The Hobbesian Analysis of Promises and Contracts Made under Coercion or Duress:

A Critique

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[…] who does not see that if someone is forced to make a promise through fear, or deceived into it by trickery, the promise ought not to stand? One is released from such promises in most cases by the praetor’s code of justice, and sometimes by the laws.

Cicero, *On Duties*

1. Introduction

Thomas Hobbes says that an action is voluntary when the agent performs it with the objective of benefiting from it. He writes in *Leviathan* that “of the voluntary acts of every man the object is some *good to himself.*” This proposition implies that contracts and promises made under coercion or duress may be completely voluntary and intentional and so that they may be morally binding. In this paper, I argue that Hobbes’s analysis does not capture the intuitive meaning of voluntariness. In my view, his theory simply redefines the notion of

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2 Cicero 1991, pp. 13-14. Cicero also says that “something exacted by the enemy through force ought not to have been authoritative” (1991, p. 140).

3 Hobbes 1994b, p. 82, italics in the original. See also 1994a, p. 71 and 1998, p. 35. In this paper I quote *Leviathan* in most cases, but I give the corresponding pages of *The Elements of Law* and *De Cive* in the footnotes.
voluntariness in such a way that any decision made on a rational basis counts as voluntary, even though they might not be what agents really want to do. Thus, in this paper I reject Hobbes’s analysis of voluntariness, and I question his take on contracts and promises made under coercion or duress.

Hobbes’s analysis of promises and contracts plays a key role in his political philosophy. Hobbes’s theory involves a principle of political obligation: “subjects owe to sovereigns simple obedience in all things wherein their obedience is not repugnant to the laws of God.” 4 Hobbes justifies this robust obligation to obey the state in an agreement or act of consent by citizens:

[…] every subject in a commonwealth hath covenanted to obey the civil law (either one with another, as when they assemble to make a common representative, or with the representative itself one by one, when, subdued by the sword, they promise obedience, that they may receive life).

Hobbes’s contractarian justification of state authority and political obligation is articulated through the idea that covenants or contracts made under coercion or duress are in some circumstances morally binding. 6 In particular, Hobbes’s theory of political authority
and obligation is articulated through the application of this thesis. According to Hobbes, both “sovereignty by acquisition” and “sovereignty by institution” are the result of agreements performed for the same reason, namely, fear of death:

A commonwealth by acquisition is that where the sovereign power is acquired by force; and it is acquired by force when men singly (or many together by plurality of voices) for fear of death or bonds do authorize all the actions of that man or assembly that hath their lives and liberty in his power.

And this kind of dominion or sovereignty differeth from sovereignty by institution only in this, that men who choose the sovereign do it for fear of one another, and not of him whom they institute; but in this case they subject themselves to him they are afraid of. In both cases they do it for fear, which is to be noted by them that hold all such covenants proceed from fear of death or violence void; which, if it were true, no man in any kind of commonwealth could be obliged to obedience.7

Notably, Hobbes mentions in the passage just quoted the thesis that contracts and promises made under coercion and duress may be considered invalid by some writers, although he doesn’t specify who those authors are. However, the anarchistic conclusion this principle entails—no citizen would have an obligation to obey the state because no state would be legitimate—is for him itself sufficient to ground the opposite theory: Coercion or

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duress do not undermine the validity of contracts and promises. However, this is not the end of Hobbes’s analysis of contracts and promises made under coercion or duress. Additionally, he also develops an original theory largely grounded in a distinctive analysis of agency and voluntariness.

Admittedly, Hobbes’s ideas on contracts and promises are extremely counter-intuitive. Surely actions made under coercion or duress are not fully voluntary, which would explain why they are not morally binding. However, important scholars—notably Claire Finkelstein—have recently written important essays on this topic trying to find a way of understanding what sort of theory would be required in order to make sense, if not to defend, Hobbes’s theory, at least in some contexts. Thus, according to what I call in this paper “The Hobbesian Analysis of Promises and Contracts Made under Coercion or Duress,” it is not just a psychological fact that agents feel bound by agreements reached under coercion or duress; according to the Hobbesian theory they have a genuine moral obligation to act as they have promised or consented to. In this paper, I analyze both Hobbes’s and Finkelstein’s arguments to ground such a claim via a particular understanding

