



Licensing Domination: Foreign Will and Social Benefit

Danielle M. Wenner

To cite this article: Danielle M. Wenner (2019) Licensing Domination: Foreign Will and Social Benefit, *The American Journal of Bioethics*, 19:9, 60-62

To link to this article: <https://doi.org/10.1080/15265161.2019.1630507>



Published online: 16 Aug 2019.



Submit your article to this journal [↗](#)



View Crossmark data [↗](#)

REFERENCES

Dickert, N., and C. Grady. 1997. What's the price of a research subject? Approaches to payment for research participation. *The New England Journal of Medicine* 336: 98–203.

Millum, J., and M. Garnett. 2019. How payment for research participation can be coercive. *American Journal of Bioethics* 19(9): 21–31.

U.S. Department of Health and Human Services, Office for Human Subjects Research. 1979. Belmont report: Ethical principles and guidelines for the Protection of human subjects

of research. <https://www.hhs.gov/ohrp/humansubjects/guidance/belmont.html>

U.S. Department of Health and Human Services. 2019. U.S. Code of Federal Regulations. Title 45. Public welfare. Part 46. Protection of Human subjects. <https://www.hhs.gov/ohrp/regulations-and-policy/regulations/45-cfr-46/index.html>

Wertheimer, A. 1987. *Coercion*. Princeton, NJ: Princeton University Press.

Licensing Domination: Foreign Will and Social Benefit

Danielle M. Wenner , Carnegie Mellon University

Research ethicists are worried about twin threats to vulnerable groups of potential research participants related to the kinds and amounts of benefits they get from participation. On one hand, many worry about the potential for exploitation: that when all is said and done, the benefits generated by research are not distributed fairly among sponsors, researchers, and participants. On this view of exploitation in research—where exploitation is understood to involve the exploited party (research participants) receiving a disproportionately small share of the benefits generated by research—exploitation can be averted by ensuring research participants get a greater share of the benefits produced by research.

On the other hand, some worry that offers of larger benefits in exchange for research participation may ultimately compromise participants' consent in some way, whether by coercing them or by providing so-called "undue influence" on their decision to participate. On these views, worries about coercion or undue influence grow as benefits to research participants increase.

There is a tension here in that benefits that are offered to research participants can be construed as exploitative if they are too small, but unduly inducing or even coercive if they are too large (Ballantyne 2008). This pulling in two directions seems to indicate that the sweet spot of appropriate remuneration may be very small indeed.

Into this fray, Millum and Garnett (2019) introduce a conceptual distinction meant to clarify the terms of the debate. Neither our traditional conception of coercion, which consists of a threat to make someone worse off as compared to some relevant baseline if they do not perform the demanded action, nor the accounts of undue

influence that have been defended in the literature can make sense of the coercive nature of an offer to make someone better off than they would otherwise be. What has confused ethicists, they contend, is the conflation of two different kinds of coercion. One kind of coercion—the consent-undermining type—is properly characterized as consisting of a threat to make someone worse off as compared to some relevant baseline if they do not perform the action demanded. This kind of coercion (as the name would indicate) is a clear indication that someone's action is not voluntary in the manner demanded for full and informed consent.

The other type of coercion—what Millum and Garnett call "coercion as subjection"—doesn't require a threat to make the coerced party worse off. An offer to make someone better off can coerce in this way, if she is badly off enough to begin with that refusing the offer is unacceptable to her and she doesn't have an independent reason to do what is asked. While all consent-undermining coercion is subjection, not all coercion as subjection is necessarily consent-undermining. Instead, we should understand the kind of subjection involved in receiving offers to be one kind of bad that can occur in an agent's life, but a bad that can be weighed against goods in a utilitarian calculus and that isn't necessarily disqualifying of voluntariness in the way that consent-undermining threats are.

While offering an important insight into the kinds of threats to voluntariness that potential research participants face, this analysis has three significant shortcomings. First, Millum and Garnett fold into a conception of bad-but-not-wrongful coercion what we might more explicitly—and more usefully—identify as domination.

