerful agents, and so investigates the sorts of powers and intentions the coercer must have in order to engage in coercion. This shift in focus has implications for both the metaphysics and epistemology of coercion. Because it focuses on uses of a particular technique, it individuates instances of coercion differently than the pressure approach. Contra McCloskey, not every act of coercion need result in specific discernable alterations in actions, and some acts of coercion (such as imprisonment) may simply inhibit broad ranges of actions, rather than any one action in particular. And because such interdiction is a broad-spectrum technique that may be employed continuously for long periods of time (as in the case of criminal law), it may be difficult or impossible to identify what particular actions are prevented or inhibited by uses of force, or standing threats of the same.

There has been much discussion amongst coercion theorists over whether coercion is an inherently moralized concept. The enforcement approach hopes to render a concept that can provide moral or normative guidance, though it is not itself an intrinsically moralized approach to coercion. I claim this because our understanding of coercion on this approach does not call on us to make any specially contentious normative judgments. While R's power over E, and the nature of R's activity or intentions, may sometimes be discernable only by making some moral assumptions, in many cases these facts can be discerned without much if any reliance on normative judgment.<sup>13</sup> If this account turns out to be acceptable, it will therefore be better suited to help us make other normative judgments, since it will not necessarily beg those same questions.

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everything else, that is crucial to / necessary for / uneliminable from the coercee's life. Unsurprisingly, force is often a key element in enforcing such decisions.

<sup>13</sup> By calling a theory of coercion "moralized," I mean that one cannot reach judgments about whether coercion has occurred without relying on some antecedent moral judgment or premise. For example, Wertheimer's account of coercion relies on two subsidiary judgments, both of which invoke moral or normative criteria, such as what the target of coercion has a right to do or to be free from. A non-moralized account of coercion attempts, as far as is possible, to avoid reliance on normative premises or judgments, examples of which include Michael Gorr, Joel Feinberg, and J. R. Lucas.

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This is not to suggest that the enforcement approach can answer all of the normative questions one might ask about uses of pressure, constraint, or requirements on actions. This is especially true for pressure stemming from lesser forms of power than the paradigm cases of coercion. So, for instance, I doubt that one can use the enforcement approach to determine what the law of contracts should say about all of the different possible lesser suasions that can be used to get a party to sign on the dotted line. Here, considerations of efficiency and justice probably play greater roles in answering such questions than the enforcement approach gives them heed. But the enforcement approach does offer some guidance to identify some techniques that should clearly void contracts, and one can extend the account by looking for analogies between the clear cases and the novel ones. So the enforcement approach is not wholly without resources for thinking about lesser forms of coercion and imposition.

In the next section, I'll elaborate on the importance of the enforcement approach to coercion by showing how, in general, if the judgments of pressure accounts are to be credited, they must tacitly depend upon the enforcement picture of coercion. This is to say, if what counts as pressure on the will is to be regarded as something distinctive, justifying the label of "coercion," relations between the coercer and coeree must stand as specified by the enforcement account (barring rather special circumstances).

### **2. Coercion and power: what makes acts of coercion *coercive*?**

The idea that one agent can put pressure on the will of another is familiar enough, but insofar as such pressure is supposed to constitute a matter of social concern, there must be more to it than merely an agent's claim that she feels pressured. Consider for a moment what is involved in the claim that E feels pressured by R to do *A*. Perhaps R has made a threat, which E hopes remains unrealized, and which is conditioned on whether E fails to do *A*. If we are to treat E's feeling pressure to do *A* as evidence of or support for the claim that R is *coercing* E, we might ask what justifies E's feeling. The feeling that one is under pressure may be idiosyncratic or even crazy; one's assessment of the costs and benefits of action may be ungrounded or

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dishonest; one's fears of loss may be out of proportion to the damage actually at stake.<sup>14</sup> One thing that would matter is whether E is able or unable to alter the situation so as to eliminate the pressure R applies, or to counter it with pressure of her own, in doing something other than what R demands. If E is able to evade or nullify R's threat, or could effectively retaliate if the threat is executed, then it is unclear that she is justified in feeling pressured, or that we could make sense of her saying she was. For instance, in order to back up the claim that R is pressuring E, it won't suffice to cite the fact that R holds the mortgage on E's home, or that R is larger than E, if it is also the case that E can have the state nullify the contract or otherwise restrain R, or if E holds the mortgage on R's home, or is well armed (or has some similar counter-leverage). In such circumstances, R's power to strike would seem to be cancelled out by E's power to dodge or to strike back against R.

