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Good Samaritanism: A Matter of Justice

CÉCILE FABRE

Introduction

By far the most important question, in contemporary political philosophy, is that of the just distribution of material resources. Radical egalitarians argue that a society is just if, and only if, no one is worst off than others through no fault of his own.¹ Less radical proponents of the coercive distribution of resources from the well-off to the badly off claim, by contrast, that a society is just if, and only if, everybody has the resources they need in order to lead a minimally flourishing life, provided – or some such proponents will add – that they are not responsible for lacking those resources.

Let us take for granted, with less radical proponents of coercive redistribution, that when someone leads a less than minimally flourishing life through no fault of his own, he can claim the required material resources against the well off, provided the latter would not jeopardise their prospects for such a life by providing help. In many cases, however, the needy need things other than material resources in order to lead a minimally flourishing life. For example, they need a kidney transplant or a blood transfusion, which may require not only that the better-off channel part of their income towards (something like) a national health system, but also that someone make their kidney or their blood available to them. In this essay, I look at a different kind of need which cannot be met through tax transfers, to wit, our need for other people's bodily services, which arises when, for example, we are in danger of drowning, collapse in the street following a heart attack, are attacked on the way home after dark, are stranded on the roadside with a flat tyre, etc.

To help those needy individuals – whom I shall term, for short, the

imperilled – is to be a Good Samaritan. Now, liberal theorists of justice, be they radical egalitarians or not, hardly ever study duties of Good Samaritanism.² This is not altogether surprising: duties of Good Samaritanism, after all, do not sit very well with liberals' deep seated commitment to the view that, barring national emergencies such as war, individuals alone have the right to decide how to use their body (provided that they do not thereby infringe on someone else's similar rights).³ Indeed, the Anglo-American political and legal tradition, within which those theorists write, is hostile to the view that we have a stringent moral, and enforceable, duty to be a Good Samaritan. (By contrast, as is often noted in the literature on the topic, most European countries have adopted so-called Bad Samaritan laws – laws, that is, which make it a crime for someone not to help the imperilled, when he could help them at very little cost to himself.)⁴ This is not to say that Anglo-American liberals regard a failure to be a Good Samaritan as morally acceptable: indeed, most of them think that it is morally wrong. But they tend not to think – or at least they do not explicitly argue – that it constitutes a violation of a duty of justice. Rather, they condemn it as a failure to perform a duty of charity.

My aim, in this essay, is to show that if liberals are committed to the view that the needy have a right, as a matter of justice, to some of the material resources of the well-off, they must endorse the view that the imperilled have a right, as a matter of justice, to the bodily services of those who are in a position to help. In the second section, I examine and reject the claim, put forward by some, that the duty to rescue is a duty of justice only in so far as it is a duty to support just institutions. In the third section, I argue that the duty to rescue is a duty of justice which is owed to the imperilled themselves, and which can be enforced by the state.

Four preliminary remarks before I begin. First, a Good Samaritan, for my purpose here, does not stand in a special relationship to the person in peril; nor does he have a professional or contractual obligation to help those in need. A Good Samaritan, in short, is not a parent, a friend, a physician, or a policeman: he is a stranger who is not particularly qualified, professionally, to help, and who happens to be at the critical place, at the critical time. Second, I focus on needs which cannot be met through ordinary methods of resource transfers (such as taxation), and which can only be met by a physical and time-consuming contribution. A Good Samaritan, here, is not someone who discharges his duty by

giving money to the beggar; he is someone who discharges his duty by providing bodily services to those who need them. Third, throughout this paper, I adopt the interest theory of rights, whereby to have a right means that an interest one has is important enough to hold some other person(s) under a duty (Raz 1986: 166). Fourth, I do not address the difficult issue of the ways in which duties of Good Samaritanism can be discharged: David Miller's piece, in this volume, does precisely that. Nor, unlike Keith Graham, do I try to identify what acting altruistically (which Good Samaritans do) means. My aim, rather, is to assess what falls within the scope of justice.

Good Samaritanism: A Duty of Justice to Support Just Institutions

Before I offer my own defence of the duty to rescue as a duty of justice, I should like to examine, and refute, a standard argument to that effect. On that view, our duty to provide emergency assistance is owed, not to the imperilled, but to society writ large. Thus, Alison McIntyre argues that there is a connection between a Good Samaritan's duty to obtain assistance and the organisation of emergency services. Take the case of fire-fighters. As a community we want them to operate efficiently, for they maximise the general welfare; yet, they cannot do so unless citizens assist in reporting fires. As she writes, 'One's duty to report a fire is a public duty, just as the fire-fighter is carrying out his duty to the community that employs him, rather than a duty to the individual whose property needs protection' (McIntyre 1994: 181–2).

