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Substantive Responsibility and the Causal Thesis

1 Introduction

Scanlon has given us an account of substantive responsibility. Why is such an account difficult to construct? Holding people substantively responsible involves an imposition of tangible burdens: those substantively responsible for a given outcome cannot appeal for assistance with their situation on the grounds that others should have done more to protect them from whatever befell them – insolvency, medical trouble, loss of one's home, and worse. This may mean having no claim to assistance at all.

One way to justify the imposition of such burdens is to appeal to the idea that people chose freely when they made the choices that triggered the burdens. But this strategy is blocked if we assume the truth of the causal thesis. According to that thesis, one's actions and attitudes are caused by factors external to the agent (and in this specific sense, are not under one's ultimate control). On a popular version of the causal thesis that I will assume throughout, a person's actions and attitudes are made inevitable by the state of the world prior to that person's birth. If so, the imposition of burdens on the person seems misplaced – akin to the medieval practice of putting pigs on trial and punishing them for stealing food.

Famously, Scanlon defends a version of substantive responsibility that is meant to be immune to the threat of the causal thesis. His strategy is to appeal to the idea that those who have no complaint against others that an outcome arose had an 'adequate' or 'good enough' opportunity to avoid the outcome.¹ In what follows, I question Scanlon's account and gesture at an alternative that is Scanlonian in spirit and also meant to be compatible with the causal the-

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1 T. M. Scanlon 1998, chapter 6 and Scanlon 2008, pp. 198–204. See also Scanlon 2013.

sis. Any account of substantive responsibility worth having, in my view, does need to be compatible with the causal thesis.

2 Substantive responsibility according to Scanlon

To be substantively responsible for an outcome is to have no complaint against others that the outcome arose. Scanlon memorably asks us to imagine the case of toxic waste removal in our neighbourhood. The relevant bodies have issued warnings (leaflets, radio announcements and similar) to alert people that they need to stay indoors at the time of the removal and erected a fence round the excavation area to keep people out. The warnings, however, only awoke the curiosity of Curious who climbed the fence and went to look at the site. Assuming the protection that was offered Curious is deemed ‘good enough’, she is substantively responsible for the medical condition she develops as a result of exposure to the toxins.

It is a testament to Scanlon’s example that the fictional character of Curious does not seem too far-fetched. We can be less sure of the motivations of real people, of course, but Curious-like behaviour seems on display in the real world:

Since the 2004 Indian Ocean tsunami, the Australian government has spent [tens of millions of dollars] on the development and deployment of the Australian Tsunami Warning System... The Chilean tsunami was forecast to arrive at Sydney at about 8.30 in the morning on 28 February. Despite widespread television and radio broadcasts of the tsunami warning, live television coverage showed hundreds of people standing on beaches waiting for the tsunami to arrive. Worse, some of them were deliberately swimming into the incoming tsunami, despite the efforts made by volunteers from Surf Life Saving Australia to prevent this.²

As the authors of the text recognise, we cannot be sure that all those involved heard the warnings but it seems reasonable to assume that many of them did. For a different example of conduct that seems designed to court self-inflicted disaster, consider the popular British practice of binge-drinking on the weekend.³

² Dominey-Howes and Goff 2010, 350. I am grateful to Jacob J. Krich for drawing my attention to the letter in *Nature*. I mention it also in Stemplowska 2013, 488–507.

³ Many binge-drinkers would not qualify as addicts, rather they engage in a cultural phenomenon (raising further questions about cultural and social determinants of human behaviour that I put aside here since, in any case, I assume the truth of the causal thesis).

According to a 2015 report, binge drinking costs the UK taxpayer 4.9 billion GBP a year. This figure includes the costs of increased ‘A&E admissions, road accidents and police officers on duty’.⁴

Conduct that leads to disadvantage and even disaster despite ‘good enough’ protection is widespread in our world. Clearly, then, we need a philosophical account of what can be said to those who, like Curious, took steps that led to their own disadvantage. When are they substantively responsible for their fate? Such accounts are needed all the more in countries, such as most EU countries, where there are spiralling medical costs but medical assistance continues to be offered free at the point of use.⁵

A natural interpretation of what it means to be substantively responsible invites the conclusion that people in the situation of Curious are not entitled to assistance here, but this is not Scanlon’s vision. Rather, being substantively responsible means that one has no complaint that the outcome arose, but one might still have a claim for assistance on other grounds (and, if so, a complaint should assistance be withheld). So Curious might have no complaint that she is suffering pain, but may have a complaint if her medical costs are not covered. That said, to give teeth to the conclusion of substantive responsibility here, it might be best to imagine situations in which one has no further claims against others for assistance once the outcome in question arises. This may be, for example, because resources are in short supply and any claim to assistance one might have had are trumped by the claims of those in even greater need or those who are not themselves substantively responsible. From now on, I will assume that the relevant harm is that of the medical condition and the costs of managing it.

