

## Responsibility and the Duty of Rescue

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### Abstract

What difference might it make to the duty of rescue if the victim is responsible for needing to be rescued? Having distinguished the natural duty of rescue owed as a result of a chance encounter from the artificial duties of rescue that may be created by agreement among participants in high-risk activities, I examine three ways in which the victim's responsibility might lessen the stringency of the duty: by lowering the cost threshold above which rescue ceases to be a duty; by lessening the force of the duty when it competes with other duties of justice; and by making the duty unenforceable by third parties. I then consider different forms the victim's responsibility may take: simple negligence, deliberate risk-taking, and engaging in wrongful behaviour. There are only two circumstances in which the duty of rescue is entirely eliminated *as a duty*: when by virtue of repeated risk-taking, the victim unfairly imposes excessive costs on his rescuer, and when rescuing the victim would allow him to continue threatening harm to others. In other cases, however, responsibility considerations should *qualify* the natural duty of rescue: rescue should not be a responsibility-free zone.

### 1. Introduction

The duty of rescue is the duty that falls on someone who, without prior design, is so placed that they can avert a threat to life or bodily integrity faced by another at low-to-moderate cost to themselves – in the classic example, rescuing a drowning swimmer you spot while walking on the beach or riverbank. This duty has been quite extensively studied in the recent philosophical literature, with questions asked about the grounds for this positive duty of assistance,<sup>1</sup> about whether and if so why it should matter that the rescuer should be physically close to the victim when the need for rescue arises,<sup>2</sup> and so forth. There is, however, one question that has not so far been addressed: what difference does it make to the duty if the victim is responsible for getting into difficulties?<sup>3</sup> It is somewhat surprising that this question has been neglected. Although it is certainly possible that a person might need to be rescued because of a natural occurrence such as a landslip that

they could have done nothing to avoid, in many cases rescues are only necessary because someone has been negligent or because they have deliberately chosen to engage in an activity that is somewhat risky.

To keep things simple, and in order to focus attention on the *victim's* responsibility, I will use examples in which a person needs to be rescued from some predicament with natural causes – he is a stranded hiker or a drowning swimmer – thereby leaving aside other cases in which the threatened harm arises from a humanly-created disaster – a traffic accident, a collapsing building, street violence, and the like. Although some of the same considerations will apply to potential rescuers in these cases too, they are made more complicated by the fact that there will often be people other than the victim who bear responsibility for the latter's plight, and who may therefore have reparative duties that intersect with the duty of rescue itself.

Where a responsible victim needs to be rescued from a naturally occurring threat like a fast-flowing river, we may find ourselves pulled in opposite directions when contemplating the moral position of the potential rescuer. On the one hand, given the gravity of the situation in which the duty of rescue arises – the victim will die or at least be seriously injured if the rescue is not performed – there is a moral obligation to perform the rescue, provided that this can be done at low-to-moderate cost. On the other hand, we expect people to take responsibility for their own lives, and not to ask others to bail them out when, for example, they lose their possessions through their own carelessness. So why should this principle of personal responsibility cease to apply in rescue cases? This dilemma can of course be avoided by considering only instances in which the victim is exempted from responsibility, such as the ubiquitous child-in-the-pond scenarios where the rescuee is assumed to be too young to bear any responsibility for getting into difficulties.<sup>4</sup> But elsewhere the dilemma will reappear, and my aim is to see how it might be addressed.

There are two diametrically opposed ways of resolving the dilemma, neither of which, I will argue, is acceptable. The first holds that where the victim is responsible for needing rescue, he has forfeited his right to be rescued, and the rescuer no longer has a duty, but at most a reason, to carry out the rescue. One practical implication of this is that the rescuer cannot be compelled to carry out the rescue, whereas in cases in which the victim is simply unlucky, a reluctant rescuer can if necessary be forced to carry out a low-cost rescue, as I shall

suggest below. In response to the forfeiture view I will show that the victim's responsibility can only lead to outright forfeiture of the right to be rescued in two extreme cases, one involving repeated exposure to risk, and the other involving moral wrongdoing.

The opposing view is that the victim's responsibility makes no difference at all to the duty of rescue itself, though it may legitimately be taken into account in the aftermath, when the costs of the rescue are being allocated. For example, who should pay for the rescuer's expensive ruined suit? If the victim is responsible for getting into danger, the suggestion is, she will have a (potentially enforceable) duty of justice to cover those costs, subject perhaps to a proviso that she does not have to bankrupt herself in the process. In contrast, if the victim is innocent, she will at the most have an unenforceable duty of gratitude to cover some or all of the rescuer's costs. Responsibility, then, can make a difference, but only after the event. I will argue, however, that this view overlooks the significance of irrecoverable costs: it tacitly assumes that a responsible victim can restore her rescuer to the position he was in prior to the rescue, whereas the duty can sometimes require rescuers to incur costs – such as the risk of breaking a limb – that cannot be fully compensated for afterwards. It thereby gives too little weight to the victim's responsibility.

In contrast to these two polar views, I propose that the victim's responsibility can modify, without cancelling, the duty of rescue itself, and my aim in this article is to develop such an intermediate view. In section 2 I introduce a distinction between natural and artificial duties of rescue which is needed to handle the responsibility question. In section 3 I examine three ways in which the victim's responsibility may modify the (natural) duty of rescue: by lowering the cost threshold above which rescue ceases to be a duty, by weakening the force of the duty when it comes into competition with other duties of justice, and by rendering the duty of rescue unenforceable by third parties. In section 4, I distinguish three forms of responsibility – negligence, deliberate risk-taking, and moral wrongdoing – and consider how each may impact the duty of rescue. I conclude in section 5 by returning to the general reasons why responsibility should matter even in the grave circumstances in which rescue is called for.

