



Coercion, compulsion, force: Feinberg

CORE QUESTION. When is consent *invalid* because it was *forced* rather than free? Feinberg distinguishes acts of forced consent from mere non-consensual wrongs (e.g., burglary). Then he classifies the varieties of force relevant here.

KEY DISTINCTIONS. Feinberg arranges techniques of ‘getting *x* to act’ on a spectrum running from most to least forceful. Only techniques in the *forcing* part of the spectrum reduce or nullify the voluntariness of the induced response. See Table 1.

Technique	Options affected	Role of will
Compulsion proper	Alternative(s) made <i>impossible</i>	None: body is moved directly
Compulsive pressure	Alternatives made <i>very costly/difficult</i>	Limited: resistance possible but hard
Coercion proper	Alternative made <i>ineligible</i> via threat	Central: victim is made to <i>choose</i>
Coercive pressure	Costly threat, but victim still resists	Full choice: pressure felt, overridden
Manipulation / Persuasion	Changes preferences or beliefs	Full agency (may or may not be forceful)
Enticement / Requests	No pressure applied	Fully voluntary

Table 1: The spectrum of coercion

Compulsion *closes* options in the strong sense: one alternative is made impossible. A hurricane, a locked door, an irresistible grip—these move the body or block movement without any act of will. Coercion, by contrast, closes options in the weak sense: alternatives remain physically available but are made *unreasonably costly or ineligible*. In this case, the victim (=coercee) still chooses between compliance and an unacceptable price.

This distinction matters morally. For if the coercee *does* choose, he can in principle be held responsible for what he does. However, because the coercive pressure may have been great enough, he may also be *excused*. As Feinberg puts it, coercive pressure ‘forces (without necessitating) a choice’.

In the paradigmatic cases of coercion, there are credible threats backed by power to enforce them. A threat ‘puts a price tag on noncompliance’ and leaves it to the coercee to decide whether the price is worth paying. The greater the threatened cost, the greater the coercive pressure. At the extreme, however, coercion morphs into compulsion. See Figure 2.

Then there are ‘hard cases’. Physical pressure can be simultaneously compulsive *and* coercive (e.g., arm-wrestling until pain prompts a deliberate choice to yield; soldiers driving a prisoner forward with bayonets). In such cases, the victim makes a genuine, if tormented, choice to accept the lesser evil. But this choice is *coerced*, not merely *compelled*.

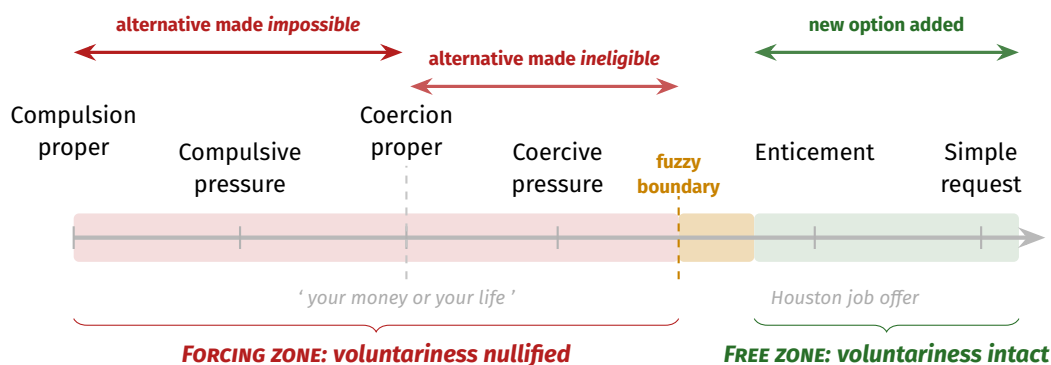


Figure 2: The spectrum visualised

SOURCES OF COERCION. Criminal liability and third-party intervention rights hinge on *who* coerces:

(9-1) *A* coerces *B*: *A* acquires no valid consent; *A* is properly subject to criminal liability.

C coerces *B*, unknown to *A*: *A* acts in good faith and cannot be fairly punished; *C* bears the wrongful responsibility.

C coerces *B* and *A* knowingly exploits this: *A* shares in culpability, especially if *A* and *C* planned together.

