The Duty to Rescue

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Philosophy of Law

Several influential court cases shaping our legal system over the year have revolved around whether we have a duty to rescue others or not. In the case of McFall v. Shimp the plaintiff sought a claim that would force the defendant, his cousin, to save his life by undergoing a bone marrow transplant. The court ruled in the defendant’s favor, citing that “the forcible intrusion into the body contemplated here [was] impermissible” (Adams, Flaherty, 588). This is an extreme case, but it certainly acts to raise the question of whether or not it is acceptable to require a duty to rescue in some cases, or in any cases at all. I will argue from a Utilitarian perspective that it is both socially acceptable and morally defensible, at least in situations where there is no threat of harm to the rescuer.

The position that a duty to rescue is justifiable when there is no harm present to the rescuer is made clear by Ernest Weinrib. Weinrib begins by discussing the notion that although the current conception of law does not in fact require any such duty to rescue, the courts have become more and more encouraging of people rescuing others, going as far as to say that a “broad range of rescue attempts are deemed foreseeable by the defendant” (Weinrib, 593). Additionally Weinrib notes that the courts have “increased the number of special relationships that require one person to aid another in peril” (Weinrib, 593). Society evolves, and the standards of the law change, and it makes sense that the legal position on a duty to rescue in cases of no self-harm should change with them.
Weinrib continues by addressing the utilitarian approach to the problem, citing Bentham’s belief that it should be duty to “save another from mischief when it can be done without mischief” (Weinrib, Bentham, 593). This is certainly a correct application of Utilitarian ideals. If everyone were to save people they found in danger when it would place no danger on them, then the greater good would obviously and clearly be increased. Consider Weinrib’s examples; If you use your water bottle to put a fire on someone out, move a sleeping drunk who is in danger of drowning in a puddle, or stop someone from starting fire in a room filled with gunpowder you are clearly promoting the greater good at little inconvenience to yourself (Weinrib, 594).

Weinrib continues his Utilitarian approach to his position, stating that “the utilitarian’s only concern is that an individual bring about a situation that results in a higher surplus of pleasure over pain than would any of the alternative situations that his actions could produce” (Weinrib, 594). According to Weinrib there are some flaws and areas where restraint is necessary “to harness and temper the utilitarian impulses toward altruism and to direct them more precisely toward an intelligible goal” (Weinrib, 594). This comes after a fairly lengthy critique of the fact that Bentham’s theory would have supported eliminating the lines marking urgency and convenience. Weinrib states that there needs to be a “different formulation of the rescue duty” to avoid the problem of people relying on other people’s rescue aid in dire situations. He quotes Mill regarding this point, who says “there are few things for which it is more mischievous that people should rely on than the habitual aid of others than for the means of subsistence” (Weinrib, Mill, 594).
This is an interesting possible externality of requiring a duty to rescue. If people were required to rescue, would it be that people would do things to gain attention under the impression that if they did it in the right place with enough people around someone would rescue them. With the hunt for attention that many people get caught up in in the modern world it could become the case that people would put themselves in danger only to gain attention, knowing that someone would have a duty to save them. This would certainly be an inconvenient and detrimental externality of a duty to rescue. According to Mill’s statement quoted above the worst thing that could happen would be for people to become reliant on the help of others (Weinrib, Mill, 594). I still believe, however, that from a Utilitarian perspective, even if some small portion of people became dependant on others to rescue them, that the greater good would benefit from having a duty to rescue.

Weinrib’s solution is to say “if beneficence would tend to induce reliance on similar acts, it should be avoided. If the act of beneficence does not have this tendency, it should be performed as long as the benefit produced is greater than the cost of performance” (Weinrib, 595). He continues, stating that following a duty to rescue only in situations of emergency can fulfill this (Weinrib, 595). “Only a fool would deliberately court a peril,” Weinrib says, and “furthermore, an emergency is not only a desperate situation; it is also a situation that deviates from society’s usual pattern” (Weinrib, 595).

Weinrib continues by discussing the application of contract law to the duty to rescue. Utilitarianism views contracts as a way “to acquire and to exchange property [in a way] conducive to the public good” (Weinrib, 595). Contracts, however, do not apply
in situations of emergency, leaving the individual to confine his reasoning in a situation of emergency to the “specific consequences of the rescue” (Weinrib, 595).

