

**Trading with the Poor:
Misdiagnosing Injustice and Exploitation as Coercion**

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1. Introduction: capitalist acts between consenting adults

The case for consensual exchange by informed adults is both liberal and Paretian. Consensual exchange meets (classically) liberal goals because free choice is an exercise in personal autonomy, valuable for its own sake. Consensual exchange also advances, instrumentally, the goals of the Paretian, as it is more likely than non-consensual exchange to make both buyer and seller better off. Thus, because market exchanges are consensual (uncompensated external costs to one side), while state exchanges are compulsory, partisans of consent regard market exchanges as socially good, while more strictly scrutinizing state action.

Critiques of the case for consensual trade, speaking broadly, come in weak and strong forms. The weak critique says “yes, but.” Yes, trade is consensual, and, yes, legal compulsion is coercive, but the consent characteristic of market exchange is possible only *because* the state coerces. Even classical liberals, such as Friedrich Hayek (1967), acknowledge that free markets rest upon a coercive legal foundation – a foundation that establishes and protects rights to person, to property and to contract.

The strong critique, which this essay engages, denies that valid consent necessarily characterizes market exchange in the first place. Strong critics argue that the absence of force and fraud is not sufficient to establish valid consent. In particular, they claim that the choices of the economically necessitous – those with limited alternatives – are not fully consensual. Both Fabienne Peter (2004), who says that “[t]he quality of the alternatives matters for coercion” (2004: 10), and Michael Sandel (1998) argue that the poor are coerced by their economic necessity.¹

This essay takes issue with the strong critics’ shared claim, that the quality of alternatives is sufficient to establish coercion. Consider two traders, *A*, the alleged coercer, and *B*, the alleged coercee. With Alan Wertheimer (1987), I argue that coercion cannot be read off the structural properties of *B*’s choice set alone. Coercion, rather, concerns *how* *B*’s choice set comes to be diminished, so that, in the context of exchange, *B*’s necessity is relevant for coercion only insofar as *A* *causes* or is otherwise morally responsible for *B*’s necessity. Coercion is a property of an exchange between *A* and *B*, and not an evaluative statement regarding *B*’s feasible

¹ See also Fleurbaey (2007). Olsaretti (2004) argues a related claim: necessitous transactors, she says, those without what she calls “acceptable alternatives,” are not coerced as such, but neither are their choices fully voluntary.

opportunities if *A* and *B* do not exchange (Tim Brennan cite). It may well be *unjust* that *B* has limited opportunities, but a policy that mistakes background injustice for coercion can be led to ban consensual, mutually beneficial trade between *A* and *B*, which serves only to make *B* worse off, exacerbating the injustice misdiagnosed as coercion.²

This essay argues, secondly, that the strong critique's expansive conception of coercion elides another important distinction, that between coercive exchange, which harms *B*, and non-coercive but exploitive exchange, which can benefit *B*. Exploitation, like coercion, is a property of a transaction between *A* and *B*, but exploitive exchanges need not be coercive and, moreover, can benefit *B*. The central question here: is it better for *A* to refrain from trade with *B* or for *A* to exploit *B* in mutually beneficial fashion.³

Lastly, misdiagnosing injustice or exploitation as coercion begs an important ethical question: on whom should the burden of remedying unjust background conditions rightly fall? Those who assert *A* has an affirmative duty to rescue *B* from poverty rather than trade with *B* in mutually beneficial fashion propose to bar or restrict trade with the poor. Restricting trade with the poor has two basic shortcomings: it makes Poor *B* worse off (by denying him the gains of mutually beneficial exchange), and it also compels *A* to shoulder the social burden of remedying the injustice of *B*'s poverty. Should justice require rescue of the poor, it does not follow that the burden of rescue should fall upon those who trade with the poor rather than upon the community more generally (Trebilcock 1997: 98). As with the case of mutually beneficial exploitation, a better policy to remedy injustice rejects restraint of trade in favor of income redistribution to the poor funded by general taxation.

2. Threats or offers: coercion in the context of exchange

Mutual gains from trade systematically obtain only when trade is fully consensual. The standard conception of valid consent requires that agents be uncoerced, competent and in possession of adequate information.⁴ As with fraud or incompetence, coercion makes consent invalid, so exchange-rooted theories of coercion, beginning especially with Robert Nozick (1969), have focused upon distinguishing consensual from coerced exchange. Nozick

² Commodification theorist Margaret Jane Radin (1996) calls this problem the “double-bind.”

³ Alan Wertheimer (2003) “Exploitation”

⁴ Defects in a trader's competence or information can vitiate consent, but, in focusing upon coercion, this essay largely sets aside the many issues that arise with deficiencies in agents' competence and or information.

distinguished non-coercive proposals, what he called offers, from coercive proposals, what he called threats. If *A*, a gunman, proposes that *B* hand over \$100 otherwise *A* will harm *B*, *A*'s proposal is coercive, a threat. If *A*, a masseur, proposes that *B* hand over \$100 otherwise *A* will not massage *B*, *A*'s proposal is non-coercive, an offer.

Consider the several differences between the threat of Gunman *A* and the offer of Masseur *A*. The gunman's threat shrinks *B*'s choice alternatives, whereas the masseur's offer expands *B*'s choice alternatives. The gunman's proposal threatens harm; the masseur's proposal promises benefit. *B* can decline the masseur's offer (exit is unimpeded), whereas *B* cannot decline the gunman's threat – the gunman forcibly blocks *B*'s exit.⁵

Two related points merit emphasis. Firstly, when *B* surrenders his wallet to Gunman *A*, *B* is coerced, but *B* nonetheless *chooses*, opting for his safety over his wallet. *B* might say, colloquially, "I had no choice," but what *B* means is that the alternative to surrendering his wallet was unthinkable. Coercion, in fact, *requires* that *B* choose, so "having no choice" cannot be identified with coercion. And, by the same token, *B* having a choice does not demonstrate the absence of coercion.⁶ Coercion occurs when Gunman *A* takes *B*'s right to safety in his person, and sells it back to *B*; that is, coercion occurs because *A* deprives *B* of his right to both his wallet and safety in his person. *B* has a choice among which things to surrender, but not whether to surrender.

Secondly, and consequently, *B* prefers not to receive Gunman *A*'s proposal, precisely because *A*'s proposal, qua threat, entails that *A* has already taken from *B* something to which *B* is entitled. Thus Gunman *A* wrongly violates *B*'s rights, *and* makes *B* worse off. In contrast, *B* can prefer to receive Masseur *A*'s proposal, because Masseur *A* is offering *B* something (a massage) to which *B* is not yet entitled. Masseur *A* has the right to carry out his announced intention –

⁵ For the purposes of this essay, I largely set aside the distinction between coercive proposals (which *A* makes) and coercion (what happens to *B* upon acquiescing to *A*'s threat). That is, I make the simplifying assumption that *A*'s threats are always sufficiently grave and credible such that *B* always acquiesces. In practice, of course, this assumption will not always hold. Nozick (1969), for example, says that if *B* does not acquiesce, a coercive proposal does not lead to coercion. Wertheimer's (1987) "two pronged" approach likewise distinguishes *A*'s proposal from *B*'s choice, though he acknowledges that the proposal does most of the analytical work.

