

Scanlon on Substantive Responsibility¹

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Abstract

This paper examines the role of a person's opportunities to choose in the justification of social arrangements. Common judgment gives these opportunities a justificatory role: it holds, for example, that we should prioritise preventing harm that people cannot avoid by choosing appropriately over preventing harm that they can so avoid. Thomas Scanlon argues that such judgments should be explained with reference to the value of a person's opportunities to choose: if a person is given opportunities which generally lead people to avoid the harm in question, then, Scanlon argues, this can make it the case that she cannot complain about what results from her choices.

I argue that while Scanlon is right to focus on the value of a person's opportunities, his way of determining their value is flawed. Instead, I argue, we should evaluate a person's opportunity set by taking account of the various outcomes that she can achieve by choosing from this set and how well placed she is, given her dispositions to choose, to achieve the good and avoid the bad outcomes. I argue that this view can explain why we should prioritise preventing harm that people cannot avoid by choosing appropriately over preventing harm that they can so avoid. I also argue that it can account for the importance of protecting people against choices through which they might come to harm.

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Scanlon on Substantive Responsibility

Introduction

What role do a person's opportunities to choose play in the justification of social arrangements? We need to answer this question in order to arrive at a theory of substantive responsibility, which tells us the way in which a person's claims on others, others' claims on her, and the quality of her situation should depend on the opportunities she has and the choices she makes.² To get a handle on this question, consider the following case, which is adapted from an example of Thomas Scanlon's.³ Imagine that we are public officials responsible for the removal and transport to a remote, safe location, of some recently discovered, naturally occurring hazardous material from a town. Though the excavation site will be fenced off, and the excavation and transport will be carried out with care, the removal of this material will inevitably release harmful particles into the air, which, if inhaled, will cause lung damage. Workers involved in the removal will be protected by special equipment, and the inhabitants of the town will be safe if they stay away from the excavation site and stay indoors on the day when the excavation and transport will take place.

Suppose that we have two options. Our first option is to have a very thorough information campaign, which will ensure that everyone in the town receives a standard warning message and can take the necessary steps to protect themselves. (Call this policy *Inform Everyone*.) From our knowledge of similar situations, we can confidently predict that almost everyone will indeed protect themselves, but that there will be one person, though we can't know who this person is, who will visit the excavation site even though she is aware of the danger to her health, because the standard warning aroused her curiosity

about the nature of the hazardous material and the process of excavation. As a consequence, she will develop a severe and incurable case of emphysema. (Call her Curious.)

The second policy is to spend more money on each individual sign, leaflet and announcement, in order to describe the effects of exposure with particularly vivid and persuasive images. (Call this policy Vivid Warning.) On the basis of our knowledge of similar situations, we can confidently predict that these images will move everyone who receives the warning—even those who are especially curious—to heed it. However, because the leaflets and announcements will be more costly to produce, the campaign’s coverage will be somewhat less extensive. As a consequence, though an attempt will be made to reach everyone, we can confidently predict that one person will remain uninformed and will be outside on his daily stroll. (Call this person Walker. Again, suppose we don’t know who this person will be.)

Suppose that Curious and Walker are equally well-off prior to the hazardous material removal, and that the harm suffered by Curious under Inform Everyone is just as great as the harm suffered by Walker under Vivid Warning. The characteristics of these individuals’ opportunity sets and their levels of welfare under these two policies can then be summarized in Table 1.

Table 1. Two individuals' opportunity sets and outcomes under two policies.

Policy	Inform Everyone		Vivid Warning	
Individuals	Opportunity set	Outcome	Opportunity set	Outcome
Walker	1. Stay indoors; 2. Go outside. Fully informed of consequences; (1) presents itself as best option; does not find (2) tempting.	Long, healthy life.	1. Stay indoors; 2. Go outside. Not informed of consequences.	Severe, permanent health problems.
Curious	1. Stay indoors; 2. Go outside. Fully informed of consequences; is strongly tempted by (2).	Severe, permanent health problems.	1. Stay indoors; 2. Go outside. Fully informed of consequences; (1) presents itself as best option; is somewhat tempted by (2), but does not find it difficult to resist temptation.	Long, healthy life.

Which policy, if any, should we prefer? I take it that a common response would be that we should give priority to preventing the harm that Walker would suffer under Vivid Warning over preventing the harm that Curious would suffer under Inform Everyone, because under the latter policy, Curious would be in a position to avoid the harm by choosing appropriately, whereas under the former policy, Walker would not be.⁴

In this paper, I aim to formulate a perspective on the justificatory role of a person's opportunities to choose that adequately accounts for this judgment and other related case judgments. My discussion will proceed through a critical examination of Scanlon's views on the topic. In section 1, I examine Scanlon's Value of Choice view, which holds that if a person is given opportunities which generally lead people to avoid harm, then this alone is sufficient to make it the case that she has no valid complaint about what results.⁵ I argue that Scanlon is not justified in assessing the value of a person's opportunities by the value

of the things people generally achieve when faced with these opportunities, and that the Value of Choice view cannot, therefore, provide a reason for favouring Inform Everyone over Vivid Warning.

In section 2, I examine the Forfeiture view, which Scanlon regards as a rival perspective on substantive responsibility. This view holds that someone cannot complain of harm that she suffers only because of her voluntary choice.⁶ I argue that we should reject this view because it pays insufficient attention to the importance of protecting people against harm which they might incur through unwise choices.