## **2. Natural and Artificial Duties of Rescue**

The natural duty of rescue is the duty that falls upon anyone confronted with a person in need of rescue regardless of any prior agreement or social practice that might link the two of them together and mandate a rescue attempt. In other words it is a duty that is likely to arise as a result of a chance encounter – in the course of a recreational walk, happening upon a complete stranger who has fallen into the river or broken a leg. It is this natural duty that authors have in mind when discussing the duty of rescue, and it is also the focus of my investigation here. As I have argued elsewhere, in standard cases the duty of rescue is a duty of justice owed by the rescuer to the victim, corresponding to a right on the latter's part to be assisted.<sup>5</sup> Like other duties of justice, it is potentially enforceable by third parties, using means that are proportionate to the gravity of the harm to be avoided. So someone who is able to carry out a low-cost rescue but chooses not to do so is liable not only to be sanctioned retrospectively but also to have coercive means applied to force her to act – so, for example, if a strong swimmer refuses to jump into the water to save a drowning bather, a passer-by who cannot swim may use suitable threats to compel her to do so. Note, however, that this assumes that the swimmer has already been identified as the relevant duty-bearer, for example by being the only person present who is able to carry out the rescue safely and at low cost. Matters become more complicated when multiple rescuers are on the scene.<sup>6</sup>

As I have said, the natural duty of rescue typically arises through a chance encounter between strangers with no previous connection (by speaking of strangers here, I don't mean to imply that they are actively hostile to one another, only that neither knows the other and that they are not linked by special ties of the kind described below). So it must be distinguished from the artificial duties of rescue that are created by an undertaking or a social practice, usually arising in a context in which the need for rescue is foreseen.<sup>7</sup> For example, people who engage in high-risk sports like scuba diving or parachuting may accept an obligation to go to the rescue of fellow-participants whenever necessary, on grounds of reciprocity; or alternatively they may pay fees in advance to employ specialist rescuers for this purpose. Another example is provided by the international law of the sea, which requires ships' masters who receive information about a vessel in distress to alter course in order to carry out the rescue, even if this means deviating from their chosen course by many miles, and then to look after those taken aboard for as long as it takes to find a port

where they can be put ashore. This again is best explained by the importance to seafarers of establishing such a reciprocity-based practice. The nature of sea travel is such that any vessel may at some point get into difficulties and its master and crew find themselves in need of rescue: even a *Titanic* may hit an iceberg.

It is essential to draw this distinction between natural and artificial duties of rescue, because the shape that they take may be quite different, including over the significance of the rescuee's responsibility. Artificial duties are shaped by the interests of the participants in the relevant practice, who consent to taking on the duties when they join the practice. This means, for example, that the costs the rescuer is asked to bear may be considerably higher than in the case of the natural duty, as the example of the law of the sea brings out. It also means that the scope of responsibility will be defined within the practice: at one extreme, any participant may be entitled to rescue regardless of how they have behaved and without having to pay anything by way of compensation afterwards. In other words, the practice may operate as a scheme of no-fault insurance against the risks that the participants are taking on as a result of engaging in the activity that the practice covers even if they behave recklessly. This is acceptable because each has consented to bear the costs of rescue by virtue of participating.

None of this applies in the case of the natural duty of rescue. It is implausible to think that merely by sitting on a beach or taking a walk, I am engaging in a practice that involves standing ready to go to the rescue of fellow swimmers or hikers. When the need for rescue arises, I am effectively conscripted against my will to carry out the rescue.<sup>8</sup> I have no choice but to do this given the victim's predicament and my ability to save him. This explains why the natural duty comes with a built-in cost limitation: the cost that the rescuer can be asked to bear is considerably less than the cost that will befall the victim if the rescue is not performed. But it also helps us see why the responsibility issue cannot be dismissed. We could express this by saying that by getting himself into danger, the person involved is unilaterally imposing a duty on his would-be rescuer.<sup>9</sup> Even if the duty only holds when the costs of carrying it out fall below a certain threshold, there is still something morally disturbing about this unilateral imposition. If the need for rescue arises because of faulty behaviour on the part of the rescuee, then he appears morally blameworthy for the imposition. At this point I am using 'faulty behaviour' as an umbrella term that later will

need to be broken down into different categories, but think of the swimmer who marches into the sea ignoring the red flag on the beach. If subsequently he turns out to need a rescue that involves some risk to his saviour, it seems evident that he is morally blameworthy for imposing this risk. What effect this will have on the duty of rescue itself has yet to be determined: at this point I am merely trying to show that questions about responsibility cannot simply be set aside as morally irrelevant in the case of the natural duty, as they may be by agreement in the case of an artificial duty.

### **3. Reducing the Stringency of the Duty of Rescue**

With that distinction in place, we can begin on the paper's main question: how is the (natural) duty of rescue affected when the victim is known to be responsible for needing to be saved? There are three possible effects, two on the duty itself, and one on the position of third parties. The first concerns the cost threshold above which rescue no longer counts as a duty but becomes supererogatory. Here what limits the duty is the rescuer's prerogative not to expose herself to undue harm, or risk of harm. The same threshold may not apply in all cases, since it may vary according to the degree of harm that the victim will suffer – we should risk more to save someone from dying than from suffering frostbite – and according to personal features of the rescuer that may make a given rescue more damaging or traumatic for one person than another. The relevant question, however, is whether the victim's responsibility can lower it significantly, not what its absolute level should be in any given case. Second, there is the issue of the force of the duty – how strong a reason there is to undertake it. It seems clear that duties can vary in weight without ceasing to be duties: the duty to save a life is stronger than a duty to keep a promise, so if one is forced to choose between them, saving a life takes precedence. So might responsibility on the part of the victim, assuming that evidence about this is available to the prospective rescuer, have the effect of weakening the force of the duty of rescue without it altogether ceasing to be a duty? Third, there is the question whether third parties who cannot carry out the rescue themselves are permitted to enforce the duty by threatening the rescuer with sanctions if she does not perform. Might the victim's responsibility render the duty unenforceable?