⁶ I owe to Kaushik Basu (2007: 565-566) this sentence's framing of the issue.

surrender \$100 else I won't massage you – whereas Gunman *A* has no right to carry out his announced intention – surrender \$100 else I will harm you.

Alan Wertheimer's (1987) learned survey, perhaps the most fully elaborated theory of coercion, summarizes the distinction between coercive proposals (threats) and non-coercive proposals (offers) as follows: "*A* coerces *B* to do *X* only if *A* threatens to make *B* worse off with reference to some baseline condition if *B* chooses not to do *X*." On this view, *A* does not coerce *B* unless *A* proposes to worsen *B*'s situation should *B* reject *A*'s proposal (ibid). But, worsen relative to what baseline?

Coercion theorists have different views of the correct baseline: some argue for a statistical or expectations baseline – coercive proposals are those that make *B* worse off relative to what *B* reasonably or normally expects, ordinarily the status quo before the proposal. A moralized baseline, in contrast, says *B* is coerced only when *A* worsens *B*'s situation by violating *B*'s rights, such as *B*'s right to safety in his person.⁷ The moral baseline says: not only does *A* constrain *B*'s options, *A* does so impermissibly.

Statistical and moralized baselines usually point in the same direction. The gunman's proposal – pay me \$100 or I will harm you – compels *B*'s entry into a transaction that violates both *B*'s reasonable expectation of safety in his person and also *B*'s right to safety in his person. The masseur's proposal – pay me \$100 or I will not massage you – violates neither *B*'s reasonable expectation nor *B*'s rights. When Masseur *A* carries out his announced intention, it is neither wrongful nor harmful. So both statistical and moralized baselines judge the gunman's proposal coercive and the masseur's proposal non-coercive.

But, in some settings, statistical and moralized baselines reach divergent judgments about the same situation, as Nozick's (1969: 450) example of the slave illustrates. *A*, who beats his slave *B* daily, proposes one morning to spare *B* the usual beating, provided *B* does *x*. Since *A*'s proposal is effectively "do *x* or I will beat you," a moralized baseline judges *A*'s proposal a threat, thus coercive. But viewed from a statistical baseline, what *B* expects (a beating), *A*'s proposal can be seen as an offer – it proposes to make *B* better off.

The ambiguity arises from the fact that the status quo, in which *B* is beaten daily, is, at once, expected, in the sense of predicted, but it is also not what is *morally* expected. Nozick

⁷ The statistical- and moralized-baseline terminology is due to Feinberg (1986 CHECK). Peter's (2004) discussion here is also helpful.

suggests that when statistical and moral baselines diverge, we should use the baseline *B* prefers. In the case of the slave, *B* prefers a moral baseline: which judges slave owner *A*'s proposal a threat, and which says *B* should not be beaten even if he does not do *x*.

This essay adopts a moralized baseline approach, as do Nozick, Wertheimer and Peter, which says: *A* coerces *B* to do *x* only if *A* proposes (threatens) to violate *B*'s rights if *B* does not do *x* (Wertheimer 2010). Two things follow. The first is that adopting a moralized baseline tends to embed and explain the view that coercion is intrinsically wrong.⁸ A second consequence is that a moralized baseline will be conditional upon the moral theory being employed. Unavoidably, different moral theories can produce different moral baselines.⁹ Specifically, a moralized baseline accommodates situations where *B* has a right to rescue by *A*, which shall be relevant for our discussion of if and when poverty can coerce.

Strong critics of market exchange say *B* can be coerced even when *A* does not threaten to make *B* worse off should *B* reject *A*'s proposal. Fabienne Peter (2004: 3), for example, says, instancing organ sales: “the impoverished person’s choice to sell a kidney is not entirely free.” In similar fashion, Michael Sandel (1998) characterizes a “peasant” who sells his kidney as “being coerced by economic necessity.” When Kidney Seller *B* is very poor, goes the argument, he is coerced, because his choice to sell reveals or even demonstrates a lack of choice alternatives.

The temptation to say that poverty coerces is reconstructible. Both coercion and poverty refer to situations of limited alternatives. Both coercion and poverty rightly engage our moral concern. And, “having no choice” is used colloquially to describe the situations of both the gunman’s victim and the impoverished seller of a kidney (even as both the gunman’s victim and the impoverished kidney seller do, in fact, choose). But coercion and poverty reduce choice alternatives in distinct ways.

The difference turns on the question of *how* *B*'s choice alternatives came to be reduced.

⁸ The OED’s definition of “coercion” notes that coercion “has a bad flavour,” and that the term “is now usually avoided by those who approve the action in question.”

⁹ Statistical baselines, it should be noted, will also vary: there are different ways of making predictions and forming expectations. And, what is more, what agents expect can be different from what they should expect. (See Anderson 2006).

Poverty is the circumstance of *B*'s having limited choice; whereas coercion names a process by which *A* deliberately and impermissibly causes *B*'s choice to be limited, that is, *A* takes from *B* something to which *B* is entitled. Coercion creates necessity, for that is how it works, but it is possible to be necessitous without being coerced.

Sandel's terminology – he says economic necessity coerces – thus misleads, for he does not mean that Kidney Seller *B* is coerced by the circumstance of being poor, which is a background condition prior to any exchange.¹⁰ Kidney Seller *B* is coerced, for Sandel, only *upon transacting* with buyer *A*. For, if no willing buyer shows up, Kidney Seller *B* is not coerced, but remains poor.¹¹ The present point is that, even for market critics like Michael Sandel, there cannot be coercion without an interaction. Coercion, that is, requires a coercer.

Coercion also requires a coercer with moral agency. One would not say, for example, “gravity coerced me.” Gravity limits *B*'s alternatives – *B* would like to fly like a bird but cannot – but the constraints of gravity we do not regard as coercive, since rights-violating threats are not sensibly ascribed to natural forces. Gravity constrains *B*'s alternatives non-coercively. The same logic of agency applies to the coercee. One would not say that *A*, upon building levees, coerced *B*, the Mississippi River.¹²

The difference between non-coercive constraint and coercion is what Nozick pressed when he held that “a person's actions are voluntary [depending] on what it is that limits his alternatives” (1974: 272). Consider *B*, a cancer patient who must choose between experimental surgery and death. The law requires Patient *B* to give informed medical consent to *A*, the surgeon supervising the experimental trial. If Patient *B* consents to surgery, we do not say she was coerced, even though she is severely necessitous, with choices that are even more constrained than the impoverished

¹⁰ Sandel here may prove too much. If it is poverty that coerces, then *all* trade by the poor, not just trade of intimate goods such as one's own kidneys, is coercive. See the discussion of coercion as failure of duty to rescue, below.