In section 3, I propose what I call the Potential Value of Opportunities view, which holds that in justifying social arrangements, we should attend to the potential value of a person's opportunity set. This value depends on the various outcomes that he can achieve by choosing from this set, and on how well placed he is, given his dispositions to choose, to achieve the good and avoid the bad outcomes. I argue that this view can explain why we should prioritise preventing harm that people cannot avoid by choosing appropriately over preventing harm that they can so avoid, and can also explain why it is important to protect people against choices through which they might come to harm.

1. The Value of Choice view

Scanlon characterises his Value of Choice account as follows:

“According to the Value of Choice account what matters is the value of the opportunity to choose that the person is presented with. If a person has been placed in a sufficiently good position, this can make it the case that he or she has

no valid complaint about what results, whether or not it is produced by his or her active choice.”⁷

Scanlon proposes that we determine the value of a person’s opportunities to choose with reference to “the positive reasons that people have for wanting opportunities to make choices”, and he distinguishes three such reasons.⁸ The first is what he calls the *instrumental* value of choice: the value choice has in securing states of affairs that we have reason to seek. This value is conditional on the degree to which for a given object of choice, a person’s capacities, dispositions and conditions of choice will help him achieve the ends he has reason to seek. It is also relative: it depends on the usefulness of his being given a choice as compared to other means of achieving these ends.

The second is the *representative* value of choice. This is the value we put on seeing features of ourselves manifested in our actions and their results. Examples are gifts, where the significance of the gift is determined by having chosen it oneself, and creative work, where part of the point of the work is that it reflects its author’s attitudes and abilities.

The third is the *symbolic* value of choice. We may want outcomes to depend on our choices not merely because this will be a more efficient way of achieving our ends, or because we want our choices to reflect our values, thoughts and capacities, but also because *not* having such choices would be taken as an indicator that we are not competent to make them.

Though it may well be that we should add further values to this list, I will follow Scanlon in attending to these values alone. Indeed, in the context of our hazardous waste removal case, I will follow Scanlon in assuming that only the first of these three values applies. As he writes:

“The Value of Choice account that I am proposing explains the role of choice in the justification of moral principles by appealing to the reasons (...) we have for

wanting outcomes to depend on the way we respond when presented with alternatives. In the present case these reasons are purely instrumental. (...) So according to the Value of Choice account ‘giving people the choice’ is, like the fences, the careful removal techniques, and the remote location of the new site, just another means through which the likelihood of injury is reduced.”⁹

Given this assumption, Scanlon recognises that it would be natural to conclude that in the context of this example, a person’s circumstances of choice are good when they lead her to avoid harm, and bad when they do not.¹⁰ This would mean that Curious’ circumstances of choice under Inform Everyone are bad, because her receipt of this warning does not decrease the likelihood of her coming to harm, since, as Scanlon puts it, “the [standard] warning only aroused her impetuous curiosity, and she would have been better off if she had never been told at all.”¹¹ Given that her circumstances of choice would appear to be bad from the perspective of the one value relevant to their assessment, it would seem that on the Value of Choice view, we cannot appeal to the quality of these circumstances to discount the harm suffered by Curious under Inform Everyone. It therefore seems that the Value of Choice view cannot regard the fact that Curious would be informed under Inform Everyone and that Walker would not be under Vivid Warning as a reason to choose Inform Everyone.

Scanlon responds to this line of argument as follows. Curious is placed in a sufficiently good situation when she receives the standard warning (as she would under Inform Everyone) just because being given the standard warning is *generally speaking* a good thing. As he puts it:

“The reason why it is important that this woman was informed of the danger, and thus given the chance of avoiding it, is not that this was necessarily advantageous

to her but rather that it is something that people in general have reason to value.”¹²

The reason that receiving the standard warning is something people in general have reason to value is that “it is generally sufficient to lead people to avoid coming to harm.”¹³

By contrast, Scanlon writes, Walker is not placed in a comparably good situation under Vivid Warning:

“[B]ecause we did not succeed in making him aware of the danger, we did not make what happened to him depend on his response to this information. Given that this dependence is something we all would reasonably want to have under the circumstances, we did not succeed in making this person as well off as one would reasonably want to be.”¹⁴

In sum, given that receiving the standard warning is generally beneficial, because people generally respond to it by avoiding the harm in question, we can regard Curious’ situation under Inform Everyone as sufficiently good to make it the case that she has no valid complaint about the harm that results. Under Vivid Warning, by contrast, Walker would be able to complain of the harm he comes to because he was not warned, and being warned generally leads one to avoid harm. If Scanlon’s appeal to the general value of a person’s opportunities were justified, we would therefore have reason to favour Inform Everyone over Vivid Warning. But is it?

Scanlon justifies it by arguing that in assessing a person’s situation, we should only appeal to what he calls “generic reasons (...) that we can see that people have in virtue of certain general characteristics” rather than to “the reasons that a specific individual may have, given all the facts about his or her situation.”¹⁵ Scanlon offers two reasons for appealing to generic reasons in evaluating a person’s situation. The first is that not all of a person’s preferences and projects give rise to moral claims on us; we only owe others

goods that are useful across wide range of views of the good life, such as goods required to develop one's capacities, to lead the life one wants with family and friends, and to achieve success in one's main endeavours. We also owe them more specific goods like health, leisure, and wealth, which are generally judged to be important elements of a good life.¹⁶ This consideration, however, only establishes that in evaluating the quality of Curious' options, we need not consider the satisfaction of her curiosity as something which counts in favour of a policy like Inform Everyone under which she visits the excavation site. It does not give us reason to regard Curious as having been placed in good circumstances of choice under Inform Everyone. For she will suffer damage to her health, and this is among the ways in which a person is affected that Scanlon regards as giving rise to legitimate claims.