How plausible is the suggestion that there are rescues that expose the rescuer to moderate cost, or moderate risk of harm, that will only remain obligatory (as opposed to

supererogatory) when the victim bears no responsibility for his predicament? It is not plausible in simple cases in which there is only one way in which the rescue can be carried out. If a potential rescuer should be willing to bear a moderate risk of injury, such as a broken arm, in order to save the life of a drowning swimmer, that limit will continue to apply even though the person in danger has behaved irresponsibly.

But not all rescue situations are so clear-cut. There may, for example, be different ways in which the rescue can be attempted, with implications for the predictable costs that the rescuer or rescuers will have to bear. Consider the case in which a hiker has become stranded on a mountain with a severe storm blowing in. Local volunteers have been alerted, but they face a choice. They could either set out immediately, in which case there is some risk that they would be caught in the storm and stranded overnight themselves. Or they could wait until the following morning when the storm will have passed and then carry out a low cost rescue, but meanwhile the hiker will have suffered from severe hypothermia and will need to be temporarily hospitalised. Now consider the hiker's responsibility for needing rescue. In one scenario he has just suffered bad luck: the storm was unexpected, or the hiker had an unlucky fall. In a second scenario, the hiker failed to take adequate precautions before setting out even though the storm was anticipated and he knew this. Perhaps the rescuers only have a duty to set out immediately in scenario one, when the walker is an innocent victim. In the second scenario, when he is at fault for behaving irresponsibly, it is fair to allow most of the cost to fall on his head rather than on the rescuers, so it is permissible to leave him on the mountain overnight, and heroic for the rescue party to set out at once.

Is it acceptable to differentiate between the two cases in this way? The argument for doing so is that this is what it means to take personal responsibility seriously. In other areas of life, we believe that responsibility should make a difference to how unavoidable costs are allocated. Think, for example, of how such costs are allocated in tort law between the tortfeasor and her victim. If the victim is himself negligent, and thereby contributes to the loss that the tort produces, the law will place some of the burden of repair on his shoulders. If you crash your car into the wall of my house, then you are liable to pay the cost of having the wall repaired; but if I negligently fail to employ a builder to do the repair, and later on the whole house collapses as a result, I can be required to contribute to the cost of

rebuilding: I cannot expect you to cover it all. If responsibility shifts the distribution of costs in this kind of case, it would seem anomalous if it had no parallel effect in a rescue case.

To this it might be objected that the victim's responsibility should influence the way that the costs of the rescue are distributed, but only after the event, not in advance. The greater the victim's responsibility, the stronger the reason for her to reimburse the rescuer for the material costs of the rescue. In the case of the stranded hiker, however, it is the irrecoverable costs expected in advance that are at issue. The rescuers have to decide how much risk and discomfort they are prepared to suffer to salvage, in the one case, a hiker caught by the unpredictable forces of nature, and, in the other, a hiker who has behaved in a foolhardy way. In the latter case, they have a duty only to perform a low-cost rescue that imposes greater costs on the victim as a foreseen (though not intended) result.<sup>10</sup>

Having seen that responsibility may in some cases affect the duty of rescue by reducing the level of cost that a rescuer can reasonably be asked to bear, when facing a choice between different modes of rescue, we can now consider whether it might also affect the duty's *force*, understood as the strength of the reason to perform it. Initially we might think that the duty must override all other duties, given that its aim is to protect the most basic of human rights, life and bodily integrity; we are permitted to break promises, seize property, coerce other agents, and so forth when rescue requires it. Nevertheless, there may still be occasions on which choices have to be made. In particular, the rescuer may be forced to decide which victim to prioritise, given limited time and resources. Here there will often be good reasons for choosing in one way rather than another. Most obviously, one should rescue one's own child, partner, or friend in preference to a stranger. More controversially, one should rescue a younger person in preference to an older person, or 'a brilliant musician or philosopher or peacemaker' in preference to someone who is none of these things.<sup>11</sup> In this light, and again in line with our general beliefs about the significance of responsibility, it seems reasonable that one should rescue an innocent victim in preference to one who had brought the danger on to himself through faulty behaviour.<sup>12</sup> To choose differently would be to allow the latter to impose a severe external cost on the innocent victim – the cost of being denied a rescue to which she would otherwise be entitled.

So here the effect of responsibility is to weaken the duty of rescue owed to the agent whose behaviour has been faulty when it comes into conflict with a similar duty owed to an



innocent victim. Can it also lessen the force of the duty vis-a-vis duties of a different kind? In the simplest kind of case, where for example the victim is in immediate danger of drowning and the only person who can save her is the rescuer, the duty of rescue seems paramount. But consider the following example: suppose the potential rescuer is a hospital doctor who on her way to work comes across a badly injured accident victim. She knows that waiting for her in the operating room are patients who cannot be treated by anyone else. She also believes that others capable of attending to the victim will soon pass by on the route she is taking. She faces a dilemma: her natural duty of rescue owed to the victim in front of her, versus her professional duty to the specific patients on whom she is about to perform potentially life-saving operations.<sup>13</sup> In weighing these duties against each other, it seems relevant, assuming this can be known, whether the person lying beside the road was responsible for his injuries through reckless behaviour. If he was, this counts in favour of the doctor hurrying on to her work. Again this point can be sharpened by noticing that if the doctor instead chooses to attend to the victim, she will be allowing him to impose costs on her patients – the costs of having their operations postponed, with possibly fatal consequences. By passing by, she of course imposes costs on the victim – extra pain, the risk that in fact no one else will rescue him – but this may be seen as the lesser evil in the light of his responsibility.