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8 In this paper, I don’t investigate in detail this first argument and so I move (too quickly, perhaps) to Hobbes’s different argument based on agency.
9 Philip Pettit writes: “By all accounts, Hobbes’s included, a contract has to be voluntarily assumed if it is to generate an obligation. But it doesn’t take much for a contract to count as voluntary in Hobbes’s reckoning. People will enter a contract voluntarily in the course of the process, common to human and nonhuman animals, the he describes as deliberation. No matter how this process materializes—it may or may not be aided by explicit reasoning—and no matter what appetites it takes as input—these may include fear or anxiety—the product will count as voluntary. So the contract accepted under duress or pressure, even under coercive threat, can be just as binding as a contract that is undertaken with relish” (2008, p. 67).
10 See e.g. Finkelstein 2001, p. 335 and 2009, pp. 47-54. In personal correspondence, Finkelstein told me that she believes that Hobbes’s theory is not acceptable in the gunman case. But she believes that this kind of case is different from other cases (like Alaska Packers’ Association v. Domenico) which have to do with renegotiating an existing contract. In those cases, she claims that the new contract should be enforced even though the renegotiation takes place as the result of a threat that coerces the other party to rewrite the contract.
of agency and voluntariness. My conclusion is that their attempts to rationally ground the claim that contracts or promises made under coercion or duress are in many cases voluntary and therefore that they may be binding do not succeed. Common sense is vindicated by philosophical reflection—or at least that is what I attempt to do in what follows.

2. Coercion and Voluntariness

Hobbes writes famously that

Covenants entered into by fear, in the condition of mere nature, are obligatory. For example, if I covenant to pay ransom, or service, for my life, to an enemy, I am bound to it. For it is a contract wherein one receiveth the benefit of life; the other is to receive money, or service, for it; and consequently, where no other law (as in the condition of mere nature) forbiddeth the performance, the covenant is valid.¹¹

Hobbes does not limit the validity of the thesis that promises and contracts entered into by fear are only binding in the state of nature. On the contrary, Hobbes explicitly extends this principle to civil society, although this issue may conflict with other parts of Hobbes’s political and legal theory.¹² He says that “even in commonwealths, if I be forced to redeem

¹¹ Hobbes 1994b, p. 86. See also 1994a, pp. 85-86 and 1998, pp. 38-39. Based on the principle that covenants entered into by fear are obligatory, Hobbes also says that “prisoners of war, if trusted with the payment of their ransom, are obliged to pay it; and if a weaker Prince make a disadvantageous peace with a stronger, for fear, he is bound to keep it, unless […] there ariseth some new and just cause of fear, to renew the war” (1994b, p. 86).

¹² The difficulty is that for Hobbes contracts or promises made under coercion or duress in civil society should not be binding since they are contrary to the law of nature (based on reciprocity) and the law of nature is part of the civil law. One can perhaps say that if agents have the obligation to fulfill promises and contracts made under duress in the commonwealth that may imply that the state these agents live in is not really a civil state. I thank Luc Foisneau for pointing out this issue to me.
my self from a thief by promising him money, I am bound to pay it, till the civil law discharge me.”13

Hobbes’s evaluation of these two examples is completely contrary to common sense, and also opposite to the opinion of most philosophers, lawyers and judges. As a matter of fact, the intuitive analysis of Hobbes’s examples is straightforward. The ransom case and the promise to the robber do not entail any kind of moral obligation to fulfill one’s word; both the agreement and promise are invalid ab initio. The agreement to pay ransom and the promise to the thief are made under coercion or duress, which morally speaking invalidates the assumed obligation, and which any court of justice would recognize as a legitimate defense.14 Contracts under coercion or duress are not supposed to be binding under any circumstances, for whatever reason.15

Intuitively, the key point that explains why actions made under coercion or duress do not oblige the agents is that they are not strictly speaking voluntary. Now, they are involuntary not because coerced agents do not choose to promise or agree to perform something, but because the background conditions under which they do so are such that it is

