

RESPONSIBILITY AND THE VALUE OF CHOICE

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Imagine that you are struggling to finish a project, with the deadline fast approaching. Nearly done, you are about to print out what you have finished when a dialog box appears on your computer screen telling you that you must download and install an update for some piece of software. Frustrated, you try to make it go away, but it keeps reappearing. So you relent and click on 'Install', and your screen is filled with small print listing 'Terms and Conditions'. You do not have time to scroll through the whole thing. So you click 'Agree'. The installation begins, and you are relieved that it takes only a few minutes. Soon you are back at work and have finished your project.

But as you are cleaning up your desk you begin to wonder, 'What did I agree to?' What if it said 'And I hereby assign to Bill Gates half of my income for the rest of my life and all of my estate when I die'?

This thought is even mildly troubling (the joke is even mildly funny) because we all believe that the choices we make, such as clicking 'agree' can change what we owe to others and what they owe to us. In these brief remarks I want to call your attention to the question of how choice can have this obligation-shifting power, and when it actually does have this power.

On what might be called the will-based view, an individual has an inherent moral power to legitimate outcomes by giving consent, or by voluntarily 'laying down a right' to something. This power is morally basic – that is to say not explained in terms of any further moral argument or principle. A choice is voluntary, on this account, if it really does express the agent's will. It cannot do so if the agent is unaware of what he is consenting to, or if he consents only

because he is coerced. So coercion and lack of information (or false belief) can render a choice involuntary in the relevant sense, undermining its legitimating force.

It is natural (although as I will argue not quite correct) to suppose that the idea of voluntariness at work here is a psychological notion, a matter of what the person was at the time aware of and what he or she intended in acting as he or she did. This may offer you some comfort in regard to my example about Bill Gates. Since you were not aware that you were agreeing to his demand, and did not intend to agree to it, perhaps you did not consent to it in the morally relevant sense.

This will-based view provides a more plausible explanation of the significance of choice in some cases than it does in others. It may appear to work best in a case like that of a person who signs a waiver specifying he understands the risks of rock-climbing and will not hold the owner of the gym liable for injuries he may suffer on their climbing wall that are not due to negligence on their part.

But things are different in another class of cases. These are cases in which a person could avoid some loss, or risk of loss, by taking appropriate action, and may even have been warned that this was so, but fails to take this action due simply to absent mindedness or inadvertence. Suppose, for example, that I receive a notice saying that my gym is going out of business, and that clothes and other equipment left in lockers there will be given to charity unless picked up by April 1. It may be that when I receive this notice I resolve to pick up my shoes and tennis racquet the following week, but I then forget about this and fail to pick them up by the required date. One might say in such a case that I have 'waived my right' to my equipment. But this cannot be explained on the will-based account, because the relevant psychological condition is not fulfilled: I have not at any point decided or willed or chosen to assume this loss, or to 'lay down my right' to my equipment.

It nonetheless seems clear that the owners of the gym are justified in disposing of my equipment, and that the fact that they notified me, and after being notified I failed to retrieve this equipment, is a crucial part of their justification. What is important to this justification, however, is choice in the sense of *having* a choice rather than in the sense of *having made* a choice. Maybe this means you should be more worried about Bill Gates. You *had* the choice of clicking 'Don't Agree' rather than 'Agree', even though you did not *make* the choice to give him half your money.

Bearing in mind cases of this kind, we can look back at the first class of cases with a different eye. In the rock climbing case, I assumed that the person signing the waiver was aware that, in so doing, he would be 'laying down his right' to complain to the management of the gym about injuries he might suffer. But this need not be so in order for his signing the waiver to be valid. (I have in mind here, moral validity, not a claim about the law of contracts.) It can be sufficient, I think, that under the circumstances he *should reasonably have understood that this is what he was doing*. When this is so, such a waiver *can* have the effect of licensing a certain outcome – of 'laying down a right' – even if the person did not actually have this in mind. He might, for example, have failed to see that this was what he was doing, despite the efforts of the manager and others to call this to his attention, because he was too busy trying to impress the woman he was talking with and did not read the form carefully. Note that what I am saying is that a waiver *can* have effect in such a case. Whether it *does* have the effect of legitimating an outcome in a particular case may depend on other factors, such as the magnitude of the stakes involved for the agent and the cost to others of a policy of not recognizing such waivers as binding. (I will return to this point below.) What matters fundamentally in all three kinds of cases, then, is not that the agent made a choice but that he or she *had* a choice, although what it takes for the person to have 'had the choice' in the right way will vary from case to case. So

maybe you can relax about Bill Gates, since it does not seem that you should reasonably have understood that agreeing would involve assigning him lots of money.

Starkly put, this suggests a view that is almost the opposite of the will-based view with which I began: What legitimates an outcome is not so much what the agent does (making a choice) but what others have done to give him or her the choice, by making the outcome depend on what the agent does in circumstances of the right sort.