Besides potentially reducing the force of the duty of rescue vis-à-vis other duties of justice, might the victim's responsibility also have the effect of rendering the duty unenforceable by third parties? As I have suggested, the duty is normally liable to be enforced: if Anne could rescue Charles at low cost to herself but refuses to do so, then Brenda who cannot swim is permitted to use reasonable means to force Anne to act. There may, however, be circumstances in which even a low-cost rescue is no longer required by justice and becomes an unenforceable humanitarian duty. Typically this will be because there is a primary duty-bearer who is refusing to act. For example, if the designated lifeguard on the beach for some reason refuses to rescue a drowning swimmer, a capable passer-by will have a duty, but not an enforceable duty, to carry out the rescue himself. It would be wrong to force him to discharge a duty that he only has because of the lifeguard's failure to carry out the duty he was appointed to perform.<sup>14</sup>

The question is whether the same logic might be applied to a person who is himself culpably responsible for needing to be rescued. Should we say that such a person has violated a duty by getting into difficulties, and by doing so has rendered the duty of rescue unenforceable? Yet there seems to be no general duty to avoid acting in ways that might, if things go wrong, place others in a position where they owe you a duty of rescue. Although he is certainly behaving inconsiderately, and therefore liable to blame, we do not think that the foolhardy swimmer is under a *duty* not to enter the water while the red flag is flying.<sup>15</sup>

Against this Rulli and Wendler have argued that in cases in which professionals such as coastguards or firefighters are involved, individuals are under a duty to avoid getting into situations where rescue is required.<sup>16</sup> However this argument is made on the grounds that these rescuers are morally and perhaps legally bound to act even when the risks involved in rescuing are high, so by getting into danger, a victim is negligently imposing a heavy burden on those who may have to rescue him. The position seems different where the natural duty of rescue is concerned. The prospective victim is only exposing others to the modest level of risk involved in carrying out a low cost rescue, and although as indicated he may be to blame for doing so, and liable to compensate the rescuer after the event, he is not in breach of a duty. There is no general duty to refrain from engaging in activities that may impose small risks on other people (at most, there might be a duty to conduct the activity in a less risky rather than more risky way<sup>17</sup>).

There is, however, one circumstance in which a breach of duty on the part of the victim can render the duty of rescue unenforceable. The victim has a duty to co-operate with the rescuer to ensure that the rescue remains low-to-moderate cost for the latter. Suppose he refuses to do so: suppose, for example, that the rescue could be carried out in a way that is low-cost for the rescuer, but that would unavoidably destroy the Patek Phillipe watch the victim is wearing. Here he is obliged to sacrifice his watch: if he were to insist on being rescued in a different way, one that exposes the rescuer to higher costs such as the risk of a broken arm, then the rescuer's duty becomes humanitarian only, and cannot legitimately be enforced by third parties. So what matters here is not the victim's responsibility for needing rescue in the first place, but the responsibility he now has to collaborate in keeping down the rescuer's costs.

In this section I have examined ways in which the victim's responsibility might alter the stringency of the duty of rescue. It might lower the cost that the rescuer is obliged to bear. It might reduce the force of the duty vis-a-vis other duties of justice. And, in cases of the kind just described, it might have the effect of making the duty of rescue into a humanitarian duty only. Next we need to unpack the different ways in which the victim might be at fault for getting into difficulties.

#### **4. Three Kinds of Faulty Behaviour**

I will distinguish three forms that the rescuee's responsibility might take: simple negligence, deliberate risk taking, and morally wrongful behaviour. The negligent victim is the one who ignores clear signs warning of danger, like the red flag on the beach, or else fails to take the precautions that she should have taken, such as the hiker who walks at altitude without a thick jacket and proper footwear. To speak of negligence is always to invoke the standard of care that we expect a reasonable person to take. A reasonable person knows that seas are sometimes dangerous and that high-level walking can be risky, and takes appropriate precautions in each case. In general, when one person's negligence imposes costs on another, we expect the negligent person to provide compensation. In rescue cases, however, it may be impossible for the victim to compensate the rescuer, either because of the nature of the injuries sustained by the latter in the course of the rescue, or because of material costs that the victim cannot pay for.<sup>18</sup>

Does this mean that negligent victims may forfeit their right to be rescued? I offer two reasons in support of the claim that rescue remains a duty even in the face of negligence. The first is that the person who needs rescue is usually also the victim of bad luck. We are not presently contemplating a person who simply walks into evident danger. Recall that I am distinguishing negligence from deliberate risk-taking. The negligent person fails to act on information that she should have been aware of and that would deter a reasonable person from taking the course of action she takes, but nevertheless in most cases she would have got away with it. So she is unlucky as well as careless. The rescuer also suffers bad luck by being caught in a situation in which he is obliged to act at some risk to himself, so we might think about their relationship in terms of the sharing of misfortune. By imposing a duty of rescue, we require the rescuer to take upon himself some share of the bad luck that has befallen the rescuee.