Weinrib continues, stating that given the arguments he has presently given, Bentham’s theory on beneficence restricting it to emergencies can be justified by Utilitarian ideals (Weinrib, 595). He then questions whether the same can be said about Bentham’s limitation to areas of no inconvenience to the rescuer, stating that “limiting the duty of rescue to situations where the rescue will not inconvenience the rescuer – as judicial decisions would elaborate that limitation and thus give direction to individuals – minimizes both the interference with the rescuer’s own preferences and the difficulties of enforcement that would result from recalcitrance” (Weinrib, 595-596). According to Weinrib, it is fundamental to Utilitarianism not to have the rescuer compelled to put himself in physical danger, as “such coercion cannot influence the will” (Weinrib, 595). He concludes this section by saying that the limitation to only situations of no inconvenience is defensible on Utilitarian grounds (Weinrib 595).

Restricting the duty to rescue to emergencies is a good solution to the problem of reliance. By limiting the duty only to those situations where a person is in peril, and still only requiring that the rescuer do so when not inconvenienced or endangered, we can restrict the duty to only those cases where our moral intuitions feel violated. We should consider the case of David Cash. In 1997 Cash witnessed a friend holding a seven-year-old girl in a bathroom stall with his hand over her mouth, yet left the bathroom right before anything more happened. The seven-year-old girl was then sexually assaulted and killed. Cash’s conduct was reproachable, and yet, despite his “morally reprehensible” behavior, he had not violated the law in any way (Adams, 586). Let us look at Cash’s
omission and nonfeasance through the light of Utilitarian theory as Weinrib’s argument has developed thus far. The girl’s situation was one of dire emergency for certain. Let us assume for the sake of argument that walking over to the stall and telling his friend to stop and helping the little girl would not have inconvenienced Cash. With the combination of the lack of inconvenience to Cash and the emergency that was the little girl’s situation, Cash’s actions would at this point have been a breach of the duty to act in cases of emergency where rescuing would place the rescuer in no inconvenience or danger. Cases that evoke such clear emotions regarding our moral intuitions would most likely always be convictable under this standard of the duty to rescue.

Another case that can provide useful insight into these limitations is the case of Yania v. Bigen. Bigen was a coal miner who invited Yania, another coal miner, to his property to discuss a business matter. On Bigen’s property there were places where they had dug out pits of earth with pools of water in the bottom for coal excavation. While at the site Yania jumped off the top of one pit, approximately 16 feet, into the pool below, and drowned. A suit was subsequently brought against Bigen for three reasons, one being particularly relevant to a duty to rescue. The third claim was that he did not take appropriate measures to excavate Yania from the water. The court held that Yania had full mental capabilities and undertook an act that was with foreseeable peril that caused his death. In this case again a duty to rescue was not upheld, and in this case Weinrib would likely agree with the court. At a height of 16 feet it would probably have been dangerous and inconvenient for Bigen to rescue him, despite the emergency Yania was in. Had the pit been 2 feet deep and Bigen had a rope lying right next to him, then there
would have been no danger or inconvenience to him and he would have been required to fulfill a duty to rescue Yania (Jones, 609-611).

Weinrib next addresses the administrative concerns associated with enforcing a duty to rescue even with the limitations to emergencies and situations of no inconvenience. He notes that there is the possibility that people will feel aggrieved and recalcitrant at the notion of being forced by the law to come to the rescue of others. People may feel deprived of their liberty. Weinrib’s response to this is that Utilitarianism is concerned not with the concerns of these individuals but with “whether a particular person should perform a particular act on the basis of the act’s limitations for the entire society’s market arrangements” (Weinrib, 496). He addresses Fried, whose claim is that “the administrative and enforcement considerations on which the utilitarian account of rescue rests are irrelevant to the individual’s obligations as a moral agent” (Weinrib, Fried, 496). According to Fried, “the individual ought to ask what he ought to do, not how others can compel him to fulfill his duty” (Weinrib, Fried, 496).

Weinrib states that Fried’s points are useful to his argument in the sense that they point out that in every situation where Utilitarianism is used to defend a duty to rescue there will be some inconsistencies. He points out that viewing prevention of injury or loss of life as comparable to other quantitative measures of losses of happiness is incorrect, as they are not things that are “merely components of the aggregate of goods that an individual enjoys” (Weinrib, 596). Additionally Weinrib claims that it is false to view “an act of rescue as a contribution to the greatest happiness of the greatest number” (Weinrib, 496). The example he uses to enforce these claims is that there is equal duty to
rescue a hermit, as there is to rescue an eminent heart surgeon, and that even the duty to rescue the heart surgeon is a duty to the surgeon, and not to his patients (Weinrib, 496).

This is a point that is very important for Weinrib to make. It sets the field in a way so that we don’t get caught up in Utilitarianism so much that we lose touch with modern day moral views. It would not fit with our modern conceptions of morality to hold some people’s lives at a higher value than the lives of other people with less of a stake in the happiness of greater society. It is tempting to look at a heart surgeon’s life as more worth saving than that of a hermit, but morally we would be committing an offense. By addressing this issue Weinrib eliminates that point of contention that could be used for counter-argument against his claim for a duty to rescue.