¹¹ Zimmerman's (1981) conceit imagines that *A* *does*, in fact, make *B* poor, by kidnapping *B* to a remote island, and forcibly preventing *B* from leaving the island. When *A* later proposes that impecunious *B* work for subsistence wages, Zimmerman calls this a coercive offer. But when unrelated *C* offers *B* work for subsistence wages, *C*'s proposal is an offer. Because *A* wrongly and deliberately *caused* *B*'s necessity, *A*'s proposal is coercive.

¹² Nearly all coercion theorists reject the idea that natural forces can coerce. But see Rhodes 2001.

person considering selling a kidney.¹³

Why do we regard the cancer patient's choice of risky surgery as not coerced? In part, it is because her predicament was not caused by a person, still less by a person taking something to which she was entitled.¹⁴ Some hard choices are nothing more than "a sad fact about the human condition rather than any unjust disadvantage brought about by the wrongful actions of others" (cited in Wertheimer 1987: 234). The examples of gravity and illness suggest that transacting under necessity is not sufficient for coercion. They also show that when we focus solely upon the size of *B*'s choice set, we jettison ethically relevant information, namely, the process by which *B* came to have bad choices.

Coercion also requires intent.¹⁵ A threat to worsen *B*'s situation cannot sensibly be made accidentally. *A* can, of course, unintentionally worsen *B*'s alternatives. If *A* inadvertently falls asleep while double-parked, and blocks *B*'s car, *A* constrains *B*'s choice, and perhaps does so negligently. We might even say that Double Parking *A* forced *B*. But it seems peculiar to say that Double Parking *A* has coerced *B*. *A* has not threatened *B*, compelling *B* to choose between being blocked and some worse alternative. Indeed *A* has made no proposal to *B* of any kind, so *B* was not given a choice to acquiesce. There is a difference, with respect to coercion, between being adversely but inadvertently affected by another, and being intentionally threatened by another.¹⁶ This difference the law recognizes when it distinguishes accidental harms (torts) from intentional harms (crimes). Both torts and crimes are wrongful, but in different ways and degrees.

Some libertarian writers regard all forcings as coercive. This essay, in contrast, defends a view of coercion as transactional, which means that not all forcings are coercive. If *A*

¹³ This point and the example are due to Wertheimer (1987: 233).

¹⁴ Ronald Dworkin refers to this kind of misfortune as "brute bad luck," which he distinguishes from "option luck": "Option luck is a matter of how deliberate and calculated gambles turn out – whether someone gains or loses through accepting an isolated risk he or she should have anticipated and might have declined. Brute luck is a matter of how risks fall out that are not in that sense deliberate gambles" (1981, p. 293).

¹⁵ The importance of intention to coercion is developed in David Miller *Constraints on Freedom*.

¹⁶ The double-parking example is due to Wertheimer (200x).

burglarizes *B*'s home while *B* sleeps, this crime is not coercive, even though it is both harmful and impermissible. When Extortionist *A* proposes that *B* pay \$500 a month to “protect” *B*'s shop from arson, this *is* coercive, since *A* is not offering to insure *B*, but is threatening to burn down *B*'s shop should *B* not acquiesce by paying for “protection.”

On this essay's account of coercion, coercion is both harmful and impermissible; when *A* coerces *B*, *A* harms *B* and violates *B*'s rights. Coercion is, moreover, transactional and intentional. *B* cannot be coerced unless *B* receives a threat from coercer *A* and chooses to acquiesce. And coercers are persons, not natural forces such as gravity or disease, nor circumstances, such as economic necessity, at least insofar as *A* does not cause *B*'s economic necessity.

3. Coerced by price?

In modern markets, millions of choices by others affect *B*'s set of feasible alternatives. These many choices, at every moment, reduce (or expand) *B*'s opportunity set – via pecuniary externalities. When *A* develops a taste for cappuccino, say, her new demand increases the price of cappuccinos and their complements, and reduces the price of substitutes like tea. If a cappuccino drinker, *B* is (infinitesimally) worse off; if a tea drinker, *B* is (infinitesimally) better off. So impersonal market forces clearly can and do affect *B*'s opportunities, for bad and good.

On this essay's account of coercion, we should not regard such changes in *B*'s opportunity set as coercive. First, *A* and *B* don't trade or otherwise interact. *A* makes no proposal to *B* at all, threatening or otherwise. Second, *A*'s effect upon *B* is unintentional. *A*'s purchase of a cappuccino does not intend to harm or benefit *B*; indeed, *A* likely does not know *B*. Third, price effects are a consequence of economic scarcity, the condition wherein human wants exceed available economic resources.

Peter (2004) quotes Paul Samuelson, who said, “the price system is, and ought to be, a method of coercion.” Peter (2004: 2) reads Samuelson's quote as support for her view that the “market . . . relies on coercion.” But I read Samuelson as suggesting that economic scarcity, not a price system per se, entails coercion. His next two sentences are: “Nature is not so bountiful as to give each of us all the goods he desires. We have to be coerced out of such a situation by the nature of things” (1966: yy). Coercion, in the sense Samuelson employs here, is the name he gives to the consequences of scarcity, whatever method of allocating goods is employed, be it a price system, queuing, central planning, lottery, seniority or social status.

It is ultimately because of scarcity, not prices per se, that when A acquires a cappuccino fewer cappuccinos are available for the rest that want them. If A 's cappuccino were instead allocated by central planners, this would be no more and no less coercive in Samuelson's broad sense.¹⁷ Coercion theorists who emphasize the purely structural properties of B 's choice set are naturally drawn to consider price effects upon B 's scope for choice. But if prices are coercive in Samuelson's sense, then so too are all other mechanisms for allocating scarce economic resources.

That said, *coercion* is the wrong word to describe the consequences of economic scarcity. It would be odd to argue that B is morally entitled to be free of scarcity, a right that would be impossible to enforce universally, and which implies a moral baseline that says B is coerced when he does not have his every desire met. It seems no more plausible to argue that B reasonably expects to have his every desire met.