Let us therefore say that implicit in the claim that E is coercively pressured to do *A* is a further claim that there is an asymmetrical, unbalanced relationship between R and E, such that R possesses some form of *power* over E.<sup>15</sup> *Power* is of course a sketchy concept, but for now it will suffice to explain it in terms of a correlative strength on R's part and weakness on E's. This language leaves open the possibility that there are as many sorts of power as there are sources of strength, on the one hand, and weakness or vulnerability, on the other. Assuming we can make sense of some correlative strength and weakness plied by R's threat, then we would have the requisite explanation of the pressure E feels to do *A* (or *not* to do *A*).

The notion of power relations between R and E helps us to flesh out what I will call the *holism condition* for claims of coercion: to claim that R coerces E, some range of R's and E's strengths and vulnerabilities need to be considered, with a net imbalance in R's favor. In

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<sup>14</sup> Pressure accounts sometimes require that R's threat is "credible" (or "credible to E"), but this stipulation simply begs our question. We want to know what makes R's threat credible, such that we can say that E's feeling of pressure from the threat is not crazy or completely idiosyncratic. Wantonly irrational beliefs are not uncommon.

<sup>15</sup> In this I am accepting the predominant view which holds that offers—even extremely attractive ones—are not coercive, though this has been occasionally denied. Being able to make enticing offers is certainly a kind of power, but it does not in the requisite sense allow one agent to inhibit broadly another agent's ability to act. This matters because there is something qualitatively different between the power to offer an agent many additional opportunities to act than she has at present, vs. the power to broadly undermine an agent's ability to act at all.

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assessing this broader balance of power between R and E, some forms of power become particularly salient, and in particular, the ability to use force effectively against another. Having an advantage with respect to the ability to muster force and/or violence against another is not just any sort of power: it gives one the ability to stop another from acting in general, as well as to impose severe disadvantages on that agent. This in turn usually provides one the sort of holistically conceived power needed to make convincing, pressuring threats. To repeat, this is not to say that force and violence are the only tools by which one can achieve such an advantage. They do, however, usefully demonstrate the sort of advantage necessary, while also (typically) constituting something of a backstop behind many other forms of less tangible power.

Of course, no form of human power makes one invincible; powerful governments, mafias, and institutions such as the church are routinely disobeyed and sometimes toppled. So even when an agent has an overwhelming advantage in power, she may not be able to achieve her ends without fail, either by coercive or non-coercive means. Nonetheless, a substantial advantage in the ability and willingness to use force and violence can give an agent a special sort of power over another agent, often overturning other possible disparities in power between the agents. And unless there are such disparate abilities between the agents, the ability of one to pressure the other is mysterious. The question is, why do some forms of power tend to trump others when it comes to their coercive potential? Attending to this helps explain what sort of holism is required to support a claim of coercion.

Consider Clyde, a mugger with a gun. Clyde could successfully rob Gates, the richest man in the world, as Gates takes his trash out to the alley. Assuming this is plausible, it would nonetheless be dubious to claim that Clyde is more powerful, overall, than Gates. Gates has access to enormous financial means, and also has the state on his side, which is known to pursue assiduously and punish harshly those who rob or harm its upstanding, wealthy citizens. If so, then we require some explanation for how Clyde is able to bring pressure to bear on Gates, since despite all his resources and the awesome power of the state at his back, Gates fails or is unable to put countervailing pressure on Clyde's will. One possible explanation is that Clyde exhibits a

kind of irrationality, while Gates acts rationally. While this is very possibly true, this doesn't seem to be the sort of answer we want, since it suggests that irrationality provides a defense against coercion: Gates, by being rational, is subject to coercion, while Clyde, because of his irrational disregard for Gates' and/or the state's powers, is immune to their coercion. This would seem to make rationality a liability, and irrationality a kind of strength. While there may be some cases like this,<sup>16</sup> as a general claim this would overturn our understanding of what's rational and irrational here. If Clyde can free himself from the state's coercive powers by ignoring them, why can't Gates free himself by refusing to believe or act on his belief in Clyde's powers?