‘Natural’ coercion: Background conditions (illness, poverty) are typically treated as circumstances against which consent is given, not as forces nullifying it—*unless* those conditions were themselves produced by *A*’s wrongful conduct (e.g., a chemical company that creates the very threat under which homeowners ‘consent’ to sell).

DEFINITION OF COERCION. In coercion proper, the option is not destroyed but rather *priced out of eligibility* by means of a threat. The gunman who says ‘Your money or your life’ does not prevent you from keeping your money; he makes keeping it so costly—death—that it ceases to be a live option. You still choose (you hand over the wallet), but under conditions that nullify the voluntariness of that choice.

Drawing on the paradigm gunman case, Feinberg offers the following analysis of direct coercion: 198

(9-2) *A* coerces *B* iff the following hold:

- (1) *A* demands that *B* consent to some act.
- (2) *A* makes a threat: unless *B* complies, *A* will bring about (or allow) some consequence *B* finds unwelcome.
- (3) *A* provides evidence of the credibility of the threat.
- (4) *A* has actively intervened in *B*’s option-network, closing the conjunctive option of non-compliance *and* avoidance of the threatened harm.
- (5) *B*, understanding the proposal and frightened by it, complies at least partly to avoid the threatened consequence.

Condition (4) is debatable. Feinberg notes that coercion requires *active* manipulation of options, not mere refusal to help. Feinberg comes back to it in discussing coercive offers.

DIFFERENTIAL COERCIVE PRESSURE. Coercion presents its target with a forced choice between two unwelcome options: comply with the demand, or suffer the threatened consequence. Both carry a subjective cost: the coercee ranks them and chooses the lesser evil. ‘Differential coercive pressure’ is Feinberg’s term for the difference between those two costs: 199

(9-3) differential pressure = cost of threat – cost of demand.

The greater the gap, the harder it is to reject the demand, and the more coercive the proposal is. Crucially, the degree of pressure depends on *B*’s own subjective values: what *B* fears or wants determines how much is at stake for *B* in each option.

To show that coercive pressure is a matter of degree, Feinberg constructs two independent scales. On one axis, demands range from the most burdensome (betray your comrades, cost 10) down to the trivial (pour a cup of coffee, cost 1). On the other axis, threats range from the most severe (detonate a nuclear bomb) down to the negligible (a withhold of friendship). Any pairing of a demand with a threat generates a specific level of differential pressure. The extreme cases (nuclear threat backing a coffee-pour demand) produce maximum pressure; mild threat backing a grave demand produces almost none.

Differential pressure rises to ‘coercion proper’ at the point where the cost of the threatened consequence *exceeds* the cost of complying with the demand. Only then does the rational coercee prefer compliance to resistance. The scale of cases therefore runs:

(9-4) Extreme pressure: threat cost far exceeds demand cost — compliance is virtually unavoidable.

Threshold: costs are roughly equal — a 50/50 case.

Negative balance: demand cost exceeds threat cost — coercive pressure is insufficient to force compliance; *B* prefers to suffer the threat rather than comply.

If the threat is too weak, *A* fails to obtain compliance. But Feinberg insists it does *not* follow that *B* suffered no coercion. Three points remain:

- (9-5) (i) The very *making* of a threat to harm may be a crime, regardless of whether it succeeds.
- (ii) If *A* carries out the threat after *B* refuses, that is itself a crime.
- (iii) An unsuccessful bluffing threat can still constitute an *attempted* crime (e.g. attempted rape if *A* threatens bodily harm to obtain sex with a toy pistol).

STANDARDS OF COERCIVE PRESSURE. Whose perspective determines whether coercive pressure was *coercive enough* to nullify voluntariness? 210ff

Subjective standards are calibrated to the actual preferences and fears of the coercee. If *B*'s rankings made the threat terrifying and compliance preferable, then the proposal was coercive by *B*'s lights, regardless of how an outsider would assess it. This matters most when only *B*'s interests are at stake; Feinberg thinks there is no reason in self-regarding cases to impose anyone else's price-tags on *B*'s options.