McIntyre is not alone in thinking along those lines. Arthur Ripstein, for example, also thinks that a duty to rescue is a duty to support a just institution. In that sense, or so he claims, it is analogous to a duty to help via taxation, which is owed to social institutions, and not to those who need help. On Ripstein's view, the reason why we are under a duty to the community as a whole to rescue others lies in the value of reciprocity: 'Reciprocity requires that the misfortunes which stand in the way of each person being able to live a self-directing life be held in common, so that all have the wherewithal to participate as full and equal members of society' (Ripstein 2000: 765). And the reason, in turn, why we owe that duty not to those in need but to society at large is that relational duties of that sort would make a mockery of liberals' cherished view that we should all bear some responsibility for the way our life goes. For me to be under a duty to *you* if you are in danger undermines my freedom,

since the conditions of our interaction are laid down unilaterally by your need for help. By contrast, for me to be under a duty to the community to get out of the way of the ambulance that takes you to the hospital does not undermine my freedom, since it simply amounts to helping a just institution – the ambulance services – to do their job properly (Ripstein 2000: 768–9).

There are several problems with Ripstein's and McIntyre's line of argument. First, it justifies not so much duties to rescue as duties to help emergency services; in so doing, it justifies a weaker kind of Good Samaritanism – albeit one which could save lives – than its proponents explicitly recognise. And this is troublesome: after all, most instances of Good Samaritanism are ones where the rescuer needs to do something *before* the emergency services arrive, and not to help them, assuming that they will be needed at all (such as administering CPR, helping someone get up after a heavy fall, helping a swimmer in difficulty swim ashore, etc).

Second, and more importantly, it is plain odd to say that we are under a duty to report a fire because we ought to support just institutions. Suppose that I see a fire breaking out in the house next door, that there are not any emergency services (the government has run out of money), and that I can very easily, at no cost to myself, help its inhabitants to get out. It is unclear what McIntyre and Ripstein would say here. Should they hold that I am not under a duty to rescue, they would be vulnerable to the charge that the absence or existence of emergency services cannot determine my moral duty, at least when the rescue is easy; should they hold that I am under a duty to rescue but that it is not a duty of justice, they would be vulnerable to the charge that the absence or existence of emergency services cannot determine whether my duty is *of justice* or not.

Third, it would be odd, in either case (absent or with emergency services), to deny that my duty is grounded in my neighbour's interest in survival. If this is correct, this implies that I owe *him* a duty to rescue him (which, in so far as to have a right means that an interest of one's is important enough to hold some other person under a duty, in turn implies that my neighbour has a right against me that I rescue him.)

Fourth, and relatedly, assuming for the sake of argument that a duty of Good Samaritanism is a duty to assist emergency services, it nevertheless does not follow that it is a duty owed to society as whole. Consider a fire-fighter employed by the city council. To claim that he is under a duty to help to his employer – the community – and not to the

imperilled, does not account for the fact that the latter are, in some cases, allowed to sue fire-fighting services themselves, and not the city council, for gross negligence. True, they do not always have the power to do so. But cases where the courts have exonerated rescuers – in particular the police – from a duty to help particular individuals have elicited the following response: what is the point of having a police, or a rescue service, if, when not performing an easy rescue, they cannot be taken to court by civilians? Setting that aside, even if emergency services are under a duty to help to their employer and not to the imperilled themselves, it does not follow that those whom they deputise to act – namely, civilians, are not *themselves* under a duty to act to the imperilled.

Fifth – and this is directed at Ripstein's argument specifically – it is very unclear why helping a just institution, namely emergency services, to assist someone else does not constitute a violation of my freedom, whereas helping that very person myself does. So to contrast those two acts make sense only if one takes the following two propositions to be true: (a) one is under a duty not to free-ride on just institutions; (b) one's freedom is not undermined if one is prevented from acting in violation of one's moral duties. Now, the proposition that one is under a duty not to free-ride on just institutions is not really in dispute. But the second proposition is implausible. For if it is indeed the case that one does not suffer a loss of freedom if one is prevented from acting in violation of one's moral duties, it follows that imprisonment does not render the rightfully convicted murderer unfree – which is ludicrously counter-intuitive (Cohen 1991). Consequently, this second proposition cannot support the view that being held under a duty to someone to help them violates one's freedom whereas a duty to the community to assist emergency services does not constitute such violation.