Scanlon's second reason is that taking into account specific variations in people's needs and circumstances would be more demanding than just paying attention to general characteristics; it would lead to greater uncertainty about whether everyone's claims had been met and require everyone to gather more information in order to know what moral principles give to and require of them. Since this uncertainty and information gathering are costly, we are permitted to refer to generic reasons in the justification of our actions.¹⁷

I do not think, however, that this cost can be successfully appealed to in order to justify regarding Curious' opportunities to choose under Inform Everyone as valuable. For the information we have assumed is available in our case—information about the overall pattern of behaviour induced in a given population by various ways of warning them—is commonly and justifiably gathered and used in public decision-making.¹⁸ (Recall that “Curious” is simply a placeholder for the anonymous individual who we know will come to harm under a particular policy, so that no special assumptions are involved about knowledge of named individuals' dispositions to choose.) It therefore seems that we are

entitled to use this information to conclude that Curious' receipt of the standard warning does not increase her likelihood of avoiding harm and therefore does not benefit her.

In sum, the Value of Choice account is unable to offer a convincing explanation why the fact that Curious would be warned under Inform Everyone places her in a better situation than Walker would be under Vivid Warning. It is therefore unable to explain why we should choose Inform Everyone in this case.

2. The Forfeiture view

This failing of the Value of Choice view should lead us to examine the view that Scanlon regards as its closest competitor, which he calls the Forfeiture view. Scanlon characterises this view as follows:

“a person who could have chosen to avoid a certain outcome, but who knowingly passed up this choice, cannot complain of the result: *volenti non fit iniuria*.”¹⁹

Concerning the situation Curious would be in under Inform Everyone, Scanlon writes that a proponent of the Forfeiture view would reason as follows:

“Since she had been warned of the danger, and chose to go to the site anyway, we are inclined to say that she is (substantively) responsible for her own injury; and it is this fact, rather than the amount that has been done to protect her or the cost to others of doing more, that makes it the case that she cannot blame anyone for what happened. By choosing, in the face of warnings, to go to the excavation site, she laid down her right to complain of the harm she suffered as a result.”²⁰

The core idea of the Forfeiture view, then, is that someone who is well-informed and has an accessible option that it is reasonable to take and through which she would avoid

coming to harm, but who freely makes a conscious choice to pass up this option, cannot complain if she ends up badly as a result. This core idea no doubt requires some qualification. A defender of the Forfeiture view would presumably want to allow someone to complain of harm that they suffered only because of their choice of a particular alternative if there was no good reason for the harm to be connected to that alternative. We should therefore assume that there is adequate justification for the connection between the harm and the person's action. In the context of our example, this condition is met, because we assumed the case for removing the hazardous material was overwhelming, and that there was no way to remove the material without affecting the health of people who ventured outside during its excavation and transport. This means that, on the Forfeiture view, while Walker can complain of the harm he would suffer under Vivid Warning, Curious cannot complain of the harm she would incur under Inform Everyone. If we then assume, as it seems natural to do, that we should choose a policy which does not impose a burden of which someone can complain over a policy which does impose a burden of which someone can complain, then it follows that we should choose Inform Everyone over Vivid Warning. The Forfeiture view therefore offers an explanation of the common judgment with which we began.

Scanlon offers two points of criticism of the Forfeiture view. The first is that it places undue weight on the special legitimating force of voluntary action.²¹ What is important, Scanlon claims, is a person's opportunity to choose, rather than his conscious decision to pass up specific alternatives. Scanlon argues that we should appeal to the former rather than the latter because there are cases in which it seems right to offer the options a person has as part of the justification of an arrangement under which he ends up badly through an action of his own, even if he never consciously considers all relevant aspects of this action.

We can illustrate this with the following case, which is again adapted from Scanlon's discussion.²²

Imagine that in our hazardous material example, we can confidently predict that under both Inform Everyone and Vivid Warning there will be a person—whose identity, again, we do not know—who, though he was warned, and though generally of sound mind and capable of remembering things and running his own affairs, will simply forget the warning. (Call this person Forgetful.) As a result, he will be outside exercising during the transport of the material and suffer damage to his health.

Scanlon argues that the case of Forgetful illustrates that it is not active choice, but the quality of the circumstances in which a person was placed, that is of moral significance. For, he argues, Forgetful does not consciously decide to take a dangerous action; nevertheless, if he is warned, then, Scanlon believes, his claim should be treated like Curious' claim, who makes a conscious decision to take the dangerous action:

“If (...) enough was done to warn him, then this man is, like [Curious], fully responsible for what happens to him, even though he made no conscious decision to take the risk. From the fact that a person, under the right conditions, took a certain risk, we may conclude that he alone is responsible for what happens to him as a result. But this need not be seen as reflecting the special legitimating force of voluntary action, in the way that the Forfeiture view would suggest. The mere fact that he was placed in conditions in which he had the choice of avoiding the risk may be sufficient.”²³

Contrary to what Scanlon seems to suggest, however, the case of Forgetful does not constitute a counterexample to the Forfeiture view. For Scanlon's definition of the Forfeiture view specifies that informed choice under certain circumstances is a sufficient condition for not being able to complain of a result; not that it is a necessary condition for

not being able to complain of it. Therefore, if Scanlon's judgment about Forgetful is correct, then all this proves is that both informed, voluntary choice and negligence can be grounds for not being able to complain of a result of one's actions.