Address correspondence to Danielle M. Wenner, Department of Philosophy, Carnegie Mellon University, Baker 155C, Pittsburgh, PA 15213-3815, USA. E-mail: danielle.wenner@gmail.com

Second, in doing so, the analysis they provide ultimately buys into and reinforces the hegemony of an approach to research ethics that focuses primarily on individual interactions between discrete, identifiable parties. Such an approach serves to obscure the importance of relevant background contexts characterized by power differentials and pervasive injustice. Finally, in suggesting that coercion as subjection is merely one harm among many that can be weighed against other benefits in a utilitarian calculus, Millum and Garnett effectively license unbridled domination of the weak and vulnerable by the powerful and wealthy.

Discussions of coercion, exploitation, and undue inducement in research ethics are almost exclusively cashed out by reference to a conception of autonomy grounded in an understanding of freedom as noninterference. Millum and Garnett's consent-undermining coercion falls neatly into this category, drawing the boundary of permissible interference at those threats that will leave an agent worse off than she otherwise has a claim to be.

But coercion-as-subjection is pushing against this boundary. This kind of subjection is not about "irrationality or unfairness" but fundamentally about unfreedom—a kind of unfreedom that is characterized by engaging in behaviors not for one's own reasons, but for reasons that are wholly subsumed by another's prerogative. This kind of unfreedom might more directly be recognized as domination in the neorepublican sense. On this view, freedom comprised of nondomination is orthogonal to the kind of negative freedom that is often taken for granted within the transactional paradigm and that underpins consent-undermining coercion. While negative freedom construes an agent as free as long as she is not interfered with, the neo-republican conception of freedom says that a person is free to the extent that she is not subject to domination by—or subjected to the wills of—others.

Millum and Garnett recognize that the fundamental reason an agent has to allow her will to be subsumed in this way is that the alternatives otherwise available to her are unacceptable. Unsurprisingly, socioeconomic disparities can put individuals in position of domination over others (Wenner *forthcoming*). In particular, domination can often be traced to economic dependence or threat advantage (one party's "relative willingness to contract if [her] proposal is not accepted": Wertheimer 1996, 67). A party to a negotiation has positive threat advantage when she stands to lose less than the other party if an agreement is not reached, and can therefore more easily refuse to transact. For example, threat advantage in labor markets is a major source of domination, especially in cases of background poverty, as it provides employers all of the leverage necessary to dictate both the initial and the continuing terms of interaction.

In the case of clinical research, researchers and research sponsors seeking healthy participants for phase

1 studies or recruiting for clinical trials in low-income settings have significant threat advantage with respect to each prospective participant. It is this difference in bargaining power that permits them to supplant the will of research participants with their own.

This analysis should push us to expand our conceptual schema to account for threats to voluntariness presented by background (or so-called "macro") contextual features. Instead, Millum and Garnett attempt to redraw the boundaries of the micro (or transaction-specific) level of assessment by focusing entirely on the interaction between researchers or sponsors and likely participants. In doing so, they reinforce a tendency within research ethics to omit from ethical consideration the relevant social, institutional, and structural determinants of individual behaviors and deprive us of an opportunity to refocus ethical assessment on the background of structural injustice against which research transactions occur. In other words, while the analysis presented by Millum and Garnett correctly identifies the lack of freedom involved in subjection to another's will, in folding this subjection into an account of coercion they effectively limit focus to the actors in question, while the lens of domination broadens our focus to include relevant background features as well.

This wider focus also helps us to appreciate why a laissez-faire approach to domination can be problematic. A common refrain in these discussions, repeated by Millum and Garnett, is that even if there is something morally wrong with interactions of this kind, it would nevertheless also be wrong to interfere with or prevent them, since any interference runs the risk of depriving those who need resources of a net benefit. They go on to suggest that benefits to those who are will-subjected, coupled with benefits to science and society, can outweigh the threat to freedom that such subjection represents. But if we recognize that subjection of this form is an unfreedom, why not think about it as similarly a threat to autonomy and thus not "clearly permissible"? Millum and Garnett seem either unaware of, or unabashed by, the extent to which this framework licenses researchers and research sponsors to prey on the needs of vulnerable populations. In fact, as long as we pay them enough, and as long as society (by which we can only mean those positioned to benefit from advances in biomedical science) benefits sufficiently, it seems there is no limit to the extent to which researchers and research sponsors can impose their will on those without better alternatives. And when situated against the background conditions that permit this kind of domination, the logical conclusion of this approach is the endorsement of the ongoing use of the have-nots to fulfill the wishes of the haves. A theoretical framework that brings background conditions into the analysis helps to make this conclusion clearer, and refocuses our attention on alleviating the background conditions of need that result in the ongoing vulnerability of subsets