It is of course possible that Gates will ignore Clyde's apparent threat; it's also possible that Clyde is bluffing. But if Gates yields to Clyde's demands, the following description of their relationship would have the right degree of holism: in this situation Clyde appears to be uniquely able to enforce his decision about what Gates will be able to do; Gates, by contrast, appears to have no similar means to enforce any such decision on Clyde, at least not imminently.<sup>17</sup> In this particular scenario, Clyde can even achieve his immediate end of robbery with or without Gates' cooperation: if Gates refuses, he can use force to disable or kill Gates and take his wallet. Even if Clyde needs Gates' cooperation (suppose Gates has with him only a bank card that requires a password to be of value), Clyde's power may well suffice to give Gates a reason to act as demanded: whether or not it would be rational for Clyde to punish Gates if Gates refuses to comply, Clyde can prevent Gates from obtaining any of his ends by using force to disable or kill him, and has expressed a willingness to do so. Meeting Clyde's demands thus

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<sup>16</sup> A possibility explored by Thomas Schelling in *The Strategy of Conflict* (Cambridge: Harvard University Press, 1960).

<sup>17</sup> I speak here of the appearances because, I will assume, Gates does not know whether the gun is loaded or whether Clyde would indeed enforce his threat if defied. What grounds does Gates have for his assessment of Clyde's power and intentions? Clyde's ability to make credible threats here depends on the existence of a set of shared background beliefs that it is assumed he and Gates (like most of us) share. These include facts about what guns do to people; what gunmen in dark alleys are likely to do when defied, and so on. Unless Gates and Clyde have had a prior history together (unlikely), or unless Clyde can provide a demonstration of his powers and willingness to inflict harm on innocents (possibly difficult), Clyde will be trading on the reputation that other gunmen have established. Hence part of Clyde's power depends on his similarity to others who have possessed and used such powers in the past. I'll return to matters of appearances and bluffs in section 8A below.

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is (or may be) a necessary means for virtually any end Gates may have.<sup>18</sup> Given Gates' inability to mount a similar immediate countermeasure, Clyde has power over Gates within context of the back alley, even if Gates is more powerful overall. This then explains how Clyde can put pressure on Gates' will.

So, a significant advantage over another in the ability and willingness to use force/violence gives one the relevant sort of power advantage that makes coercion by pressure possible. In passing, let me make two other quick observations here: First, we can assess Clyde's powers over Gates by making only the most minimal claims about Gates' psychology. In particular, we need not posit any particular set of desires or evaluations in Gates' head. If Gates wants to do anything at all, Clyde is in a position to put pressure on Gates' will. Second, in at least this case, there may be little difference to Clyde between using direct force or merely threatening it: Either way, Clyde can have Gates' wallet. Hence in at least these cases, it appears unreasonable to insist that coercion is strictly concerned with causing the coercee to act. In fact, a mugger's possible indifference to whether his victim complies with his demand or not can make his threat all the more potent.

One might worry, however, that isolated back-alley gunman cases are unrepresentative of most coercion, and hence that they give a misleading picture, or a biased starting point. Much coercion seems mundane by comparison, and many possible coercers would seem to be relatively innocuous, or sometimes even hard to discern (as when one finds oneself required to pay for parking by a mechanical gate, or a parking meter). I will argue, however, that to understand the possibility of many more mundane forms of coercion, we must presume that there are enforcement powers operating somewhere in the background, that account for the need to take lesser threats seriously. Call this the *enforcement condition* on coercion. When one possesses the power to enforce one's decisions maximally, so to speak, many lesser modes of

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<sup>18</sup> That is, assuming there is some prospect that Clyde will abide by his (perhaps implicit) indication that he will not harm Gates if Gates does comply with Clyde's demands.

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coercion can also be used; without it, the ability to coerce to any extent will often disappear or become mysterious.

