ABSTRACT. Does the "free market" foster more freedom for individuals generally and less coercion? Libertarians and other market advocates argue that the unfettered market maximizes freedom and hence has less coercion than any feasible alternative. Welfare liberals, Socialist, and Marxists, in different ways, argue against the claim that the unrestricted market maximizes freedom generally. Both supporters and critics agree that coercion undermines freedom and that that is what is ultimately *prima facie* wrong with it. Further, they agree that the extent to which an economic system includes coercion provides a serious strike against it. The problem is that there is little consensus on the necessary conditions for coercion. In this paper I will be concerned with the nature of coercive relationships in the market. Market interactions have a particular character and occur within a specific institutional framework. Other accounts of coercion have failed to capture the unique character of coercion in the market because they have failed to take into account certain non-trivial facts about the market which are essential to the analysis of coercive market relations.

Does the "free market" foster more freedom for individuals generally and less coercion? Libertarians and other market advocates argue that the unfettered market maximizes freedom and hence has less coercion than any feasible alternative. Welfare liberals, Socialist, and Marxists, in different ways, argue against the claim that the unrestricted market maximizes freedom generally. Both supporters and critics agree that coercion undermines freedom and that that is what is ultimately *prima facie* wrong with it. Further, they agree that the extent to which an economic system includes coercion provides a serious strike against it. The problem is that there is little consensus on the necessary conditions for coercion. In this paper I will be concerned with the nature of coercive relationships in the market. Market interactions have a particular character and occur within a specific institutional framework. Other accounts of coercion have failed to capture the unique character of coercion in the mar-
ket because they have failed to take into account certain nontrivial facts about the market which are essential to the analysis of coercive market relations.

The unique character of coercion in market interactions is most often obscured by the over-emphasis given, in the standard account of coercion, to gains and losses relative to a baseline. The most prevalent position is that a proposal can be coercive only if it projects consequences "worse than" what normally happens to that person. The paradigm of coercion is the classic gunman case in which the gunman, by threatening to shoot the person if he does not comply, projects consequences "worse than" the normally expected course of events. The general distinction between making a person "worse off" or "better off" relative to the baseline and its importance to the standard analysis of coercion is illustrated by the following examples.

1. Ms. Pecunious is approached by a gunman who says: If you refuse to have sexual relations with me I will shoot your baby.

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.

The standard approach to these kinds of examples has been to say that the first is an instance of coercion and the second is not. The reason is that the gunman threatens to make Ms. Pecunious "worse off" in relation to her "normal course of events". Whereas since Ms. Impecunious is at a disadvantage initially, the lecherous millionaire does not threaten to make her "worse off", but rather proposes to make her "better off" in relation to her initial position. The problem with the second case and others like it is that the proposer is able to secure compliance (to a very exploitative deal) only because of his victim's weak bargaining power (or desperate situation). He uses the evil state of affairs, i.e., the baby's preventable death, in the same way that the gunman does, viz., as his insurance for compliance. Since in both cases the intention of the proposer is the same (using the evil state of affairs to secure compliance), and the effect on the victims is the same (the victims are faced with the same alternatives, one an unthinkable disaster), I find the different judgments about the status of the proposals indefensible.

The question I want to address in this paper concerns the relationship between coercion and bargaining positions. I will argue that the "better off/"worse off" distinction ignores the power relationships that occur when there are radically disparate bargaining strengths. Missing the relevance of relative bargaining positions to coercion makes those who are worse off in the society the ones most difficult to coerce. The standard view does not count as coercive those situations in which the least well off find themselves. I will introduce the notion of the perfectly competitive market as referring to a market situation in which the normalcy (or baseline) criterion might be justified precisely because of the absence of bargaining advantages in the situation of perfect competition. However the normalcy criterion is less than compelling when the conditions of perfect competition are not satisfied. That criterion is
only legitimate in the absence of bargaining advantages since, as I will argue, what one can rationally expect to secure from a negotiation is a function of one's bargaining power (or one's "threat-advantage"). And it 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. I argue that coercion involves exercising power over another; in the market, it involves exercising superior bargaining power. Superior bargaining power is a function of the bargaining advantages that one has over another. I examine the notions of bargaining advantages, exploiting advantages, bargaining power, and their relationship to freedom, and voluntary behavior, especially voluntary exchange.

I. ASSUMPTION THAT THE STATUS QUO IS LEGITIMATE FOR THE DETERMINATION OF COERCION

The normalcy criterion suggests that whenever one proposes to make a person "better off" in relation to "the normal course of events" one is not coercing that person, and this applies to any status quo point (bargaining position) from which the judgment is made. This approach to coercion seems to assume that all status quo points are equally legitimate. And thus that it is justified to use that general point to evaluate proposals for all persons at all times.

One of the most recent attempts to articulate this view comes in the work of David Zimmerman. Zimmerman accepts the standard way of distinguishing threats from offers, i.e., if the proposal makes the person better or worse off in relation to the normally expected course of events (it is unclear which interpretation of "normal course of events" Zimmerman favors; he does mention "what Q would be able to do for himself if P had not made his proposal"). This criterion not only distinguishes threats from offers, but since coercion it was assumed, necessarily included threats, the criterion distinguishes coercive proposals from non-coercive ones. The problem that Zimmerman recognized, like Nozick before him, is that the analysis fails to capture some proposals which intuitively seem coercive but nevertheless on this analysis come out as offers. For example, imagine a slave-owner who beats his slave every day (for no reason connected with the slave's behavior), and one day proposes that he will forgo the day's beating if the slave will perform some task which is disagreeable to the slave, but not as disagreeable as a beating. Since in the normally expected course of events the slave is beaten and thus made better off, the proposal is an offer. But Zimmerman and Nozick agree that the proposal seems coercive. Nozick's way out of this problem is the recourse to a morally expected course of events in which the slave is not beaten or not a slave at all. Zimmerman wants a morally neutral baseline and thus argues for the following analysis: An offer is coercive only if Q would prefer to move from the normally expected pre-proposal situation to the proposal situation, but he would strongly prefer even more to move from the actual pre-proposal situation to some alternative pre-proposal situation which is feasible and P prevents Q from having it. From this alternative pre-proposal situation the proposal would make Q "worse off". The following are Zimmerman's examples which illustrate his distinction between coercive and non-coercive proposals:
A kidnaps Q, brings him to the island where A's factory is located and abandons him on the beach. All the jobs in A's factory are considerably worse than those available to Q on the mainland. The next day A approaches Q with the proposal "Take one of the jobs in my factory and I won't let you starve"... B also owns a factory (the only other one) on the island, in which the jobs are just as bad. Seeing Q's plight, he beats A to the scene and makes the same kind of proposal.\(^6\)

According to Zimmerman, though both A and B exploit Q only A coerces Q because it is A who put Q into his present situation. For Zimmerman the relevant difference is that A actively prevented Q (by kidnapping him and bringing him to this island) from having the pre-proposal situation that Q strongly prefers. Zimmerman distinguishes coercive from noncoercive proposals on the basis of how Q came to be in the vulnerable position. The normalcy baseline, then, is what Q would have been able to do for himself but for P's active prevention.

But in both cases we have Q faced with starvation with no way of avoiding it, and both A and B know of Q's desperate need and use that need to insure compliance. Further, in both cases what Q is trying to avoid is an evil—starvation. Why, we might ask, is it relevant to the characterization of the relationship (both the proposal and the choice situation) what A or B did to Q in the past? Zimmerman himself makes a similar point about Nozick's analysis of the normal course of events:

> It is misleading, however, to characterize the morally neutral baseline, as Nozick does, in terms of what P does in the normal course of events, for other morally neutral baselines are possible and in some instances more relevant. For example, the coerciveness of the highwayman's threat can be established quite independently of what he has ever done to his victim in the past.\(^7\)

To call the first an instance of proposing a harm and the second an instance of proposing a benefit obscures the force of the power relationship that obtains when an individual is in a desperate situation. With these almost structurally identical situations one wants to ask how in the first case we can say that Q does not act freely but in the second he does. The assumption is that anything that improves a person's condition (improves it in relation to the baseline; for Zimmerman it is what P did in the past which prevents Q from having his preferred pre-proposal situation) is an inducement or enticement and is thereby freely accepted.