of society to having their own wills subjected to the desires of others.

FUNDING

This work was supported by the Brocher Foundation, www.brocher.ch. ■

ORCID

Danielle M. Wenner  <http://orcid.org/0000-0001-7731-8357>

REFERENCES

- Ballantyne, A. J. 2008. Benefits to research subjects in international trials: Do they reduce exploitation or increase undue inducement? *Developing World Bioethics* 8(3): 178–191.
- Millum, J., and M. Garnett. 2019. How payment for research participation can be coercive. *The American Journal of Bioethics* 19(9): 21–31.
- Wenner, D. M. Forthcoming. Non-domination and the limits of relational autonomy. *IJFAB: International Journal of Feminist Approaches to Bioethics*.
- Wertheimer, A. 1996. *Exploitation*. Princeton: Princeton University Press.

A Proposal for Fair Compensation for Research Participants

Emily E. Anderson, Loyola University of Chicago, Neiswanger Institute for Bioethics & Health Policy

The authors of the target articles in this issue add new perspectives to decades-old debates about payment for research participation: Under what particular circumstances is payment coercive? And, could paying research participants as workers resolve some ethical concerns about payment? Millum and Garnett concludes that payment can sometimes be coercive, and not simply unduly influential (Millum and Garnett 2019). Malmqvist argue that to treat research participants as workers will not protect them from all harms or exploitation presented by research (Malmqvist 2019). I do not disagree with their premises or arguments. But where do they leave us?

There is a long history of paying research participants. Presently, although payment for participation is “common” across different types of research, including for sick as well as healthy volunteers, it is certainly “uneven” and “contentious” (Grady et al. 2005). Yet federal guidance is vague, and few research institutions have specific written policies.

Given the power differential between the pharmaceutical industry and medical researchers on one hand and patients desperate for cures or individuals in need of quick cash on the other, concerns about undue influence, coercion, and exploitation are warranted. But, the reality is that evidence-based medical treatment requires research with human participants, which will in turn require those participants to bear some risk. No matter what future developments in cellular, animal, and computer models take place, because the end of all research

is treatment of human patients, systematic data collection in humans, healthy and affected, will be required. Financial incentives are a primary reason for participation, and particularly for healthy volunteers—who are critically needed yet derive no direct personal benefit from participation. There is likely nothing that can be done to change this motivation, which may or may not lead to increased risk of harm (e.g., if individuals lie to meet study inclusion criteria). However, human research protections exist to safeguard the health and well-being of participants. Therefore, it is time to extend our current protections and implement new, systematic measures to better protect human research participants and ensure that offers of payment are optimally ethical.

Rather than continue to argue about whether and when payment is coercive or whether to treat research participants like workers, here I propose five solutions, which if implemented comprehensively and universally have good potential to mitigate potential risks of coercion, undue influence, and physical harm, as well as avoid exploitation and provide fair compensation for research participants. Perhaps with the exception of compensation for research injury, none of these recommendations on its own is particularly controversial, and arguments in support of each have been made persuasively by others. But implementation will take regulatory changes and thus political will.

First, standardized payment guidelines based on local living wage standards (Phillips 2011) and existing

Address correspondence to Emily E. Anderson, Stritch School of Medicine, Loyola University of Chicago, Neiswanger Institute for Bioethics & Health Policy, 2160 S. First Avenue, Bldg 120, Maywood, IL 60153, USA. E-mail: emanderson@luc.edu