

Exploring the legal and ethical implications of Duty to Rescue Laws

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AUTHOR BIO

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ABSTRACT

This paper delves into the intricate legal and ethical issues surrounding duty to rescue laws, scrutinizing their implications through the lens of legal philosophy. By examining the theoretical foundation of utilitarianism and the social construction of norms, it elucidates the moral imperative and societal benefits of mandating assistance in emergency situations. Drawing upon seminal works in ethical theory and jurisprudence, such as Peter Singer's renowned thought experiment and the concept of the collective action problem, the paper navigates the intricate balance between individual autonomy and communal wellbeing. Moreover, it engages with practical considerations regarding the enforceability and efficacy of such laws, addressing concerns regarding personal autonomy and potential unintended consequences. Through thorough analysis and argumentation, this paper seeks to contribute to the ongoing discourse surrounding the legal and ethical contours of duty to rescue laws, shedding light on both their merits and potential limitations in promoting a more just and compassionate society, finally coming to the conclusion that the arguments for the implementation of duty to rescue laws outweigh the arguments against.

Keywords: Duty to Rescue Laws, Utilitarianism, Social Norms, Collective Action Problem, Legal Philosophy, Personal Autonomy, Ethical Implications, Societal Welfare, Moral Obligation, Jurisprudence

INTRODUCTION

The paradigm of the “golden rule”—to treat others as one would want to be treated—is heavily emphasized within society: a medical professional is expected to aid in crises, a bystander is expected to intervene and aid in cases of emergency. Thus, the case of duty to rescue laws have been long debated for its ethical and practical implications. It has resulted in a quandary and intersection of autonomy versus obligation.

Duty to rescue laws require affirmative action from individuals. In the current Canadian law, duty to rescue laws do not exist outside of special situations in tort law (Linden, 1970). For example, there is a civil duty to stop and render aid in incidents of hit-and-runs.

This paper will explore the main arguments in favor and against duty to rescue laws, to come to the conclusion that they should be implemented for the net benefit to society, including solving the collective action problem, and the principality of the responsibility to intervene when one is able to do so. The paper aims to explore the ethical and legal justifications both for and against enacting Good Samaritan laws, examining the complex moral and legal dimensions surrounding mandatory assistance. First, the principle of utilitarianism will be examined; second, the impact the law has on social norms will be analyzed; third, the problem of collective action will be examined; and finally, the paper will examine the objections against duty to rescue laws, and provide responses to each.

GENERAL CONTEXT

Good Samaritan laws aim to outline the legal obligations and protections for individuals who render assistance during emergency situations. They cover a variety of obligations, from providing assurance that reasonable assistance will not result in legal repercussions if something goes wrong in the process of aiding another, to duty to rescue laws, where a party

can be held liable for failing to come to the rescue of another party (Kleinig, 1976).

As mentioned briefly above, there are certain unique situations in which duty to rescue laws are upheld, and individuals who ignore calls for help can be held liable. For instance, duty to aid exists in contractual relationships—“employers and employees, carrier and passenger, innkeepers and guest.” (Kleinig, 1976). One notable example is the case of *R v. Russel* where the defendant was convicted of manslaughter of his wife, who had drowned, and the defendant chose not to aid when he could have easily done so.

However, the layers of duty to rescue laws reach further than that. Practical implications arise, and the question of personal autonomy versus collective utility is debated.

PRELIMINARY DISCUSSIONS

It is first critical to note the impact duty to rescue laws has on individuals’ incentives. The world is assumed as follows: duty to rescue results in a clear and direct consequence of some sort – be it a fine or legal persecution – and individuals are aware of this information. This means that there would be a clear consequence for failing to come to the rescue of another party, if it did not pose danger for the individual. This would result in an increase in incentive to aid for any rational individual, as the looming consequence would be deterring them from walking away. Thus, for an average law-abiding citizen, the implementation of duty to rescue would incentivize them to aid another as long as they themselves would not be endangered as a result (Dagan, 1999). This is an important axiom in this paper because it is necessary to assume that the implementation of duty to rescue laws *would* incentivise change of action or new action. Otherwise, there would be no debate, as it would not cause any change in the status quo; thus, no argument of the good impact it can have or the bad impact it can have, as it would not change what currently exists.

The legal quandary of good Samaritan laws, specifically duty to rescue laws, can be preliminarily explored using Peter Singer's drowning child thought experiment. To summarize, the thought experiment is as follows: imagine you are walking by a pond and see a child drowning. You can either jump in and save the child, but you would have ruined your new expensive shoes, or walk away and let the child drown (you would not have ruined your new expensive shoes) (Singer, 2009). Peter Singer then outlines that the intuitive answer would be to save the child as a child's life holds more value than the expensive shoes. The conclusion here is that one should aid another as long as they are not giving up something of greater value. The same framework can be applied to duty to rescue laws. If rescuing another person does not pose a danger to the bystander, would they not also be obligated to help that person, similar to the obligation to save the child? And if it is morally obligatory to save the child, why should it not be a law to ensure that this morally obligatory action happens?