A good deal—conceptual and normative—turns on the claim that a person's status quo is the appropriate point from which to distinguish coercive from noncoercive proposals. For example, consider the distinction between threats and offers, and that between proposing harm and benefit. On the normative side, the extent, if any, of one's criminal or contractual liability, and the on-balance moral permissibility of what one does hangs on how the distinction is drawn. Indeed, what one can be said freely to accept and what not; what, therefore, one can be held accountable for and what not turns on the person's status quo as an appropriate point from which to dis-
BARGAINING ADVANTAGES AND COERCION

tinguish coercive proposals from noncoercive ones. This is a lot of weight for a distinc
tion to carry and the weight may prove too great for the distinction.

So much hinges on the normalcy baseline, it is startling that no one who em­
loys the baseline or normal course of events argument questions whether any base­
line is sufficiently justifiable to serve these purposes. This is especially troublino since
there are at least two significant problems that can be raised for the normalcy base­
line approach. First, the proposed baselines themselves are not normatively
neutral—each has a history. The same sorts of judgments follow whether the status
quo point is secured by misfortune, bad judgment or just desert. One would think,
prima facie, that the moral assessment of an action should include not only whether
or not it advances one's position relative to a baseline, but some assessment of the
appropriateness (morality) of the baseline itself. Since one is not coerced when one is
advanced from the baseline, it turns out that the worse off in absolute terms a person
is the more difficult it is to coerce him. The range of his voluntary acceptance seems
to increase when we would ordinarily think of such an individual as being especially
vulnerable to coercion.

This brings me to the second problem with the normalcy criterion as an ap­
propriate standard by which we can distinguish coercive from noncoercive proposals.
The baseline approach obscures the relationship of power to bargaining strength and
the relationship between bargaining strength and coercion. In what follows I want to
explore this particular objection in more detail.

II. PERFECTLY COMPETITIVE MARKET AND THE NORMALCY CRITERION

We might begin our analysis of what is wrong with the baseline approach by
first considering whether there are any circumstances that might justify the use of it.
To do so consider the perfectly competitive market. In a perfectly competitive mar­
ket, no party holds any bargaining advantages. In other words, different starting
points have no significance to the deal one gets. Perfectly competitive markets are
Pareto efficient and involve stable equilibriums. To say that something is Pareto effi­
cient is to say that there is no other allocation of goods that would make someone
better off without making another worse off. The market will ensure maximum free­
dom and efficiency only without the interference of laws regulating exchanges. The
motivating force of the market is self-interest, and self-interest guides people in the
service of the common good—efficiency—as though by an "invisible hand".

The conditions that must be met in order to have a perfectly competitive
system are as follows: 1. There must be enough small (relative to the size of the total
market) sellers and buyers of the goods to eliminate the possibility that any single
seller or buyer could influence the price of the good. 2. The good produced by each
seller must be identical to that made by every other seller, which is the same as saying
that the goods are homogeneous. 3. Firms, as well as all resources and inputs, must
be mobile in the sense that there are no barriers or impediments preventing them
from entering or leaving the industry (costless entry and exit, no externalities or
transaction costs). 4. There must be perfect knowledge, meaning that all participants
in the economic process must know all costs and prices in which they have an economic interest, and they must know the outcome of all economic events pertaining to them.\(^9\)

The market is meant to establish the exchange value of various commodities—the exchange value is the price—and it is set by competition. It is a requirement of a perfectly competitive system that the marginal rate of substitution be the same for all individuals (the marginal rate of substitution is a measure of an individual’s willingness to trade one good for another). Also, the prices of the market are equilibrium prices; this means that supply will be equal to demand. All who engage in market interaction enjoy the full benefit of their labors; since the value of total market output is equal to the sum of the marginal values each person contributes to that output—the sum of the marginal difference each person makes. In the free exchanges of the market each may expect a return equal in value to his contribution. Thus the income each receives, or the value of the goods each is able to consume, is equal to the contribution he makes, or the marginal difference he adds to the value of the total product.

In a perfectly competitive market there is no need for any constraints on individual utility-maximizing choices as there are in other markets where, for example, prisoner’s-dilemma situations require that constraints be put on individual utility maximization. There is no uncertainty and no strategic calculations. One chooses as if one’s actions were the only variable factor. Since one can only consume the amount of goods that is equal to the contribution one makes and one can not receive less goods than one’s contribution, this moves the market toward an equilibrium which must be optimal. All utility-maximizing choices are also optimal: i.e., no one could be made better off unless someone were to become worse off.

The most significant implications of the assumptions of the perfectly competitive market are first, that no one is in a position to control the terms of exchange. Prices are set by the market, so the price is the same for all, and willingness to pay is the same for all. Second, all buyers and sellers possess all information about those prices. Third, there are many sellers, so if a particular seller asked more than the market price the buyer could go elsewhere. Further, no one gets more or less than he bargains for.

This is the ideal of the laissez faire economists wherein the "natural liberty" of the agents is allowed to flourish, and any governmental interference would be unjustified because it would be inefficient. All individuals are in the same bargaining position—in a sense there are no bargaining positions, because they have no relevance to the deals one can expect to make. The idea of disparate relative bargaining strengths is, in short, ruled out by the conditions of perfect competition.

What is different about this system from the current market structure? I will mention only two differences, first, there are no monopolies or oligopolies; that is, there are no single or small groups of sellers that could control price and thus have controlling power over other individual’s choices. In a perfectly competitive market we could say that individual’s power and freedom in the market are evenly distributed
even if their initial endowments are not. There would be no power in the relative status quo points, because no one can control exchanges. We could say that no one has a "threat-advantage" in terms of the status quo. In other words, *not trading* would not be a threat given that one could just go elsewhere and get the product for the market price.

To illustrate this point imagine the following example which Hayek uses to illustrate the coercive power of a monopoly:

[A monopolist owns the only spring in an oasis] Let us say that other persons settled there on the assumption that they would get water at a reasonable price and then found, perhaps because a second spring dried up, that they have no choice but do whatever the owner of the spring demanded, if they were to survive.\(^\text{10}\)

This situation would not occur in a perfectly competitive market because there are no monopolists controlling the price. But in the monopoly situation, the normal course of events for people who settled in the region Hayek imagines is that there is no water, now that the well they had relied upon has dried up. So in proposing to sell them water—albeit at an astronomical price—the monopolist is making them better off when judged against their baseline of no water. In this situation the monopolist has a threat-advantage of "no-trade"; his implicit threat of no-trade unless they meet his (the monopolist's) price returns them to their undesirable status quo. Under Zimmerman's analysis this would not be a case of coercion since the prevention condition is not satisfied.\(^\text{11}\)

The absence of externalities is the second way in which the perfectly competitive market differs from the present market structure. An externality arises whenever an act of production or exchange or consumption affects the utility of some person who is not party, or who is unwillingly party, to it.\(^\text{12}\)

If we could assume that in our present system of exchanges all the conditions for a laissez faire market economy are met, then the use of the status quo *might* be a legitimate point from which to distinguish coercive proposals from noncoercive ones. The better off/worse off distinction in terms of the status quo might be justified as a way of determining coercive from noncoercive exchanges since individuals maximize their expected utilities within fixed parameters; thus a sub-optimal outcome would suggest that the agent did not choose freely. Since no one can control exchanges, has a monopoly, etc., that is, has a "threat advantage" over another's status quo point, utility maximizing choices would appear freely chosen. For example, when they are externalities, perhaps pollution, the pollutor has a threat-advantage over the persons he affects with his pollution, namely, that of continuing to pollute. The pollutor can return his victims to the status quo of "no-trade".