As reported, Scanlon thinks that to be substantively responsible, a person must have had an adequate (or ‘good enough’ – I will use the terms interchangeably) opportunity to avoid the relevant outcome. Good enough does not mean sufficient to actually avoid it. If a deterministic version of the causal thesis is true then no one who ends up harmed has had a genuine (ultimate) opportunity to avoid the outcome. An opportunity can be good enough, argues Scanlon, even if it fails to actually protect, provided we have ‘done enough’ to protect the person. So a weaker interpretation of ‘good enough’ is needed for Scanlon to claim his account is immune to the threat posed by the causal thesis. Of course, we might have ‘done enough’ in one sense because there is nothing else left to

⁴ BBC News, ‘Binge drinking ‘costing UK taxpayers £4.9bn’’, 31 March 2015, available online: <http://www.bbc.co.uk/news/uk-32126518> [accessed 25 July 2017].

⁵ I do not mean to imply here that the medical costs are spiralling due to reckless human conduct; they are primarily growing even in well-established public health systems due to medical advances and aging populations.

do. But we can dispense with that interpretation right away: Scanlon does not mean for his idea to rest on this thought. After all, in the toxic removal cases where Curious ends up substantively responsible for her contamination, we could have installed a 24 h guard at the excavation site and erected a screen there to show a movie on a loop about the dangers of toxic exposure.

I tackle what might count as a good enough opportunity below. First, let me discard the suggestion that such an adequate opportunity is a necessary condition for substantive responsibility. I do not think that Scanlon would disagree, but this is worth clarifying. Consider a situation – unlike the toxic waste one – in which the cost to the person who ends up harmed is lower than the cost to at least one other person if more is done to protect the former. Suppose, for example, that a pregnant woman faces a high risk of piles in her calves unless £1 m is spent on her pregnancy medication (and this is the only measure available to mitigate the risk to her). Since we are considering policies that would cover many, the costs would mount quickly if all were to be offered such protection. This would doubtless affect the availability of other medical provision. If so, then it is not clear that the pregnant woman needs to be offered any protection against the condition at all and yet, it would seem, she would still lack a complaint against others when she develops piles. Similarly, we can imagine the need for toxic waste removal in our war-torn country where resources are so scarce that Curious could not even ask for a warning and a fence – we just have to get on with the waste removal as soon as possible. And still Curious would presumably have no complaint against others if she ended up exposed. My point here, of course, is not that people have no claim to be warned/protected from disadvantageous outcomes, but that they may lack the relevant complaint despite the absence of such measures and a corresponding adequate opportunity to avoid the outcome. Still, giving people an adequate opportunity to avoid a given outcome can be thought of as a way through which people can be permissibly exposed to a greater risk of harm than would otherwise be possible. Perhaps if the pregnant woman is informed of increased risk of piles from some procedure, the procedure can be offered to her. It is easy to think of further cases where being able to expose people to a greater risk of harm could let us adopt beneficial policies: for example, we can undertake hazardous waste removal.

3 An opportunity to avoid harm

But if we must assume the truth of the causal thesis, what would it mean to say that people had a good enough opportunity to avoid getting harmed? Can such a good enough opportunity ever be offered? Scanlon thinks that it can. Indeed, he

thinks Curious was offered such a good enough opportunity. This can be contrasted with another person, Walker who – in an example developed from Scanlon’s writings by Alex Voorhoeve⁶ – goes out for a stroll on the day of the toxic waste removal because the warnings about it happening did not reach him. In fact, following Voorhoeve, suppose that we are facing a choice of policies: we can adopt either Inform Everyone – a policy that manages to reach everyone with a warning about the toxic removal but that also sparks the curiosity of Curious, or Vivid Warning – a policy that manages to persuade anyone whom the warnings reach to avoid toxin exposure but whose coverage is more limited and the warnings fail to reach those who frequently go on strolls, e.g. Walker. Suppose we conclude that the opportunity offered to Walker was not ‘good enough’ such that, although steps were taken to protect him, he retains a complaint and is not substantively responsible for the exposure to the toxins. Should we not say the same thing about Curious?