The Duty to Rescue: An Enforceable Duty of Justice

It is time to take stock. So far, I have claimed that arguing for the duty to rescue as a duty of justice on the grounds that one has a duty to support just institutions is unsatisfactory. Here, I argue that we owe it to the imperilled, as a matter of justice, to rescue them, whether or not they belong to our society, and irrespective of the presence, or absence, of emergency services. I then argue that duties of Good Samaritanism should be enforced by the state.

The Duty to Rescue: A Duty of Justice Owed to the Imperilled

On what grounds, then, do we owe it to others to help them if they need emergency assistance? I am assuming, you recall, that the needy have a right, as a matter of justice, to some of the material resources of the better off; that is, that they have rights to minimum income, education, housing and health care. The rationale for holding the better-off under that kind of duty is this: if one believes that individuals' fundamental interest in leading a minimally flourishing life is important enough to hold others under negative duties not to kill them, not to take their livelihood from them, etc., one must accept that it is important enough to hold them under positive duties to provide them with the resources they need in order to lead a minimally flourishing life.⁵

By the very same token, one must believe that an individual's interest in leading a minimally flourishing life is important enough to hold others not simply under a duty to provide material resources, but also under a duty to provide emergency assistance to them, in cases where, absent such assistance, they would not be able to lead a minimally flourishing life. The fact that in the former case material resources are needed, whilst in the latter bodily services are, is not weighty enough to justify holding the better off under a duty to distribute and to exonerate potential rescuers from the task of helping. The imperilled, in short, have a right to emergency assistance against those who are in a position to help. Moreover, they do not have that right in virtue of their membership in a scheme of cooperation, any more than the needy have welfare rights against the better off in virtue of their membership in such a scheme. Just as the needy have those rights in virtue of their neediness, the imperilled have the right to be rescued in virtue of their being in danger.

Having established that duties of Good Samaritanism correlate into rights does not suffice to establish that they are duties of justice. After all, not all such duties are duties of justice: my moral duty not to lie to you can conceivably be thought to be grounded in your right not to be lied to; however, it would not be appropriate to say that in lying to you, I would act unjustly towards you. A principle for the regulation of individual behaviour counts as a principle of justice if it solves conflicts between individuals over the distribution of moderately scarce resources. The principle 'one ought not to lie to others' does regulate individual behaviour but cannot in any way be taken to settle conflicts over a distribution of moderately scarce resources.

As I noted above, arguments about distributive justice are (nearly always) arguments about the distribution of goods, such as money, housing and health care, which are scarce, and distributable, resources. In order to show, then, that a duty to provide emergency assistance is a duty of justice, one must show that our body, as we use it in emergency rescues, does count as a scarce resource. I, for one, see no reason not to think of the body as such a resource (which is not to say that it is nothing *but* such a resource.) If the lifebelt I can throw to one of two drowning individuals can count as a resource, why cannot my arms, which I use to throw the lifebelt, or indeed to swim towards you, also count as such? After all, we are accustomed to thinking about labour as a resource: but labour simply consists in using one's body in certain ways. Moreover, our body is a *scarce* resource: as I only have two arms and two legs, I cannot rescue you from the river *and* prune my flower beds at the same time. Even if I had enough limbs to perform both tasks at the same time, I could not do so, since I cannot *be* in two different places at the same time. Now, you have an interest in controlling the use of my arms and legs, as well as the location of my body, in such a way as to be rescued; but I have an interest in controlling them in such a way as to tend to my garden. If that is not a conflict over a scarce resource, I do not know what is. In fact, whilst it is possible to imagine a world of abundant material resources (abundant, that is, in the sense that there are enough of them to satisfy everybody's needs and wants), indeed whilst it is possible to imagine a world of abundant body parts (thanks to stem cell research and cloning), it is impossible to imagine a world of abundant bodily services, precisely because such services cannot but be performed by individuals who have to be at the right place, at the right time, and yet may not be, and who have to use their body as required by the needs of the imperilled, and yet may not want to.