The second reason is that all of us are negligent on some occasions: we take risks that looking back we realise we should never have taken. It's part of the human condition not to be fully alive to the dangers that surround us. We overlook warning signs that we should have taken notice of, we are notoriously bad at computing the chances of bad outcomes occurring, we overestimate our abilities to surmount difficulties when faced with a challenge, and so forth. Given these species-wide cognitive limitations, we want to have the freedom to live a normal human life, with all the activities that comprises, without the fear of being abandoned if on a particular occasion we make a mistake and expose ourselves to unanticipated risk. So *ex ante* it makes sense to acknowledge a duty of rescue even in cases where negligence is involved, though this is compatible with recognizing that known negligence may reduce the duty's stringency in one or other of the ways discussed in the previous section.

Such arguments cannot however be applied in the case of the second kind of faulty behaviour: the person who without first joining a rescue scheme deliberately embarks on a risky course of action in full knowledge of the danger that it presents. Obvious examples are extreme sports such as high-level mountaineering or single-handed ocean racing.<sup>19</sup> In singling out these cases, we presuppose a baseline, identified in terms of the risks that are inherent in everyday life, even if they are not perfectly equally distributed among people. We don't, in other words, judge someone who cycles to work through busy city streets to be a deliberate risk-taker in this sense, even if as a matter of fact they are running an above-average chance of having an accident. Exactly where the baseline should be set is a matter of judgement, but the extreme sports cases clearly fall above it.

We are now on the terrain where we should expect an artificial duty of rescue to be created. Assuming that a suitable arrangement exists – whether a mutual aid scheme organized by a club or an association, or an insurance scheme that covers the costs of a professional rescue service – the risk-taker is under a moral obligation (and may reasonably be placed under a legal obligation) to participate in it. But what of the person who engages in the risky activity while declining to participate in the scheme, or who goes ahead regardless where no such scheme exists? Does the natural duty still apply if the risk materializes, or has the victim forfeited his right to be rescued? Much more strongly than in

the case of mere negligence, the uninsured risk-taker seems to be exploiting the willingness of his fellows to bail him out even at some cost to themselves.<sup>20</sup>

Suppose, however, that he declares publicly in advance that he does not wish to be rescued if the risk materialises. Is that sufficient reason for us to say that the duty has been cancelled? There are circumstances in which we believe that the voluntary forfeiture of a right releases others from the corresponding duty. For example, most of us would say that if a person in an acute condition decides to end his own life, we have no duty to try to prevent him. We would say the same about someone who makes a costly sacrifice of a body part for the sake of a family member. However the case of the deliberate risk-taker is importantly different from these. The risk-taker hopes that the risk will not eventuate: she doesn't choose to be stranded up the mountain or at sea. If we decide to carry out a rescue, we would not be frustrating her settled purpose, as we would in the case of the person who wishes to sacrifice himself.<sup>21</sup> So we cannot escape the duty by claiming that the victim has chosen to forfeit her right to be rescued. In advance, we might threaten to withhold rescue unless the risk-taker joins the insurance scheme and pays his premium. But this looks like a case in which it is permissible to issue the threat, but not to carry it out, especially if the effect of doing so is that the person will die or suffer irreparable bodily harm.

There is one special case in which the duty of rescue does indeed appear to lapse. Consider someone who fails to join an available rescue scheme and then repeatedly exposes herself to risk, thereby needing to be rescued on each occasion.<sup>22</sup> Here we must decide how to interpret the cost threshold above which the duty of rescue ceases to be a duty of justice. Does it apply to each rescue taken singly, or does it aggregate for the rescuer across rescues of the same victim in such a way that, say, the third rescue would push the cost above the threshold?<sup>23</sup> In the literature on the duty of rescue, the point is often made that what distinguishes rescue cases proper from other situations in which someone might be asked to contribute resources to prevent harm or saves life – such as sending money to a famine relief organization – is that they arise very infrequently and unpredictably, so while the immediate cost of carrying out a rescue may be moderate, imposing the duty does not in any significant way damage people's ability to pursue their freely-chosen plans of life.<sup>24</sup> Of course an unfortunate person might find that they have to conduct a series of time-consuming and/or expensive rescues (of different victims), impacting their life-plan

significantly, and this does not cancel the duty when the next rescue is needed. Instead we should think of this as simply one of the many kinds of bad luck to which human lives are exposed.<sup>25</sup> But where the need for repeated (and moderately costly) rescue arises only because the person needing rescue has chosen to expose himself to risk, the situation changes: the rescuer is no longer merely unlucky but being actively exploited by the risk-taker who depends on her unlimited willingness to offer help. Taken together with the aggregated cost, this means that the person who is being taken advantage of is no longer under a duty of justice to rescue that victim in future; doing so would be admirable, but not required.

Leaving this special case of *repeated* risk-taking aside, therefore, the deliberate risk-taker does not forfeit her right to be rescued, though we can justifiably force her to join any (reasonable) scheme that creates an artificial duty of rescue covering the activity she is about to engage in (for example, making it compulsory to insure in advance against the need to be rescued by helicopter). In the event that no such scheme is available, or she has eluded our attempts to make her join it, we are then obliged to rescue her at up to moderate cost – though the stringency of this duty may be reduced in one or other of the ways that apply to the merely negligent victim discussed above.

There is still a third kind of faulty behaviour to consider: behaviour that involves (serious) wrongdoing.<sup>26</sup> How might this affect the duty of rescue? Consider someone who has got himself into a rescue situation as a result of acting in a way that poses a threat of harm to others – for example Adam is chasing Bert in an attempt to beat him up, but loses his footing and slides down the edge of the cliff. Does a bystander – or even perhaps Bert himself – have a duty to go to the rescue in such a case?