But Scanlon sees Curious as substantively responsible in the stylised scenario. To bolster this point, and building on the work of Johann Frick, Scanlon offers an analogy with vaccinations.⁷ We can say that people have been given a good enough opportunity to avoid a disease if they have been vaccinated against it, even if the vaccination did not in fact protect them in the sense that they did not develop immunity (I will discount throughout the herd immunity impact of vaccinations). Specifically, adapting Frick’s examples, we can imagine three schemes which, let us assume, end up leaving different people to catch the disease (and suppose that due to budget constraints, we can only develop one of the schemes). For simplicity assume also that those for whom a vaccination scheme is ineffective all catch the disease and die:

- (1) The first scheme works by providing everyone with a dose of vaccination that is known ex ante to only work for a specific 95% of the population (the remaining 5% are offered it as a gesture in case they don’t want to know which group they belong to).
- (2) The second scheme works by providing everyone with a dose that is known ex ante to be 95% effective against the disease. We are under a ‘natural veil of ignorance’⁸ in that we have no ex ante knowledge – and no reasonable prospect of acquiring it – of who will end up in the unprotected 5% (though, given that the vaccination analogy is meant to work as an analogy for choice if even the deterministic version of the causal

⁶ Scanlon 1999; Voorhoeve 2008. I also discuss the example in Stemplowska 2013. This article offers a further defence of the position I develop in that paper.

⁷ Scanlon 2008, p. 205 and Scanlon 2013, *passim*. Frick 2013. My discussion that follows was developed before Covid-19 pandemic and is not intended as a commentary on the current vaccination regimes.

⁸ Frick 2013, p. 190.

thesis is true, we can assume that the vaccination was always bound to fail those it did fail; we can imagine, for example, they had antibodies that blocked the development of the new antibodies).

- (3) The third scheme works by providing a randomly selected 95% of the population with a dose of vaccination that is 100% effective against the disease, while the remaining 5% get a placebo.

Clearly, adopting the first scheme means that there are some people to whom we cannot say that we did anything to protect them. Similarly, Scanlon argues that the 3rd scheme – sufficiently analogous to the case of Walker under the Vivid Warning policy – also fails to offer protection to the 5%: instead of reducing their risk of the disease we offered them a placebo.

However, on Scanlon's account, the 2nd scheme – despite not being 100% effective – is seen as offering protection to everyone. Why? We can say to each person: 'our actions reduced your risk of catching the disease'. We can look each person in the eye and say this because we are under a 'natural veil of ignorance' here so although we know some people will end up catching the disease, we do not and cannot reasonably know in advance who they are. If so, we can say that the 2nd scheme offers a good enough protection, despite the fact that some are bound to lose out. By analogy, at least if we did not know in advance who would act like Curious, we can be said to have protected people like Curious when we adopted Inform Everyone, even if, given that the causal thesis is true, they were bound to come to harm.

The analogy with vaccinations is illuminating. But, to my mind, we are still left with three reasons to reject the conclusion that Curious is substantively responsible for her fate. First, it seems to me that those who end up disadvantaged by their choices, like Curious, are often in a situation analogous to that of the 5% from the 1st scheme rather than the 2nd. We may have offered our warnings against toxic excavation sites, but of many people we can reasonably know, or can come to know, in advance that they will not heed the warning. For example, we each know some people who – we can reliably predict – if given a phone and a car will text and drive or, if alcohol is affordable, will drink too much and otherwise act self-destructively. If so, we cannot always claim that our policies designed to protect people do offer them an opportunity to avoid the outcomes any more than we can claim that a medicine that works only with chromosome Y works for women. We can think of Curious here like we would of a 2 year old to whom we show a biscuit in a cupboard and warn her not to eat it as it is poisoned with norovirus. Pointing out a poisoned biscuit to a two year old cannot be said to protect her from the poison. If so, Scanlon cannot argue that people like Curious, about whom we can reasonably know in advance that they will court

harm, can be held substantively responsible on the grounds of having been offered a good enough opportunity to avoid the harm.

Second, even when we do not know who such people are in advance, we may know that this type of person exists; offering some people warnings, or at least some types of warnings, will trigger destructive behaviour. If so, the vaccination scenarios presented so far are disanalogous to the case of toxic removal as specified above. Recall that Curious only went to the excavation site because she was being offered the warning: the warning triggered her curiosity. If so, a more analogous vaccination scheme would look more along the lines of:

- (4) We can offer everyone a vaccination that will be 100% effective against contracting the disease, but in some people, it will cause suicidal thoughts that will lead to death. 5% will be so affected.