Scanlon's second objection to the Forfeiture view runs as follows. He points out that the Forfeiture view must stress the fact that Curious can do otherwise than she does under Inform Everyone. But, he argues, identifying this fact as the crucial one leads to implausible results in other cases, since, he writes,

“there are many conditions that undermine the legitimating force of choice despite the fact that a person choosing under such conditions still ‘could have done otherwise’ in any sense that would apply in this case.”²⁴

Scanlon gives the following example of a case in which there are such other conditions that undermine the legitimating force of choice:

“It would, for example, be reasonable to reject a principle according to which a long-term contract is binding even when entered into by a fourteen-year-old without adult guidance. What is special about the case of fourteen-year-olds is not that they *cannot* choose wisely (after all, many of them do), but rather that they are so likely not to do so.”²⁵

The challenge Scanlon puts to the Forfeiture view is to explain what makes it the case that informed, voluntary choice does not play a justificatory role in the case of fourteen-year-olds when it does play this role in the case of Curious under Inform Everyone, while not referring to the fact that fourteen-year-olds are unlikely to choose wisely—for that is also true of Curious under Inform Everyone.

A defender of the Forfeiture view could respond that Curious, like other normal adults, is assumed to have a certain amount of knowledge, experience, and certain cognitive capacities, like the ability to reflect coolly on what she will do and fully appreciate the

potential consequences, and a degree of self-control that fourteen-year-olds typically lack. This knowledge and these capacities are, like the availability of an accessible option through which one could avoid harm and that it would be reasonable to take, necessary conditions for choice to have the moral force the Forfeiture view accords it. Though, as the Forfeiture view theorist will readily acknowledge, these conditions usually make it likely that a person will choose well, their import is not reducible to their contribution to a person's choosing well, or to any additional value that choice has. They simply make it reasonable for us to ask of people that they look out for themselves. In sum, Scanlon's second objection lacks force because a defender of the Forfeiture view can happily agree with Scanlon's claim that "there are many conditions that undermine the legitimating force of choice despite the fact that a person choosing under such conditions still 'could have done otherwise'."

Though Scanlon's objections to the Forfeiture view fail, there is, I believe, a more forceful objection to it: it appears to pay insufficient attention to the importance of protecting people against harm that they might incur through unwise choices.²⁶ By way of illustration, consider again the situations of Walker and Curious, and suppose that while Vivid Warning is no longer an option, it becomes possible to excavate and transport the material by covering it in such a way that the particles released cause only minor harm on exposure (say, an unpleasant cough and concomitant limitations on some activities for a week, with no lasting effects; call this policy Low Emissions). Under Low Emissions, an attempt will be made to inform everyone of the danger of visiting the excavation site and being outside during transport by issuing a standard warning. However, the cost of lowering emissions makes it impossible to ensure that everyone will receive this standard warning. Assume that, as a consequence, under Low Emissions, Walker will be taking a stroll during the transport because he is uninformed of the danger. Curious, by contrast, will receive the standard warning, but will stay inside because she knows the excavation and

transport are taking place under a cover and there will be no way for her to see what precisely is going on even if she were to visit the excavation site. The opportunity sets and outcomes associated with Inform Everyone and Low Emissions are listed in Table 2.

Table 2. Two individuals' opportunity sets and outcomes under two policies.

Policy	Inform Everyone		Low Emissions	
Individuals	Opportunity set	Outcome	Opportunity set	Outcome
Walker	1. Stay indoors; 2. Go outside. Fully informed of consequences; (1) presents itself as best option; does not find (2) tempting.	Long, healthy life.	1. Stay indoors; 2. Go outside. Not informed of consequences.	Minor, temporary health problems.
Curious	1. Stay indoors; 2. Go outside. Fully informed of consequences; (2) is tempting and difficult to resist.	Severe, permanent health problems.	1. Stay indoors; 2. Go outside. Fully informed of consequences; (1) presents itself as best option; does not find (2) tempting.	Long, healthy life.

From the Forfeiture view's perspective, we should choose Inform Everyone, because no one could complain of the severe damage to their health that results from Inform Everyone, whereas Walker could complain of the minor harm he would suffer under Low Emissions.