There is, moreover, little theoretical advantage to a conception of coercion so expansive that it applies to all choices made under scarcity. There are, in fact, two dangers. First, to call all choices made under scarcity coercive renders the concept of coercion essentially vacuous. Second, such an expansive definition risks imputing a specious moral equivalence to the alternative means of economic allocation under scarcity.¹⁸ For if scarcity is a given, the real ethical action lies in comparing and evaluating the alternative institutional means of allocation. ~~This is why Samuelson says a price system *ought* to "coerce." Something has to, Samuelson observed, and he believed that a price system, warts and all, was superior to the alternatives.~~

4. Mutually beneficial exploitation or neglect?

Consider the case of the Bad Samaritan A , who finds billionaire B dying of thirst in a remote desert, and proposes to sell to B a life-saving quantity of water for \$10,000. B accepts. Is A 's proposal coercive? It depends upon which moral baseline we adopt. A libertarian might argue that

¹⁷ I read Warren Samuels (1993) as making an argument along these lines – that coercion arising from scarcity is a given, and the details regarding *who* gets coerced are decided institutionally, especially how society assigns property rights.

¹⁸ Deirdre McCloskey (1996: 15) adduces a further objection to treating price effects as coercive. Since nearly all exchanges in market societies have price effects, to treat them as coercive would be to license "universal coercion by the state." If all economic choices are deemed coercive, there is, McCloskey argues, "no stopping point in the slippery slope to thoroughgoing coercion by the state."

A does not coerce *B*, because *B*'s rights have not been violated – *B* has no claim to *A*'s water. Moreover, the exchange makes *B* unambiguously better off, a costly rescue being vastly better than none. A key difference: unlike the gunman, who creates his victim's predicament, the Bad Samaritan did not create Thirsty *B*'s predicament, even as he proposes to exploit it.

An alternative moral baseline asserts that *A* has an affirmative moral duty to rescue *B*. In life-threatening situations, *B* has the situation-specific right to privately take *A*'s water: *ex ante*, *A* can justifiably exclude others from his water, *ex post*, he cannot.¹⁹ If our moral baseline says that Thirsty *B* is entitled to the water, then *A*'s proposal to withhold the water becomes coercive – Bad Samaritan *A*, like Gunman *A*, threatens to make *B* worse off by taking something that rightly belongs to *B* and selling it back to *B*. So, some background conditions, such as Thirsty *B*'s dire necessity, can matter for coercion, at least in the limited cases where we assert an affirmative moral duty for *A* to rescue *B*.²⁰

Using different moral baselines, the libertarian judges the Bad Samaritan's proposal an offer, albeit an exploitive one, whereas those who assert an affirmative duty to rescue judge the Bad Samaritan's proposal a threat, thus coercive. Still, even if the Bad Samaritan's proposal is judged coercive, the policy implications differ from those of ordinary coercion.

A successful ban on armed robbery unambiguously helps would-be victims of armed robbery. But it would be perverse to help travelers dying of thirst by banning water sales in the desert. The difference arises because rescue is economically beneficial and armed robbery is economically destructive. Thirsty *B* wants rescue – and thus prefers *A*'s proposal to none – but also wants a better price, whereas there is *no* price Victim *B* wants to pay to be robbed at gunpoint.²¹

This distinction – rescue benefits *B* and armed robbery does not – helps explain why the Bad Samaritan is seen not to have discharged his duty to rescue, even though the Bad Samaritan

¹⁹ Friedrich Hayek (1960: 135-37), though a classical liberal, makes just this exception.

²⁰ The Bad Samaritan example also reminds us that, even with identical facts, different moral baselines can lead to different judgments of coercion.

²¹ This suggests a kind of Paretian test for coercion in exchange: would a successful legal ban on trade unambiguously benefit *B*? If yes, *B* is coerced. If no, *B* is not coerced, save for coercion of the *failure to rescue* variety. Hence, in the absence of an affirmative duty for *A* to rescue, if a ban on trade does not unambiguously benefit *B*, there is no coercion.

has, in fact, rescued Thirsty *B*. The affirmative duty to rescue requires not merely rescue, but also rescue at a fair price.

Economically, these two goals of the duty to rescue are partly opposed: one goal wants rescue services provided, and the other goal wants to prevent rescuers from extracting too high a price from the necessitous. A legal ceiling on compensation to rescuers set below the “market price” for rescue meets the fair-price goal, benefitting those rescued, but only at the cost of ensuring that some of the necessitous will not be rescued.²² For if rescuer *A* knows that courts will not uphold the high price he can extract from necessitous *B*, *A* will not rescue *B*, even if *B* is indeed prepared to pay the price.²³

As the foregoing suggests, the absence of coercion does not entail that non-coercive exchange must be morally permissible. *B*’s poverty might well be unjust.²⁴ Moreover, non-coercive exchanges can be exploitive. Consider a different case: *A*, following a destructive hurricane, drives into the emergency area and sells ice for \$10 per bag. The pre-hurricane price was \$1. *B* willingly pays \$10 to *A*, and benefits thereby. Assume further that *A* is a monopolist, and has no duty to rescue or otherwise interact with *B*, so that *A* has not coerced *B*. Thus, *B*’s consent is valid, but *B* pays more than he would have under better circumstances.

This is mutually beneficial exploitation, a trade where *A* takes advantage of *B*’s situation in order to receive greater benefit to himself, even as *B* also benefits from the exchange.²⁵ Many people, and most American state legislatures, regard *A*’s behavior as wrongful, as indicated by the familiar epithet of *price gouger*, on grounds the exchange, while neither coercive nor

²² One possible response is: have the state provide rescue services. But in settings where *A* is present and state rescuers are not – Wal Mart arrives before FEMA – the issue of fair compensation issue recurs.

²³ Mike Munger cite.

²⁴ Olsaretti (2004).

²⁵ See Zwolinski 2008. Mutually beneficial exploitation means only that *A*, the exploiter, and *B*, the exploitee, both gain from a consensual exchange (Wertheimer 1996: 207), but *A*’s share of the mutual gains is deemed unfair or excessive. Cases of harmful or non-consensual exploitation, where *A* benefits from a transaction that harms *B*, have few defenders (Wertheimer, *SEP*). If *A* hires *B* and then reneges on his promise to pay *B*, *A* both exploits *B* and harms *B*, and laws prohibiting this practice are not controversial.

fraudulent, is unfair.²⁶ It is the price that is wrong. So, while *B* validly consents to \$10 ice, and prefers \$10 ice to no ice, price-gouging legislation makes the exchange criminal.²⁷

Yet, even if Price Gouger *A* has exploited *B*, and even if mutually beneficial exploitation is wrong in some fashion,²⁸ it is not clear that the two alternatives – not selling ice to *B* at all, or capping the post-disaster price of ice – are morally better. This rejoinder is premised upon what Wertheimer calls the “non-worseness claim,” and what economists call the Pareto Principle. The non-worseness claim maintains that it cannot be morally worse for *A* to interact with *B* than to neglect *B* if: (1) *A* has the right not to interact with *B* (thus no affirmative duty to rescue); (2) the interaction is not worse for *B* than non-interaction; (3) *B* consents to the interaction; (4) such interaction has no negative effects on others.²⁹ The economist’s version: in the absence of (unpriced) external costs, a consensual Pareto-improving trade cannot be morally worse than no trade.³⁰

Consider the first alternative to price gouging – neglect, or no exchange. Critics judge Price Gouger *A* guilty of exploitation, even though his action brings *some* benefit to victims in the disaster area. Most of us, in contrast, do *nothing* to benefit disaster victims. Price Gouger *A* does more good for people in the disaster area than we who do nothing, but do-nothing critics

²⁶ When Kahneman et al. (1986) asked Canadian survey respondents whether it was fair or unfair that a hardware store, the day after a snowstorm, raised the price of snow shovels from \$10 to \$15, 82% of respondents judged the price increase unfair.

