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PART I

The nature and dynamics of economic compulsion

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CHAPTER I

Markets and coercive pecuniary externalities

INTRODUCTION

In the view of mainstream economic thought, there can be no economic compulsion in an unfettered marketplace because consummated transactions are purely voluntary and evidence of mutual advantages gained. A unique strength of the market as a societal institution and as a mechanism for allocating scarce resources lies in the unparalleled degree of autonomy it affords economic agents. In the perfectly competitive markets of neoclassical economics, people are completely free to trade whatever, whenever, however, wherever, and with whom they so desire.[1] Moreover, since economic actors are rational and pursue what is in their best interest, we can presume that they engage in market exchange only to the extent that they improve, or, at the very least, remain at, their pre-trade welfare. It makes no sense for rational agents to partake of a bargain that leaves them worse off; they trade up and not down. People participate in the market only as they see fit. Consequently, there is no room for such a notion as compelled market exchanges in mainstream economic thought. This position is not peculiar to neoclassical economists alone, as some philosophers are also skeptical of claims that economic circumstances, and by extension the market, can be coercive.[2]

The object of this chapter is to show why and how the market's harmful unintended consequences can compel economic agents to make choices they would normally not take. To do so, however, it is first necessary to define the formal characteristics of what constitutes economic compulsion. Having done this, I will then examine particular elements in the nature and dynamics of the marketplace that occasion severely constrained economic exchanges.

1 For a brief exposition of the history and scope of neoclassical economic thought, see Landreth and Colander (1994: 210–317) or Blaug (1985: 294–613, 632–53).
2 For example, see Nozick (1974).

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THE GRAMMAR AND NATURE OF COERCION

Determining whether a state of coercion exists or not is important for the ascription of responsibility. In much of the legal and philosophical literature, the concern ultimately revolves around the issue of whether the coerced have any obligations to fulfill the terms of contracts accepted under duress.[3] In contrast, this study deals with the questions of whether the coerced deserve special assistance from the community, and if so, who bears responsibility for relieving their plight and why. In both cases, however, there is a common need to establish first what constitutes coercion.

Much can be learned from the extensive philosophical literature on the subject. In what follows, I highlight only those works that are relevant and helpful for talking about whether market exchanges can be coercive. Aristotle's (1951) mixed action, Alan Wertheimer's (1987) moral baseline, David Zimmerman's (1981a and b) nonmoral account, and Joan McGregor's (1988–89) bargaining advantages all provide differing, albeit overlapping, theories of coercion that provide useful conceptual frameworks of analysis.

Mixed action

There is no mistaking that the economic conduct described in the earlier examples of distress cited in the preface were voluntary. People made decisions for themselves knowing full well the implications and the severe trade-offs that would follow in the wake of their actions. They could have just as easily walked away from their choices or chosen otherwise, but did not. Nevertheless, one cannot simply be narrowly focused on the moral agent to the exclusion of the coercive backdrop within which such agency was exercised. Aristotle's notion of the mixed act, situated between willing and unwilling action, is illuminative in this regard.[4]

Aristotle presents the case of the tempest-tossed ship whose crew jettisons cargo into the sea to save lives. Is this voluntary or involuntary action? Aristotle's distinctions are exceptionally helpful:

> 'Abstractly considered' (*haplôs*), no one would willingly throw his goods overboard, but any reasonable man would do so if it were a question of saving

3 See, for example, Wertheimer (1987).
4 My thanks to Nicholas Ingham for pointing this out and for reference to Wertheimer's (1987) work.

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the lives of himself and his crew. Actions like these are of a mixed nature . . . for they are accepted as choiceworthy at the moment of performing them . . . [A]ction ought to be judged willing or unwilling with reference to whatever end was actually in view of a particular occasion of its performance . . . [S]uch actions, therefore, must be regarded as having been performed willingly; although from an abstract point of view they are doubtless against the agent's will, since no one would choose them for themselves. (Aristotle 1951: 201, Book III, i)

In the examples in the preface, economic agents were making mixed choices. Under normal circumstances, they would not have voluntarily solicited or engaged in the market exchanges that they did, as no reasonable person would ordinarily do so. In other words, the particular circumstances (especially the constraints) surrounding such choices hold the conceptual key to determining whether a completed market transaction is an instance of economic compulsion or of a welfare-improving exchange.