I believe, by contrast, that we should choose Low Emissions over Inform Everyone in this case, and that the Forfeiture view is therefore mistaken. The reason it is mistaken is that it fails to adequately register that in one important respect, the situation in which Curious is placed under Inform Everyone is bad, because she will be strongly disposed to choose an option through which she will come to great harm. This means that under Inform Everyone, she is exposed to a significant danger, since there is a significant risk that

she will choose badly and suffer the consequences.²⁷ We are all familiar with the idea that it is bad to be exposed to this type of danger, because we are familiar with various ways in which someone might choose badly in spite of being able to determine and pursue the best course of action. For one, a person might simply never take the time to think things through and work out what the best course of action is. (An example is Forgetful mentioned above, who, we can imagine, is occupied by other matters when he receives the warning, puts off thinking about what to do in the light of it until later, and then forgets it.) Alternatively, a person might deliberate about his options and fail in variety of ways to develop a proper appreciation of the relevant reasons for action, because his deliberation is clouded by excessive desire.²⁸ He might, for example, talk himself into adopting certain false beliefs because he wants them to be true. (Think of an employee who, wanting to view X-rated web-pages while in the office persuades himself of the false belief that his boss would never find out if he did so.) Or, while in the grip of a desire, he might give the wrong weight to certain considerations. (An example is someone, who infatuated with a beautiful car that he cannot really afford, incorrectly regards the pleasure of owning it as outweighing the financial difficulties he knows that its purchase would impose on him.) Or he may arrive at the right conclusion through deliberation but fail to acquire the conviction that these beliefs should bring, because such conviction would lead to behaviour that is contrary to a strong desire. (An example is a smoker who believes the written warnings provided on cigarette packages and who concludes that he should stop smoking, but because of his fondness for smoking, fails to develop the conviction that he should stop smoking until confronted with vivid images of people wasting away from lung cancer.) Finally, he may arrive at the right conclusion through deliberation but fail to abide by it because of weakness of will.

Curious' situation under Inform Everyone should be understood as one in which she suffers from weakness of will, or is prone to at least one of the aforementioned desire-induced failures to acquire the proper conviction that she should stay inside during the excavation and transport of the material. A good account of the justificatory role of a person's opportunities should take note of this way in which Curious' circumstances of choice under Inform Everyone are less than ideal, because in cases like this, where our policies inevitably shape people's circumstances of choice, people have a claim to be placed in circumstances in which they are disposed to choose well and to avoid harm. The Forfeiture view should be rejected, I believe, because it does not recognise claims of this kind. In the following section, I attempt to develop a view that does recognise such claims.

3. The Potential Value of Opportunities view

On what I will call the Potential Value of Opportunities view, when a person is in a position to freely and capably make an informed choice, we assess her situation not by the outcome she achieves but by what I will call the potential value of her opportunities.²⁹ This value depends on the value of the various things that she can achieve through her choices, as well as on how disposed she is to choose her better options and avoid her worse options. By contrast, when someone cannot reasonably be expected to choose differently than she does, then this account is only concerned with how she ends up.

In the context of our example, this view holds that we should look at the potential value of the opportunities that Walker has under Inform Everyone, as well as the potential value of the opportunities that Curious has under Inform Everyone, Vivid Warning and Low Emissions, and not at the outcomes they achieve through their choices from these

opportunities. For in all these cases, Walker and Curious have the information and capacities required to avoid harm by choosing appropriately. The Potential Value of Opportunities view also requires that we look only at how Walker ends up under Vivid Warning and Low Emissions, because under these policies he cannot reasonably have been expected to avoid coming to harm by choosing appropriately. The information that the Potential Value of Opportunities view judges relevant to our evaluation of these policies is summarised in Table 3. For the sake of brevity, I will refer to the value of the cells in Table 3 as follows: [C, IE] stands for “the value of Curious’ opportunity set under Inform Everyone” and [W, VW] stands for “the value of Walker’s outcome under Vivid Warning”, etc.

Table 3. The information relevant to our assessment of three policies on the Potential Value of Opportunities view.

Policy	Inform Everyone	Vivid Warning	Low Emissions
Individuals			
Walker	The value of the opportunity set: 1. Stay indoors; 2. Go outside. Fully informed of consequences; (1) presents itself as best option; does not find (2) tempting.	The value of the outcome: Severe, permanent health problems.	The value of the outcome: Minor, temporary health problems.
Curious	The value of the opportunity set: 1. Stay indoors; 2. Go outside. Fully informed of consequences; is strongly tempted by (2).	The value of the opportunity set: 1. Stay indoors; 2. Go outside. Fully informed of consequences; (1) presents itself as best option; is somewhat tempted by (2), but does not find it difficult to resist temptation.	The value of the opportunity set: 1. Stay indoors; 2. Go outside. Fully informed of consequences; (1) presents itself as best option; does not find (2) tempting.

Let us now see what we should say about the potential value of the opportunity sets in question, starting with the comparison between Inform Everyone and Vivid Warning.³⁰ In each of the three opportunity sets under consideration in this comparison, the worst option leads to a state in which one's health is severely and permanently impaired. Each of these sets also contains an option which leads to a better outcome. Each of these opportunity sets therefore enables its possessor to achieve a better outcome than ending up with severe, permanent health damage without exposing its possessor to the danger of making a choice through which he or she would end up in a state that is worse than living with severe health damage. We should therefore regard these opportunity sets as more valuable than ending up in a state of severe, permanent health damage. It follows that each of [W, IE], [C, IE] and [C, VW] is greater than [W, VW].

As we noted above, when an opportunity set exposes someone to the possibility that she will choose badly and come to harm as a result, then it exposes her to a danger. Being exposed to this danger is a bad thing, and renders her opportunity set less valuable. The magnitude of this danger is an increasing function of the magnitude of the harm and the degree to which she is disposed to act imprudently. As the magnitude of the danger increases, the value of her opportunities declines.³¹

This has the following implications for the relative value of the three opportunity sets under consideration. While Walker is not disposed to choose badly under Inform Everyone, Curious may be somewhat disposed to do so under Vivid Warning, and she is highly disposed to do so under Inform Everyone. Since the harm involved in choosing badly is the same in each case, it follows that the dangers that these opportunity sets pose are such that $[W, IE] \geq [C, VW] > [C, IE]$.