Even if we are behind a natural veil of ignorance here it seems to me that, should this 4th scheme be adopted, the 5% will have a complaint that their situation was not improved by the vaccination (and relative to scheme (3), might have been worsened). If we would not say in this case that the people were offered a good enough protection by us then we should not say that Informed Everyone in a world with people like Curious in it offered a good enough protection either.

Third, suppose, again, that we are indeed simply comparing schemes (2) and (3). It is not clear to me that even in this constrained case the 2nd scheme is really any better at offering protection than the third, so if Scanlon is right that the 3rd scheme fails to protect the 5% then so does the 2nd scheme. Consider the two schemes. Notice, first, that even if we adopt the 3rd scheme, we can still say to those who lose out: 'since you were included in the lottery, we did something to protect you relative to had no vaccination been on offer'. Second, if we adopt the 2nd scheme, as Scanlon suggests, those who lose out can complain that had the 3rd scheme been adopted they would have been protected from their bodies' physiological response, but as things stand they were not. This, on its own, does not mean that we should have adopted the 3rd scheme – that scheme also would have failed to protect some – but it does, I think, undermine the claim that one of the schemes is better at protecting everyone. After all, we cannot say that if we adopt the 2nd scheme we will have done more to protect everyone than if we adopt the 3rd scheme: there is a point at which all people enjoy a 95% chance of developing an immunity (and the randomised procedure for offering placebos we devise can keep us ignorant of who is getting what as we administer the doses). We may have other reasons to pick scheme 2 over scheme 3 but offering better protection does not appear to be such a reason.

If we cannot pick scheme 2 over 3, we cannot pick Inform Everyone over Vivid Warning. Thus if we would balk at seeing Walker as substantively responsible when he comes to harm, we should also not see Curious as substantively responsible for her fate on the grounds that she was offered ‘good enough’ protection from the harmful outcome she suffers.

4 An opportunity to choose one’s fate

Scanlon might appeal to a separate strategy for grounding substantive responsibility in the case of Curious. This strategy is to suggest that if we offer someone an opportunity to avoid an outcome then her fate depends on who she is.⁹ I call this a separate strategy since, following Scanlon, what matters here is not whether the opportunity increases or decreases a risk of something and is for that reason good enough but whether it makes what happens depend on one’s preferences. Curious might not have been protected by the choice she was offered but she was put in a situation in which what happens to her reflects her preferences (to go to the excavation site despite warnings). The thought here is that it matters when our fate is determined by who we are.

I do not want to dismiss this as an important consideration when it comes to policy selection, but it is not obvious to me that on its own it is powerful enough to block one from having a complaint against the outcome (and indeed I take it that Scanlon does not seem to think it either, which is why he emphasises the need for offering good enough opportunities). Suppose some harm has to befall me no matter which policy is adopted. For example, imagine that I am in Pompei the day before the volcano eruption and I can be either offered a horse to ride away (which, if I try to ride it, I will fall off and kill myself) or I can be offered shelter in a public bath house in Pompei. It is not even clear to me that it is preferable for my fate to reflect that I ineffectively tried to ride a horse than that I sat in the bathhouse when the volcano erupted, let alone that either option would have protected me. Without some further argument – which I hope to offer below for a restricted set of cases – it is not clear to me why I would have less of a complaint if a policy was adopted that would mean that any harm that comes to me reflects my *choice* under conditions in which offering it was bound to lead me to choose badly.

⁹ Scanlon 2008, 192–198 and Scanlon 2013.

5 Substantive responsibility: A narrower account

Can we ever hold people substantively responsible, then, for self-inflicted harm, even if the causal thesis is true? Let's call choosing to act (from a menu of options at least nominally open to one) in a way that reasonably foreseeably and noticeably increases one's risk of harm (or just straightforwardly leads to harm) as 'courting harm', and let's call one's demands that one be protected from courting harm or protected from bearing the resulting harm as demands to 'share the costs of harm'. Finally, let's call costs that people would not need to bear for one another if they each acted of their own free will when courting harm 'undue costs'. Not all shared costs of harm are undue costs. For example, even if the causal thesis is false and there is proper free will, there are costs that I can permissibly impose on others – for example, as I skillfully and attentively drive to work in my hybrid car I can permissibly impose a greater risk of accident on others and ask for medical assistance when I suffer harm. But there are also costs that would count as undue – for example, the costs that arise due to an accident I suffered because I texted as I drove.