Our economic system is not a perfectly competitive system, so that the status quo may not be a justified point from which to determine coercion. It is not my intention to argue for or against the possibility of a perfectly competitive market, but rather to use it as an illustration of a system in which the normalcy criterion might be
legitimately employed and to show that the criterion is less than compelling when the conditions of perfect competition are not satisfied.

When there is a market failure because of, for example, externalities, the market no longer produces optimal states when participants act to maximize their individual welfare. The presence of externalities leads to a divergence between optimality and utility maximization. The difference between the two may be recovered by cooperation. Under cooperation each agent's decisions are aimed at a joint strategy; the perfectly competitive market, in contrast, is the paradigm of independent, non-cooperative choice. People will be motivated to cooperate because they can increase their welfare by doing so. Another way of saying this is that cooperation yields benefits that one could not achieve on one's own: benefits which can be secured only by abandoning individual utility maximization in favor or pursuing joint or cooperative strategies. In cooperative efforts, however, each actor attempts to have as much of the benefits of cooperation as he can. And, as I will argue, the proportion of the benefits of cooperation each can legitimately expect to secure is a function of the parties' relative bargaining power.

### III. THE CONCEPT OF BARGAINING POWER

To begin let us explore why what one can secure from a cooperative venture is a function of what one starts out with, or one's bargaining power. Imagine a rich man and a poor man playing a cooperative game. If they cooperate successfully, they can share $1000, otherwise each receives nothing. Each wants to get the largest possible share. Yet the poor man worries more about not getting anything at all. Consequently, he places higher values (utilities) on getting something—even less than half—than does the rich man. Since the rich man already is well off he might be interested in cooperation only if he can get a very large share. We can imagine the following assignment of utilities to payoffs.

<table>
<thead>
<tr>
<th>Money Gain</th>
<th>Utilities Assigned to Payoffs</th>
<th>Product of Utilities</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rich</td>
<td>Poor</td>
<td>Rich</td>
</tr>
<tr>
<td>0</td>
<td>1000</td>
<td>0</td>
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<tr>
<td>250</td>
<td>750</td>
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<td>500</td>
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<td>750</td>
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<td>75</td>
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<td>1000</td>
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Being utility maximizers neither of them will cooperate if the other takes all the benefits. The solution which John Nash proved for such games is the maximum product; hence the solution for this game is 750 to the rich man, 250 to the poor man. The money gain is grossly unequal, yet the payoffs in utilities are not.
We might ask, why the discrepancy in assignments between the two? That disparity can be explained in terms of the risk aversion each has in regard to outcomes. The poor man, in this particular situation, prefers the greater probability of the lesser payoff to accepting a greater risk of not securing a larger payoff. Moreover, neither party need be aware of his or her relative bargaining strength to ensure the 750/250 solution to the game. The poor man might be desperate and not want to take the chance of coming out with nothing. He assigns utilities according to his position which does not require that he be aware of the other party's preferences—though he might adjust his preferences in the light of such information. On the other hand, the rich man is not, at least in this instance, risk averse; he is willing to take chances that the poor man is not. One's bargaining position is likely to affect one's aversion to risk. If we assume that the rich man is not altruistically motivated, it is natural according to the axioms of bargaining theory for the rich man to expect to receive more from playing the game than the poor man simply because he already has more than the poor man.

Bargaining power plays a central role in the cooperative deal one can negotiate; indeed, what one can rationally expect to secure from negotiations is determined by it. The terms by which any two agents will cooperate (e.g., exchange their goods), can be explained by the bargaining advantages of the agents. Bargaining advantages are a function of a number of background factors; for instance: one's knowledge of the subject of the negotiation, one's wealth (which among other things gives one the ability to wait and which affects one's attitude toward risk), one's business savvy, what one possesses that others want (this includes abilities and talents), and the alternatives open to one.14

Another set of conditions that go into determining one's bargaining power are the rules that restrain or liberate that power—as Jules Coleman suggests, "the practices and procedures that specify the ground-rules for negotiating the agreements in a particular context".15 Whether or not one can benefit by having or using certain advantages that would contribute to one's bargaining power is determined by these background rules. For instance, rules prohibiting fraud restrain the advantage of deception; such rules, like rules against coercion, restrict advantages in order to prevent individuals from entering agreements non-voluntarily. Other rules have as their justification that they equalize bargaining advantages, e.g., disclosure laws, nonwaivable warranties, "cooling off" periods. The rules which specify what advantages one can have or use structure the bargaining power of parties, and hence a change in those rules changes the bargaining power patterns.

The above suggests another distinction, that between taking advantage and merely having an advantage. The rich man has a bargaining advantage over the poor man in that the poor man's position made him more risk averse. In the rich man/poor man example the rich man did not take advantage of his superior position, but he did benefit from having an advantage over the poor man. Had he taken advantage he would have been aware of his advantage, tried capitalize on it by, for example, informing the poor man that he would only cooperate on the terms that he most preferred, and succeeded in doing so.16 To take advantage, then, is to intentionally employ one's advantage to secure the deal that one wants, to causally affect one's
subsequent gain. The difference between the two is the presence or absence of the stronger party's knowledge and agency in his subsequent gain.

A common way of referring to taking advantage, at least in some situations, is *exploiting* an advantage. Normally when we talk of exploitation we mean that an actor P profits or gains *at the expense of* some other actor Q. P does this by using some factor which is outside the subject of negotiation—normally some trait or circumstances of Q's (e.g., Q's generosity, kindness or Q's desperate situation)—that enhances P's bargaining advantage over Q. Tentatively, we can say that P exploits Q if and only if P intentionally uses factors about Q that give him more bargaining power but do not affect the value of the commodity exchanged (the value of the commodity to P) to obtain a bargain more favorable to him than would otherwise be possible. Exploitation is normally thought to be unfair to Q because P is able to secure a better deal for himself by using something about Q which is not germane to the subject or negotiation in order to increase his bargaining advantage over Q. For example, imagine an entrepreneur who owns the only well in the desert; crawling up to the well is a person whose car has broken down and who is dying of thirst. The entrepreneur says that he can have a glass of water for $10,000. Here the entrepreneur uses the fact that the person is dying of thirst, has no alternatives for getting water, etc., to gain more bargaining power which leads to his securing a better deal than he would otherwise have been able to. Note that the water has not changed in value to the entrepreneur.

What I have tried to illustrate is the connection between the agreement that one can rationally expect to secure and one's initial bargaining advantages. The discussion has been put in terms of initial bargaining power and expected outcomes, as opposed to actual outcomes. However, if we suppose that individuals think about their own interests (are rational maximizers of their expected utilities) then what one expects, transaction costs and luck aside, should be entirely a function of what one starts out with. What this brings to the fore is the question whether there are any grounds for morally objecting to continually redistributing resources in society on the basis of the existing bargaining power patterns. The existing patterns, as I have tried to point out, are not only a product of initial endowments but also a product of practices and procedures which set the ground rules for negotiating in particular contexts and hence are open to reassessment and change when found to lead to morally objectionable agreements. Market advocates assume that what justifies the redistributive outcomes of exchanges is the process of voluntary exchange, but since the outcomes are determined by the existing advantages, we need to question the confines within which already existing patterns of advantage may legitimately determine outcomes. Specifically, what sorts of constraints on bargaining advantages and/or on the circumstances in which individuals may take-advantage are justified?

As a start toward a theory of what kinds of constraints need to be put on bargaining advantages consider the following assessments. There are a number of judgments that can be made about advantages. Advantages can be illegitimate or legitimate. An illegitimate advantage would be one gained from, e.g., dealing with children or insane persons even while lacking the knowledge that the person with whom one is dealing is negotiating under such handicaps. A legitimate advantage is illustrated by
greater knowledge of the subject of negotiation (at least, in most circumstances). Further, one can take advantage in legitimate or illegitimate ways, e.g., it is legitimate to take advantage of one's surgical skills to make a decent living but it is illegitimate to take advantage of a monopoly on necessary health care. In some cases when an advantage is taken in an illegitimate way we refer to it as exploiting an advantage (exploitation in interpersonal relationships has a pejorative connotation). Exploitation is rarely thought of as justified. It is assumed to be unfair as indicated by the reference to "taking unfair advantage".