13 Hobbes 1994b, p. 86. See also 1994a, p. 86 and 1998, p. 39. Of course, Hobbes’s analysis does not entail that the robber has a right to assault the victim.
14 See e.g. Ferriel and Navin 2004, p. 529.
15 See Finkelstein 2009, p. 3. Horacio Spector writes that “Though there are various philosophical doctrines about the moral basis of contractual obligation, it is widely accepted that contracts are binding (only) if they are voluntarily (freely) consented to. Accordingly, law establishes coercive threats and economic duress as reasons that exclude voluntariness” (2006, p. 1125). Alan Wertheimer also says that “A coerced promise is not morally binding. A legal contract is voidable if made under duress. A marriage may be annulled if it results from coercion. A will is not valid if the testator was subject to ‘under the influence.’” (1987, p. 3) Now, as Spector says, not all philosophers and jurists share the reasons that explain why promises and contracts entered into by coercion or duress are invalid and thus not binding. Some scholars believe that coercion or duress in some way invalidates the voluntariness of the promises or agreements although some writers analyze the issue in welfarist terms. See Finkelstein 1995, pp. 257-270 for a detailed analysis of “welfarist” and “voluntarist” conceptions of coercion or duress.
intuitive to claim that they do not reflect agency and voluntariness of agents. Claire Finkelstein characterizes this view as follows, although in her own work she assumes the competing rational choice/Hobbesian view in her own analysis:

It is important to note that the argument for the invalidity of such contracts is normative, not psychological. There are certain background conditions we require in order to regard a person as having acted of his own free will, and the notion of voluntariness might be thought of as capturing these conditions. When we say, therefore, that a contract signed under duress is “involuntary,” we do not mean literally that the actor did not choose to enter the contract. Rather, we mean that the background against which he chose was one that makes his choice fail to reflect his agency.16

Of course, Hobbes does not share this analysis of agency and voluntariness. Among other things, this issue implies that coercion plays no role in his evaluation of the validity of promises and contracts.

Hobbes’s defense of the idea that the covenant to pay ransom and the promise to the robber entails a moral obligation to the agent is based on a distinctive analysis of voluntariness. From his point of view, almost all that matters when evaluating the validity of an agreement or promise is that the performed action was voluntary and intentional. Now, according to Hobbes, an action is voluntary when the agent performs it with the objective of benefiting from it; in Hobbes’s own wording: “of all voluntary acts the object is to every man his own good”17 and “of the voluntary acts of every man the object is some good to

17 Hobbes 1994b, p. 95. See also 1994a, p. 90.
Hobbes also writes that “all the voluntary actions of men tend to the benefit of themselves, and those actions are most reasonable that conduce most to their ends.”

Reason recommends acting in such a way that people’s choices satisfy their own desires and interests (in the contemporary economic jargon: that their choices maximize utility). And so Hobbes claims that any rational decision in this sense may count as voluntary. In particular, this idea implies that most contracts and promises made under coercion or duress are completely voluntary and intentional because, in most cases, coerced agents perform these actions because they are a way to obtaining something they want more than what they promise or agree to do, e.g., to keep living.

Thus, Hobbes says that “agreements are

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18 Hobbes 1994b, p. 82, italics in the original. See also 1994a, p. 71 and 1998, p. 35. According to Finkelstein, this Hobbesian thesis is adopted by rational choice theory: “The rational choice perspective on voluntariness […] is that an action is voluntary just in case the agent performs it for the sake of something he hopes to attain” (2009, pp. 15). The idea that voluntary acts involve “some good to himself” or are performed “for the sake of something he hopes to attain” seems to entail psychological egoism, which would imply that actions performed for moral or esthetic reasons cannot be legitimately considered voluntary. But this obviously is not the case, which suggests that either the egoist interpretation on the issue is mistaken, or that Hobbes and his rational choice followers are wrong. I do not want to take sides on this issue in this paper and thus I interpret the meaning of “good” in Hobbes’s principle in a broad way, which involves not only one’s own well-being, but also the well-being of other people. Finkelstein herself suggests this reading. She says that the idea adopted by Hobbes is that “an agent who performs a voluntary act hopes to attain something he regards as a benefit. We can allow Hobbes this claim while distancing ourselves from egoism if we say that the notion of benefit need not be restricted to enhancements of one’s own well-being. A person, for example, might treat as a benefit the fact that someone she loves is bettered, without abandoning the basic picture of rationality as one of rational maximization” (2001, p. 337, italics in the original). A slightly more radical way of interpreting the passage would be to interpret “good to oneself” as meaning “something that is considered as good by myself”; in such a reading, the option of psychological egoism associated to Hobbes can be to aside, or in any case its influence can be limited. See Foisneau 2007 for a reading in this vein.


20 Hobbes writes in another context that “the motive and end for which this renouncing and transferring of the right [of nature] is introduced, is nothing else by the security of a man’s person, in his life and in the means of so preserving life as not to be weary of it” (1994b, p. 82).
universally valid once the benefit has been accepted, and if the act and the content of the promise are licit.”