²⁷ Exploitation is commonly represented as the product of an asymmetry in power or wealth, as when, canonically, Kidney Patient *A* is rich and Kidney Seller *B* is poor. Such may often be the case. But while exploitation does require different bargaining strengths, it doesn’t require that *A* be rich and *B* be poor: Price Gouger *A*’s ice customers might well be wealthier than he.

²⁸ Allen W. Wood (1995) judges consensual, mutually beneficial exploitation morally wrong not because it is unfair per se, but because it violates a duty of proper respect owed *vulnerable* persons, thereby degrading *B* and dishonoring *A*. Even if this judgment is correct, it does not follow that the state should therefore prohibit mutually beneficial exploitative trade, for such prohibitions create other moral wrongs.

²⁹ Wertheimer (1986): 289.

³⁰ Broome (1991) offers the following version: “For all alternatives *x* and *y*, if everyone is at least as well off in *x* as in *y* and someone strictly better off, then *x* is better than *y*.”

don't judge themselves as acting as wrongly as the price gouger. These judgments are, facially, inconsistent.³¹

To make them consistent one must argue that those who wish to trade with the poor or the otherwise necessitous acquire special moral obligations simply in virtue of interacting (even beneficially) with them, and these special obligations do not apply to the many who neglect the necessitous. Wertheimer (200x) calls this the "interaction principle." The interaction principle asserts that because, upon interaction, *A* acquires special moral obligations to *B*, doing nothing is morally better than doing something at exploitive terms of trade. Those who uphold some form of the interaction principle contend it is morally better for Price Gouger *A* to withhold his ice from *B* than to sell it to *B* at beneficial but unfair prices.

But mandating neglect, as Margaret Radin (1996: 51) observes, merely adds insult to *B*'s injury, so few exploitation scholars defend the claim that neglect of *B* is better than beneficial exploitation of *B*.³² Most scholars, acknowledging the moral force of *B*'s valid consent and *B*'s benefit from exchange, argue not for denying ice to *B* but for legal price ceilings intended to secure for *B* a larger share of *A* and *B*'s joint surplus from exchange. \$10 ice is better than no ice, goes this more moderate position, but fairly priced ice is better than \$10 ice.

The fair-price position also faces difficulties, however. The first difficulty is the ancient and difficult question of determining what price fairness requires. Wertheimer (1996) tentatively suggests that a fair price is the price that would obtain in a competitive market. A competitive-price standard does have the virtue of connecting fairness to monopoly power, which the source of Price Gouger *A*'s ability to exploit *B*. The power to exploit consumers is decreasing with the number of ice vendors. If rival ice vendors arrive on the scene, *A* will be obliged to lower his price, mitigating exploitation. At the limit of perfect competition, *A* has no power whatever to set price – he sells his ice at the competitive price or not at all.

But even if the "what price fairness requires" question can be answered with precision and generality sufficient for legislation, a second difficulty then arises: the consequences of a binding price ceiling are themselves morally problematic. Successful price-gouging regulation compels

³¹ This argument is due to Wertheimer (1996) *Exploitation*. Zwolinski (2008) applies it to the price-gouging case.

³² For an exception, see Sample, Ruth (2003) *Exploitation: What It Is and Why It's Wrong*. New York: Rowman and Littlefield.

vendors to sell at below market-clearing prices. Say Price Gouger *A* behaves unlawfully when his price exceeds \$2. Viewed from the level of a single transaction, buyer *B* benefits from the legal price ceiling – *B* obviously gains more (and *A* less) at a price of \$2 than at a price of \$10. But while a compulsory below-market price will help a given buyer, it does so only at the expense of harming others who want ice, now and in future emergencies.

The first harm to others who want ice comes from deterring supply responders from entering the emergency zone. Because high prices signal and induce outside vendors to provide a greater supply of ice (which, over time, will lead to a lower market price), a legal price ceiling will reduce emergency supply by deterring those vendors who find it unprofitable to sell at the legal price ceiling. Secondly, a legal price ceiling lowers the expected return for local entrepreneurs who would otherwise invest more in generators, insulation, etc. to meet ice shortages in the future – resulting in reduced inventory for future emergencies. More generally, for goods that are not highly inelastic in supply, the lower the price ceiling, the more reduced will be the quantity supplied of ice, so that the necessary consequence of successful anti-gouging legislation is to reduce beneficial exploitation only by increasing neglect (no ice).

What if the good in question were highly inelastic in supply, such as hotel rooms, so that higher prices would not, in the short run, induce a greater supply? With no adverse supply effects, the ethical case for price ceilings in the name of fairness is strongest, but it is still not certain that a price ceiling below market price is socially best.

Imagine convenience store *A* inside the disaster area with an existing stock of ice. If *A* sells at the compelled price of \$2, demand will exceed supply, so that *A* effectively must allocate ice by queuing, and higher-value users can be crowded out. If *B*₂ lines up early to buy ice to keep his beer cold, *B*₃, a diabetic, does not get ice, which she wants to refrigerate her insulin, because she cannot lawfully signal her greater willingness to pay.³³ A fourth problem is that vendors of less perishable goods (gasoline, say), uncertain at what level their prices become criminal, may find it safer to shut down rather than risk arrest and prosecution – an additional channel by which price ceilings turn beneficial exploitation into neglect.

This is not to argue that, post-disaster, price *must* be the morally best method for

³³ Zwolinski, Matthew (2008) “The Ethics of Price Gouging” *Business Ethics Quarterly* 18, no. 3 (2008): 356-60.

allocating scarce resources already present in the emergency zone, only that it often will be superior to the alternatives typically offered.³⁴ Nor does this argument say that consensual, mutually beneficial exploitation cannot be wrong in some fashion, only that it less bad in its consequences for the necessitous than are the possible alternatives.