The major reason for objecting to a form of advantage-taking is that it effectively prohibits voluntary choice. Any form of advantage-taking that vitiates voluntariness is illegitimate and should be prohibited by the rules of agreement formation. Some forms of advantage-taking that vitiate voluntariness are the consequence of cognitive or emotional impairment of the weaker party which the other party capitalizes on. For example, the insanity or immaturity or even the ignorance of another can be used to secure an agreement involuntarily. In other cases the involuntariness is a result of some action on the part of the stronger agent, such as when he defrauds the agent with whom he deals or uses his superior strength physically to force the agent into agreeing (e.g., by grabbing his hand and physically moving it to sign the paper). Coercion, like fraud, involves an action on the part of the stronger party which results in the weaker party's choice being unfree. What needs to be explored is what specific advantages when capitalized on make coercion possible.

In this section I have developed a concept of bargaining power. The presence of bargaining advantages allows those with the bargaining advantages to secure more benefits from cooperation; this follows from merely having an advantage. One can secure even more benefits when one takes advantage of one's superior bargaining position. One takes advantage by intentionally capitalizing on that advantage over the other negotiating party to affect his subsequent gain. Bargaining advantages and advantage taking can be either legitimate or illegitimate depending on the advantage used and/or the way in which it is used, and/or the circumstances in which it is used. Some forms of advantage taking are referred to as exploitation, specifically, those in which one party profits from his negotiation with another at the expense of the other. The problem which we must now address is: What forms of advantage-taking are illegitimate because they result in coercion?

IV. THE RELATIONSHIP BETWEEN BARGAINING POWER AND COERCION

The problem of determining which forms of advantage-taking vitiate voluntariness is more difficult than one might think. Not all forms of advantage taking, even when used to exploit the other person's miserable circumstances, necessarily affect the voluntariness of the person's choice. Exploitative advantage taking does not necessarily undermine freedom, whereas coercive advantage taking always does. For example, when prisoners are asked to participate in experimentation the experimenter is exploiting the boredom, lack of opportunities, lack of funds, etc., of the prison population. Often the victim even knows of his exploitation but also desires the benefits of cooperation. We might object to this kind of exchange as being unfair, and possibly
argue on distributive grounds that the initial endowments need to be altered, or that advantages need to be equalized by the ground-rules of contract formation. Yet these arguments do not necessarily suggest that the advantage which allowed the person to secure his agreement did so by rendering the other person's action not fully voluntary.

Though I think it is true that market coercion includes exploitation, i.e., that the stronger party takes advantage of some trait or circumstance of the weaker which is not germane to the subject of negotiation to gain power over him, coercion arises only when certain advantages are capitalized upon. Only advantage-taking which allows the stronger party to force the weaker party into consenting to the terms of his agreement is coercive. Coercion forces compliance by making the alternative to compliance "ineligible". It is not made impossible for the victim of coercion to do otherwise as with compulsion, but the coercer ensures that the alternative to complying is so undesirable that in effect the victim has only one choice. Hence the consent is unfree.

I want to argue that there are two advantages needed for the power to coerce. The first is dependence. As the available alternatives get fewer the advantage, and hence the power, becomes greater. Dependence comes from the weaker party having no options. This opens the door for the stronger party to use the dependence to secure a better deal than he might otherwise have been able to secure. Having the weaker party dependent is essential since only then is it the case that the weaker party must deal with this person. Dependency of the victim can be created by the stronger party or, given certain states of affairs in the market, the stronger party may find himself with others dependent on him.

The second advantage necessary for the power to coerce is the ability to cause or prevent a positive evil to the weaker party, i.e., what the stronger party can do or fail to do that the weaker party is dependent on him for. The proposer then can play on that evil to secure assent from the weaker party. Imagine a case of a drowning swimmer on an isolated lake who is approached by a boater who proposes to save the swimmer for the fee of $10,000. In this case the boater has the advantages of dependence and the ability to prevent an evil.

Dependence without the ability to cause or prevent an evil will not result in coercive power. I can be indifferent to your proposal if the subject of negotiation is of little importance to me. The stronger party could, however, exploit that advantage of dependence (imagine a pornography theater that is the only one within 500 miles, and the proprietor uses that dependence to charge more than he could without the monopoly). Also, having the ability to cause or prevent an evil without dependence precludes coercive power.

These advantages have intuitive appeal when we consider the basis for our objections to monopolies. Monopolies, having by definition the advantage of dependence, naturally narrow (or nullify) individuals' options and thus provide the monopolies with great power over the individuals who must deal with them. Objections to monopolistic power become even more cogent when the monopoly is over a resource individuals cannot do without.
Bargaining advantages that are derived from the dependence of the weaker party and the ability to cause or prevent an evil grant the stronger party sufficient bargaining power to coerce the weaker. But, merely having these bargaining advantages is not sufficient to characterize the relationship between P and Q as coercive. These advantages are necessary for the power to coerce. 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 an 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 affect his subsequent gain from the weaker party. When P has Q totally dependent on him to avoid an evil and P takes advantage of his position of superiority his proposal amounts to: "If you do not comply with my demand, then I will cause or fail to prevent an evil to you". This forces Q to face two evils: the demand (which involves P securing a profit which he could not have secured without having Q "over a barrel") and the evil consequence. Q cannot both not comply with the demand and avoid the evil since Q is dependent on P. For P's advantage-taking of Q to be coercive the evil which is made a consequence of not complying must be harmful enough to Q that Q's desire to avoid that evil state of affairs is so strong that he has a motive for complying with P's demand. With the bargaining power that P has over Q, P causes Q to have a motive to comply.

A person has a motive for an action only if he believes that some end that he wants will be furthered by doing that action. Motives in this way are logically connected with one's desires. The end that the victim of coercion wants to further is that of avoiding the evil consequences the coercer has in his power to affect. Having a motive for acting means that one believes that some end that one wants will be furthered. This does not entail, however, that the person wants to do the action but that some end is wanted which the action will bring about. It is true of all acts of coercion that the victim does not want to do the demanded action, but he does have a motive for acting in the demanded way. Consider Aristotle's example of the man who was threatened by the tyrant that unless he did some "base deed" the tyrant would kill his family. The victim in this example does have a motive for complying, the end of which is avoiding his family being killed. The tyrant has made the lives of the victim's family contingent upon his complying with the demand. Since what the victim desires is to avoid the evil consequences of not acting in the demanded way, the tyrant's proposal has caused the victim to have a motive to act in the way the tyrant wants. The problem becomes a question of which evils are sufficient for coercion. We can think of each individual ordinally ranking states of affairs that he desires to attain and that would motivate him to act. Conversely, states of affairs that individuals desire to avoid can be ranked ordinally also. Given the ranking of desires of a particular agent, the stronger party is able to coerce this agent when the state of affairs that the stronger party projects for non-compliance is higher on his victim's "desire-to-avoid" ranking than is the desire to avoid complying with the demand. The desire to avoid the evil of non-compliance, then, is great enough to cause the victim to have a motive for complying. There are, of course, some evils that almost all rational persons want to avoid, viz., death, physical abuse, loss of property, and so on. It would simplify matters if we could specify a set of evils sufficient for coercion, for
example by associating evils with needs as opposed to wants. But there are serious problems with this approach, first, I am not sure that it is possible to provide a non-question-begging distinction between wants and needs. Another problem with a list of evils sufficient for coercion is that different individuals, depending on their starting points, experience states of affairs in different ways. For example, someone who is hungry is going to experience the consequence that he will get no food as an evil whereas an individual who is not hungry will not. Or imagine an employer whose funds have been embezzled who secures repayment from the guilty employee's mother by threatening her with the criminal prosecution of her son. The employer has caused her to have a motive for complying. Even though the employer had nothing to do with creating the state of affairs which allows him to threaten her (her son embezzled the funds), he can use that situation to gain a bargaining advantage over her, leaving her dependent on him to avoid the state of affairs she greatly disvalues. Given her strong desire to avoid the criminal prosecution of her son (which is stronger than her desire to avoid repayment), the employer's projection of this as a consequence of non-compliance is sufficient for the mother to have a motive to comply with his demand. In general coercion is tied to an individual's assessment of relative evils, but because of this we may not want coercion to provide an excusing condition for every particular case of coercion.