Consider, for instance, the lowly parking fine: if one parks at a meter, but refuses to pay the required fee, one risks incurring a fine (say, \$25 or \$100; not nothing, but something far short of death or incarceration). Most would agree that the threat by municipalities to impose such fines constitutes coercion.<sup>19</sup> Of course the threat does not achieve universal compliance, but on the whole the threat of such fines surely contributes to the fact that people are largely compliant with parking rules, fees, etc. Parking fines are just one of a range of unforceful sanctions that would appear to be suited for use in coercive threats. Nonetheless, explaining the coerciveness of at least some of these means, such as parking fines, requires us to look again beyond the content of the threat itself, and to ask why it should succeed in bringing pressure to bear on its target's will. In particular, it matters what is likely to happen if the coercer's demands are disobeyed, and his sanctions disregarded. If, for instance, Jones threatens to fine the owners of vehicles parked in front of his house, on a public street, unless the owners pay Jones to park there, his threat would likely be laughed off, or treated as madness. This is because Jones lacks the requisite power to enforce such fines.<sup>20</sup> What distinguishes the municipality's threat from that of Jones is the role played by the system of enforcement behind its giving of parking tickets and assessments of parking fines.

No system of fines or penalties can explain compliance with parking laws unless it is backed up by uses of force or some other sort of stopping power that cannot be ignored by the scofflaw. The law that requires one to pay parking fines is, like the parking law itself, just another law, which may be followed or violated: one may simply refuse to pay one's tickets. Violating this law may of course invite stiffer penalties than the law that governs parking does,

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<sup>19</sup> One might deny that coercion is at play here, on the grounds that such laws are just, and therefore the threat of enforcement of these laws is rendered non-coercive, according to certain recent theories of coercion. For an exponent of this view, see William Edmundson, "Is Law Coercive?" *Legal Theory* 1 (1995): 81-111. This view is sufficiently recondite and divergent from our longer-standing views of the coerciveness of the state that I will not worry about it here. (I do comment on it more fully in "How the Coercer Got Away.")

<sup>20</sup> This holds if one assumes that Jones has not adopted Mafiosi-style methods of enforcement, and is otherwise a law-abiding citizen—a reasonable assumption around here, though not true always or everywhere.

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since it amounts to a more serious offense. Suppose these higher penalties include much higher fines, loss of driving privileges, or the inability to register one's car. Nonetheless, like parking fines themselves, all these penalties can also be ignored by the party penalized. Thus it requires something further to explain why these penalties give potency to the fines they underwrite. If the state intervenes to take or disable one's car, garnishee one's wages, or attach or take one's property, then doing so might have the requisite effect. But even these sanctions require for their effectiveness a larger set of enforcement mechanisms that prevent one from simply replacing one's car or property by taking the same from others.

Ultimately, for the parking law to have any rational impact on parkers, it must be backed by a system of enforcement activities which the scofflaw cannot simply ignore, evade, or easily compensate for. With the backing of such an enforcement system, even the threat of parking tickets can give one good reason to alter one's behaviour; without recourse to such a system, the penalties imposed by the parking law give one no reason to attend to it, since nothing comes of refusing to acknowledge such penalties.<sup>21</sup> So the coerciveness of the parking fine cannot be abstracted from its grounding in the state's ability and willingness to enforce it in some ineluctable fashion.

What holds true of parking fines imposed by municipalities is true quite generally of the threats and demands of coercing agents. Understanding the potency of a threat requires some grasp of the potential for enforcement of the threat—that is, what is supposed to happen if the party threatened rejects both the threatener's demands and impositions of non-maximal sanctions.

An objection is likely to arise at this point: namely, what about bluffs? It seems that coercers need not actually possess the ability to enforce their threats; they need only *be perceived* to have such power. If so perceived, one could threaten to use force to stop someone from acting. And if one's target acquiesces out of fear, surely one has coerced her. Strategic bluffs

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<sup>21</sup> The same thing is true whether we are talking about the legitimate state, an illegitimate usurper, the mafia, or the local unaffiliated lot of muggers and robbers.

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are not uncommon. The possibility of coercion via bluffs encourages us to associate coercion with pressure. Whereas the enforcement approach seems to imply that coercers must be able to back up their threats, the pressure approach focuses on the threat itself and how it alters the coercee's subjective assessment of her situation. Thus it seems better suited to handle bluffs.