Weinrib next makes an interesting move, and decides that it would be useful to try to outline an argument for a duty to rescue based on non-utilitarian grounds. The first differentiation he makes is the use of administrative considerations in the non-utilitarian duty to rescue. Where the Utilitarian perspective “weaves the fabric of the duty to rescue out of administrative strands,” the deontological argument he makes “justifies a legal duty to rescue independently of the administrative costs; the mechanisms of enforcement are invoked only to structure them and to coordinate the operation of the duty” (Weinrib, 596).

The deontological argument continues, stating that a person requires physical integrity to realize his ends. A person shares morality with all humans and therefore “he cannot claim a preferred moral position for himself” (Weinrib, 597). He must therefore make moral claims that “demand recognition of the personhood of others,” (Weinrib, 597) and since no one conception of happiness is shared by all people he must not use
desire for goods or societal happiness as the justification of his moral actions. On the other hand, physical integrity is necessary for any human goal, and is therefore the appropriate subject by which to justify one’s moral actions (Weinrib, 597). If a person seeks his goals as a moral right, then, following a moral code of humanity, he must not deny the same right to other people either. Weinrib qualifies his moves, saying “respect for another’s physical security does not entail foregoing one’s own” (Weinrib, 597).

Weinrib next claims that the emergency and convenience limitations fit “readily” with the deontological argument, claiming that an emergency is an imminent threat to one’s physical integrity, which we are required to safeguard (Weinrib, 597). The convenience limitation has to be qualified to fit as well, however. Without qualification we would be required to act in all situations except where we would be put in danger, even if it were a major disruption to our lives. Weinrib argues that the duty cannot be this strong, but can still be strong enough to require “the rescuer to undergo considerable inconvenience” (Weinrib, 598). Because of this undetermined set of parameters, there lies what Kant refers to as a “play-room” for determining what benefaction is to be derived. These things would be based on factors such as how wealthy a person is or the person’s “own conception of happiness (Weinrib, Kant, 598).

Macaulay presents a prominent counter argument to Weinrib’s arguments for a duty to rescue. He argues that the only time there is a duty to rescue is when there is a relational responsibility between the parties involved. For example, a person stationed at a dock to warn people of dangerous conditions on a swollen river would be responsible for warning you that the river is swollen. A person who just happened to be standing on the dock and happened to know the river was swollen and dangerous and let you walk in
and try to ford it without warning you would not be responsible whatsoever (Macaulay, 392). Consider as a counter to this argument and a defense of Weinrib’s, Heyman’s perspective. Heyman states that “in this situation, in which the threat arise from wrongful human conduct, it is easier to see that the parties do have a relationship – one of common citizenship – that can give rise to a duty to aid” (Heyman, 679). Heyman is in fact talking about preventing others from committing felonies that would cause harm, but this argument can be extended dramatically beyond the case of preventing felonies. A case can certainly be made for a relationship of common citizenship and the greater good of society as a relationship and a counter to Macaulay’s point. Common citizenship and a shared morality as humans and members of society is absolutely a sufficient justification for the need to preserve the physical integrity of others.

Weinrib presents two strong arguments for a duty to rescue. The first, his Utilitarian argument, hinges on the duty to rescue being a way to increase the greater good for society. The deontological argument focuses on the claim that as humans we all abide by one moral code, and that by that code we owe a duty to preserve the physical integrity of others. The Utilitarian argument, though coming to the same duty to rescue as the deontological argument is more effective for one primary reason. Weinrib hinges it on two limitations; the rescuer need only rescue in emergencies and when it is not an inconvenience to him. These work because they help to increase the total happiness in society by keeping the rescuer and other potential rescuers happier. These two limitation are the only reason why this duty to rescue could be practically enforced without massive upheaval of our entire legal system. Stretching farther than those two limitations would severely alter the structure of our personal liberties. In the deontological argument, when
he attempts to use these same two limitations he is left with a difficult end result. The inconvenience limitation does not fit well with the argument. What is left after applying the inconvenience limitation is an empty space with a lot of room for interpretation and a lot of “play-room” as Kant calls it (Weinrib, Kant, 598). This kind of interpretation leads to a potential overreach for the government, which would actually threaten our individual liberties, and could also dramatically alter the democratic ideals of our nation. For these reasons, the Utilitarian easy rescue position that Weinrib produces is the best and most defensible justification for a duty to rescue.
Works Cited