On the Potential Value of Opportunities view, we base our choice of policy on which policy leads to the preferable distribution of the value of people's opportunities to choose (where they are informed, capable choosers) and the value of the outcome achieved (when they could not reasonably have been expected to avoid the outcome in question). In our case, this means that we should choose Inform Everyone, since the least valuable situation under Inform Everyone is more valuable than the least valuable situation under Vivid Warning— $[C, IE] > [W, VW]$ —and the most valuable situation is at least as valuable— $[W, IE] \geq [C, VW]$.³²

The core of the argument for Inform Everyone is, in sum, very simple: we should choose Inform Everyone over Vivid Warning because under the former, Curious would have a valuable opportunity to avoid harm that Walker would not have under the latter.

Let us now turn to the choice between Inform Everyone and Low Emissions. Curious' least valuable option under Low Emissions leads to the same outcome that Walker ends up with under that policy, and her most valuable option leads to a better outcome. Her opportunity set under Low Emissions is therefore more valuable than Walker's situation under the same policy, because it enables her to achieve a better outcome than Walker achieves without exposing her to the danger of ending up in a worse condition than he will end up in: $[C, LE] > [W, LE]$. We have already established that Walker's opportunities under Inform Everyone are better than Curious' opportunities under that policy, since Curious will face a danger of choosing badly and Walker will not: $[W, IE] > [C, IE]$. If we could now establish that the least valuable situation under Low Emissions will be more valuable than the least valuable situation under Inform Everyone, and the most valuable situation will be at least as valuable, then it would follow that we should prefer Low Emissions to Inform Everyone.

Start with the comparison of the most valuable situations under each policy, [C, LE] and [W, IE]. Curious' first-best alternative under Low Emissions is just as good as Walker's first-best alternative under Inform Everyone, and her second-best alternative is better than his second-best alternative. Moreover, the second-best alternative is not tempting for either of them. Since the quality of her opportunities dominates the quality of Walker's, and both are entirely disposed to choose well from their opportunity sets, it follows that [C, LE] \geq [W, IE].³³

Now compare the least valuable situation under each policy, [W, LE] and [C, IE]. As discussed, Curious is exposed to a significant danger under Inform Everyone because she is strongly disposed to choose an option which leads to great harm. The present question is whether this danger so diminishes the value of her opportunities that they are less valuable than a state in which one suffers a minor, temporary ailment. The argument that it does diminish the value of her opportunities to this extent runs as follows. When our decisions shape people's circumstances of choice, people have a claim to be placed in circumstances in which they are disposed to choose well and to avoid harm. In the case under consideration, we are therefore required to give the aim of lessening the danger of coming to harm through poor choices some weight in our decision-making. Moreover, though we are entitled to give priority to eliminating dangers that people cannot avoid by choosing well over eliminating dangers that they can so avoid, this priority is not absolute. As the magnitude of the danger of coming to harm through choosing badly increases vis-à-vis the magnitude of the danger of suffering harm that one cannot avoid by choosing appropriately, there is therefore a point at which the claim to be rid of the danger of ending up badly through one's choice becomes stronger than the claim to be rid of the danger that one will suffer a harm that one cannot avoid by choosing appropriately. In my view, this point is reached in this case: given the great difference in the magnitudes of the dangers

involved, Curious' claim not to be placed in circumstances in which she will be strongly tempted to choose imprudently is greater than Walker's claim not to suffer a minor, temporary ailment. It follows that $[W, LE] > [C, IE]$, which completes the argument in favour of Low Emissions.

The core of the argument for choosing Low Emissions over Inform Everyone is, therefore, that Low Emissions removes a significant danger that Curious will choose badly and come to great harm as a result, and that this improvement in her circumstances of choice outweighs the minor harm that Walker will come to under Low Emissions.

In sum, by appealing to the value of being given an opportunity to avoid harm, and the value of being placed in circumstances in which one is disposed to make good use of this opportunity, the Potential Value of Opportunities view can explain our judgments in our two cases in an appealing way. It explains the priority we give to preventing harm that a person cannot avoid by choosing appropriately over harm that a person can so avoid by the fact that the second person has a valuable opportunity that the first does not. It explains the importance of protecting people against choosing badly by its account of the value of being placed in circumstances in which one is disposed to choose well, and the disvalue of being exposed to the danger of coming to harm by choosing badly. The Potential Value of Opportunities view therefore appears to offer a promising account of the role of a person's opportunities to choose in the justification of social arrangements.

¹ I thank Elisabeth Anderson, Constanze Binder, Luc Bovens, Nancy Cartwright, Keith Dowding, Cécile Fabre, Marc Fleurbaey, Wulf Gaertner, Michael Otsuka, Leif Wenar, Jonathan Wolff for comments and discussion. Earlier versions of this paper were presented at the Popper Seminar at LSE in November 2004, at the Workshop on Law and Economics at the World Congress of Legal and Social Philosophy in Granada in May 2005, the Political Theory Seminar at Nuffield College, Oxford in October 2005, and the Workshop on

Rationality and Normative Economics at the LSE in November 2005. I am grateful to those present for their comments and suggestions.