ARGUMENTS FOR DUTY TO RESCUE LAWS

Utilitarianism

Utilitarianism is an ethical theory and principle that determines morality by focusing on the outcomes (Gillon, 1985). Utilitarianism argues that the most ethical choice is the one that will produce the greatest good for the greatest number, that will provide the most utility. The greatest "good" can simply be defined as the outcome that brings the least amount of pain, or the greatest amount of pleasure and happiness.

It is intuitive then that utilitarianism would argue in favor of duty to rescue laws, as utility would be maximized through mandatory assistance. For example, a pedestrian is walking by a person laying on the ground, seemingly having a seizure. If duty to rescue laws were implemented, this person would be more likely to stop and call emergency services, potentially saving that person's life. Without duty to rescue laws, there is a significantly decreased incentive

to help that person laying on the ground considering that there would be no repercussions in not aiding. This means that the world with duty to rescue laws, would potentially save a life, while the world without duty to rescue laws would be more likely to lose that life, as it increases the probability of those pedestrians simply walking past. Therefore, the argument of utilitarianism argues that duty to rescue laws would prevent the most harm and bring the most "good" considering the likelihood of aid, and thus the likelihood of individuals being saved.

Furthermore, under utilitarianism, the argument stands that there are social benefits from increased altruistic behavior. The first mechanism to this is that altruism has been proven to have positive benefits from the individual indulging in the altruistic act (Rhoads & Marsh, 2023). The 2023 World Happiness Report has examined the positive correlation between altruistic acts and happiness. This means that being altruistic brings happiness to individuals, therefore, there is already utility in that aspect. Moreover, individuals acting altruistically often positively impact those around them, as these actions are not aimed at bettering the livelihood of the individual but the livelihoods of others. Duty to rescue laws gives incentive for these individuals to act altruistically, as it would encourage them to help others, especially in dire situations. In the lens of altruism, the helping individual would receive benefit, and the helped individual would also receive benefit. Both parties benefit from the action, and this exemplifies the positive societal impact altruism can have.

Laws and norms

Additionally, laws shape norms. Laws have a unique and specific ability to shape and create social norms (Dagan, 1999). Through this, duty to rescue laws can create a social norm of acting altruistically to help others. This concept can be seen throughout day-to-day life; some illegal things are inherently not necessarily bad, but because they are illegal, people tend to think negatively of them. Take for one, drugs. While drugs can have incredibly harmful effects, it is

not innately a morally bad thing. However, the long history of it being illegal and frowned upon by the law has cultivated an extremely negative norm against it. In fact, now that drug regulations are becoming more and more lax in certain regions, many can witness the shift in attitude towards them. While individuals might only be following the law in the beginning, the created new social norm can internalize the feeling of helping others, to the point where individuals are no longer only aiding because they have to. This can also be seen with the civil rights movement. In the beginning, many were still discriminatory, but conformed with the inclusionary laws nonetheless. As time moved on though, many began to internalize the movement, and inclusion became a lot more common. Though it is not perfect today, the popular internalized values of inclusion and belonging have certainly helped propel the movement.

Collective Action Problem

The collective action problem constantly exists and is quite simple. It is the problem of conflicting individual and collective interests (Dowding, n.d.). While having a shared goal between the collective, individuals have conflicting incentives between working towards that goal or benefitting themselves. Individuals each have their own interest and might make choices based on what's best for them individually, even if it goes against the collective goal. A very common example of the collective action problem is littering. While the small act of throwing a gum wrapper, or a chip bag, or a popsicle stick, on the ground is seemingly insignificant to the individual, it is extremely harmful for the collective. Additionally, if every individual were to throw seemingly insignificant things onto the ground, it would be excruciatingly bad for the collective as a whole. That perfectly outlines the problem: though everyone agrees that littering is bad for the environment, each individual might think that their little bit of litter is not contributing to the problem. Relating back to duty to rescue laws, individuals might not feel that it is their responsibility to help the stranger on the road, considering that there must have been people to

come by before, and surely people to come by afterwards. Or, perhaps the individual is not the only person to be standing there on the road, and therefore there is a collective action problem to *do something*.