This objection is based in a confusion, but a common one, and thus merits an important clarification about the power one needs if one is to be able to coerce, and where such power is located. Most coercion by threat involves not just the power immediately in the possession of the coercer (say, his ability to kill or maim with his gun or two fists), but also a degree of power located in the shared history of the coercer and coercee in the particular society in which they interact. To see this, consider the difference between good bluffs and bad bluffs, and where to locate this difference. We might say that good bluffs are credible, while bad bluffs are incredible. But this apparently locates the difference in the coercee's head, which credits or discredits the threat. More useful would be to look instead at how the coercer has or hasn't portrayed himself as willing and able to carry through on his threat. The success of such a portrayal depends on how like or unlike the coercer is to the sort of agent the coercee would reasonably expect to have this power. This is to say that part of the power needed to issue successful threats frequently lies outside of the coercer him or herself. Instead, it resides in a shared background understanding of, for instance, what similar agents have done in the past when they have exercised such powers, especially in response to threats that have been rejected. Even agents who actually possess the powers they threaten to use typically rely on such a shared background: if their threats are to succeed without having to enforce them, they must be credible, and this depends on whether their powers and intentions are recognizable as such.<sup>22</sup>

When a bluffer succeeds in credibly threatening someone, he taps into the power residing in this shared appreciation for what some agents are able and likely to do to others. We might say he is a free rider, of sorts, on the *commons of enforcement powers*. No doubt it is sometimes

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<sup>22</sup> By the same token, if the coercer's powers are located in abilities the coercee is unfamiliar with, his threat may remain incredible no matter how terrified the target ought to be.

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more profitable to free ride than to contribute one's fair share to the commons' maintenance, so long as the commons holds up, and one is not excluded from it. But if too many people try draw on this shared resource without contributing, the resource will be depleted and may collapse. Less metaphorically, if coercers regularly fail to execute their threats when defied—as bluffers will (by definition) fail to do—such threats will in general become less credible. So when one attempts to coerce via a bluff threat, one does indeed use a sort of power, frequently based in force and violence, which has been paid for, so to speak, by those who really possess the ability and willingness to use it, and who have demonstrated it when defied. A threatener gets to use that power by depicting a connection between himself and those who actually possess or possessed such power (including himself, perhaps). Hence, the possibility of coercion by bluff does not undercut the connection between coercing and enforcing; it just locates that connection in a broader context than is usually recognized.

Even if the importance of enforcement is granted, one can doubt that it requires force. One might say instead that what matters is that the coercer has some means of threatening something important to the coercee, and that the coercee has no comparable countermeasure available. So long as the threatened consequence is regarded as a penalty by the coercee, and the coercer can make it stick, it has the potential to be used as a coercive sanction. The use of direct force (say, killing or imprisoning) is merely one of many kinds of sanctions that can serve this role. Other potentially potent penalties would include emotional or psychological harms, ostracism or refusal to associate or trade with a party, refusals to meet one's obligations to another, reputational harms (such as blackmail trades on), or other forms of symbolic or practice-based diminishment (such as disbarment or ineligibility for important offices or awards). One can also threaten to harm third parties, especially those near and dear to a person. In various contexts, any of these sorts of penalties might provide a coercer with a trump card, holistically considered, that would allow him to coerce another.

It is safe to acknowledge that there is something right about this response. Not all threats are enforced by an apparent ability to resort to force and violence, though I think that

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surprisingly many are so backed. As noted earlier, there are as many different kinds of power as there are sources of correlative human strengths and weaknesses. So a full theory of coercion needs to acknowledge the range of powers that can be used by one against another.

That said, pressure accounts have tended to treat all of these sorts of powers as on a par: since there are many means of putting pressure on a will, there would seem to be a common metric with respect to which they are comparable. This supposed comparability is what I wish to object to. Without denying that there are many kinds of interpersonal power, we have reason to single out as special the use of force or violence, including threats of force or violence, as the primary and paradigmatic means for enforcing decisions about what persons may or may not do.