I agree with Hobbes that actions performed under coercion or duress are in most if not all circumstances rational. Coercion and duress changes the pay-offs of the options agents face, and thus makes it rational for agents to promise or contract to do something which only *prima facie* might be evaluated as disadvantageous. And Hobbes insists that the exercise of the agent’s exercise of rationality when making a promise or signing a contract is sufficient to ground its validity and bindingness, although of course Hobbes believes that before promising they have the right to resist the robbery and, perhaps, even to kill the thief in self-defense.

This way, Hobbes’s analysis of voluntariness entails that coercion and duress are legitimate means to lead people to make promises and contracts. As a matter of fact, the issue that coercion or duress can intuitively be illegitimate ways to lead parties to make promises or agreements do not seem to matter to him at all. According to Hobbes, once agents have promised or contracted to do something, they acquire the obligation to do it. In

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22 This is a big admission, especially given my purposes of criticizing the Hobbesian view. There is a whole school that argues that mental functioning is just short-circuited in cases of coercion or duress. However, I take it that the point that actions performed under coercion or duress are in most if not all circumstances rational is not really controversial at all. As a matter of fact, the efficacy of coercion depends on the victim’s rational deliberation in decision-making. See the analysis of Don Corleone’s “offers” in section 3, *infra* for a discussion.
23 One may say that Hobbes is not considering rationality but voluntariness here; there is an element of deliberation in the will according to Hobbes, but that “deliberation” may not be understood as a rational deliberation, but the succession of desires and aversions. However, I take it that the association of deliberation with rationality is crucial in Hobbes’s argument, because part of what makes contracts and promises made under coercion binding is that agents make a decision on a rational basis.
24 Hobbes writes that “a man cannot lay down the right of resisting them that assault him by force, to take away his life, because he cannot be understood to aim thereby at any good to himself” (1994b, p. 82). See also 1994b, p. 87 and 1994b, p. 142.
particular, the fact that agents sign contracts or promise obedience conceptually implies that they voluntarily renounce to a liberty. Finkelstein says that “Mutual benefit provides the explanation both of why it is voluntarily entered into, and of why it is binding. It is voluntary, because the test of voluntariness in actions is expectation of benefit. And it is binding simply because it is a voluntary renunciation of a liberty—the liberty not to pay the robber.”\(^\text{25}\) And according to Hobbes renouncing a right is necessary and sufficient for the creation of a moral obligation on the agent.\(^\text{26}\) Thus, he believes that people have an obligation to fulfill what they have promised or agreed to do even though they have made such a thing due to the coercive threat of another person, perhaps only for saving their own lives.\(^\text{27}\)

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\(^{25}\) Finkelstein 2001, p. 340, italics in the original.


\(^{27}\) This issue by itself does not imply that Hobbes believes there are some elements that invalidate agreements or promises, but that coercion or duress are not such things. However, in any case, the normative role that these elements play in his theory is marginal. Hobbes says that the element that affects the validity of the agreement or promise is not fear in itself but the cause of fear, insofar as that cause has a relationship with new circumstances not present at the moment of making the act: “The cause of fear which maketh such a covenant invalid must be always something arising after the covenant made (as some new fact or other sign of the will not to perform), else it cannot make the covenant void. For that which could not hinder a man from promising, ought not to be admitted as a hindrance of performing” (1994b, p. 85). There are also some elements of content and circumstances that are relevant at the moment of evaluating the validity of contracts and promises. Regarding content, Hobbes says that the right to self-preservation cannot be alienated, which implies that “A covenant not to defend myself from force is always void” (1994b, p. 87). Hobbes also writes that “A covenant to accuse oneself, without assurance of pardon, is likewise invalid. […] The same is also true of the accusation of those by whose condemnation a man falls into misery (as, of a father, wife, or benefactor)” (1994b, p. 87). There are some circumstances that turn contracts invalid: “If a covenant be made wherein neither of the parties perform presently, but trust one another, in the condition of mere nature (which is a condition of war of every man against every man) upon any reasonable suspicion it is void […]. And therefore, he which performeth first does but betray himself to his enemy, contrary to the right (he can never abandon) of defending his life and means of living” (1994b, pp. 84-85). Now, these elements almost do not play any role in civil society: “in a civil estate, where there is a power set up to constrain those that would otherwise violate their faith, that fear is no more reasonable; and for that cause, he which by the covenant is to perform first is obliged so to do” (1994b, p. 85). See also 1994a, pp. 84-85 and 1998, pp. 39-40.
3. Rationality and Coercion