Exploitation rightly engages our moral concern. But *A*'s consensual and beneficial exploitation of *B*, provided one accepts the Pareto Principle (a.k.a. the non-worseness claim), is ethically superior to *A*'s neglect of *B*, and, under most circumstances, will also be superior to price-ceiling regulation, which, even setting aside the challenge of successfully defining a fair price for all situations, reduces beneficial exploitation only by increasing neglect, and also by misallocating existing supply to lower-value buyers.³⁵

What then to do if market price is judged so high as to be exploitive? A more effective ice policy than price ceilings is one that reduces price (and therefore exploitation) without increasing neglect, that is, a policy that lowers price by not by shrinking but by *increasing* the quantity of ice available to people in the emergency zone. Increasing the quantity of ice can be accomplished by subsidizing ice vendors or ice consumers. When the state subsidizes ice vendors or transfers income to necessitous consumers, more ice is supplied and ice prices *fall*. Unlike price ceilings, which “protect” necessitous consumers only by depriving some of ice, subsidies reduce exploitation by directly helping all of the necessitous.

6. Coercion as a failure to rescue the poor

Coercion, as defined in this essay, requires that *A* be causally responsible for *B*'s necessity. And when *A* coerces *B*, *A* is also morally responsible for *B*'s necessity. But coercion, while sufficient, is not necessary for moral responsibility. *A* may be held morally responsible for *B*'s condition when, for example, Double Parking *A* negligently if non-coercively blocks *B*. In instances of coercion and negligence, *A* is both causally and morally responsible for *B*'s situation.

The *coercion as failure to rescue* argument goes one step further, and argues that even

³⁴ *ibid.*

³⁵ Ignoring the losses a price ceiling imposes on vendors, it is possible that, with a ceiling, the gains to those who get cheaper ice exceed the losses of those who get no ice. But even in this situation, it is perverse to make some worse off, when a better, readily available policy option (subsidies) can reduce exploitation without sacrificing those who are denied ice by price ceilings.

when *A* does not cause *B*'s necessity, *A* nonetheless can be made morally responsible for *B*'s necessity.³⁶ It essentially takes the idea of an affirmative duty to rescue, ordinarily confined to transient situations of imminent peril and to particular occupations (such as physicians and ship captains) likely to encounter situations of imminent peril, and writes it large enough to cover all trade by and with the economically necessitous. If *B* is poor, he is owed a duty of rescue by those who encounter him no less than is Thirsty *B* dying in a desert. If, for example, *B* is poor, *A* must give *B* money or goods, without asking for something in exchange. In short, *A* must not, like the Bad Samaritan, exact a price for a rescue he is morally obligated to provide to *B* for nothing.

A fundamental objection to the duty to rescue the poor observes there are morally significant differences between the necessity of Thirsty *B* and the necessity of Poor *B*. The Bad Samaritan can save Thirsty *B*'s life at very low cost. And, most people will never have to undertake such a rescue even once. But the duty to rescue the poor is boundless. If *A* gives every penny of her lifetime wealth, and dedicates every waking moment of her entire life to the poor, it is not enough: hundreds of millions of poor people will remain to be rescued. Short of arguing that poverty obligates *A* and millions of others to give over their entire lives to rescue, the duty to rescue must be bounded in some meaningful sense the analogy to Thirsty *B* elides.³⁷

Setting aside the question of moral limits on the duty to rescue, there are enormous practical problems created by laws enacted to enforce rescue by making mutually beneficial trade unlawful. Banning or restraining trade with the poor creates an overwhelming information burden for the state and for market participants. First, given billions of exchanges annually, how will the state, and buyers and sellers, know who is poor(er)?³⁸ Will there be identity cards

³⁶Miller (1983: 75) speaks of “obstacles to freedom” rather than coercion as such, but *coercion as failure to rescue* is very much in the spirit of his argument. In this case, *A* has not imposed, either intentionally or negligently, an obstacle to *B*'s power to act; *A* has, rather, failed a duty to remove an obstacle to *B*'s power to act. {{Again, however, note that the duty to rescue really means the duty the rescue at fair price.}}

³⁷ David Schmitz (2000) “Islands in a Sea of Obligation: Limits of the Duty to Rescue.” *Independent Institute Working Paper* #18.

³⁸ A duty to rescue does not arise solely from *B*'s poverty. It also requires that *A* has sufficient means to rescue. If *A* is poor, and *B* is extremely poor, does poor *A* have a duty to transfer resources to extremely poor *B*?

indicating real-time information about personal wealth? And, further, how will the state and traders distinguish the unjustly poor, who are entitled to rescue, from the justly poor, and how, moreover, will they know if *A* has already discharged her duty to the poor, before encountering *B*?³⁹

If this information burden is not already insuperable, consider the perverse incentive effects of banning or restricting trade with the poor. The first effect is free riding. Knowing poor *B*s are entitled to a transfer, prudent *A* will prefer to avoid the risk her trading partner *B* turns out to be poor, perhaps by avoiding poor neighborhoods altogether, which further isolates and impoverishes the poor – the double bind, again. A second effect will be fraudulent efforts to circumvent the ban on trade. Savvy *B*, anticipating free riding, may disguise his poverty – say, by anonymous on-line transacting – in order to benefit from (illegal) trade, just as some non-poor traders will find it profitable to fraudulently represent they are poor. Widespread illegal markets of all kinds demonstrate the costs of legal restraint of mutually beneficial trade.

The adverse effects of banning trade with the poor are thus analogous to the consequences of price ceilings in the price gouging case: the ban “protects” poor *B* from somewhat beneficial gains from trade with *A* in order that *B* might get still larger gains via transfer from *A*. Fixing a legal price ceiling of \$2 ice intended to get ice buyers a better outcome than the post-disaster market price of \$10. But, in practice, the price ceiling instead increased neglect (no ice), a worse outcome. Similarly, banning trade with poor *B* intends to secure a transfer of \$10 from *A*, which is better for poor *B* than exchanging something (say, work costing \$8 of effort) for \$10 from *A* – a \$10 gain is better than a \$2 gain. But, by barring *B* from offering work (say) to *A* for \$10, with the idea of mandating a \$10 transfer from *A* to *B*, the law instead has the unintended consequence of increasing neglect – neither trade nor transfer – a worse outcome for poor *B*.

Hence, as with the price gouging case, it is better for the state to refrain from trade restrictions and, instead, to subsidize poor *B*'s income, by direct transfers or by tax credits. If just

³⁹ Luck egalitarians, for example, say *B* is unjustly poor when *B* is impoverished by bad luck or by circumstances outside his control. “Coercion as poverty” arguments are generally unclear on whether *A*'s obligation to poor *B* applies only when *B* is unjustly poor or also when *B*'s poverty is the not product of injustice.

rescue requires \$10 for *B*, then the state should provide it to *B*. Subsidies are better for poor *B* (and his trading partners), and more directly address the root problem, which is the circumstance of poverty, not trade.