This is because the ability and willingness to use force and violence has a rather special place in establishing the power relations between agents. Force and violence are more or less unique in their ability to inhibit actions—almost all actions—and are perhaps the only techniques that work against virtually every person. Thus, even if there are other forms of power that may be the basis of a coercive threat, frequently those forms of power can be disrupted or cancelled by a superior ability to use force against those possessing other powers. Before one can use other techniques to put pressure on the will of another, one typically needs some safety against one's target's possible violent retaliation or defensive uses of force. Our physical vulnerability as humans leaves each of us constantly at risk of serious harm from virtually all other people with whom one comes into contact; all that is required for almost any human to harm almost any other human nearby is some weaponry, or the element of surprise. Hence, before one can use other coercive means, one typically will require first to have reached a draw or better with one's target with respect to the ability to use force or violence. Many of the other kinds of power can get a grip on us only in a context in which rough parity and stability has been established in the ability of participants to use force and violence.<sup>23</sup>

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<sup>23</sup> Of course, the protection one needs against force or violence does not have to derive from one's own abilities. Typically one can make do with a strong protector, such as the state, which can enforce the peace between citizens. As I argue in the next section, one of the chief functions of a well-working state is to provide such security to all citizens, thus making their private use of force and violence largely unnecessary.

What we should say, then, is not that force is essential to enforcement, but rather that the sort of efficacy that force and violence carry is crucial to enforcement, and therein to having the potential to make effective coercive threats. So I urge that we treat the sort of advantage that some agents have with respect to the ability to use force and violence against others as both an exemplar of the sort of power coercion requires, as well as probably its predominant form. It is therefore also a standard against which other, less potent forms of power can be assessed for their coercive potential. Since power comes in degrees, there is no reason to deny that there may be lesser or “petit” forms of coercion. But such lesser powers will more easily fail the holism and enforcement conditions set out above, in which case there may be reason to deny that their use on a given occasion is in fact coercive. At the least, when a claim of coercion is made, we should investigate to see whether the coercee had or has access to an equivalent or superior form of power that could undermine the putative coercer’s ability to enforce his demands.

### **3. The implications of coercion**

The previous section aimed to establish that enforcement is integral to the concept of coercion. To finish this talk, I want to elaborate on the value of this analysis, as it helps us to think about the nature and significance of coercion in two areas: more briefly, with respect to the moral quality of coercive acts, and in somewhat more detail, with respect to how coercion might alter an agent’s legal responsibility for acts taken as a result of being coerced.

The moral quality of acts of coercion would seem to be dependent on numerous factors, including especially their purposes and the institutional context in which they occur. Let’s set aside direct force for now, and focus on coercive threats. Threats may be no more tangible than words spoken or written, or even just a certain look. Of course, to say something is to act, and what is said can have significant tangible implications. The question is, what is it about coercive threats that makes them a matter of special moral concern?

The significance of coercive threats lies not (just) in the pressure they generate to do (or not do) one thing, but rather in the fact that they involve creating and/or leveraging a much

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broader power differential between coercer and coercee. Because of this differential, those subject to threats may find themselves generally disabled from whole ranges of actions which might help them to mitigate their losses, or to seek aid, or to find alternative solutions. We may compare this kind of effect to that of fraud, which is another way of getting someone to act as one wills, and in some cases by creating severe pressure on the defrauded agent's will—for instance, by lying convincingly that the target is at risk of some natural hazard which might be as severely disadvantaging as a coercer's threat. While some employments of fraud may be extremely difficult to detect, and/or may rely on forms of social power such as reputation or trust, the willingness and ability to defraud others does not typically generate social problems as severe as do uses of force and violence. For one thing, to stop or neutralize ordinary coercion, based in force and violence, one typically must resort to like employments of force and violence. By contrast, the most direct means to prevent fraud—*viz*, providing credible true information, and reversing or refusing to enforce fraudulent bargains—are much less dangerous to employ, and do not create further social hazards when employed. Furthermore, the ability to use fraud or deceit to get someone to do something does not usually entail the ability to induce another into or out of wide ranges of action. By contrast, the power that backs most credible threats typically has generic potency, so can be used to get one person to do a variety of things, or targeted at a variety of different people. Hence an agent who is able and willing to use such power illicitly presents a more serious problem for fellow citizens—*viz*, the broad ability to disable others—than does the fraudster. Focusing solely on the pressure a threat puts on its intended target will tend to obscure these broader, contextual problems posed by illicit uses of coercion, as well as the wider impact that a coercer's power can have on a coercee's overall agency.