The moral baseline

Wertheimer (1987) distills common threads in the courts' adjudication of a wide variety of cases on the binding nature of obligations incurred under duress. Moving from law to philosophy, he synthesizes the rationale behind these legal rulings into a coherent theory of coercion. At the heart of his framework is the distinction between threats and offers; the former are coercive, the latter are not.[5] Observe the contrast in the two cases he examines:

The Stock Market Case. A realizes that B is about to lose a large sum in the stock market. A tells B that he will help B avoid the loss if and only if B gives him 15 percent of the amount he would have lost.
The Ambulance Case. A comes upon an auto wreck and an injured B on a desolate stretch of the road. A tells B that he will call an ambulance if and only if B gives him $100. (Wertheimer 1987: 214)[6]

A's proposal is coercive in the Ambulance Case, but not in the Stock Market Case. After all, there is an obligation in the former (to summon an ambulance), but not in the latter because A is not bound by any duty to help B avert an impending loss in the stock market. Thus, A's offer to call an ambulance in exchange for $100 is in effect a threat in the form of

5 Alternatively, one could present it as the difference between a coercion and an enticement. The former pertains to avoiding a harm, while the latter deals with reaching out toward a desired good (McGregor 1988–89: 49).
6 These cases were originally published in Gunderson (1979: 258).

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"I will leave you here to die without medical assistance unless you compensate me for calling an ambulance." This is a coercive proposal. The Stock Market Case, on the other hand, is a genuine offer, a noncoercive proposal, because there are no ties or bonds that require A to alert and help B avoid financial ruin. A has a right to ask for remuneration in the Stock Market Case, but not in the Ambulance Case. Thus, one must weigh the web of obligations and rights binding the transactors, if any, before one can ascertain whether a condition of coercion exists or not.[7]

Another way of distinguishing the two cases is by using "better off–worse off" language in examining the consequences of A's proposals. In the Stock Market Case, B gains as a result of A's proposal since B would have lost a much larger sum of money than the 15 percent that B paid to A for the latter's assistance. In other words, in acceding to A's proposal, B is made better off by being able to keep 85 percent of what would have otherwise been lost. On the other hand, in the Ambulance Case, B will needlessly relinquish $100 in yielding to A's proposal. That B is alive (because of timely first aid) is an incalculable gain compared to the $100 fee. Nevertheless, B could have been saved just as well without having to shell out $100 had A been conscientious in doing what A should have been doing in the first place – summoning medical assistance with no strings attached. Thus, B is relatively worse off as a result of A's proposal because B could have and should have gotten an ambulance without having to disburse $100 in the *normal course of events*. Thus, A's proposition is not an offer but a coercive threat.

In both sets of criteria, the determination of whether a proposal is coercive or noncoercive is always in reference to a baseline.[8] In the first set of standards, the baseline is founded on the existence (or lack thereof) and strength of the network of mutual obligations and moral claims that bind the parties to each other. A had a right to ask for compensation in the Stock Market Case but not in the Ambulance Case because A was bound by a duty in the latter. The second approach (better off–worse off standard) is likewise dependent on a baseline. After all, statements on whether one is better off or worse off make sense only in reference to a benchmark.

Wertheimer's theory of coercion lends itself to another set of distinctions: an empirical or a moralized account of the baseline. For example, in

7 See also Nozick (1974: 262).
8 Note Wertheimer's (1987: 206) definition of the baseline: "B's baseline ordinarily includes the normal course of events *without* A's proposed intervention" (emphasis original).

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the baseline governing the Ambulance Case, we can establish that A has an obligation to call an ambulance based on prevailing custom, law, or usage – an "empirical" account of what is considered normal within the community. Alternatively, such an obligation may be understood to be clearly part of what we owe each other as human beings. The latter requires further grounding in a moral theory.

A nonmoral account

Zimmerman (1981a and b) attempts a nonmoral account of what constitutes coercion by providing what he claims to be a simpler baseline. He presents the following case, which I have summarized:

> A kidnaps Q, strands him on an island and offers Q a job to prevent him from starving. The only other employer on the island, B, also offers Q a job. The working conditions in both A's and B's factories are substantially worse than the jobs that were available to Q on the mainland. Are these job offers coercive or not? (Zimmerman 1981a: 133)

Zimmerman argues that only A's proposal is coercive as it is A who kidnapped Q, and in so doing, A is responsible for depriving Q of the much wider and better menu of choices available on the mainland. B's proposal, while just as exploitative[9] as A's, is not coercive because B is not in any way restricting the range of choices available to Q. In fact, B is expanding Q's choice set.