In what follows, I grant that coerced actions are strictly speaking free in the sense that the person could have done otherwise.\(^\text{28}\) This is the usual case for the Hobbesian analysis of coercion or duress, and I believe that this is correct. At least in most circumstances, coerced agents are not literally prevented from acting otherwise than the way they are forced to act, although their options are intentionally reduced severely by other agents.\(^\text{29}\) However, I think that the agent’s freedom to act is not by itself sufficient to ground the bindingness of promises or contracts made under coercion or duress. The relevant issue is not whether the action is free in this sense, but whether it is voluntary. And against Hobbes I take it that most actions performed under coercion or duress cannot be taken to be genuinely voluntary even though I believe Hobbes is completely right in saying that they are performed by agents with the expectation of obtaining a benefit and therefore that these actions are rational. Their lack of voluntariness is what entails the invalidity of promises and contracts made under coercion or duress, because involuntariness defeats true and genuine consent.\(^\text{30}\)

Hobbes’s own example of the promise to the thief shows that coerced actions are not genuinely voluntary even though they can be rational. Surely, the fact that paying the thief is Pareto-superior to the status quo does a lot of work in Hobbes’s example, and pushes us to think that the promise to act so is voluntary. Assuming that the victim does not have

\(^\text{28}\) Of course, Hobbesian compatibilism would also say that persons would strictly speaking be free even though all their actions were determined. But in this context I don’t need to engage in the metaphysical dispute regarding free-will/determinism to develop my critique of the Hobessian analysis of contracts and promises made under coercion or duress.

\(^\text{29}\) This thesis is not straightforward, though. For instance, Spector writes that appeal to “standard liberal intuitions” grounds the idea that coercion and duress limit people’s freedom since “the most flagrant attacks on individual freedom condemned by liberals consist precisely of tyrannical legal rules threatening subjects with sanctions if they commit certain acts permissible in a free society, such as the refusal to collaborate in the persecution of dissidents” (1992, p. 15).

\(^\text{30}\) See Finkelstein 2009, p. 10.
enough money in her pocket to secure her freedom when threatened by the robber, the situation that would take place when she fulfills her promise would be beneficial for both parties. On the one hand, the victim would be in a much better position, since we can assume that being liberated at the cost of losing part of her property is certainly better for her than not being liberated and (in some sense) keeping the money. On the other hand, the thief would also be in a better position when the victim fulfills the promise and pays the money, because *ex hypothesi* in the example the thief does not want to kidnap his victim beyond the economic benefit of robbing her, and having the victim captive and the money at the same time is not a real option—the very victim is the one in charge of getting the money for the robber. This issue seems to entail that the promise to the thief is voluntary. After all, promising is the rational way to go in the situation.

But this conclusion is too quick. The relevant issue to consider is that the alternatives the victim faces are not the best options *simpliciter*, but the best alternatives given the circumstances. In such a context it does not look like the victim can really decide voluntarily what to do; as a matter of fact, she cannot do many things she might want to, things she would have done were she not being threatened by the thief. (We can simply assume here that giving her money to the robber wouldn’t have been something she otherwise would have done.) In this situation, she has to make a choice from a set of options that is seriously restricted due to the robber’s threat. In such a context, it does not seem adequate to say that the victim is making a voluntary decision when promising to return to the robber with a certain amount of money in order to be liberated by the thief. Though rational, the promise to the thief is intuitively not strictly speaking voluntary. Giving the money to the thief is *not* an action the agent does willingly, although it is an action she would have promised to
perform were she threatened to do so. This is what grounds the intuitive idea that her promising does not generate any kind of moral obligation to the thief.

Finkelstein disagree with this kind of analysis. She writes that

[...] Hobbes was right to reject the idea that actions performed under duress are involuntary. First, a coerer depends on his victim’s ability to respond to his demands rationally for his efforts at coercion to be effective. He relies on his victim to engage in a rational balancing of evils, and it would be odd to say that an action is rational nevertheless not voluntary. Second, it is hard to distinguish these kinds of cases from those in which one’s options are simply unattractive. If I need, desperately need, to buy a loaf of bread, and there is only one kind of bread in the store, we would not normally say I bought that kind under duress. It would be worse, still, to say I bought it involuntarily. But what possible difference could it make that in one case a person has a gun to my head, and in the other, I have compelling reasons of a different sort to favor a particular course of action?