A second implication of coercion is thought to be its propensity to sever a coercee's responsibility for acts taken or omitted because of coercion. The laws of duress and necessity, for instance, treat coercion and (maybe also) like phenomena as grounds to reduce or terminate an agent's legal responsibility to fulfill a contract, remedy a tort, or suffer punishment for an

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illegal act.<sup>24</sup> Although some deny that coercion has such an effect on responsibility, the enforcement approach helps support what is generally thought to be a common-sense view.

Consider first, cases of coercion by direct, overwhelming force. An agent who is held in place by a captor is prevented from doing most of what she could do if free. Of course, the agent may herself be responsible for being held captive—perhaps because of her own prior bad behaviour—but at least sometimes the constraints on her actions will be no fault of her own. If such uses of force should count as instances of coercion, then at least these instances will support the claim that coercion can undermine responsibility.

Some coercive threats are also equally easy to assess with respect to their effect on responsibility. For instance, some threats are to accomplish by force what an agent might do on her own—e.g., “Move or I’ll move you.” It would hardly make sense to hold the coercee accountable for moving as directed when there was little or no doubt that the enforcer could and would ensure the same result involuntarily.<sup>25</sup> If a coercer is sure to have his way regardless of what choice the coercee makes—when resistance is literally futile—then it seems unreasonable to hold the coercee accountable for failing to resist the coercer’s demands, for no appreciable benefit.<sup>26</sup>

Frequently, however, even serious coercive threats do not eliminate the significance of the coercee’s choice so starkly. When they do not, judgments of responsibility will tend to rest more heavily on other, deeper normative considerations (some of which may be in great dispute). I want at this point to distinguish two kinds of responsibility—*moral* and *legal*—with an eye

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<sup>24</sup> Coercion can also void a confession or plea, though I think the reasons for this are not quite the same as those for, say, voiding a contract. The problem with the coerced confession is not (just) that it is not voluntary; it’s that it is very likely false, and so of little probative value for judging the confessor’s actual guilt or innocence.

<sup>25</sup> There’s a complication here, though. Suppose a coercer threatens a whole group of individuals. It may be the case that even though no individual could resist the coercer by acting alone, the collective resistance of the group may render the coercer powerless to stop more than a few, if any. Still, it’s unclear that individuals should be held responsible for failing to act individually when such individual choice has no effect on what others do or on the net effect of the group’s joint actions. I note this complication to set it aside.

<sup>26</sup> The wisdom of this claim has not always been accepted. It constitutes one chief criticism of older laws of rape, which held that a rape victim must resist to her utmost if the act of sex was to be deemed non-voluntary on her part, and thus possibly criminal. Such a law put the victim in the terrible position of being required to struggle with her aggressor, thus elevating her peril, or else be thought complicit in her own injury, and unable to obtain redress.

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toward bracketing moral responsibility, while addressing legal responsibility more fully. Moral responsibility turns out to be very difficult to evade for intentional actions and their intended (alternately, their predicted) effects, at least if common moral theories are right. Nonetheless, there are cases where legal responsibility (and perhaps also moral responsibility) will be curtailed for actions that an agent takes in the face of significant coercive threats, because of the coercion. Consider a paradigmatic case: Suppose that Riley threatens to shoot Evans if Evans refuses to unlock her employer's combination safe, in the course of an apparent robbery. It seems likely that, if Evans acquiesces to Riley's demand, we would not hold Evans responsible for her employer's subsequent loss. We would not, for instance, expect her to pay restitution, or be punished by her employer, let alone by the law.<sup>27</sup> Notice that, by contrast, were Evans to help herself to the contents of the safe because she needed the money to combat sickness or a looming natural disaster that threatened her life, it would be at least arguable that Evans should bear some responsibility for the loss. We might, for instance, expect her to pay restitution, at least if this is not unduly onerous to her.<sup>28</sup> Assuming there is such a difference in how we regard Evans' responsibility in these cases, how can this be explained?

I would argue that the reason we do and should hold the two cases to be differentiable is that the state should not ask nor expect people to engage in the sort of self-help necessary to fend off coercers such as Riley by, say, arming themselves, using force to deflect their attacks, or engaging in private threats and retaliation afterwards.<sup>29</sup> In most places, states explicitly reserve

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<sup>27</sup> There are, however, possible complications: suppose Evans is in a position to open the safe only because she illicitly acquired the combination herself. If Evans' own wrongful actions play a causal role in her employer's loss, then Evans may not be entirely acquitted of responsibility for the damage to her employer.