To recapitulate, our body, when used to provide services, is a scarce resource. Accordingly, a principle which delineates duties grounded in rights and pertaining to the provision of such services, can, on that count at least, be regarded as a principle of justice. I say 'on that count at least', because in the eyes of some philosophers, a moral duty has to fulfil yet another condition in order to qualify as a duty of justice. Thus, Rawlsians would deny that duties to rescue as imposed on individuals are duties of justice, on the grounds that justice regulates the behaviour of institutions, as opposed to that of individuals. Duties of Good Samaritanism, on that view, belong to the category of natural duties, to

wit, duties which, like the duties of justice imposed on us by the principles of justice, are chosen in the original position, but which, unlike them, apply to us irrespective of our membership in a cooperative scheme and of our consenting to them, and the content of which is not determined by social institutions (Rawls 1999).⁶ According to Rawls himself, we have several natural duties. One of them, namely the natural duty to support just institutions, is, precisely in virtue of its content, a duty of justice. Duties of Good Samaritanism, by contrast, do not partake of justice, because we must fulfil them whether or not we have agreed to submit to them, and because their content is not determined by social institutions.

Whilst I agree with Rawls' characterisation of the content and binding force of duties of Good Samaritanism, I disagree with the contrast he draws between those duties and duties of justice. If natural duties are chosen in the original position, and are thereby 'the outcome of a hypothetical agreement' (Rawls 1999: 99) it is unclear why they apply to us irrespective of our having consented to them. Moreover, it is unclear why the *content* of our obligations of justice, and of the rights with which they correlate, is determined by the rules of social institutions, whilst the content of natural duties is not. Rawls, in fact, seems to vacillate on this point. On the one hand, he claims that the duty not to harm or injure others is a natural duty; on the other hand, he claims that the right to be free from physical assault and dismemberment is one of the rights secured by the first principle of justice.⁷ But why should the content of the latter be determined by social institutions, and not that of the former? If the content of natural duties can be determined by social institutions, in that respect at least they, and therefore the duty to rescue, can partake of justice.

To recap, if one thinks that the needy have a right, as matter of justice, to some of the material resources of the well-off, one is committed to the view that the imperilled have a right, as matter of justice, to the bodily services of potential rescuers. At this juncture, it pays to note that there are two differences between the duty to provide material resources and the duty to provide bodily services – neither of which, I now argue, undermines my case. In the introduction to this essay, I posited that when someone leads a less than minimally flourishing life through no fault of his own, he can claim the required material resources against the better off, *provided the latter would not jeopardise their prospects for such a life by providing help*. Clearly, the

imperilled's claim for help against rescuers is subject to the same proviso. For just as it would be arbitrary to exonerate potential rescuers from a duty to help whilst holding the materially better-off under that duty, it would be arbitrary *not* to release them from it when their prospect for a minimally flourishing life would be jeopardised whilst releasing the latter in similar circumstances.

Now, although the duty to provide material help and the duty to rescue are similar in their demandingness, the first of the aforementioned two differences between them pertains to the costs incurred by help providers. When a needy person calls upon the well-off to give him material resources, he is (merely) imposing a cost on them, to wit, the cost of losing a share of their income. When someone in peril calls upon potential rescuers to help him, not only is he imposing on them the cost of not being able to make use of their body as they see fit; he is also imposing on them a risk of incurring a further cost, to wit, the cost of suffering some injury, in some cases death, in the course of the rescue attempt. Is he entitled to do so?

At this juncture, some might be tempted to hold the following principle P1 to be true:⁸

P1: one is under a duty to help and thereby incur a risk of cost C (Rc) only if one is under a duty to help and thereby incur C.

On that view, one determines whether imposing Rc is legitimate merely by determining whether imposing C is legitimate. This has the merit of simplicity as well as, unfortunately, the disadvantage of implausibility. For consider. Suppose that S has been knocked unconscious by a falling branch into a shallow pond and that Q happens to pass by. You are quite heavy, and if Q lifts S out of the pond, there is a risk, but an absolutely minuscule one (much, much lower, say, than the similar risk Q incurs by cycling to work everyday) that Q may have a heart attack. Now, as should be clear by now, I believe that Q ought to lift S out of the pond. If P1 is true, though, then it follows that one cannot hold the following two claims to be true:

- (1) One is not under a duty to die for the sake of someone else.
- (2) Q is under a duty to lift S out of the pond.

For if Q lifts S out of the pond, and suffers a heart attack, from which he dies, then in so far as (1) is true, which it surely is, it seems that Q was

not, in fact, under a duty to lift S out of the pond. But that strikes us as rather unacceptable. Consider another example: S is very ill, in bed, and needs some medicine: he asks Q to go to the chemist's, a five minute walk which involves crossing a traffic-heavy thoroughfare. Surely Q ought to go, even though he risks being run over and dying. Consider now a final, contrastive, example: S is drowning in very stormy seas; Q is not a very good swimmer, and if he goes in to try to get S out, there is a 30 per cent risk – a very high risk by all accounts – that Q will drown himself. In that case, surely Q is not under a duty to attempt to rescue S.