I believe that this account is basically correct. But stated in this way it seems trivial, in part because it provides no explanation of why a person's 'having had the choice' should be an important element in making the process through which an outcome was produced (and therefore the outcome itself) something that he or she could not complain of. To fill this gap, we need to add some account of what makes choice morally significant, at the most basic level. I will sketch the view I favor, which I call the value of choice account.¹

This account begins from the fact that people often have good reason to want what happens in their lives to depend on the choices they make, that is, on how they respond when presented with the alternatives. This can be so for many reasons. I will mention three types of reasons, but I am open to the idea that there are others as well. The first class of reasons are *instrumental*: we often have reason to want what happens to depend on our choices because this makes it more likely that the results will be ones that we want or will find more pleasant. I generally have reason of this kind to want to be able to order my own food in a restaurant, for example, or to choose where to go on vacation. A second class of reasons are what I will call, in a slightly obscure phrase, *representational*: we may want to choose something ourselves, such as the décor of our apartments, or the presents we give our loved ones, because the outcome has a different meaning if expresses ('represents') our tastes, preferences and decisions. A third class of reasons are what I will call *symbolic*: if people like me are

expected to make certain kinds of choices for themselves, then the fact that I rely on others to make such choices or, worse, that I am not allowed by others to make such choices, indicates that I do not have, in my own eyes or those of others, the status of a competent person. Given that I have reason to want to have this status, I have reason to want to make, and to be allowed to make, the relevant choices for myself. So, for example, in addition to the reasons of the first two kinds that teenagers may have to be allowed to choose their own clothes, they may reasonably have a reason of this further kind, and to feel humiliated if their mothers insist on choosing their clothes for them.

My thesis is that the value of choice, so understood, is the way in which choice enters moral argument and becomes significant at the most fundamental level. This value shapes the content of morality. It explains why people have good reason to insist on moral principles and social arrangements that make outcomes depend on their choices – on how they respond when placed in appropriate conditions.

Several things should be noted about the value of having a choice, as I have described it. First, the value depends on the conditions under which the choice is made. If the menu in the restaurant is in Chinese, which I can't read, having someone else order for me might have greater instrumental value. Second, the value of having a choice can be negative as well as positive: If I characteristically make bad choices of a certain kind under certain conditions (such as when I am drunk) having the choice under those conditions might be a bad thing. Representational value can also be negative. It was not a good thing for Sophie to have her famous choice. It would have been better for her if the guard had chosen which of her children was to live, because then the result could not be seen as representing greater love on her part for one child rather than the other.

Another thing to notice is that in order for having a choice to have positive value of the kinds I have mentioned

it is not necessary that our choices be free in a strong sense that entails complete independence from outside causes. What is important is that these choices be connected in the right way with our actual psychology, as it is – with what will please us, with what we prefer and value, and so on. Outside causes that disrupt this connection (as brain stimulation does) undermine this value. But the fact, if it is a fact, that our preferences and values themselves are caused by our heredity and environment does not have this effect.²

In discussing the value of choice it is natural to focus on cases in which making outcomes dependent on choice is a way of making it more likely that the results are things that are positively desirable from the agent's point of view. But, as I have noted, agents can have instrumental reasons (and even reasons of other kinds) to value having outcomes depend on their choices because this dependence is a way of making specifically bad results less likely. I have reason to want to be warned about the bad consequences of certain actions if this is likely to deter me from performing them, because this makes those outcomes less likely to occur. In such cases, in contrast to cases like my restaurant example, we might prefer that these outcomes not be possible at all. We don't value having the opportunity to choose cancer, or to step in front of speeding buses. But it may not be possible to avoid these dangers altogether, and we may want for other reasons to have choices that may bring these dangers in their train.

Given that this is so, being warned, and thus 'having the choice' to avoid them, is *one* protection we want to have against bad outcomes. Having this protection can diminish our grounds for objecting to principles or policies that allow others to behave in ways that may cause these harms to befall us if we have not chosen wisely. But when we have had this protection the question remains whether it is enough – whether having the opportunity to choose less dangerous or risky plans of action, under the circumstances in which we will make this choice, and given the

alternatives we will have, is as much protection and assistance as we could reasonably ask for. This is a question about 'what we owe to each other,' not just a question about whether the choice to take the risk would, under the circumstances, be voluntary (i.e. reflect our will.) As I argued above, voluntariness in this psychological sense is not in general necessary in order for some result to be a person's 'own responsibility', nor is it sufficient.

The will-based account may seem plausible because there are cases in which, because of the high stakes involved, it seems that only an explicit, conscious and intentional laying down of one's right can have the relevant legitimating effect. Perhaps undertaking the obligations of marriage is an example, and alienating large amounts of property to Bill Gates may be another. Even in these cases, however, there are limits on the degree to which true 'engagement of the will' can be assured. The needs of others to be able to rely on an obligation having been undertaken must also be taken into account. There is a limit to the amount of trouble the gym owner can be asked to go to before he can throw out my old shoes. So 'I didn't really mean to accept *that*' even when true, cannot always be a way of escaping obligations.

The important point here, however, is that the pressure toward insuring *actual* consent – 'the engagement of the will' – in certain cases can be accounted for within the value of choice account. It arises because there are cases in which only this seems to offer a person sufficient protection against very serious unwanted results. It is not an indication that some other kind of normative significance is also at work. So you should not accept the will-based account because you think that only it can protect you against Bill Gates when you click 'Agree'. But you should still be careful what you click on.

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Notes

¹ I first presented an account along these lines in 'The Significance of Choice', *The Tanner Lectures in Human Values*, Vol. 8, Sterling McMurrin, ed. (Salt Lake City: The University of Utah Press, 1988), 149–216. A later version is given in Chapter 6 of *What We Owe to Each Other* (Cambridge, Mass.: Harvard University Press, 1998).

² This is the point Hume makes in arguing that what matters for moral responsibility is what he calls the liberty of spontaneity rather than what he calls the liberty of indifference. See *A Treatise of Human Nature*, Book III, Part II, Sections I and II. Hume is there discussing the kind of responsibility that is a precondition for moral blame rather than the form of responsibility we are discussing here, but the point carries over. I discuss the relation between these two forms of responsibility in the works cited in note 1.