Two scenarios need to be distinguished here. In one the effect of the rescue would be to allow Adam to resume his wrongful chase. In this case, presumably, there are valid reasons of self-defence or other defence not to go to the rescue. The bystander who rescues Adam would become complicit in the bodily injuries later inflicted on Bert. In the second scenario, there will be no resumption, either because Adam has meanwhile calmed down or because Bert is safely out of sight. So there is no moral obstacle to carrying out the rescue. But is there a duty to perform it, given the particular kind of moral responsibility that Adam has

for the actions that have got him into trouble? Or does moral wrongdoing provide a clear instance in which the right to be rescued (on a single occasion) has been forfeited?

The wrongdoer plainly does forfeit one right, namely the right not to be punished. Assume that in the case as described, if Adam were apprehended he would be charged with assault and liable to whatever penalty is laid down for that offence. Could the harm he will suffer if no rescue is carried out be seen as appropriate punishment for what he has done, so long as it doesn't exceed the level of harm that could justifiably be imposed by way of (formal) punishment? On that view, there would not only be no duty to rescue Adam; there might even be a duty *not* to rescue him (or at least not to rescue him until he had suffered enough) to ensure that he received the treatment that was due to him for his wrongful behaviour.

To answer that question we would need to resolve some contested issues in the philosophy of punishment. Is punishment simply a matter of someone inflicting the appropriate amount of harsh treatment on the wrongdoer, or does it require that the punisher is authorised to do so, and that due process must be observed – in other words that punishment must only be inflicted after a fair trial in which the wrongdoer is given a chance to defend himself? The standard view of punishment would impose such conditions, though there are also dissenting views that defend something like a natural right to punish that anyone can exercise.<sup>27</sup> To claim that Adam forfeits his right to an immediate rescue in scenario 2, therefore, one would need to show not only that there is indeed a natural right to punish, but also that being left unrescued could serve as an appropriate response to his prior wrongful behaviour.<sup>28</sup>

## 5. Conclusion

I have established that there are only two very specific, and presumably rare, cases in which the duty of rescue expires *as* a duty because of the victim's responsibility. These cases aside, the forfeiture view does not apply. But readers are more likely to be tempted by its polar opposite, the view that the nature and extent of the victim's responsibility is simply irrelevant to the duty itself; at most it might have a bearing on how the rescuer's costs are to be offset after the rescue is complete. So my concluding remarks are intended to bolster the significance of responsibility.

It is important to say first that if we are going to allow responsibility to qualify the duty of rescue, we need to take care to ensure that responsibility attributions are carefully made. This is particularly so if we allow the duty to guide our thinking about the wider class of cases in which we have the opportunity to save people from significant harm. So on the one hand, we need to be alive to the possibility that a course of action that looks at first glance to be negligent or even a case of deliberate risk-taking might turn out not to be. However unlikely, it's possible that the swimmer we took to be negligent didn't recognize the flag that was flying as a warning flag; or, not being able to read the local language, failed to react to the large signboard that he passed on the way to the beach. Then, on the other hand, we need to be sure that the standard conditions for responsibility are met: for example that the person needing rescue has not been subject to coercion, *force majeure* or necessity when deciding upon the course of action that has led to it. In the absence of sufficient evidence, we should act on the presumption that the victim was *not* responsible for his predicament; this on the grounds that morally speaking it is worse to deny rescue to, or delay rescuing, an innocent victim in the mistaken belief that he was at fault, than to incur extra costs to rescue a faulty victim in the mistaken belief that he was innocent.

That having been said, is there a case for insulating the duty of rescue entirely from issues of responsibility? In circumstances where an artificial duty of rescue has been created, it may well be desirable to instil in potential rescuers an ethos that rules out inquiring about the responsibility of those who need saving. For example lifeboat crews might be encouraged to take pride in their commitment to saving lives at sea no matter how the need for rescue arises; similarly (though this is not strictly a rescue case) we might think that doctors and nurses dealing with accident victims should be trained never to ask questions about whether the casualty they are dealing with was randomly attacked by muggers, or on the other hand had got drunk and started a fight. The rationale would be that all their attention should be focussed on how best to help the victim, and allowing responsibility questions to intrude upon their decision-making might influence their practice in ways that we would deplore; for example, the lifeboat crew might make less of an effort to rescue a sailor who had clearly behaved irresponsibly.

But this applies within the context of the artificial duty, where, to remind ourselves, potential rescuers have chosen to become involved. In making that choice, they also



consent to the ethical code that governs the practice, which may well for the reasons just given include a blanket requirement to save lives and prevent harm, unqualified by any responsibility concerns. In contrast, the natural duty falls randomly on people who have made no such choice. Going about their daily lives, they are liable (albeit statistically unlikely) to find themselves unexpectedly in a situation where they are obliged to perform a rescue. In these circumstances, is it still acceptable to ignore all questions about responsibility? We hold people responsible because of the impact they may have on the lives of others. If my irresponsible behaviour injures you or damages your possessions, I should be forced to make reparation or pay appropriate compensation. This is in the first instance what justice requires, though it also serves as a way of incentivising people to behave responsibly. So why should these general considerations cease to apply in cases of rescue, even if they are often outweighed by the imperative to save life? You injure me in one way when your careless behaviour risks breaking my arm; but you appear to injure me in another way when by negligently exposing yourself to peril, you oblige me to act as your rescuer, thereby incurring a similar risk of a broken arm.