The important non-moral aspect of the coercive relationship which accounts for the unfreedom of the action is that the proposer's advantage taking causes the victim to have a motive that the victim does not want to have. Individuals do not want others to deliberately cause them to have motives the ends of which are to avoid evils. Individuals are acting freely, on the other hand, when they have motives based on goods they want to attain, but what we do not want is for others to deliberately put us in a situation where we have a motive to avoid an evil. We can see this by considering why totalitarian regimes are affronts to the freedom of those who must live under them. It is because the people of those societies must structure all their actions in ways that avoid the sanctions of the government. To summarize, the mechanism that the coercer uses to secure compliance is to take advantage of his power to affect an evil to his victim. The coercer intends his proposal to have causal efficacy by arousing the victim's fear of the consequences that he has control over. And the effect on the victim is to force him to face two evils and cause him to act on a motive to avoid the greater evil. Causing a person to have a motive to comply, the end of which is to avoid the evil consequences which are in the stronger party's power to affect, is that which constitutes an interference or restraint on that person's freedom. The above account of the unfreedom of actions done under coercion explains the inclusion of threats, which project evil consequences, as coercive; and offers, even enticing offers, as non-coercive. Later in this paper, I will show why some offers are also coercive.

THREATS AND COERCION

Generally, a threat is a proposal which projects evil consequences or a sanction for non-compliance. An offer is a proposal which holds out a good or benefit for compliance. Subsequently, we will question whether all offers are non-coercive. First, consider the relationship between threats and coercion. The coercer uses a "threat" to
make the choice of noncompliance substantially less eligible than before the threat was made. Or, without explicit threats, the coerer can just as easily accomplish his task by showing, with, e.g., weapons or by walking out of a negotiation, that unless the person complies he will suffer some evil.

But making the choice of non-compliance substantially less eligible than it was before the threat was made is not sufficient for coercion since any threat will have this effect. And not all threats are coercive in effect, i.e., not all threats undermine the liberty of the agent. When a threat coerces it not only makes non-compliance less eligible but it causes the victim to have a motive for complying. Without the bargaining advantages over the recipient the threat will not be effectively coercive. With ineffective threats the alternatives are undesirable, but one of the alternatives is not clearly the greater evil to this person. The victim is allowed to weigh the alternatives and determine the most desired choice. That choice may well be to comply with the demand, but the actor is free to act otherwise. For example, Q's employer says, "If you don't get to work on time, I'll fire you". Suppose Q does not care whether his employer fires him. He does, however, desire to avoid having people think of him as anything but punctual, and this is the desire that motivates him to act. One acts freely when one is motivated to act on a desire other than to avoid the evil threatened by another.

Another characteristic of threats generally, but specifically important to understanding coercion, is the relationship between what is threatened and what is demanded. It is not merely the projected evil consequence which determines whether a threat is effective in coercing an agent. It is the threatened consequence in relation to the cost of avoiding that consequence. The threat of insolvency might coerce an agent to change the terms of an agreement. But when the demand is changed to perjuring oneself in front of the grand jury the price is too high for the agent. Although he desires to avoid insolvency, his stronger desire is to avoid bearing false witness. Sometimes a particular evil consequence in relation to a particular demand will coerce an agent whereas another demand in relation to the evil consequence will not coerce. Coercion is analyzed in terms of an individual's preferences which include his desire to avoid the threatened consequence in relation to his desire to avoid the demand, thus a threat is effective when the victim views complying as the lesser evil.

With effective threats the bargaining advantage that P has over Q makes it clear to Q that he cannot both not comply with the demand and avoid the threatened evil. When threats fail to have this characteristic, it will generally be the case that the threatener does not have superior bargaining power. In business contexts, for example, both parties in a negotiation often use threats against each other. Each party is attempting to pressure the other into agreeing with his terms. This has been viewed as a problem for accounts of coercion since, it is argued, pressure in the form of threats in business contexts is legitimate (what is often referred to as "legitimate business pressure"). How can we say that the same pressure, when used in other contexts vitiates consent? The problem of legitimate forms of pressure in business contexts can be explained in terms of the general equality of bargaining positions in which the pressure occurs. When threatening an agent where little or no bargaining advantages exist (or if bargaining advantages do exist each party has them over the other), it is...
not possible for one agent to coerce the other. Each party controls something that the other wants; hence, no one party has sufficient bargaining power over the other to coerce. This may account for the courts' reluctance to find duress in negotiations between two parties of equal bargaining power in the business arena (the courts require stronger conditions for a coercive threat, i.e., it must be an unlawful threat).

The argument up to this point has been that P coerces Q into an agreement when P's bargaining advantage over Q is such that when P threatens Q, P causes Q to have a motive to act based upon Q's desire to avoid the evil consequences that P controls. There is another objection to this formulation which now must be considered. Imagine that P and Q enter into a contract for the purchase of a car. Q promises to pay P $100 by the 15th of each month and he understands that if he does not pay by the 15th then P will attach a penalty to the payment. Q is motivated to pay by the 15th in order to avoid P's attaching the penalty to his payment. Such unexotic examples abound in our everyday life; we do something to avoid the bad consequences of some other agent's action. This does not undermine the account that what differentiates actions done under restraint or coercion from other actions is the object of the desire and hence the motive from which one acts. Notice that in the above kind of case the contract or agreement was freely entered into. One's action is not unfree when one is motivated by the desire to avoid the consequence of another's action when the penalty was a condition of the contract. One went into the contract with one's eyes open and constrained one's own freedom in accordance with the terms of the agreement. It is relevant that one freely bound oneself to the specific terms of an agreement. And even though one may presently regret the agreement, this does not make it an instance of coercion.

OFFERS AND COERCION

Can an offer ever be coercive? Threats hold out evils or sanctions, and offers hold out goods or benefits. Both, however, have a price. That is, what is in the deal for the proposer. But since what is in it for the recipient of an offer is a "benefit" or good, whereas what is in it for the recipient of a threat is a "sanction" or evil and individuals want to attain goods and avoid evils, threats are thought to be the only kind of proposals which can be coercive.

The distinction between "benefit" and "sanction" is not so easily drawn once we realize that individuals in different bargaining positions experience "benefits" and "sanctions" in different ways. The person who controls the "benefit" or "sanction" can exert different degrees of power over the person he is dealing with depending on the weaker party's relative position. Sanctions are generally thought to include only positive interferences (actions of some determinate individual) to a party's status quo which makes him "worse-off" than he would have been without that interference. Here we think of causing death, inflicting physical abuse, perpetrating loss of property and loss of freedom as positive interferences in a person's course of events. Included in this category would be legitimately expected acts or goods (e.g., the lifeguard and the policeman are expected to prevent harm or the contractor is expected to fulfill the terms of the contract). On the other hand, "benefits" are additions to one's status quo
that make one "better off" than without those additions. Benefits are thought to include such things as food, shelter, money, and other material possessions. Not preventing death, physical abuse, loss of property, etc., are not thought to be sanctions; nor are withholding food, shelter, etc., thought to be sanctions.