As with the analogous price gouging case, this argument does not claim that mutually beneficial trade with the poor must be beyond ethical reproach. It says that given the goal of alleviating unjust poverty, restraint of trade with the poor is a dubious means of accomplishing it.⁴⁰

The practical question of how best to help poor *B* is entangled with the ethical question of who should bear the cost of remedying *B*'s poverty. Poverty is the product of complex and historically contingent legal and socioeconomic forces. Because no single person has caused *B*'s poverty, a *coercion as failure to rescue* regime must independently decide *who* shall bear the responsibility of remedying it.⁴¹ The *coercion as failure to rescue* argument says Poor *B* is coerced because *A* beneficially trades with him rather than meeting the duty to rescue *B* without compensation. If *A* hires *B* to do yard work and *B* gains \$2, this is deemed coercive because *B* is entitled to a \$10 payment from *A* without giving up yard work.

But why should the duty to rescue Poor *B* should fall upon *A*, who wishes only to trade in mutually beneficial fashion? As in the price gouging case, the *coercion as failure to rescue* argument condemns *A*, when *A* does *something* for Poor *B*, while exempting others who do *nothing* for poor *B*. To say that more should be done for Poor *B* does not show that *A*, who does something for Poor *B*, alone should have the duty of rescue. What is more, many of those who do nothing for Poor *B* are no less in a relationship of justice to Poor *B* than is *A*.

If the community is morally responsible for *B*'s poverty, as *coercion as failure to rescue* assumes, then the community, and not merely its members who encounter the poor, should bear the cost of rescue. In the case of imminent peril, *only* Bad Samaritan *A* can rescue Thirsty *B*. And *A* can rescue at low cost. Not so in the case of unjust poverty. All members of the

⁴⁰ Uplifting the poor by restricting their opportunities to trade is almost never a successful strategy. Historically, poverty has been most acute where trade opportunities are limited; greater scope for trade has ordinarily been a force for reducing poverty.

⁴¹ Fleurbaey (2007: 147) notes that when coercion is a violation of *B*'s freedom, it is relatively easy to identify *A*, who is both causally responsible and morally responsible for *B*'s necessity. But when we think of coercion as a failure to alleviate *B*'s poverty, *A* is not causally responsible, rather, "the community as a whole is guilty."

community (with adequate economic resources) are no worse situated than *A* to rescue poor *B* – by contributing taxes, they can fund the alleviation of *B*'s poverty. A sensible policy of progressive tax and transfer, and not a self-defeating plan to restrict or prohibit trade with the poor, is fairer to those who trade with them, and, more importantly, is better for the poor.

A final matter concerns the scope and nature of the community bound to rescue its poor. *Coercion as failure to rescue* scholars tend to identify the relevant moral community with the nation state – so that *A*'s duty to *B* derives from the fact that *A* and *B* are members of the same polity. But if this is so, does it not imply that *A* has no duty to rescue Poor Foreigner *B*, and that, therefore, trade with less developed countries is permissible? If, alternatively, the relevant moral community is all humanity, so that those with the strongest claim for rescue are the world's poor living on \$1 a day, then is there not a compelling moral obligation to enact those policies that rescue the world's poorest, such the wholesale removal of barriers to immigration?

7. No exit: consent to a market order

Fabienne Peter (2004) argues that market exchanges without force or fraud nonetheless should be called coercive when *B* has not consented to the socioeconomic background conditions of his exchange with *A*, even when *A* has had no influence whatsoever on those background conditions.⁴² Peter does not claim that *B* is coerced unless he consents to *every* conceivable aspect of the social and economic order that might bear on a commercial transaction, an assertion that would make her conception of coercion vacuous. Peter says, rather, that *B*'s transactional consent is vitiated specifically when background conditions depart from Rawlsian principles of justice. Peter does not say that *A* coerces *B*, nor does she deny that *B* is better off trading with *A*; in her account, *B* is coerced by structural injustice.

⁴² Peter accuses economists (at least those of “the Chicago-fed mainstream”) of conflating choice and consent, to the point that they mistakenly take all choice to establish consent. Put so baldly, this cannot be correct. First, not all choice involves consent. If *B* chooses to brew coffee rather than tea at breakfast, *B* does not, with her choice, give or receive consent. Second, some choices clearly are not consensual, even for Chicagoans. The victim of Gunman *A* chooses to surrender his wallet, but nobody thinks his consent is valid. Third, I am not sure Richard Posner, one of Peter's exemplars of the choice-establishes-consent fallacy, will serve, since Posner (1981) is not a Paretian. In fact, Posner (1981) defends a wealth-maximization theory of justice *against* the Paretian, welfare-maximizing view of mainstream economics. Posner's theory of justice defends non-consensual but net-wealth-increasing reallocation of resources, what a Paretian approach, with its emphasis upon consent and mutual benefit, will not permit.

This essay has defended a different concept of coercion, one that requires, among other things, that *A* be causally responsible for *B*'s necessity – coercion requires a coercer. But Peter makes two important points. First, injustice does exist; and, even if injustice is distinct from coercion, it is wrong and harmful, and it commands our moral concern. This essay has argued that unjust poverty is better addressed by state transfers to the poor, rather than injustice-exacerbating restraint of trade with the poor.

Second, Peter points to what we may call constitutional consent, that is, consent to principles of justice and other elements of what Rawls called the basic structure of society. One implication of the distinction between transactional consent and constitutional consent is that consent given at the transactional level does not automatically ramify upward. For example, Marxist *B* can happily and voluntarily buy a cappuccino from capitalist *A*, without thereby endorsing a market system in the large. However, Peter follows Rawls (and others in the social contract tradition) in assuming arguing that consent *does* ramify downward. Peter says if *B* is made worse off by labor legislation *B* is not coerced, because *B* has already consented, presumably at the constitutional level, to abide the outcomes of the political and legal process that produced the unfavorable legislation.⁴³

In Rawls' (1971) theory, the principles of justice are installed at the constitutional level. Should, for example, Rawlsian social contractor *B* find, once her veil of ignorance has been lifted, that she is, in fact, near the top of the income distribution, paying most of her income in taxes, she is not coerced. Why? Because, though *B* might, ex post, prefer not to have most of her income redistributed, she has, ex ante, given express consent at the constitutional level, having rationally and voluntarily assented to the Rawlsian principles of justice, and to the tax and transfer system that makes them operational.