Clearly, people may court harm out of a range of attitudes (whether they know it or not). What I suggest below is that sometimes we can ground attributions of substantive responsibility in the attitudes that gave rise to people's conduct. Suppose, then, that the actions that lead to self-imposed harm can be attributed to the following attitudes (though, of course, the list is not exhaustive):

1. I court harm even though I sincerely try not to; I just cannot act on my sincere preferences.
2. I court harm only if, as far as I can reasonably know, this will not impose undue costs on others.
3. I court harm without any regard if (or because) this will impose undue costs on others and ask for others to share the costs of the harm that I court this way, even if this amounts to undue costs to them.

I will put the 1st case to one side as it is clinical.¹⁰ Attitudes captured by (2) are innocent and I do not have an argument for grounding substantive responsibility for conduct exhibiting them. And, in any case, I think that in a deterministic universe, people who come to harm acting on such innocent attitudes are not substantively responsible for their fate for the reasons adduced in sections 3 and 4.

¹⁰ In my view such a person should not bear substantive responsibility for any harm once we assume the causal thesis is true.

The fact that they ‘chose’ to court harm is irrelevant to their substantive responsibility given the truth of the causal thesis.

But the unreasonable attitudes captured by (3) allow us, in my view, to ground substantive responsibility. An iconic case of conduct of type (3) would be, say, that exhibited by 19th century literary gamblers or, say, Lydia in *Pride and Prejudice* (at least if the harm that might befall her and her sisters was not so preposterous and unjust). But for the purposes of my argument here it is best to imagine someone, call her Self-centred, who upon hearing about the waste excavation goes to the site to satisfy her curiosity thinking that should harm befall her the free-at-the-point-of-use rescue and health systems will be mobilized to help her out. The more familiar character would be that of a texting driver or binge drinker in a country such as the UK. Those who, like Self-centred, act on attitudes of type (3) can manifest disregard for the interests of others in two ways: first, when they court harm expecting others to share the undue costs or, second, when they demand expensive policies that would stop them courting harm the costs of which they would otherwise demand to be shared. They manifest disregard for the interests of others here because they are acting in ways designed to impose undue costs on them.

How should we respond? It is tempting to say that although the person in question disregards the interests of others through her conduct, her attitudes are not ultimately due to her, if the causal thesis is true, and so she is entitled to no less (and has no less of a complaint) than anyone who comes to harm while acting on attitudes of type (2). If this is correct then, in my view, the Scanlonian project of holding people substantively responsible in a world accurately described by the causal thesis must fail.

But I am not convinced that we should be satisfied with this response. Why? Such a response would amount to allowing people to impose costs on others out of disregard for their interests. After all, by assumption, we only face the need to share the costs of the harm because those acting on the unreasonable attitudes have no regard for the interests of others. But people should not end up with (non-trivially) less than they would otherwise have simply because others disregard them.

How often are we in the presence of cases where the agent acts out of attitudes of the 3rd type as she courts danger? It is hard to know, of course, but it is not unheard of. For example, people who live with public healthcare provision know that if they miss appointments, text and drive, or bungee jump drunk, the system bears the costs of depriving others of the resources. This raises the hard question of which actions should count as imposing undue rather than acceptable costs on others and when people can be reasonably expected to be aware of which costs are undue. We can expect to face much controversy on

this issue including over conduct such as smoking¹¹ or voting for policies and persons who diminish a country, though perhaps also some degree of consensus on drunk driving. As Samuel Scheffler once pointed out, we need a new conception of responsibility ‘in a world of complex interdependencies, massive institutional structures, and breathtaking new technologies’, a world in which we are not on a sure footing regarding individual agency.¹² I think we now not only inhabit such a world but many of us are also in a position to realise that we do.

Admittedly, the appeal to objectionable attitudes offered here does not allow us to hold people substantively responsible in all the same cases that Scanlon thinks people should be held substantively responsible. But then, if I am correct, Scanlon’s argument also does not allow us to hold people substantively responsible if the causal thesis is assumed to be true. Of course, it may turn out that the causal thesis is false, and thus attributing substantive responsibility is easier than we had thought. Or, even if the causal thesis is true, it may turn out that the objectionable attitudes are rarely, if ever, displayed or that we cannot discern them when they are. If so, my argument will not allow us to attribute substantive responsibility to people either. However, if we cannot do so because people do not seem to act on objectionable attitudes, it will be less urgent to offer accounts of substantive responsibility.

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¹¹ I briefly defend the view that smoking, despite the shared healthcare costs, may not be an imposition of undue costs on others in Stemplowska 2011.

¹² Scheffler 2001, chapters 2 and 3, quote p. 65.

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