Objective (=external) standards ask what a reasonable person in *B*'s circumstances would have found sufficiently coercive. These come into play when third parties or the public are affected—as in criminal law. A soldier who betrays military secrets under torture may have been coerced by her own subjective standards (she valued her own life over the mission), yet a court applying an objective standard may find that a 'morally exemplary person' in her position would have endured the torture rather than betray thousands of lives. The coercion was real but 'voluntary enough' for conviction.

Two cases may illustrate the contrast:

The neurotic's eccentricity: *A*, knowing that *B* has a pathological terror of being patted on the back, threatens to pat *B* unless *B* signs over most of his worldly goods. *B*, genuinely horrified, complies. By *subjective* standards this is coercion. But a court applying *objective* standards might refuse to recognize the 'harm' of a pat on the back as a legally cognizable coercive threat—especially since no third parties are harmed by finding in *A*'s favor. 211

Mother Teresa's indifference: A gunman demands Mother Teresa's money 'or I'll blow your brains out,' not knowing she was planning to give him the money before. She hands over the money *willingly*. By subjective standards there is no coercive pressure (she didn't fear the threat); by objective standards the gunman clearly coerced. Feinberg notes that this produces a 'redundant intimidation': coercive in technique but not in effect. 208
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Courts cannot know each individual's exact subjective price tags. The law therefore applies objective standards: if coercive pressure would plausibly suffice to force consent in a *standard* case, it is presumed sufficient in the case at hand. Some coercees may have genuinely consented under pressure short of coercion proper, yet the law will void that consent because the threat was objectively severe. The coercer cannot complain: he was prepared to act whether consent was genuine or not, and is answerable for that intention. If objective standards track the price tags most people place on typical options, justice will be done in most cases. 203

THE FOUR BASELINES. For a proposal to coerce, its threat component must make the victim worse off relative to some baseline of 'what would happen otherwise'. But which baseline? Feinberg identifies four candidate standards, illustrated through three test cases drawn from Nozick and Lyons. 219

(9-6) *Talis qualis* (lean hypothetical): Compare the proposed consequence against the actual circumstances with only *A*'s projected action subtracted. Ask: would *B* be worse off if *A* did what he threatens, everything else the same?

Statistical hypothetical: Compare the proposed consequence against a statistically normal background with the entire episode (including *A*'s presence) subtracted. Ask: what could have been expected had *A* never appeared at all?

Moral standard (Frankfurt): Compare the proposed consequence against what *A* would have been *morally required* to do in those circumstances.

Zimmerman's test: A's proposal is a threat if B would prefer to move from the 'normally expected situation' to the proposed outcome, where 'normally expected' is defined by contextually appropriate norms of fairness.

Example 1 (The drowning swimmer: Nozick). B is exhausted in a lake. A says:

(9-7) I will rescue you only if you promise \$10,000.

We might feel this is a threat: withholding rescue to extract payment is coercive. The *talis qualis* test supports this: if A were to omit rescue, B would be dead, i.e. clearly worse off than in the actual circumstances. The richer hypothetical test, however, yields the counterintuitive verdict that (9-7) is *not* a threat, since in the normal course of events (A never on the scene) B would also drown. The moral test agrees with common sense: A has a moral obligation to rescue unconditionally. Withholding rescue therefore makes B worse off than the morally required baseline.

Example 2 (The slave: Nozick). A beats B every morning. Today A says:

(9-8) Do ϕ -ing, and I will *not* beat you.

Common sense says this is an offer: A is dangling a benefit. Yet the *talis qualis* test treats the routine beating as the baseline, so 'not beating' looks like a benefit and the proposal is an offer. The richer hypothetical test (subtract the entire regime of slavery) and the moral test (slavery is impermissible) both judge the expected baseline to be no-beating, making 'I will beat you if you don't comply' a threat. The moral test thus captures the intuition that you cannot convert a wrongful practice into a baseline and then make apparent 'offers' against it.

Example 3 (The lecherous banker: Lyons). B cannot make her mortgage payments. The banker A tells her:

(9-9) Sleep with me, and I won't foreclose.