² I follow Thomas Scanlon in distinguishing substantive responsibility from other senses of responsibility. (see *What We Owe to Each Other*, Cambridge: Mass., Harvard University Press, 1998, pp. 21-2; 248, 272 and 278). My discussion of substantive responsibility is limited to the question of how we should set up arrangements that will make people's claims, obligations and situation depend on their options and choices. I will assume that before we put these arrangements into place, no one has claims based on prior choices; nor does anyone have entitlements, or special claims to the benefits and burdens in question. I will also leave aside claims based on desert.

³ See *What We Owe to Each Other*, p. 257. It is important to note how my version of the hazardous waste example differs from Scanlon's. In his version, we have already justifiably chosen a particular policy which involved standard warnings to the citizens to stay indoors. Though an attempt was made to inform everyone, one person remained uninformed. As a consequence, in Scanlon's version, Curious has come to harm because the standard warning piqued her curiosity and she impetuously visited the excavation site, and Walker has come to harm because he was uninformed of the danger. Scanlon then asks which factors we could appeal to in order to explain to these people why our policy was justified. I believe our central question is brought into sharper focus by re-framing the example as involving a choice between arrangements under which either Curious or Walker, but not both, come to harm. Since I have modelled Curious' situation under Inform Everyone and Walker's situation under Vivid Warning to be just as Scanlon imagines them to be in his original example, I believe we can use Scanlon's remarks on what we can say to these two characters by way of justification of a policy under which they come to harm as indicative of the grounds Scanlon would adduce for choosing between the two policies I have imagined.

⁴ Studies report that respondents tend to give priority to the reduction of harm that people cannot reasonably be expected to avoid over the reduction of harm that people can avoid by choosing appropriately. (Though they are generally willing to devote significant resources to the prevention of harms that people could avoid through their choices.) See Chauncey Starr, 'Social Benefit Versus Technological Risk. What Is Our Society Willing to Pay for Safety?' *Science* 165 (1969): 1232-8; Baruch Fischhoff, Paul Slovic, Sarah Lichtenstein, Stephen Read, and Barbara Combs, 'How Safe Is Safe Enough? A Psychometric Study of Attitudes towards Technological Risks and Benefits,' *Policy Science* 9 (1978): 127-52; John D. Graham, 'Some Explanations for

Disparities in Lifesaving Investments,' *Policy Studies Review* 1 (1982): 692-704; Uma Subramanian and Maureen Cropper, 'Public Choices between Lifesaving Programs. The Trade-off between Qualitative Factors and Lives Saved,' *Journal of Risk and Uncertainty* 21 (2000): 117-49; Erik Schokkaert and Kurt Devooght, 'Responsibility-Sensitive Fair Compensation in Different Cultures,' *Social Choice and Welfare* 21 (2003): 207-242 and Eve Wittenberg, Sue Goldie, Baruch Fischhoff, and John Graham, 'Rationing Decisions and Individual Responsibility for Illness: Are All Lives Equal?' *Journal of Medical Decision-Making* 23 (2003): 194-211. For some less clear-cut results, see Wulf Gaertner and Lars Schwettmann, 'Equity, Responsibility and the Cultural Dimension,' *Economica* (2007, in press).

⁵ *What We Owe to Each Other*, p. 258.

⁶ *What We Owe to Each Other*, p. 259.

⁷ *What We Owe to Each Other*, p. 258.

⁸ *What We Owe to Each Other*, pp. 251-3.

⁹ *What We Owe to Each Other*, p. 257.

¹⁰ *What We Owe to Each Other*, p. 261-3.

¹¹ *What We Owe to Each Other*, p. 261.

¹² *What We Owe to Each Other*, p. 263.

¹³ *What We Owe to Each Other*, p. 261.

¹⁴ *What We Owe to Each Other*, p. 259.

¹⁵ *What We Owe to Each Other*, p. 205 and p. 263.

¹⁶ See Scanlon, 'Preference and Urgency,' reprinted in Scanlon, *The Difficulty of Tolerance*. (Cambridge: Cambridge University Press, 2003), pp. 70-83 and 'The Moral Basis of Interpersonal Comparisons', in *Interpersonal Comparisons of Well-Being*, eds. Jon Elster and John Roemer. (Cambridge: Cambridge University Press, 1991), pp. 17-44.

¹⁷ *What We Owe to Each Other*, p. 205.

¹⁸ It is, for example, no different in kind to the information used by governments who are considering replacing written descriptions of smoking-caused health damage on cigarette packages with vivid images depicting the same harm because the latter are more effective. See David Hammond, Geoffrey T. Fong, Ron Borland, K. Michael Cummings, Ann McNeill, Pete Driezen, 'Text and Graphic Warnings on Cigarette

Packages: Findings from the International Tobacco Control Four Country Study', *American Journal of Preventive Medicine* 32:3 (2007): 202-9.

¹⁹ *What We Owe to Each Other*, p. 259.

²⁰ *What We Owe to Each Other*, p. 258.

²¹ *What We Owe to Each Other*, p. 260.

²² *What We Owe to Each Other*, p. 259.

²³ *What We Owe to Each Other*, pp. 259-60.

²⁴ *What We Owe to Each Other*, p. 262.