I argued that there are problems with assuming that only proposals which project positive interferences in an agent's normal course of events which make that person "worse off" can be coercive. Many individuals find themselves in situations deprived of basic "benefits", facing severe deprivations of one kind or another. What follows from this is that the "normal" state in which many individuals find themselves is one with many bargaining disadvantages relative to other agents in the market. We cannot ignore cases where social circumstances in general and the more or less impersonal operations of economic forces, and not the actions of a determinate individual, render an individual's bargaining power so weak and his needs so great that when taken advantage of can force that person into the most exploitative deals. Given the position of the weaker party, non-conferral of a "benefit" in some instances enables the stronger party to have more power over the weaker than would a threat of a "positive interference". For example, imagine a drug experimenter who goes off to Ethiopia in search of experimental subjects. The drugs that he wants experimental subjects to take are very dangerous and the long term effects are unknown. He approaches an Ethiopian whose family is without food and proposes to give him and his family food only if he will become an experimental subject. If an agent's family is without food, making it a consequence of his non-compliance that he does not get food, has much more causal impact on his motivational structure, so to speak, than the consequence that he will, for example, be beaten. In other words, "not receiving food" would be a greater evil than "being beaten".

In terms of the power that one agent can exert over another, the sanction/benefit distinction drawn in terms of the distinction between making a person better off/worse off in terms of the status quo does not translate necessarily into more coercive power. The view that threats are necessary for coercion ignores the power relationship that occurs when agents with radically disparate bargaining strength negotiate. If coercion is a power relationship whereby one agent is able to force another into his agreement by controlling the occurrence of an evil then non-conferral of a "benefit" can sometimes be used as an evil sufficient to force compliance. The sense in which it is said that the person is made "better off" is just that any agreement or contract, even the most exploitative one, would make him better off. A defensible analysis of "voluntary exchange" must take more into account than whether the person is advanced from his or her status quo.

It is objected, however, that with cases where nonconferral of a "benefit" is taken to be an evil sufficient for coercion, what the proposer proposes to do if the victim does not comply is something which the proposer has a right to do—in the case of the lecherous millionaire, not pay for the baby's surgery. Whereas, the objection continues, the gunman proposes to do something that he has no right to do, namely, kill the baby. The lecherous millionaire does no more than anyone else with the money to pay and thus how could the use of that projected consequence be sufficient for co-
ercion? Is it necessary for coercion that the evil consequences of non-compliance be an action which one has no right to do? I think not.

Because my employer has a legal right to fire me it does not follow that he can take advantage of that right to secure sexual favors from me. Because one has a legal right to do or refrain from some action, it does not follow that one can take advantage of it in any circumstances. In other words, legitimate advantages can be taken advantage of in illegitimate ways. Specifically, when what one has a legal right to do is cause or prevent some harm to another, it does not follow that one can use that power to secure any agreement that one wants.

What the above objection must be implicitly appealing to is the distinction between harming and not benefitting another, i.e., the gunman proposes to harm whereas the lecherous millionaire proposes to not benefit the impecunious mother. The normative implications of the general distinction between harming and not benefitting is that one can only be held accountable for harming another and not for failing to benefit another. Without digressing into a lengthy discussion of this distinction, I will follow Charles Fried's analysis of the difference between harming and not benefitting. He says that to harm:

It is not the victim who chooses the agent, but the agent who chooses the victim. The agent retains control of his circle of concern: it cannot engulf. In direct harm, the agent focuses on the victim, knowing that his actions will impinge directly on him. It is the agent who makes the victim an issue and who must therefore take account of his particularity.23

When an individual takes advantage he intentionally capitalizes on his advantage over his negotiating party to affect his subsequent gain. He is an active player in his gain, he particularizes the person over whom he has an advantage. Thus when one takes advantage of the ability to prevent an evil it would seem to be a case of harming and not merely failing to benefit. It is because the proposer does something (viz., capitalizes on the impending harm) that he can be held accountable for that harm; whereas, for example, all the other people with the ability to pay for the surgery which would save the baby’s life would be failing to benefit and not harming.

Consider the following examples. In the first case P takes Q out in a boat with full knowledge that Q cannot swim. He makes the following proposal to Q: "Either you promise to give me $10,000 or I will throw you overboard and leave you to drown". In the second case P merely finds Q drowning in an isolated lake and puts the following proposal to him: "Either you promise to give me $10,000 or I will leave you to drown". What differentiates the cases is that in the first P creates the dependency to avoid an evil and then takes advantage of the power he has over Q. Whereas in the second, P finds Q in a desperate situation.

In the first case we find that since the victim was not facing drowning the proposal projecting the consequences that he will drown is a threat, i.e., projecting an evil. Whereas in the second case the victim is facing drowning so the proposal would
make him "better off". Thus it is thought to involve a benefit; hence it is an offer. It involves a "benefit only because of that person's desperate position. Yet since drowning is a harm and drowning is made a consequence of noncompliance, it seems that noncompliance involves a "harm".

In both cases the proposer intends to secure consent by the evil consequences of non-compliance. Clearly, P knows that he could get Q to hand over $10,000 only if Q is in a desperate situation with no other possibility of avoiding the harm. And the effect on Q is to leave him to face two evils (undesirable alternatives) and only one eligible choice. Coercive offers, like offers generally, make the recipient better off in relation to that person's status quo; but unlike offers generally the recipient of a coercive offer must choose between evils (the exploitative demand or the harm). The intention and the effect of coercive threats and offers are the same; the difference lies with how the person got into the vulnerable position.

It will be objected that not gaining a benefit of any kind could be construed as an evil, consequently all offers are coercive. I recognize that this analysis of coercive offers relies upon our being able to distinguish between "evils" and "goods". We have been considering only a small set of examples where clearly the agent must choose between evils, hence one might object that we are open to the attack that we are clouded by considering only an overly selective and not representative sample of examples. Yet the examples do illustrate that there are cases which are clearly offers but yet the recipient chooses between evils. At least in some cases we can appreciate how the distinction would be made, so that when a grocer offers bread for a dollar a loaf we suppose that no evil is involved. Of course, we would prefer to keep our dollar and get the bread, but one does not expect to get the bread for no money. As the price for bread goes up because the grocer has bought all the stores in town, then paying the higher price is less desirable. At some point in the grocer's taking advantage of his food monopoly, it may be that the individuals face a good (getting food) and an evil (paying an exploitative price). Depending on the extent of the individual's dependency on the grocer for food the proposal may involve two evils (not having food and paying an exploitative price). The distinction between goods, lesser goods, evils and lesser evils is not an exact one. It is, however, tied to an individual's situation (e.g., the consequence of a proposal that one will not get food when that person has plenty of food versus the same consequence to a person who has no food). And evils, sufficient for coercive offers, refer to needs as opposed to wants (not preventing one from dying is an evil but not giving one caviar is not an evil).

V. BARGAINING ADVANTAGES, GAMES, AND COERCION

In analyzing how an agent's bargain advantages can yield him enough power to coerce another, I will use game-theoretic models. Analyzing agreements in terms of cooperative games is appropriate, because in the model of games, as in real agreements, neither agent sacrifices his own interests. The agents communicate before agreement and decide upon a pair of actions that each will take. The game-theoretic
model does not, of course, show when something is an instance of coercion, but rather illustrates the effect of bargaining advantages on the deal one can negotiate.

To define a game, it is necessary to specify the choice of actions (strategies) of each player and the expected utilities or payoffs which correspond to each strategy by the players. In cooperative games the players may choose a pair of payoffs, i.e., decide together what strategy each will play. Each player attempts to get most of the benefits of the cooperation, thus he will try to ensure that the joint strategy chosen favors him. Nash's solution to cooperative games utilizes the notion of the "strategic strength" that is conferred on the individual by his non-cooperative security level. This is what I have called one's bargaining advantage.

The type of cooperative game we will begin with is what I will call an "offer game". This game mimics most market exchanges, because if there is a failure to agree the players return to their original place—or status quo. The payoff of "no trade" is their status quo point. If we think of the players as traders with goods that go to market, then we can imagine that if they fail to agree they go home with what they brought to the market. In the game, the status quo payoff is what each player can be sure will happen. This is why Nash called them the player's "security levels". Each player uses his particular security level to hold the other player down in price, by refusing to trade unless he gets at least that. Obviously, the better one's security level in relation to the other agent the better deal he can secure.