Common sense calls this a threat, as this is formally analogous to the gunman situation. The *talis qualis* test agrees: B would suffer foreclosure but for the licentious proposal, so the proposal makes her worse off than she would otherwise be. But by the richer hypothetical test (subtract the lecher entirely; an ordinary banker handles the case), B would also face foreclosure, so the 'sleep with me' proposal actually makes her *better off*—it looks like an offer. Feinberg sides with the richer hypothetical and moral tests here, though he ultimately concludes that no single baseline standard is always correct.

The three cases pull the four baselines in different directions. The *talis qualis* test succeeds in Example 1 and Example 3, but fails on Example 2. The richer hypothetical test succeeds on Example 2, but fails the other two. The moral standard does best across all three, but introduces normative commitments into what one might have hoped was a purely descriptive analysis. Feinberg concludes that the divergences 'suggest that none of these three criteria are correct,' and that when one delivers the right verdict it does so 'accidentally rather than necessarily.' The baseline problem thus resists tidy resolution.

COERCIVE OFFERS. Chapter 24 poses the hardest puzzle in Feinberg's account: can an offer coerce? On the face of it, this is paradoxical. An offer is a proposal that expands the recipient's options, while a threat shrinks them.



Example 4 (The lecherous millionaire). This is a variation on *Example 3*, but with a crucial twist. *B*'s child requires expensive surgery that she cannot afford. A millionaire *A* says:

(9-10) Become my mistress for six months [*sic*], and I will pay for the surgery.

If she refuses, her child dies. But *A* will not have caused that death: he will simply have declined to help.

Why does this look like an offer? Compare the banker in *Example 3*: if the victim *B* refuses, *A* (the banker himself) will foreclose. The banker is similar to the gunman, therefore. Here though, if *B* declines, the millionaire *A* merely stays idle.

But we might say: from *B*'s subjective point of view, both proposals feel identical. That's because the millionaire *A* has manipulated *B*'s option-network so that her only eligible choice is compliance. In Feinberg's railroad metaphor, before the offer *B* is stuck at a dead end (her child dies no matter what). After the offer, a new track opens: she can avoid that dead end by accepting *A*'s terms. Her freedom on balance has *increased*—she can now do something she could not do before—yet her only real choice is a coerced one. See *Figures 3* and *4*.

The legal consequences are stark. The gunman's coercive *threat* invalidates *B*'s 'consent,' leaving him without a defense to criminal charges and licensing third-party intervention. The millionaire's 'coercive offer' does *not* invalidate consent: he retains a defense, and no third party is licensed to intervene. And yet *B*'s situation is subjectively just as desperate. Well, this verdict looks dated.

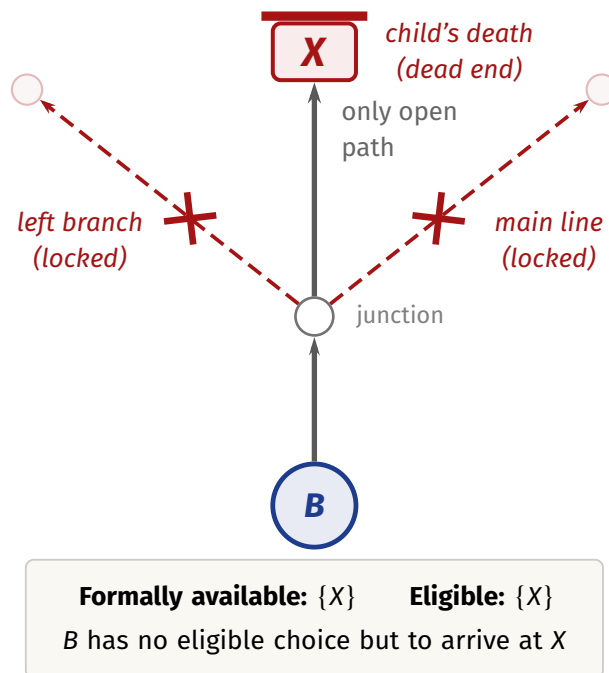
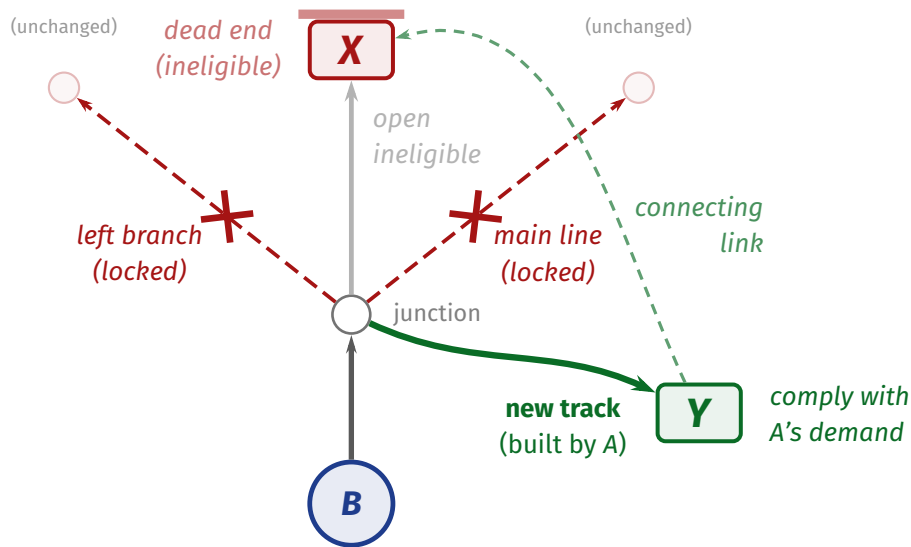