I believe Finkestein’s arguments here are flawed. Now, she is right in her first point, which emphasizes that the efficacy of coercion depends on the victim’s rational deliberation in decision-making. As I have been saying so far, coerced actions are (or, at least, can be) performed on a rational basis, a point that is missing in many analyses of coercion and duress. An example might help me to clarify the issue at stake. (The example will also allow me later to explain why contra Finkelstein I think that actions performed under coercion or duress might not be voluntary.) The fact that Don Corleone in *The Godfather* can say “I’m gonna make him an offer he can’t refuse” to explain how he pushes his victims to act as he

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wishes shows that threats can make it rational to choose one “non-preferred” option from a set of options. In the example we do not have any basis to question the fact that the threatened victim is able to deliberate and rationally choose a certain course of action from the available options. Intuitively, Don Corleone’s threats do not in any sense prevent victims from making rational decisions. As a matter of fact, the efficacy of his “offers” depends on the fact that agents keep their capacity to engage in rational deliberation and decision-making, a point Finkelstein rightly emphasizes. Were his victims to go crazy and so make any crazy decision (or no decision at all) when threatened by Don Corleone, it wouldn’t make much sense for him to make them “offers” in the first place. The very idea of using the language of offers highlights the fact that Don Corleone’s threats depends on the capacity of agents to understand, reflect, and act on the options available to them: Don Corleone is a “businessman.” Additionally, I take it that this is the issue that allows us to make sense of Don Corleone saying “I’ll reason with him” when also explaining how he is going to convince an interlocutor to accept a prima facie disadvantageous proposition.32

But surely the story does not end here. Contrary to what Finkelstein says, the fact that a decision is made through the exercise of the agent’s rational capacities does not entail that they are genuinely voluntary. Finkelstein seems to believe that the concepts of rationality and voluntariness are related in a way they are not. There can be rational actions which agents do not perform voluntarily.33 And coerced actions are actions of such a kind. Coerced

32 I take it that these considerations show that the analysis of coercion based on psychological considerations is wrong. The theory says that coercion attempts against people’s rational capacity to choose, and that this is why promises or contracts made under coercion or duress would not reflect people’s genuine will to promise or consent and thus why they would not entail moral responsibility for performing them—their actions would be mere reflexes.

33 Also, conversely, there can be irrational actions that agents perform voluntarily.
actions are typically taken on a rational basis, but that doesn’t imply that they are voluntary.

Michael J. Trebilcock explains the key rationale behind this thesis:

> If consent is defined simply as a decision that is the product of a rational, deliberate choice, assuming away informational and cognitive deficiencies, almost every exchange can be viewed as voluntary. Only in the extreme limiting case of somebody’s seizing my hand and forcing me to sign a contract, or torturing me or psychologically traumatizing me, or inducing a hypnotic trance and in the course of the trance inducing me to sign a contract would there be an absence of rational, deliberative choice. There cases can all be thought of as involving non-volitional acts that do not reflect my real will of preferences. However, these limiting cases are of little analytical interest and do not reflect the bulk of contract cases where issues of coercion arise, which might (in Wertheimer’s terms) be viewed as cases of “constrained volition.”

From my perspective, the critical point that shows that coerced actions are not voluntary is that agents obviously would not perform the actions in question were they to have a true opportunity to act otherwise, i.e., if their options were not reduced to the dramatic point of doing what Don Corleone says they have to do, or going out of business, or leaving the city (or the country), or just dying.

Let me develop the example to show this point fully. In *The Godfather*, Don Corleone uses the expression “I’m gonna make him an offer he can’t refuse” to explain to his godson Johnny Fontane that the movie producer Jack Woltz will give him the role he needs to relaunch Johnny’s career in Hollywood. What happens in *The Godfather* is well-known, but

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34 Trebilcock 1993, p. 79.
worth repeating here. Even though Woltz initially refuses to hire Fontane, after waking up and finding the head of his favorite (and valuable) horse in his bed, Woltz finally decides to give Fontane the part. Finding the head of the horse vividly shows Woltz that the options he has are not those he believed he had. Don Corleone’s “offer” reduces his alternatives to the dramatic point of not allowing him to do what he really wants to do, namely, not hiring Fontane. Now, the relevant issue is that this shows that it is intuitively wrong to say that Woltz gives Fontane the part in the movie voluntarily, simply because he makes a rational decision among the alternatives at his disposal. On the contrary, the action is involuntary, although rational. We can perfectly imagine Woltz explaining/justifying his conduct by saying “I was forced to do it, I had no choice,” or “I did what I could (in the circumstances);” but we can hardly make sense of something like Woltz saying “I hired Fontane voluntarily, I wanted to do that.” Woltz is forced by Don Corleone to hire Fontane; he thus does not do it voluntarily.35