It seems, therefore, that the duty of rescue must be responsibility-sensitive. We have found only two cases in which the victim's responsibility eliminates the duty altogether: that in which by repeatedly exposing himself to risk while anticipating rescue, the rescuee unfairly imposes unreasonable aggregate costs on his rescuer; and that in which rescuing the victim would allow him to continue threatening harm to others. These cases apart, the effect of responsibility is to modify rather than nullify the duty of rescue. It may affect which victim should be given priority, what level of cost the rescuer can be asked to incur, how the duty of rescue should be weighed against other duties of justice, and whether the duty is enforceable. Rescue cases are certainly special; but they are not so special that they should be insulated from all questions about the responsibility of the person who needs rescuing.

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#### NOTES

<sup>1</sup> See, for example, Steven Heyman, 'Foundations of the Duty to Rescue', *Vanderbilt Law Review* 47 (1994): 673-755; Arthur Ripstein, 'Three Duties to Rescue: Moral, Civil, and Criminal', *Law and Philosophy* 19 (2000): 751-79; Cecile Fabre, 'Good Samaritanism: A Matter of Justice', *Critical Review of International Social and Political Philosophy* 5 (2002): 128-44; Laura Valentini, 'Social Samaritan Justice: When and Why Needy Fellow Citizens Have a Right to Assistance', *American Political Science Review* 109 (2015): 735-49; Fiona Woollard, *Doing and Allowing Harm* (Oxford: Oxford University Press, 2015), chs. 7-8.

<sup>2</sup> See, for example, Frances Kamm, 'Does Distance Matter Morally to the Duty to Rescue?', *Law and Philosophy* 19 (2000): 655-681; Violetta Ionescu, 'Distance, Determinacy and the Duty to Aid: A Reply to Kamm', *Law and Philosophy* 20 (2001): 605-16; Jeremy Waldron, 'Who is My Neighbor?: Humanity and Proximity', *The Monist* 86 (2003): 333-54; Søren Reader, 'Distance, Relationship and Moral Obligation', *The Monist* 86 (2003): 367-81; Frances Kamm, *Intricate Ethics: Rights, Responsibilities, and Permissible Harm* (New York: Oxford University Press, 2007), chs. 11-12; Woollard, *op. cit.*, ch. 7.

<sup>3</sup> There has, however, been some discussion of the difference it might make if the *rescuer* is responsible for the victim's predicament. See Victor Tadros, 'Permissibility in a World of Wrongdoing', *Philosophy and Public Affairs*, 44 (2016): 101-131, section II, and Victor Tadros, *Wrongs and Crimes* (Oxford: Oxford University Press, 2016), pp. 56-59. See also the interesting argument made by Barry and Øverland that a person who fails to make a low cost rescue at T despite having a duty to do so may have a more onerous duty to rescue the same person at T1 in light of the previous omission (Christian Barry and Gerhard Øverland, *Responding to Global Poverty: Harm, Responsibility, and Agency* (Cambridge: Cambridge University Press, 2016), ch. 3).

<sup>4</sup> The *locus classicus* is Peter Singer, 'Famine, Affluence and Morality', *Philosophy and Public Affairs*, 1 (1972): 229-43.

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<sup>5</sup> See David Miller, 'The Nature and Limits of the Duty of Rescue', *Journal of Moral Philosophy*, 17 (2020), 320-341. This way of understanding the duty of rescue is certainly contested: the main rival to the justice view holds that rescue should be understood as a humanitarian duty of assistance, with the implication that it is not enforceable.

<sup>6</sup> See Miller op. cit., sect. 4.

<sup>7</sup> Like many other distinctions, the distinction I am drawing here may prove not to be completely sharp in practice. For example, among people who are engaged in the same activity, such as dinghy-sailing, there may exist a camaraderie which creates an expectation that each will go to help another who gets into difficulty, without this rising to the level of a formalised duty. At the same time, I resist the suggestion that the natural duty itself can be turned into an artificial duty by representing it as resting on an implicit agreement between human beings generally to rescue one another *in extremis*. If that were its basis, we would have no duty to rescue the person who declares that he himself will never rescue anyone.

<sup>8</sup> In saying this, I don't mean to imply that a rescuer will always be reluctant to act. At the other extreme, she might welcome the chance to exercise the life-saving techniques she has been learning in evening class. But in general it is reasonable to assume that people would prefer not to be placed in a situation where they have to carry out a rescue (unless perhaps it is *very* low cost), and therefore that when they act they do so in recognition of a duty that the victim's predicament has created.

<sup>9</sup> I borrow the language of imposition from Woollard, op. cit., ch. 6. On Woollard's view, an agent is normatively imposed on by a victim whenever the needs of the victim place a significant demand on the way that the agent uses his body or the resources that belong to him. This makes no reference to how the victim has come to be in need, whereas intuitively we are more likely to speak of imposition in cases where she is responsible for getting into a situation that requires someone else to take potentially costly action to remedy it.

<sup>10</sup> The volunteers are not aiming to *punish* the irresponsible hiker by allowing him to suffer overnight; they are merely balancing the expected costs of the rescue between victim and rescuers more fairly in light of his responsibility.

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<sup>11</sup> See Ronald Dworkin, *Justice for Hedgehogs* (Cambridge, MA: Harvard University Press, 2011), p. 281. Dworkin believes in fact that such considerations could justify rescuing a single person in preference to two others. This is clearly even more contestable. I shall not consider what the effects of responsibility might be in different-numbers cases.