In order to claim, in the first two cases, that Q is under a duty to rescue S and thereby to put himself at risk of dying, and, in the third case, that Q is not under such duty, one must accept that P1 is not always true, and that every single instance of it should be justified, or denied, separately, on its own merits. That it should be so does not entail that it is impossible to adopt a general principle for what counts as acceptable and not acceptable risk. To defend such a principle in detail is beyond the scope of this essay. I suggest, though, that a reasonable risk, as incurred in the course of a rescue, is one no greater than the risks we standardly incur, and impose on others, in our everyday life, when driving, cycling, etc. When engaging in those activities, we run, and impose, risks of death and serious injuries. Accordingly, we are under a moral duty to help out of the water someone who is drowning, to drive to the hospital, ambulance services failing, someone who is in serious pain, etc.

To sum up, although duties to rescue raise the question of risk-imposition and are thereby not strictly analogous to duties to provide material help, that particular disanalogy does not threaten my case for holding potential rescuers under a duty of justice to provide bodily help to those who need it. This having been said, those two kinds of provision differ in yet another, potentially threatening, respect. In the case of welfare assistance, the burden of helping the needy can be spread fairly amongst all potential contributors, through taxation. Not so with emergency rescues, since whether or not one is under a duty to help depends on whether one finds oneself in the right place, at the right time. It seems unfair, or so one might be tempted to argue, that some people, and not all, are under a duty to provide emergency rescues, simply out of the bad luck of being present when someone is in peril. Now, there is no way, obviously, to spread the burden of rescuing amongst rescuers *and* non-rescuers. I do not think, though, that this suffices to undermine the view that duties to rescue are relevantly

analogous to duties to provide welfare provision. Just as one can spread the cost of expropriation by compensating expropriated property-owners through taxation, one can spread the (small) costs incurred by rescuers through a compensation scheme funded by taxation. And just as the fact that expropriated property-owners may sometimes find that compensation does not fully make up for their loss is not a good reason to deem expropriation illegitimate, the fact that rescuers may sometimes find that compensation does not make up for the costs incurred in the rescue attempt is not a good reason to exempt them from a duty to rescue.

From a Moral to a Legal Right to Rescue

That we have a moral right to emergency rescue clearly does not entail that the state ought to enforce it, anymore than my having a right that you meet me at 5 pm, as you promised, entails that the state ought to force you to do so. There are, broadly, two kinds of considerations that might dictate against the enforcement of moral rights; (a) enforcing moral rights might prove too difficult to do in practice; (b) enforcing moral rights might compromise some other moral values. The case of promises illustrates both kinds of consideration. If you promise me, absent any witness, to feed my cat while I am away, I acquire a right against you that you do so. But if you fail to fulfil your obligation towards me to feed my cat, it is highly unlikely that the state will enforce my right and punish you, since it could in all likelihood find no reliable evidence in support of my claim. Enforcing that promise would be, in practice, impossible. Assuming that enforcing promises would be possible, it would nevertheless be morally costly, since it would undermine the role played by trust in our personal relationships. In cases where it would be practically impossible, or very difficult, but not morally costly for the state to enforce moral rights, the state has the moral power to do so, but it has good, practical reasons for not exercising that power. In cases where enforcing a moral right would be too costly morally, although not impossible nor too difficult in practice, the state does not have the moral power to do so.

Now, if one agrees that obligations of Good Samaritanism are obligations of justice, and if one thinks, with liberal proponents of coercive taxation for distributive purposes, that the state has the moral power to make it compulsory to contribute to the provision of welfare services, then, *pace* Miller, one cannot dismiss Bad Samaritan laws on the

grounds that the state does not have the moral power to enforce positive rights to be helped.⁹ However, there might be other reasons as to why advocating *legal* welfare rights does not commit one to *legal* rights of rescue. Indeed, many commentators have claimed that a badly drafted Bad Samaritan law would be too costly from a moral and practical point of view. Practically, it would be very hard to prosecute someone for a failure to rescue an imperilled individual: if I flee the scene of an accident, without anyone to see me, nobody will be any the wiser. If I fail to alert the police from the privacy of my home when I hear someone scream for help in the street, I can always pretend that I did not hear, or that the screams I heard seemed to come from the TV next door and not from the street.¹⁰