Figure 3: Feinberg-24-1: Before *A*'s offer.

FREEDOM-ENHANCING COERCION? Feinberg now considers 'freedom-enhancing coercive offers'. 233 These proposals coerce: they apply pressure that narrows the practically available choices to one. But they also enlarge the recipient's option set: the threatened 'harm' is not something *A* will actively bring about but something that will happen without *A*'s intervention. The label is not a contradiction, Feinberg argues, because 'specific coercion' (closing the option of noncompliance-plus-avoidance) and 'net freedom enhancement' (adding a new track) can coexist.

REVIEW. Feinberg concludes by drawing together three concepts: coercion, voluntariness, and consensual validity. 254ff

Coercion is a voluntariness-reducing factor, but not a voluntariness-defeating one. It comes in degrees, and even severe coercion need not reduce voluntariness to zero. Correspondingly, *voluntari-*



Formally available: {X, Y} **Eligible:** {Y} only Net freedom ↑
Freedom-enhancing coercive offer: B is freer on balance, but can only avoid X by taking exactly the path A demands

Figure 4: Feinberg-24-2: After A's offer.

ness is itself a matter of degree: acting under coercion is typically less voluntary than acting freely, but not necessarily involuntary in the sense required to nullify consent.

Consensual validity, by contrast, is all-or-nothing: consent either has legal or moral effect or it does not. How much voluntariness is required for validity is not fixed by conceptual analysis but is a matter of *policy*, varying with context and purpose.

Two consequences follow:

- (i) The same act of consent may be valid for one purpose (providing A with a criminal defense) yet invalid for another (binding B contractually). The desperate mother's consent to the lecherous millionaire illustrates this: voluntary enough to defeat a rape charge, not voluntary enough to enforce the contract.
- (ii) In cases involving serious social harm, objective rather than subjective standards govern: B may be held responsible for a wrongful choice even if it was coerced, provided a morally exemplary person would not have succumbed. The more serious the potential harm, the more heroic the standard.

Feinberg's ultimate position seems to be this. For purely self-regarding matters the subjective willingness standard should always govern: voluntariness is to be judged by B's own actual preferences, not actuarial tables or reasonable-person proxies. This is the approach congruent with autonomy. Courts and legislatures are forced for practical reasons to use objective presumptive standards, but where the law *can* take actual willingness into account without arbitrariness, it *should*.

Coercion does not automatically invalidate consent. It is one voluntariness-reducing factor among others, and whether it reduces voluntariness *enough* to defeat validity depends on the legal or moral context in which the question of validity arises. Each context will determine its own threshold. So for example, according to Feinberg, in the case of a lecherous millionaire, the criminal threshold will be low: the millionaire A is no rapist. But in the case of contractual agreement, the threshold is high: the millionaire can't sue B for the breach of contract.