Wertheimer (1987: 244–51) argues that Zimmerman fails in his attempt to provide a truly nonmoral account of coercion because his proposed baseline is unavoidably founded on a moral theory also. He summarizes the formal characteristics of Zimmerman's nonmoral account of coercion.[10]

A state of coercion exists if and only if the following conditions are satisfied:

1 The coerced prefers the coercer's proposal (state Z) compared to his/her situation immediately prior to the proposal (state Y).
2 Nevertheless, the coerced would still have preferred an alternative state (state X) compared to the post-proposal situation (state Z).

9 We are not going to deal with the necessary conditions of what constitutes exploitation as this is properly the subject of another study. See, for example, Wertheimer (1996).
10 I have paraphrased Wertheimer's (1987: 245) formulation and have changed his references to "B" as "Q" for consistency with my preceding exposition.

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3 Such preferred alternative state (state X) could have been readily and realistically provided as it is technologically and historically feasible to attain.
4 However, the coercer prevents the coerced from attaining this preferred feasible alternative state (state X) (Wertheimer 1987: 245).

Applied to Zimmerman's case, A's proposal to Q is coercive because:

1 Q prefers the horrible working conditions in A's factory (state Z) to starving on the beach (state Y).
2 However, Q would have much preferred to be working on the mainland (state X) rather than being stranded on an island and starving on the beach (state Y).
3 Q's being on the mainland (state X) is technologically and historically feasible.
4 A impedes Q from being on the mainland (state X) where Q would much rather be.

Based on these criteria, only A's proposal, and not B's, is coercive because it is only A, not B, who is hampering Q from attaining Q's preference for a job on the mainland. Condition 4 does not apply to B; thus, B's proposal is a genuine offer, albeit an exploitative one, that leaves Q better off than starving on the beach.

A truly nonmoral account of coercion would indeed be valuable as it avoids making normative commitments. Unfortunately, Wertheimer (1987: 247) points out that condition 4 is itself founded on a moral judgment. To make the statement that "A *prevents* Q from being on the mainland where Q would much rather be" is to describe an act of omission, at the very least, on the part of A (such as failing to undo the initial kidnapping by bringing Q back to the mainland). The terms *prevents* and *impedes* are not value neutral as they point to an a priori set of actions that one believes ought to be effected. In other words, there is a larger moral backdrop undergirding the prevention condition in number 4. Thus, Zimmerman's (1981a and b) nonmoral account fails; his baseline can be ultimately reduced to Wertheimer's (1987) better off–worse off or rights–obligations yardstick.

The bargaining position

McGregor (1988–89) is critical of what she calls the normalcy-criterion approach (such as Wertheimer's and Zimmerman's) to defining coercion in the philosophical literature. The use of a baseline as a reference for

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whether the coerced is better off or worse off in the post-proposal period is flawed because the legitimacy or propriety of that baseline is never questioned to begin with.

> So much hinges on the normalcy baseline, it is startling that no one who employs the baseline or normal course of events argument questions whether *any* baseline is sufficiently justifiable to serve these purposes. This is especially troubling since there are . . . significant problems that can be raised for the normalcy baseline approach . . . [T]he proposed baselines themselves are not normatively neutral – each has a history . . . One would think . . . that the moral assessment of an action should include not only whether or not it advances one's position relative to a moral baseline, but some assessment of the appropriateness (morality) of the baseline itself. (McGregor 1988–89: 27 [emphasis original])

For example, people who are destitute can hardly get any worse, and by the normalcy criterion, most proposals they get, no matter how coercive or exploitative, would have to be viewed as offers rather than as intimidating threats because they make the poor better off given the dismal baseline from which they start in their pre-proposal state. Consequently, McGregor offers an alternative set of formal characteristics for what constitutes coercion based on relative bargaining strengths.

The neoclassical position (that a completed market exchange is prima facie evidence of mutual advantages for all transactors) is indeed correct in a perfectly competitive market.[11] After all, there are many buyers and sellers in such a setting, thereby leaving everyone – consumers, businesses, buyers, and sellers – as price-takers. Moreover, complete information is readily available to all. This means that no one has a "threat advantage" over anyone else to the point of being able to shape and impose single-handedly the terms of the exchange, just like a monopolist. There are simply too many other available offers; economic agents could simply walk away from bad deals and easily find and consummate a better trade elsewhere. Thus, everybody is in the same boat in the sense of being a price-taker, that is, having to accept prices as they are set by the market. More important, all agents are assumed to be desirous of improving their own welfare, and they are able to fend for themselves vis-à-vis other market participants. McGregor (1988–89: 24, 29) argues that it is only under these conditions of perfect competition – in which everyone is on a common, level bargaining field – that the normalcy criterion (better off/ worse off relative to a baseline) makes sense. A deterioration in an

11 Key assumptions underlying perfectly competitive markets include perfect mobility, perfect information, homogeneous commodities, and numerous buyers and sellers.