This practical objection to Bad Samaritan laws does not strike me as convincing. For although it may be very difficult, in some – indeed in many – cases, to assess whether someone was in a position to help, it nevertheless is true that in some cases, one will be able to make that assessment: it may happen that some witness will see potential rescuers fleeing the scene of an accident and will be quick enough to take down their plate number, thereby allowing the police to track them down. After all, it is usually not thought that the fact that rape (in particular marital rape) and racial and sexual discrimination are notoriously difficult to prove constitutes a good reason for not criminalizing them. Why treat failures to rescue differently?

Of course, other considerations, such as the moral costs attendant on enforcing duties of Good Samaritanism, may dictate against enforcement. A proponent of Bad Samaritan laws will find such considerations harder to deal with. In what follows, I shall address the deepest critique of Bad Samaritan laws in that regard, as deployed by H.M. Malm.¹¹ According to Malm, such laws cannot lay down precise criteria for what counts as a reasonable *cost* for a potential rescuer, in the precise circumstances in which he is called upon to rescue; nor can they lay down precise criteria for what count as a reasonable *risk*. For there are too many possible scenarios for statutes to be able to foresee. Compare with taxation. It is not that difficult to legislate in such a way as to ensure that individuals contribute to welfare provision to the extent that they are in a position to do so: one can state, in the law, that taxes will be levied in proportion of income, with possibilities of rebate for, say, being a lone parent, having special medical needs, etc. Whereas tax law can be relatively precise, Bad Samaritan laws cannot, with the effect

that it will be up to the courts to decide, in every instance, whether a potential rescuer would in fact have incurred an unacceptable cost, and whether his assessment of the risks attendant on the rescue was plausible. In many cases, or so Malm argues, courts will end up penalising individuals who were not, in fact, under a moral duty to rescue.

Malm makes her case by way of several examples, the following two of which are particularly telling. Suppose I nearly drowned myself 10 years ago, and that I now find it extraordinarily difficult to get into the water; suppose further that I alone witness someone drowning, and that paralysed by fear, I cannot bring myself to go to his rescue. As a result, the imperilled swimmer dies; suppose further that rescuing him would not have been risky. Should I be prosecuted? Should judges, or the jury, be lenient towards me? Suppose now that I have been attending weekly religious meditation meetings, without fail, in the last five years. It is crucially important to me, to my understanding of the way in which I should lead my life, not only that I go to these meetings for the peace and comfort they bring me, but also that I unflinchingly commit myself to them. On my way to one such meeting, I drive past the scene of a car accident: I can see that the driver is slumped, motionless, over the wheel. There is no sign that emergency services are on the way. If I do stop and start helping, I will miss my meeting; so I speed along. In that scenario, there is no doubt that I would have incurred a high cost had I stopped. Again, what should the courts do? On what grounds can *they* decide that not missing one religious meeting is not important enough to justify my not helping?

I concede that the fact that there is risk involved in helping, which there is not in paying taxes, complicates the issue of enforcement. I also concede that it is not easy to establish whether or not the cost of rescuing was too high. However, the fact that drawing the line between acceptable and unacceptable risks and costs is a difficult task does not entail that one can *never* make such assessment: the standard of reasonableness is constantly used in other areas of the law; and in many cases it is used, precisely, so as to assess risks and costs. I do not see why it cannot be used here as well.¹² Consider self-defence: if I am attacked, I must assess what risk I would incur by not shooting back and reasoning with the attacker; if I kill him, I will be called upon to explain why I thought killing was the only response to the attack. Consider also standards for convicting someone: juries are asked to convict only if they find the defendant guilty beyond *reasonable* doubt. Consider, further,

cost assessment in the context of paying taxes: someone who refuses to pay them on the grounds that the importance of providing others with the resources they need is outweighed by the importance for him of subsidising a religious group is unlikely to be met with sympathy by judges. By contrast, judges might be inclined to be lenient (in fact, in the UK, have been lenient) towards needy individuals who refused to pay the poll tax on the grounds that they would not, as a result, be able to pay for heating in the winter.