<sup>12</sup> For a case of this kind, see Richard Arneson, 'Luck Egalitarianism and Prioritarianism', *Ethics*, 110 (2000): 349. Might it nonetheless be *permissible* to choose to rescue the negligent victim? For the view that it is, see Laura Valentini, *Justice in a Globalized World* (Oxford: Oxford University Press, 2011), pp. 51-52. I agree with Valentini that in making such a choice, the rescuer is not violating the rights of the innocent victim. Nonetheless, we are likely to feel that the latter has a justified complaint if the negligent victim is preferred. The strength of this complaint may depend on how gross the negligence is: in Valentini's example it is fairly mild (losing your balance while leaning over the edge of the water to catch a beautiful leaf floating past).

<sup>13</sup> For some readers, this may not appear to be a serious dilemma, since they will regard it as soluble through consequentialist reasoning: essentially the doctor should do whatever she thinks will minimise death and pain overall. I have argued elsewhere that the duty of rescue cannot be understood in consequentialist terms (see Miller, *op. cit.*, sect. 2). What creates the dilemma is not the mere fact that more lives might be saved by passing by the victim, but the fact that the doctor has strict countervailing duties to her patients.

<sup>14</sup> To be clear, what may render a duty unenforceable is the fact that it arises from the dereliction of other responsible agents *here and now* who are unwilling to carry out theirs. Clearly remedial duties may arise as a result of someone else's past wrongdoing, or simply through the unintended consequences of others' behaviour. My claim is that I am being wronged if I am forced to perform a duty that belongs to someone else who is now both capable and in a position to perform it, but simply refuses to do so

<sup>15</sup> Unless, perhaps, there is a law prohibiting bathing while the flag is up.

<sup>16</sup> Tina Rulli and David Wendler, 'The Duty to Take Rescue Precautions', *Journal of Applied Philosophy*, 33 (2016): 240-58.

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<sup>17</sup> Consider dog-walking, for example. This always carries the risk of something going amiss – e.g. a small child being knocked over by a boisterous dog. So there might be a duty to keep such a dog leashed to minimise the risk, but not a duty to forgo dog-walking altogether.

<sup>18</sup> Unger gives the example of driving a bleeding, and indigent, victim to hospital, thereby ruining the expensively upholstered seats of your vintage Mercedes sedan, in Robert Unger, *Living High and Letting Die: Our Illusion of Innocence* (New York: Oxford University Press, 1996), ch. 2.

<sup>19</sup> I exclude cases where the risky course of action is embarked on for altruistic reasons – driving an injured person to hospital at high speed, for example. These clearly require a different approach.

<sup>20</sup> The potentially exploitative character of deliberate risk-taking activity has been used to argue that insurance to cover the potential costs should be made compulsory: see Paul Bou-Habib, ‘Compulsory Insurance without Paternalism’, *Utilitas*, 18 (2006): 243-63. I accept Bou-Habib’s argument, but it still leaves open the issue of whether the duty of rescue should apply in cases where the risk-taker either did not or could not insure himself in advance.

<sup>21</sup> Of course, it is possible to imagine someone who really does not want to be rescued in the event of disaster – she would prefer to die gloriously in the attempt to summit Everest without oxygen than to be hauled down unconscious but alive. I am assuming that this does not usually apply to people who engage in high-risk activities.

<sup>22</sup> This case is raised in Zofia Stemplowska, ‘Making Justice Sensitive to Responsibility’, *Political Studies*, 57 (2009): 237-59, at pp. 252-3, though it is treated as a problem for luck egalitarianism, and therefore the focus is on the maldistribution of resources that would result from repeatedly rescuing the same person. It is clear that the risk-taker is creating unfairness, and should be made to compensate her rescuers if that is possible, but the bottom-line question is whether through her behaviour she has forfeited her right to be rescued on subsequent occasions.

<sup>23</sup> I have not discussed the different kinds of cost that a rescue attempt might impose, but clearly there are several: time, money, possessions, pain and hardship, risk of injury. Some of these seem more naturally to be subject to aggregation than others. For a much fuller discussion of the different forms that an aggregative approach to the cost of saving lives might take, see Garrett Cullity, *The Moral Demands of Affluence* (Oxford: Oxford University Press, 2004), ch. 5, sect. 4.

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<sup>24</sup> See David Schmidtz, 'Islands in a Sea of Obligation: Limits of the Duty to Rescue,' *Law and Philosophy* 19 (2000): 683-705; Woollard, op. cit., chs. 7-8. This holds from the *ex ante* perspective. It is always possible that the actual rescue someone is called on to make will have a significant effect on their life plan (think of the owner of the lovingly restored sedan). But because rescues are very rare and unpredictable, the chance of having to execute one does not (and should not) impinge on how people plan for the future.

<sup>25</sup> See Barbara Herman, 'Mutual Aid and Respect for Person', *Ethics*, 94 (1984): 598.

<sup>26</sup> The seriousness condition is needed, I think, because minor transgressions don't appear to have any impact on the duty. For example, someone who falls into a lake while trespassing on the landowner's property seems to have an undiminished claim to be rescued.

<sup>27</sup> See e.g. A. John Simmons, 'Locke and the Right to Punish', *Philosophy and Public Affairs*, 20 (1991): 311-349; Christopher Wellman, *Rights Forfeiture and Punishment* (New York: Oxford University Press, 2017). What I am calling 'the standard view' is persuasively defended in Anthony Duff, *Trials and Punishments* (Cambridge: Cambridge University Press, 1986).

<sup>28</sup> Of course the reasons given earlier for why the victim's responsibility can reduce the *stringency* of the duty of rescue apply in this case as well.