To illustrate the relationship between bargaining advantage and the power one can exercise over another we will use the example of the lecherous millionaire and the impecunious mother. Remember that she has no money, and her baby will die without an operation, and she has no alternative deals or ways of getting money. He obviously has a great bargaining advantage over her. Not only is his status quo more than tolerable but he has control over the occurrence of harm. He obviously knows his advantage and exploits it. He offers to pay for the baby's operation if and only if she will become his mistress.

Imagine his strategies are (a) he proposes paying for the operation for her becoming his mistress, and (b) he proposes to lend her money for the surgery to be paid by working as his maid. Her strategies are (c) becoming his mistress in exchange for him paying for the surgery and (d) becoming his maid in exchange for the loan of money which will pay for the surgery. If they do not agree to one of these exchanges they will return to the status quo. For her, her baby will die without the necessary surgery; and for him, he will be without this mistress. She, of course, views the status quo as the most horrible catastrophe. He views returning to the status quo as a mild disappointment, giving him a great advantage over her. Suppose too, that he hates the thought of lending poor people money, and she hates the thought of becoming a mistress. The payoff matrix is as follows:
The payoffs of (a,d) and (b,c) are identical because those are the players' expected utilities if there is no exchange—those are the payoffs of the status quo (those are also their security levels). If they don't agree, that is where they will be. It should be mentioned that the idea that she dislikes returning to the status quo "more than" he does is not expressed by her no-trade utility -10 being less than his 1½ because the utilities of the two are not directly comparable. What the utility indices do express, his 2½, 1½, and -1 compared to her -4, -10, and 5, is how each views the status quo. Even though the utility functions don't tell us that she fears the status quo "more than" he does, the comparative corresponding relationships do. Indeed, since he does not disvalue the status quo, this greatly enhances his bargaining advantage over her. This is an important aspect of his bargaining advantage, allowing him to run up his price and hold firm.

The solution of the game is: (a, c). He will not play (b), and only get a payoff of -1, when his security level is 1½. She has no choice but to play (c), since her security level is -10, and if she doesn't agree to (c) he will not trade. The worst thing he can do to her is to not trade.

Looking at the solution in terms of changes from the status quo it could be said that she is better off; surely -4 is better than -10. Under the "normalcy" criterion this would not be an instance of coercion. Under that type of analysis, it might be contended that the changes are equitable in terms of the status quo. Yet the status quo points are tremendously unequal. And it is precisely those grossly unequal bargaining positions, and the advantage that he has by possessing something that she greatly needs (the projected consequences of being without it as an evil) that allows him to coerce her. The implicit threat of no-trade lies behind this game; that threat would not be effective if she had not had such a grossly disadvantaged bargaining position. That threat lies behind and accounts for the payoff pair (1½, -10)—that he will not pay for the operation and the baby will die. His optimal proposal, or the threat from which he will be assured of obtaining the best terms that can be exacted at all in the given situation from a rational opponent (without raising his own costs), is not cooperating. The lecherous millionaire proposes to withhold his cooperation unless a profit-sharing agreement satisfactory to him is reached.

Another kind of game I would like to look at is the "threat game". In this game the players have explicit "sanctions" at their disposal. In these games "no-trade" does not necessarily revert back to the status quo that one begins with. The players can make explicit threats during the game to do certain things if the other player fails to agree to his terms. The threat that a player makes during the game becomes the
status quo point of the other person. If the weaker party fails to agree he will revert to the threat-point.

The threats of which one can avail oneself are a function of one's bargaining strength. For example, to threaten breach of contract effectively, one must have an advantage that allows one to survive without the present cooperative surplus of the contract. One can only, at least effectively, threaten to do something that is in ones power to do. An example of this game would be the other example that was used in the beginning of the paper: the gunman and the mother. In this game the gunman puts forth his threat and a demand that must be complied with. In games of this form both players put forth threats, which then become the status quo points of the game. They then go on to make demands in a manner similar to those employed in union and management negotiations.

In this game we can suppose that the gunman puts forth the threat of shooting her baby and his demands (strategies) are (a) have sexual relations with me; and (b) give me all your money. Her strategies are reciprocal to (a) and (b), i.e., (c) and (d) respectively. In this game if they fail to agree they return to their status quo points, in her case the threatened action. She, of course, views the status quo as the most horrible catastrophe and he views it as a mild upset. And suppose that he has no desire for her money and she views with horror the thought of sexual relations with this man. The payoff matrix:

\[
\begin{array}{cc}
\text{SHE} & \text{c} & \text{d} \\
\text{a} & \begin{pmatrix} 2 \frac{1}{2}, -4 \\ 1 \frac{1}{2}, -10 \end{pmatrix} & \begin{pmatrix} 1 \frac{1}{2}, -10 \\ 1, 5 \end{pmatrix} \\
\text{HE} & & \\
\end{array}
\]

Again the payoffs of (a,d) and (b,c) are identical because those are the players' expected utilities if there is no agreement—the status quo. The solution is apparent: He will not play (b) and get less than his status quo utility; consequently he will only agree on (a) so she must agree on (c).

In this example, the gunman must set a threat-point in order to have an advantage over her—an advantage great enough to give him the power to get his desire. The gunman could not ensure his desired result had he not employed this sanction. That is, he does not have a threat-advantage over her initial status quo which he could exploit. For the gunman, his optimal threat, to ensure the exchange he wants, is to employ this sanction. On the other hand, with Ms. Impecunious and the lecherous millionaire, the millionaire does not need to resort to an explicit sanction. The millionaire's bargaining advantage is so great over Ms. Impecunious that he can harm her by not cooperating. He has an advantage great enough to coerce by merely refusing to trade and he exploits that advantage to coerce her into the deal he wants.
The matrices for both examples illustrate the disutility of the status quo points for the game. Particular notice should be paid to the fact that because the millionaire did not create Ms. Impecunious's bargaining disadvantage it does not diminish the disvalue of the consequences of non-compliance to her. In the example of the drowning swimmer who is approached by a boat, the occupant of which says, "I will save you only if you pay me $10,000," it would not change the swimmer's utility assignments whether the person in the boat created his predicament or merely found him in it. In other words, it would not increase his desire to avoid the evil consequence. It is the advantage of controlling the occurrence of a harm that gives the stronger party the power to coerce.

A caveat to my analysis is that not gaining a "benefit" is not a sanction when there are readily available other means of attaining that benefit. One common argument that is raised against the present market is that it is coercive since goods and services are offered on a "take-it or leave-it" basis. But if the argument up to this point has been correct the fallacy of this attack on the market rests with the mistaken assumptions that all goods need to be open to negotiation. It is not whether goods and services are offered on a "take-it or leave-it" basis that makes the market coercive, but whether if someone decides to leave it that there is a workable range of alternatives open to him. And even though there is no workable range of alternatives, this does not go far enough in characterizing the market as coercive. We need to establish that the person with the monopoly is taking advantage of his superior position. It is not the case that anyone who has a monopoly over something people cannot do without coerces those people regardless of the terms he offers. The monopolist must be attempting to "squeeze" out the most favorable deal for himself that he can given the weaker party's relative position.

Market interactions often have the characteristic that the stronger party has an advantage over the recipients status quo. Failure to realize the power that this gives the stronger party obscures the coercive relationships that result in the market. Market power often involves some item that the weaker party is dependent on the stronger for, and this dependency does not just occur when there exists a market-wide monopoly, but also when there are "situational monopolies" where the stronger party has abnormal market power over some particular agent but not over all other agents in the market. Other cases occur where the weaker party has no workable alternatives since there is collusion in the industry making actual alternatives an illusion (see *Henningsen v Bloomfield Motors, Inc.* 32 N.J. 358, 161A,(2a) 69(1960)). These considerations lead us to conclude that some offers can be coercive.