Judges, then, do assess costs and risks on a regular basis, and there therefore does not seem to be any good reason not to ask them to do so when applying a Bad Samaritan law. Malm remains unmoved by such considerations, for the following reason: if judges make a mistake of judgement, and end up convicting someone who in fact was not under a moral duty to rescue (for the cost in her case was indeed too high), they will unfairly impose a penalty on her. The prospect of unfair convictions presents us with a dilemma. If we make the penalty light, i.e. a £100 fine, so as to alleviate the effects of unfair convictions, we send the wrong signal to genuinely Bad Samaritans, since we are, in effect, telling them that their failure to rescue is not that reprehensible – that it is less reprehensible, for example, than stealing a car, for which one can incur a jail sentence. If we do make failures to perform easy rescues punishable by a jail sentence (as is the case in France, for example) in order to impress on them that their failure to rescue is very serious, we risk sending to jail innocent people.

Again, one cannot but concede that such problems are serious, and may arise. But they also arise in other areas of criminal laws, such as homicide. The risk of wrongful conviction may be a good reason to oppose capital punishment; it does not seem to be a good reason to oppose any kind of punishment whatsoever. Similarly, the risk of wrongfully convicting someone for failure to rescue may, indeed should deter us from imposing harsh sentences, but it should not deter us from imposing any sentence at all. I cannot, in this essay, offer guidelines as to which tariff would enable us to avoid being impaled on either horn of the dilemma. My aim was more modest: it was merely to show that one has good reasons to confer on the state the moral power to enforce individuals' right to be rescued.

Conclusion

To conclude, I have argued that the imperilled have a right against potential rescuers that they help them provided that they would not, in so doing, run an unreasonable risk of incurring an unreasonable cost. Duties to rescue the imperilled, moreover, are not merely moral duties; they are duties of justice, owed to the imperilled themselves, protective of their fundamental interest in leading a minimally flourishing life. Or so should think liberal proponents of coercive taxation for the purpose of providing the needy with the material resources they need in order to lead such a life: after all, bodily services, as deployed in rescue attempts, are a resource, and a scarce one at that, over which conflicts arise between those who need them and those who are in a position to offer them.

The foregoing considerations, of course, raise the question of body parts: they too are a scarce resource, and are needed by many patients, often as a matter of life and death. If I am correct that proponents of the distribution of material resources are committed to endorsing duties to rescue, it seems that they are also committed, much more controversially, to endorsing duties to provide body parts, as a matter of justice. Whether they are indeed so committed, and whether they can be so without thereby jettisoning their commitment to bodily integrity and autonomy, must be dealt with elsewhere (Fabre 2003).

NOTES

1. Egalitarians differ from one another on the question of the egalitarian metric. For a defence of equality of resources, see Dworkin 2000; for a defence of equality of opportunity for welfare, see Arneson 1989: 77–93; for a defence of equality of access to advantage, see Cohen 1989: 906–44.
2. In his 'Property Rights in Persons', Richard Arneson gestures towards the view that welfare egalitarianism dictates holding individuals under such duties. I say 'gestures', because the focus of his piece is freedom of occupational choice. See Arneson 1992: 201–30. For the Biblical parable, see Luke, 10, 30–35.
3. I take that proviso as given throughout the essay. The qualification 'barring national emergencies' is important: most liberals would agree that in times of war, conscription is legitimate; some would agree that in other kinds of national emergencies (serious flooding, forest fires, etc.), we are under a stringent duty to help those in need.
4. In the US, Massachusetts, Minnesota, Rhode Island, and Vermont have passed such Bad Samaritan laws. In Wisconsin, one is required to provide aid, or to summon aid, for crime victims who have suffered bodily harm. In Europe, France, Germany, Belgium, The Netherlands, Portugal and Russia have passed Bad Samaritan laws. Russia was one of the first countries to do so, as early as 1889 (see Tunc 1981; Rudzinski

1981). Note that Bad Samaritan laws, which criminalize failures to rescue, must not be confused with Good Samaritan laws, which prevent people from suing their rescuers on the grounds that the latter occasioned them some harm in the course of the rescue.

5. For a fuller argument to that effect, see Fabre 2000.
6. For Rawls' account of the natural duty of mutual aid – his terminology for duties of good Samaritanism – see *A Theory of Justice* (1999: 297–8).
7. See Rawls (1999: 98 and 53 respectively). Rawls claims that there are two reasons why the parties will want to adopt the (natural) duty to rescue in the original position, neither of which is convincing. First, Rawls argues, assuming that they stand as much of a chance of needing help as of being called upon to provide it, and given that the cost of helping is outweighed by the gain of being helped, it is in their direct interest to do so. Now, this suggests that, if it is not in my interest to help you, then I have no reason to adopt the duty; nor, indeed, do I have any reason to fulfil it. True, I may stand as much of a chance of needing help as of giving it. However, should I need help, potential rescuers will be unable to check whether I did, or would do, my bit when called upon to help myself – indeed they are unlikely to ask me whether I have ever helped or would help, before undertaking the rescue. As a result, I would not incur any cost by demanding help and not giving it; it is in my interest, then, not to act as a Good Samaritan when called upon to do so.