I take it that this example helps us to explain what is wrong in Finkelstein’s analysis. That an action is rational does not entail that it is voluntary. Voluntary actions are actions agents want to perform, but rational actions can be actions agents don’t want to perform. I take it that here what reduces the option set is crucial; the fact that it is Don Corleone who is threatening Woltz cutting off the head of his horse is what explains the involuntariness of Woltz’s action of hiring Fontane. It is not just that, say, the actor Woltz was thinking in

35 G. A. Cohen explains that “When I am forced to do something I have no reasonable or acceptable alternative course. It need not be true that I have no alternative whatsoever. At least usually, when a person says, ‘I was forced to do it. I had no other choice,’ the second part of the statement is elliptical for something like ‘I had no other choice worth considering’” (1983, p. 4, italics in the original). Now, it seems odd to say that an agent makes voluntarily a decision to do something he does not consider worth making, but is forced to do it in the circumstances, although perhaps circumstances in which we act out of necessity may constitute counter-examples to this point.
hiring for the part in the movie is (for some reason) unavailable, and so that Woltz is forced in such circumstances to hire Fontaine. In this case we would be inclined to say that Woltz’s decision to hire Fontaine is voluntary, although not his most preferred option. But the issue is different when one person intentionally reduces the options from the option set. These circumstances are not just naturally unfortunate, but unfortunate due to the deliberate participation of some people. Thus, although in this paper I do not provide necessary and sufficient conditions for cases of coercion, I think that it is intuitively plausible to claim that coercion can result from another person’s reduction of the option set of available options for the person coerced.

Now we are ready to show that there is an important difference in the cases of the promise to the thief and of Don Corleone’s “offer” to Woltz, in which agents are forced to do something because someone else is reducing their options, and Finkelstein’s case of going to the supermarket and having to buy a leaf of bread we do not think of buying before because there are no others kinds available. In the latter, we can make perfect sense of the case by saying that the action is voluntary, but that it just so happens that the agents do not do what they were considering doing, namely, buying their most preferred kind of bread. The relevant issue is that standing conditions are here reducing the option set. In the former cases, however, the fact that someone is intentionally threatening the agents is what affects

36 Aristotle’s example in *Nicomachean ethics* 1110a10-11 of the captain who throws his cargo overboard in a storm to avoid shipwreck may perhaps illustrate this point. Hobbes analyses the case as follows: “Fear and liberty are consistent, as when a man throweth his goods into the sea for fear the ship should sink, he doth it nevertheless very willingly, and may refuse to do it if he will; it is therefore the action of one that was free” (1994b, pp. 136-173, italics in the original). See also 1994a, p. 71-72 and 1998, p. 111. Quentin Skinner says that the example “would have been familiar to many of his [Hobbes’s] original readers, partly because Aristotle had discussed it […], and partly because it had been picked up and illustrated in a number of emblem-books” (2008, p. 21). See Meyer 2006 for an analysis of Aristotle on the voluntary.
their decisions, and this is what explains why their actions are not genuinely voluntary. In these cases, the agents are alienated from their actions; they are doing what others want them to do, not what they want to do.\footnote{Friedrich A. Hayek emphasizes this point in his particular analysis of coercion: “By ‘coercion’ we mean such control of the environment or circumstances of a person by another that, in order to avoid greater evil, he is forced to act not according to a coherent plan of his own but to serve the ends of another. Except in the sense of choosing the lesser evil in a situation forced on him by another, he is unable either to use his own intelligence or knowledge or to follow his own aims and beliefs” (1960, pp. 20-21, quoted by Spector 1992, p. 13).}

I take it that the ideas developed above show that Hobbes’s analysis does not track the intuitive idea present in the concept of a voluntary action. His theory simply redefines the notion of voluntariness in such a way that any decision made on a rational basis is voluntary, even though they might not be what agents really want to do, i.e., what they do voluntarily. Thus, it seems to me that Finkelstein’s idea that “it would be odd to say that an action is rational nevertheless not voluntary” is not that odd after all.