The relationship between bargaining power and coercion can be stated as follows: For P to coerce Q and render Q unfree to do x (or not cooperate with P's terms), P must have and take advantage of the advantages over Q of controlling the occurrence of a harm to Q. The following is the crucial difference between threats and offers. With threats the coercer puts his victim in a vulnerable position, viz., facing a harm, thereby forcing his victim to take the proposal seriously. Whereas with coercive offers the proposer finds his victim in a vulnerable position. What is necessary for P to coerce Q in the market is for P to have the bargaining advantages over Q.
of controlling the occurrence of a harm to Q and P exploiting those advantages. Further the effect on Q must be a choice between evils, the lesser of which is to acquiesce. The unfreedom of Q's action is established on the basis that P causes Q to act on a motive—by forcing him to face an evil—which he does not want to have.

In this paper I have argued for an analysis of coercion which focuses on the notion of bargaining power. What I have attempted to show is that the key to understanding coercion in the market relies upon the notion of bargaining advantages. The importance of bargaining advantages rests on the power that the possessor can thereby use over another. Further, introducing the concept of bargaining advantages into the analysis of coercive exchanges sharpens the focus on the relationship between the coercer and the victim. That is, the coercer has certain bargaining advantages and hence power over this person and not necessarily over other persons in the market. This analysis brings the peculiar characteristics of market interactions into view. I have argued that assuming the legitimacy of the status quo is unjustified since it ignores the power relationships that occur when there are radically disparate bargaining strengths. Further, it ignores those who are worse off in the society since by implication they cannot be coerced. In an imperfectly competitive market bargaining advantages play an essential role in the cooperative deal one secures.

ENDNOTES


2 The Normalcy criterion has been interpreted in many ways. For example, Nozick appears to use four different interpretations depending on the example he is considering: 1) what P does in the normal course of events, 2) what would have been expected to happen had P not come on the scene at all, 3) what normally (statistically) happens in cases like this, and 4) what the morally expected course of events are. Depending upon which interpretation is used we arrive a different judgment about the status of the proposal. Hence we either need some way of determining which one is the correct interpretation, or we must reject the approach as not providing a principled distinction between coercive and noncoercive proposals.

3 Feinberg, Ibid. This example comes from his book.

4 Zimmerman, Ibid.

5 Nozick, Ibid., 450.
Adam Smith said of the perfectly competitive market:

The natural effort of every individual to better his own condition, when suffered to exert itself with freedom and security, is so powerful a principle that it is alone, and without any assistance, not only capable of carrying on the society to wealth and prosperity, but of surmounting a hundred impertinent obstructions with which the follow of human laws too often encumbers its operations . . .


For an explanation of the conditions of the Perfectly Competitive Market see any introductory text on microeconomics.


1. Zimmerman, in another paper, argues that whether a monopolist is coercing another depends upon how P came to be a monopolist before t, "So that P prevents Q from obtaining some scarce resource on his own if P acted before t to acquire all of the resource". "More on Coercive Wage Offers" *Philosophy and Public Affairs*, 12, Spr. 83, 168.


11 These effects may be either beneficial or harmful: we speak of positive or negative externalities. An example of a positive externality is a lighthouse which everyone can utilize even if they don't pay for it—we call those who don't pay but use it "free-riders". An example of a negative externality is pollution: the industrialist pollutes the air with toxins and dumps the costs onto others who do not want the pollution. The industrialist pays only his direct costs and not the costs that he imposes upon others. The existence of externalities upsets the marginal matching of supply and demand. Lighthouses are undersupplied: the people who own them only supply them to their own personal demand and not to the extent of the full demand of the market (to the demand of the non-paying users). And pollution is oversupplied relative to demand. With both positive and negative externalities all agents act in a utility-maximizing way given the actions of others, but the situation is not optimal. Everyone would benefit if the demand for lighthouses could be channeled to bring forth the supply; and everyone could benefit if pollution were controlled at the point at which there is marginal benefit to all. When there are no externalities no one is affected by market activities in which one does not willingly participate. No one can receive goods without paying for them and no one can impose costs on others without their willing participation. The absence of externalities ensures the marginal matching of supply and demand; and consequently optimality is ensured.
Bargaining advantages give one power over others, and all of these factors that give one bargaining advantages give one relative power, i.e., power in relation to another, and not absolute power. On the other hand, desires (which include pure wants and those wants that are also needs) are, in some sense, inversely related to power. If one desires to obtain something, the reason must be that one does not already possess it, or does not possess enough of it. As was shown in the rich man/poor man example, the poor man does not want to miss the opportunity to realize his desire to get something; in this sense he is dependent on the rich man's cooperation, which is to say that he is in the rich man's power. If the rich man had exercised his power that came from his advantaged position—or taken advantage—he could have affected how the poor man chose his utility assignments.


See Joel Feinberg's "Noncoercive Exploitation", in Paternalism, ed. by R.E. Sartorius, (St Paul: University of Minnesota Press, 1983), 201-35.

This example comes from Jeffrie Murphy's "Consent, Coercion, and Hard Choices", Virginia Law Review vol. 67 no. 1, 1981.

There are a number of moral objections that we can make to market agreements: 1) consent of one of the parties is not fully or sufficiently voluntary; 2) the procedure used to secure agreement was unfair; 3) the outcome violates the rights of third parties; 4) the outcome of the agreement does not improve the welfare of the parties to it; and 5) the outcome results in an undesirable distribution of resources.

However, in some cases the weaker party, due to lack of education or understanding, is not aware of the options and/or is led to believe that there are no other options (notice that the weaker party's lack of knowledge and education gives the stronger party another bargaining advantage) and this can lead to coercive power.

One important qualification to the foregoing is that it is not sufficient for coercion that the stronger party have and exercise his bargaining power to cause his victim to have a motive to act in a way that the coercer wants, since other bargaining advantages can give one the power to cause those over whom one has an advantage to have a motive for complying. If we claimed that all instances of causing persons to have motives for acting were infringements on freedom, then enticing promises of reward or goods which cause people to have new motives would be infringements on freedom. The enticing employment offer, with its rich pecuniary rewards in an otherwise undesirable location, might cause a person to have a motive to do otherwise than he had intended to do. The enticer, no less than the coercer, has bargaining power over the person with whom he deals, in that the enticer has within his power some-
thing that the recipient strongly desires. Consider a case of bribery. P promises Q that if he turns over the company's secrets he will be paid a large sum of money. Q had no intention of turning over the company's secrets before the proposal was made. Q, however, already has a strong desire for money so that this proposal ties in with desires he already wants to act upon. He may have always dreamed of having $100,000 so that this proposal is irresistible in so far as it allows him to achieve his dream. We do not, however, suppose that enticing someone to act constitutes a constraint on his freedom.

With instances both of coercion and enticement the stronger party uses the recipient's preference structure to ensure that the recipient has a motive for acting in the way the proposer wants. The proposer does this by combining the demand with the "sanction" that the person cannot resist being motivated to avoid, or by combining the request with the inducement that the person cannot resist being motivated to attain. The victim of coercion is justified in claiming that he had no choice but to comply with the demand since given the victim's preferences he could not help but be motivated to avoid the evil consequence. Coercion is tied to an individual's own subjective preference rankings of what will motivate him to act. It is in this way that individuals with "unreasonable" fears (e.g., phobias) can be coerced on the basis of them. In the case of enticement too the recipient would be justified in claiming that not only was it the reasonable choice (given his desires) but that he had no choice but to comply, since the inducement involved something so central in his preferences. Since both coercion and enticement involve causing a person to have a motive for complying, and yet enticement does not constitute a constraint on freedom, causing a person to have a motive must be necessary for coercion but not sufficient for coercion.

The difference between enticement and coercion lies with the differences in the objects of the desires which provide the actor a motive. The coercer's advantage over his victim is used to capitalize on his victim's desire to avoid the evil consequences that the coercer has in his power to effect. The enticer, on the other hand, causes his "victim" to have a motive to comply by holding out a reward. The object of the recipient's desire is to attain a good, not to avoid an evil.

Why are cases of enticement not equally restraints on the recipient's freedom? Enticement secures compliance by holding out some good that the person desires and wants to be motivated to attain. The person identifies with that desire and welcomes the chance to satisfy that desire.