²⁵ *What We Owe to Each Other*, p. 262, emphasis in original.

²⁶ Similar criticism of views of responsibility that appear to be close to the Forfeiture view is offered by Marc Fleurbaey, 'Equal Opportunity or Equal Social Outcome?' *Economics and Philosophy* 11 (1995): 25-55; Elisabeth Anderson, 'What is the Point of Equality?' *Ethics* 109 (1999): 287-337 and Richard Arneson, 'Luck and Equality,' *Proceedings of the Aristotelian Society, Supplementary Volume* 75 (2001): 73-90. These papers do not, however, share my diagnosis of the problem with the Forfeiture view, namely, that it does not account for the badness of being exposed to the danger of choosing badly.

²⁷ This danger of choosing badly is distinct from the costs that the presence of a tempting option might impose on a prudent decision-maker, and which the Forfeiture view might be able to take into account. Examples of such costs are the time and mental effort involved in decision-making, the steps that the decision-maker would have to take to avoid choosing imprudently, and any feelings of frustration which would flow from failing to satisfy her desire for the tempting option. For a discussion of some costs of choosing, see also Gerald Dworkin, 'Is More Choice Better Than Less?' in his *The Theory and Practice of Autonomy* (Cambridge: Cambridge University Press, 1988), pp. 62-81.

²⁸ The following comments draw on Aristotle's discussion in the *Nicomachean Ethics* (translated and edited by Terence Irwin, second edition, Indianapolis: Hackett, 1999) on the nature of our knowledge in acting imprudently in 1146b33-1147b19, 1150a20-29 and 1151a1-4. I am indebted to Luc Bovens for helpful discussions on this topic.

²⁹ Dirk Vandegaer, in his *Equality of Opportunity and Investments in Human Capital*. (Ph.D. Thesis, Katholieke Universiteit Leuven, 1993) and his subsequent work, and John Roemer, in his *Equality of Opportunity* (Cambridge: Harvard University Press, 1998), have developed social choice rules which are based on the

value of individuals' opportunities. I follow these authors in addressing questions of substantive responsibility by appealing to the value of a person's opportunities. I also agree with them that in evaluating a person's opportunities, we should take account of all his options and his dispositions to choose. However, as Matthias Hild and I have argued in 'Equal Opportunity and Opportunity Dominance,' *Economics and Philosophy* 20 (2004): 117-45, I believe Roemer's and Vandegaer's measures are flawed in various ways. (See also Marc Fleurbaey, *Fairness, Responsibility, and Welfare*, book manuscript [2006].) The principles for ranking opportunity sets that I put forward here are an attempt to develop an alternative to Vandegaer's and Roemer's measures that is not vulnerable to this criticism. Another interesting contribution which draws on Roemer's work is Peter Vallentyne, 'Brute Luck, Option Luck, and Equality of Initial Opportunities,' *Ethics* 112 (2002): 529-557. While I believe that Vallentyne's measure of the value of a person's opportunities inherits the flaws of Roemer's approach, I share the view expressed on p. 549ff of his article that taking account of a person's dispositions to choose in evaluating her opportunity set can ensure that one accounts for the value of protecting people against choosing poorly.

³⁰ In line with my assumption in section 1, I will focus only on the potential instrumental value of a person's opportunities. A fuller account would include the contribution that other forms of value, such as the aforementioned symbolic and expressive value and perhaps the value of autonomy, make to the potential value of a person's opportunities. The literature reviewed in Salvador Barberà, Walter Bossert, and Prasanta Pattanaik, 'Ranking Sets of Objects,' Chapter 17 in *The Handbook of Utility Theory*, Vol. 2, edited by Salvador Barberà, Peter Hammond and Christian Seidl (Dordrecht: Kluwer Academic Publishers, forthcoming) may provide an interesting starting point for this work.

³¹ Of course, being exposed to the danger of coming to harm through choosing badly differs from being exposed to a danger that one cannot avoid by choosing appropriately. In line with the common judgments outlined at the start of this paper, we should hold that the person who would face a danger that she could avoid by choosing appropriately has less of a claim for this danger to be eliminated than someone who would face an equivalent danger that she could not so avoid. In our example, this implies that though the value of Curious' opportunity set under Inform Everyone is diminished because she will be tempted to act in a way that leads to her suffering severe, lasting health damage, her opportunity set is nonetheless more valuable than a state in which a person will certainly suffer a harm of the same severity that he could not reasonably be expected to avoid.

³² We are therefore entitled to choose Inform Everyone no matter which of the standard methods for evaluating distributions we use. Inform Everyone will be better than Vivid Warning from the perspective of leximin, prioritarianism, and the sum-total of the value in question, because the least valuable situation under Inform Everyone is more valuable than the least valuable situation under Vivid Warning and the most valuable situation is at least as valuable. It is better by the Complaint Model because the size of Walker's complaint against Vivid Warning is greater than the size of Curious' complaint against Inform Everyone (for a discussion of the Complaint Model, see *What We Owe to Each Other*, p. 229).

³³ The reason that we cannot conclude that $[C, LE] > [W, IE]$ is that it is not clear that either opportunity set involves any danger of choosing badly. Given that neither chooser is disposed to choose the second-best option, one might argue that the fact that Walker's second-best option under Inform Everyone is worse than Curious' second-best option under Low Emissions is of no importance for the evaluation of their opportunity sets.