4. Fuzziness

There is another issue to analyze; Finkelstein’s second point involves an invalid move. Certainly, she is right to say that it can be extremely difficult to distinguish a genuine case of coercion from cases of non-coercion. In effect, it looks like there is a fuzzy limit between coerced actions and actions we intuitively do not say are coerced. If I break into a house and threaten to kill the owner unless he gives me the money he keeps in the safe, it seems pretty clear that I am coercing him. On the other hand, if at a party I say to a girl that I like that unless she kisses me I will break into tears, it does not look that I am coercing her (although
it shows some lamentable things of me). But there are other cases that are more difficult to catalogue: Does a capitalist coerce a worker when offering him a (legal) job with a reasonably good salary? Is a terrorist coercing his victims when threatening them with committing suicide? Am I coercing my grandmother when I say to her that unless she cooks my favorite meal (which she likes cooking) I will not visit her? It seems to me that these are very difficult cases to evaluate, and that different people will likely evaluate them differently.

We can thus grant Finkelstein that it can be extremely difficult to establish when there is genuine case of coercion or duress and when we are just facing non-attractive options. Coerced actions and actions taken on the basis of a rational “balance of evils” might be placed at different points on a continuum. But to claim that there is a fuzzy limit among coerced actions and non-attractive actions does not entail that they are the same kind of actions. There is a distinction between a bald man and one who is not bald even if there are borderline cases in a continuum of cases, and there is a distinction between coerced actions and actions that are non-coerced. Finkelstein says that the distinction cannot be made out of the basis of rationality/irrationality. So far, so good. But there are other considerations to take into account. Thus, I believe Finkelstein’s rhetorical question concerning the difference between these cases (“But what possible difference could it make that in one case a person has a gun to my head, and in the other, I have compelling reasons of a different sort to favor

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38 Perhaps this situation may be understood as a sort of “psychological coercion” or “emotional coercion” if these notions make sense. I thank Luc Foisneau for pointing this out to me.

39 See Nozick 1972, p. 112. Although many people would think that that offers are essentially noncoercive, Marxists think that under capitalism they might be coercive. In particular, Marxists believe that under capitalism job offers are coercive because proletarians, considered collectively, are not free to leave the working class and become private owners of capital, i.e., capitalists. See Cohen 1983 for an illuminating discussion.

40 Notice that an agent is somehow reducing the option set of available options in all the examples.
a particular course of action?”) should be understood literally. There surely are relevant differences between coerced actions and actions that are made from a set of unattractive options, although it might be philosophically intractable to specify what these differences are. Whatever they are in particular, these differences have an enormous normative relevance when evaluating the validity of promises and contracts. As a matter of fact, this is the point Hobbes denies, but which our moral and legal practices highlight when stating that promises and contracts made under coercion or duress are not strictly speaking voluntary, which explains why they are not binding.

5. Conclusion

Coerced actions may be strictly speaking free in the sense that the person could have done otherwise. In most cases, coerced agents are not literally prevented from acting otherwise than the way they are forced to act in a particular way, although their options are severely reduced by other agents. But this is not the end of the story. In this paper, I have argued that coerced actions are not strictly speaking voluntary. In my view, what explains that promises and contracts made under coercion or duress are not binding is not the absence of freedom of the agents to act otherwise, but the lack of voluntariness of their actions. Hobbes and his followers argue the concepts of rationality and voluntariness are tightly related. But these two notions are distinct. It may be perfectly rational to make a promise or sign a contract under conditions of coercion or duress. But that does not imply that the act of promising or contracting is voluntary. Thus, it seems sensible not to conflate these two notions, at least
insofar as we are interested in explaining the widely shared intuition that coerced promises and contracts are not binding, but also in justifying why this is so.\footnote{Hobbes’s analysis carries an extra problem I didn’t discuss in the paper. An absurd consequence of his theory is that manifestly imprudent actions would not count for him as voluntary insofar as they would not satisfy the requirement that the actions have the well-being (in a broad sense) of the agent as its result. But surely this is absurd. For example, if imprudently I choose to marry a truly terrible candidate Hobbes and his followers would have to say that the agreement would not be voluntary and thus that the marriage would not be lawful. But my imprudence and stupidity does not seem to have any impact on the bindingness of the action. At least at an intuitive level, the mere fact that I take a bad decision has no normative relevance regarding the validity of the marital contract.}
References