Peter's logic of downward-ramifying consent suggests one route for investigating the consent to a market order more generally. *B* may have her opportunities shrunk (or enlarged) by the actions of other buyers and sellers, but this is legitimate and non-coercive insofar as *B* agreed, at the constitutional level, to a market system as part of the basic structure of the social

⁴³ This returns us to the weak critique, which says that when the state prevents *A* from coercing *B*, the state coerces *A*. The liberal tradition deems state coercion of *A* legitimate insofar as it is consensual. When those bound by state coercion have agreed to be so bound, the state is within our rights to convict and punish Gunman *A*.

contract.⁴⁴ Insofar as she gave constitutional-level consent to a price system and its workings, cappuccino-loving *B* consents to the shrinking of her opportunity set occasioned by *A*'s new taste for cappuccino. *B* does not consent to a market order merely by purchasing a cappuccino; *B* consents to a market order when, as a social contractor, she rationally and voluntarily agrees to it at the constitutional level.

The question strong critics like Peter are engaging here is: (when) do individuals consent to a market order in the large? Daniel Hausman (1992), for example, regards the market as coercive, on grounds individuals have no alternative to it:

[I]ndividuals can only be regarded as voluntarily engaged in market relations if they could choose not to be part of market life. Since this is not a real option, the . . . decision to participate in markets seems little more voluntary than . . . [the] decision to hand over [one's] wallet to an armed robber (1992).

Entering the market, Hausman says, is the equivalent of entering a coercive transaction, because individuals have no choice but to enter the market. Hausman's claim is a version of the *having no choice establishes coercion* argument.

One reply, made famous by Milton Friedman, is to deny Hausman's premise. There is always, Friedman argued, an alternative to entering the market, the autarky option. Because individuals can opt to produce rather than to exchange, when they choose to enter the market, they must judge obtaining goods by exchange a better alternative than obtaining them by production (1962: 13). So long as there is an alternative in the form of self-production, Friedman argues, individuals *do* have a choice. Armed robbery victim *B* cannot exit the transaction imposed upon him by Gunman *A*, but cappuccino-loving *B* can opt to make rather than buy her cappuccinos.

But set aside Friedman's rebuttal, and grant Hausman's no-choice-to-capitalism premise. So, for example, if *B* needs to work, *B* has to work for some *A*. Even if there is competition among buyers of labor, so that *B* has choice among employment alternatives, *B* has no alternative to being a worker, at least insofar as self-employment is ruled out. Hausman does not say that employer *A*₁ coerces employee *B*, because (absent monopsony) *B* has alternatives in employer *A*₂

⁴⁴ I say "in principle," because in practice Rawls famously excluded most all property and other economic rights from his list of basic liberties.

et al., and may exit A_1 's employ at will.⁴⁵ B is coerced, rather, because B must work for some A . Hausman's coercion occurs at the constitutional level: B has alternatives inside the market, but no alternatives *to* the market.

As with transactional coercion, a key question is historical: how did the market come to be the only option for B ? One possibility is that a market order outcompeted the alternatives; the alternatives to capitalism were judged inferior or even unacceptable. In this scenario, one aspect of Hausman's analogy to armed robbery holds good: B 's society had options, and choose capitalism because the alternatives were unthinkable.⁴⁶ But what of the claim B is coerced? Was the market forced upon citizen B the way Gunman A forced his victim to choose his life over his wallet?

Not if B and fellow citizens can readily exit to alternatives they prefer. With easy entry and exit, those who prefer non-market alternatives will exit to them; those who prefer the market will opt to remain. With easy entry and exit, a market order should be unobjectionable to liberal theorists: B *does* have a choice, and has chosen the market.⁴⁷ Yet Hausman's premise, which we have granted, says that B has no choice, which implies that B and others who prefer non-market arrangements do *not* have the option (at least at reasonable cost) of exiting to them.

Hausman says B is coerced because B has no alternative to the market. But it is not a market order as such that prevents B 's exit to preferred alternatives. B 's exit, rather, is blocked by legal barriers to citizenship and immigration, and such barriers are erected by market- and

⁴⁵ It is, of course, possible for B to have no employment offers, or to have only one employment offer. The point is to distinguish having no choice among employers (monopsony, e.g.) and having no choice but to be a worker. The latter is what Hausman and others who argue in this vein deem coercive.

⁴⁶ I owe this insight to David Schmidtz (review of Olsaretti).

⁴⁷ If B was a social contractor and chose a market order, her consent to the market was express. The rub, of course, is that very few of those asked to abide constitutional choices (and their consequences) were signatories of the social contract. C , for example, did not give express consent to a market system or any other feature of the social contract her grandmother B and the other social contractors created. If C 's exit to other economic systems is barred, as it most often is in practice, there is no ready mechanism for establishing even C 's implied consent to constitutional arrangements. It is possible to make an inference of implied consent only insofar as C can vote with her feet, that is, can easily exit to alternative systems, such as those governed by central planners, queuing, common property cooperatives, or what have you.

non-market societies alike. Indeed, market societies generally have more open borders. Border controls, not markets, ensure that *B* has no choice in Hausman's sense.⁴⁸

This returns us to the question of the relevant moral community. Hausman does not say if he would favor reducing coercion in his sense by the removal of legal barriers to the free movement of peoples. Rawls did not. In fact, in Rawls' theory, the barriers to exit and entry that create coercion in Hausman's sense may not be removed by social contractors; they are imposed by Rawls *a priori*. Rawls' theory of justice requires that "membership in . . . society is given," not chosen, so "there is no question of the parties comparing the attractions of other societies" (Rawls 1993a: 276). Indeed, "the question of our entering another society does not arise" (ibid, p. 277). A Rawlsian society is closed, something "we enter only by birth and exit only by death" (ibid, pp. 135–6). In Rawls' scheme, "we do not, and indeed cannot, enter or leave it voluntarily," so a Rawlsian society seems to entail coercion in Hausman's sense.

A Rawlsian society is a closed society, and those outside its borders, poor and other, get no moral consideration, and those inside its borders are permitted no exit, and thus have no choice, except insofar as they can change the terms of the social contract that binds them and forsakes all others.⁴⁹

⁴⁸ If *C* is coerced, then so too is his sister, *D*, who is happy with a market order, but dislikes the Rawlsian principles of justice. The work of coercion is accomplished here less by the substance of what is socially chosen, but by the absence of express consent by *C* (and *D*) at the constitutional level, and the legal bar on exit, which precludes a ready inference of implied consent.

⁴⁹ *C* and *D* can voice dissent, to use the second of Albert Hirschman's (1970) famous troika, *Exit, Voice and Loyalty*, and try to change the basic structure. But constitutional amendments are, by design, costly to effect, which may be why Hausman adds the qualifying "real" when he says that *B* has no "real" choice other than the market, rather than saying *B* has no choice at all.

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