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economic agent's post-trade welfare would indeed be evidence of coercion as no rational person would voluntarily trade down in a perfectly competitive market. Unfortunately, markets never satisfy the aforesaid conditions. Perfect competition is a heuristic device that is not at all replicated in practice; the norm is imperfectly competitive markets.

All other market structures besides perfect competition allow for some measure of control over economic outcomes and processes. The uneven distribution of such power becomes the proximate occasion for economic coercion. People enjoy different bargaining strengths, and they will exploit them to secure advantages for themselves in the marketplace. In a zero-sum setting, such gains can only come at the expense of their trading partners. Thus, for McGregor (1988–89: 34–35), a state of economic coercion must necessarily satisfy the following conditions:

1 The parties' relative bargaining strengths are "radically disparate" (24). The coercer has a clear and credible capacity either to inflict distress or to prevent harm from befalling the coerced.
2 The coercer is intent on taking advantage of such power and profiting from it.

The first is the condition of dependency, and the second is that of intentionality. As she notes:

> A necessary condition for coercion is that the stronger party *takes advantage* of having the weaker party dependent on him to avoid the occurrence of evil. Recall that to take advantage of one's superior position the stronger party knows of his superior bargaining position and intentionally capitalizes on his advantages to causally effect his subsequent gain from the weaker party.
>
> (McGregor 1988–89: 35 [original emphasis])

The coerced has only two choices: accepting the coercer's proposal or enduring the suffering that would ensue from failure to accept the coercer's proposition. The coerced has been cornered into an impossible situation and does not have any real meaningful choice. Just like the captain in Aristotle's example of the sinking ship, the coerced in such an unequal bargaining position is compelled to choose the lesser evil. There are no other feasible, reasonable, alternative courses of action. "[I]t is the presence of superior bargaining power in imperfect competition that is the key to understanding coercion in exchanges – not gain and loss relative to a baseline" (25).

Clearly, McGregor's method still uses a better off–worse off criterion. After all, the coerced is weighing and choosing which is the lesser of two evils – the coercer's proposal or the consequent harm that comes with

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rejecting it. However, unlike Wertheimer's and Zimmerman's methods, such a better off–worse off appraisal relative to the pre-proposal baseline is not the only formal characteristic that makes coercion what it is. Rather, it is also important to consider the circumstances that led to such an unsatisfactory choice set for the coerced. Thus, McGregor vividly contrasts her approach with the normalcy criterion in the following cases:

> Case 1: Ms. Pecunious is approached by a gunman who says: If you refuse to have sexual relations with me I will shoot your baby.
> Case 2: Ms. Impecunious has a baby who will die without an operation. Alas she has no money and no way of getting any. She is approached by a lecherous millionaire who puts the following proposal to her: If you agree to become my mistress, I will pay for the operation on your baby. (McGregor 1988–89: 24)[12]

Using the standard normalcy criterion in the philosophical literature, only the first case is coercive. Ms. Pecunious in case 1 is clearly going to be worse off compared to what should have been the normal course of events without the gunman's proposal. On the other hand, Ms. Impecunious in case 2 is clearly going to be better off compared to her initial position (not having the means to pay for her baby's surgery). Thus, despite being grossly exploitative, the lecherous millionaire's proposal is nonetheless merely an offer, rather than a coercive threat, since it opens possibilities that would have otherwise not been available to the distraught mother.

The alternative normalcy criterion of examining the rights and obligations undergirding these two cases leads to the same conclusion. Recall in the earlier illustrations how the Ambulance Case involves coercion while the Stock Market scenario does not because there is a duty to call an ambulance in the first instance, but no obligation at all to help avert an imminent financial loss in the latter. Similarly, the gunman is coercive in the first case because far from having the right to threaten Ms. Pecunious's baby with bodily harm, the gunman is in fact bound by the requirements of public order and common decency to desist from doing so. On the other hand, the lecherous millionaire is not bound by any obligation to pay for the badly needed surgery for Ms. Impecunious's baby. Just as in the Stock Market Case, the lecherous millionaire's proposition to Ms. Impecunious is no different from A's proposal to help B avert stock market losses in exchange for a portion of the funds saved. Both are offers that prevent an impending harm if the normal state of affairs were allowed to proceed unchanged.

12 This example is originally from Feinberg (1986).

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