<sup>28</sup> In fact, Riley would likely be criminally liable for such action unless there was an extreme exigency. If there were, then Riley may avail herself of a defense of necessity because she chose to inflict a "lesser evil" rather than suffer a "greater" one. Still, she may well be liable for compensating the loss she inflicts on her employer. See, e.g., *Vincent v. Lake Erie Transportation Co.*, 109 Minn. 456, 124 N.W. 221 (1910). By contrast, it is generally held that duress (i.e., coercion) provides a greater privilege than necessity, but the difference is difficult to explain. For one account and explanation of the difference, see Peter Westen and James Mangiafico, "The Criminal Defense of Duress: A Justification, Not an Excuse—and Why it Matters," *Buffalo Criminal Law Review* 6 (2003): 833-950. While I believe they reach the right result in this essay, I find their reasons less persuasive or useful than the alternative analysis I develop here.

<sup>29</sup> There may of course be reasons for society to hope that people take some measures of self-help against theft, such as locking doors, installing alarms, etc., but as the example of the safe shows, these measures are rarely if ever proof against serious uses of force, including coercion.

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such powers for themselves, and are tasked with providing protection to law-abiding inhabitants. In many places, governments even restrict the means by which people could usefully defend themselves against attack; almost nowhere do they encourage private citizens to employ those means when there are other options available that seem safer. Hence, Evans may reasonably claim that when Riley coerces her, the state has failed in its responsibility to protect her against such private uses of coercion, and thus that the burden of such failure should not be laid on her legally. By contrast, if other circumstances such as disease or disaster create a similar pressure on Evans to do things like open her employer's safe, remove its contents, etc., there is at least a case to be made that Evans bears some responsibility for her predicament—that she should act to avoid it if possible, and if not possible, then she should at least have anticipated and insured against it.<sup>30</sup> We may thus deny that in cases of ordinary exigency, Evans may transfer the burden of such exigencies onto whomever else she chooses, without also sharing responsibility for them, and possibly bearing a duty to compensate afterwards.

If this much is right, then the enforcement approach enjoys significant explanatory advantages over the pressure approach. Since the pressure felt in both of the cases above might be the same, the pressure approach should treat them similarly, or else it will need to look for other reasons to distinguish them. The enforcement approach, however, identifies coercion with the sorts of powers, techniques, and intentions exhibited by coercers, which are exactly those factors that states hold a putative right to monopolize. Hence it is suited to track the factors that would give rise to a claim of diminished responsibility for one's acts because of coercion.

I am here assuming that states do legitimately hold a monopoly on the use of coercive force, an assumption which is sometimes questioned, and which would require defense to be

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<sup>30</sup> If, say, the state or society was responsible for insuring Evans against such circumstances, then Evans may well have a right against the state for help (which may or may not be forthcoming). But this does not, I think, entitle Evans to redirect her unjustified burden onto her employer (or anyone else), without responsibility. When threatened by Riley, however, Riley is clearly the agent who bears responsibility for the employer's loss, and so Evans may, I think, more reasonably be relieved of responsibility for acquiescing to the threat.

fully justified.<sup>31</sup> Nonetheless it is a widely held view, and one I believe is correct, though I won't argue for it at this time.

#### 4. Conclusion

In a longer version of this paper, I turn at this point to consider four further objections one might raise to it. I will omit discussion of those challenges at this point, but you can be sure that whatever your objections are to this account, they are thoroughly deflected there. So at this point, I will summarize what I have argued here. There is use for a concept that tracks the specific form of power that is familiarly associated with the term “coercion” as it has long been used in political philosophy. The recent philosophical trend away from this understanding indicates that the traditional meaning of “coercion” is perhaps not as obvious or well understood as one would wish. But if I have succeeded here in setting out the resources inherent in the traditional enforcement account, it should help to bolster it against some of the most frequent misunderstandings and apparent difficulties it encounters. In doing so, I hope also to have shown that coercion remains a category well worth a political philosopher's focused attention, because it is distinctive among the various ways humans can relate to and influence each other. It thus deserves to be treated as a fundamental element in political and ethical theory, with boundaries that, while not razor sharp, are much more clearly defined than is sometimes thought.

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<sup>31</sup> See note 19, *supra*.