The second reason why, according to Rawls, we acknowledge the duty to rescue as a natural duty in the original position is this. Individuals get a sense of confidence and trust from knowing that they live in a society where, should they need it, others will come to their aid: whether they will, as a matter of fact, need their aid, does not really matter. But this point is vulnerable to the objection that if the reason why we ought to impose on ourselves a natural duty to aid others lies in our interest in living in a society where we know we will be helped if we need it, then we will have no incentive in helping individuals who, we know, are very unlikely ever to be in a position to help us themselves, for example because they are physically or mentally disabled.

8. In this paragraph and the next two, I draw from Thomson 1986.
9. Miller, 'Are they *my* poor?: The problem of altruism in a world of strangers'. This volume, pp.106–27.
10. I allude here to what is, possibly, the most notorious case of Good Samaritanism failure in the US. On 13 March 1964, in the early hours of the morning, Kitty Genovese, a 28 year-old woman living in Queens' (NYC) was attacked three times by the same individual (who first struck at 3:15 am, and then on two occasions came back and struck at a few minutes intervals to finish his job). Genovese cried for help, but the police were notified at 3:50 am only, at which point she was dead. The police later established that *no fewer* than 38 of her neighbours, none of whom called the police before 3:50 am, had, at some point or other, witnessed her three-assault ordeal. When asked later on, by the police themselves and by disbelieving journalists why they had not called the police, some of those neighbours claimed that they thought they had heard a lovers' quarrel, or that they could not see very well, or that they felt too frightened to do anything.
11. For a detailed account of such difficulties, see Malm 1995: 4–31; 2000: 707–50. The two scenarios described in the next paragraph are taken from the latter and former pieces respectively.
12. For a similar argument, see J. Feinberg 1984: 156–7.
13. See Fabre 2003.

REFERENCES

- Arneson, R. 1989. 'Equality and equal opportunity for welfare'. *Philosophical Studies*, 56, 77–93.
1992. 'Property rights in persons'. *Social Philosophy and Policy*, 9, 201–30.
- Cohen, G.A. 1989. 'On the currency of egalitarian justice'. *Ethics*, 99, 906–44.
1991. 'Capitalism, freedom and the proletariat'. Miller 1991: 163–82.
- Dworkin, R. 2000. *Sovereign Virtue*. Cambridge, MA: Harvard University Press.
- Fabre, C. 2000. *Social Rights Under the Constitution: Government Under the Decent Life*. Oxford: Clarendon Press.
2003. 'Justice and the coercive taking of live body parts'. *Utilitas*, 15 (Forthcoming).
- Feinberg, J. 1984. *The Moral Limits of the Criminal Law, Vol 1: Harm to Others*. New York: Oxford University Press.
- Malm, H.M. 1995. 'Liberalism, Bad Samaritan, and legal paternalism'. *Ethics*, 106, 4–31.
2000. 'Bad Samaritan laws: harm, help, or hype?'. *Law and Philosophy*, 19, 707–50.
- McIntyre, A. 1994. 'Guilty bystanders? On the legitimacy of duty to rescue statutes.' *Philosophy and Public Affairs*, 23, 157–91.
- Miller, D. ed. 1991. *Liberty*. Oxford: Oxford University Press.
- Ratcliffe, J.M. ed. 1981. *The Good Samaritan and the Law*. Gloucester, MA: Peter Smith.
- Rawls, J. 1999. *A Theory of Justice*. 2nd ed. Cambridge, MA: Harvard University Press.
- Raz, J. 1986. *The Morality of Freedom*. Oxford: Clarendon Press.
- Ripstein, A. 2000. 'Three duties to rescue: moral, civil, and criminal'. *Law and Philosophy*, 19, 751–79.
- Rudzinski, A.W. 1986. 'The duty to rescue: a comparative analysis'. Thomson 1986.
- Thomson, J.J. 1986. *Rights, Restitution, and Risks*. Cambridge, MA: Harvard University Press.
- Tunc, A. 1981. 'The volunteer and the good samaritan'. Ratcliffe 1981.