This effect, the bystander effect, is at its epitome in the case of Kitty Genovese (Blagg, 2024). The infamous murder showcases the fullest extent of the bystander effect, and the extent that human nature succumbs to it. Though the specifics of the case are often disputed and details are hazy, the case is still a commonly used illustration of the bystander effect. Kitty Genovese was raped and stabbed outside her apartment building in Queens, New York City (History.com Editors, 2018). The New York Times published an article two weeks after the murder claiming that an astonishing 38 witnesses either saw or heard the attack, but none came to her aid or called the police. The bystanders' action, or lack thereof, sparked debate into what was known as the "Genovese syndrome", or bystander effect, and has been a central topic in psychology. Though other articles have since surfaced uncovering that some witnesses had attempted to call the police, the bystander effect can still be observed. This effect describes the fact that the presence of other individuals disincentivizes individuals to intervene, as they perceive their moral obligation to be less. The perception stems from the thought that the moral obligation to intervene is split between the bystanders, and because each bystander feels the same way, the bystander effect exists.

Duty to rescue laws would subsequently decrease the bystander effect significantly. This is for the simple fact that it closes the incentive gap. It provides individuals with the motive to act. There is now a clear direct incentive to act, even if it is still the perception that one's obligation decreases as people around increases. That means that duty to rescue laws are able to be a clear direct incentive to act, whereas moral obligation can be more ambiguous and lead to inaction (the bystander effect). Under this, the mechanism of why duty to rescue is a good policy is simply that it is able to bring utility — that it is able to incentivise individuals to spring

into action whereas they would only have been a bystander if left to their own judgment.

ARGUMENTS AGAINST DUTY TO RESCUE LAWS

Personal Autonomy

The most basic argument against duty to rescue laws is that each individual in society holds their own right to personal autonomy (Dagan, 1999). That is to say, individuals have the right to make decisions about how they act. This argument stems from the social contract theory— that individuals did not consent to being born into this world, and voluntary or not, to enter into a social contract by consenting to live under the state for mutual benefit and protection of rights (Malm, 2000). Within this framework, personal autonomy is fundamental as it is part of the “contract” and ensures that individuals have the freedom to govern themselves within the boundaries of society’s “agreed-upon” rules. Individuals are allowed freedom and personal autonomy within the laws and regulation set forward by the state, and the objection is that duty to rescue would infringe upon that by forcing individuals to be involved in situations that they otherwise would not want to be in. It is in the fact that these individuals would have no other incentive to be involved, other than the law, that rides this objection.

Practical Implications

The other major concern that comes with duty to rescue laws is their practical implications. This implication stands on the possibility that many bystanders walking by the incident do not possess the ability to aid. In fact, it is very possible that the individual can make the situation worse. For example, the situation requires the individual to perform CPR, yet the individual has never had CPR training. That means that the risk of enforcing this policy is the potential harm that the individual can further cause (“GOOD SAMARITAN LAW” VETOED,” 1964).

Furthermore, it is likely that this incentivises the individual to place themselves in situations where people would not need help. This looks like not taking the street infamously known to have these situations where the individual would be forced to aid.

DISCUSSION

So which arguments win? This can be evaluated through weighing the impact and overall societal impacts of the arguments. In summary, arguments for the implementation are for the reasons that first, it would be able to potentially save many more lives in dire situations of life and death. Second, that it would foster a social norm of aiding others—note here that this is separate as to the effectiveness of the policy. That is to say, even if there is not a drastic increase of lives saved as a result of duty to rescue laws, the laws are still able to implicitly change the way individuals think about helping others, and the way that they approach aid. The third argument for the duty to rescue laws is its impact on collective action. This argument follows that having external incentives to aid will help solve the collective action problem—where individuals feel less of an obligation to act when there are others nearby that could also act.

The arguments against duty to rescue laws are that first, individuals deserve personal autonomy, and second, that there are practical implications hindering the effectiveness of the laws.

Response to the argument of personal autonomy

The response to this objection is that duty to rescue laws are reciprocal. That is to say that while the individual’s personal autonomy is infringed upon, they receive the benefit of having the guarantee of being helped, should the situation arise. This means that, using the same mechanism as the argument itself, duty to rescue laws would fall under the social contract as reciprocity means mutual benefit for the individual. While it is true that individuals’ personal autonomy will be infringed upon, the

individual would also receive equal protection from the state, and be guaranteed that someone else will come to their aid.

Response to the argument of practical implications

There are two responses to this argument of practical implications. The first is that duty to rescue does not require the individual to necessarily physically aid, it just requires them to show attempts at aid. This means they can call emergency services, shout for others (that would be more qualified), etc. These actions are still extremely beneficial to the situation, especially when time is of the essence.

Furthermore, in response to the argument that individuals would simply choose to not place them in situations where they would have to abide by the law and aid (i.e purposefully avoiding a dangerous street), the refutation is that it is simply symmetric. These individuals would avoid those situations in both worlds, and at least in the world with duty to rescue laws there will be a greater amount of cases where individuals are helped. In a world without duty to rescue laws, those individuals would still choose to not walk in that street. However, for the individuals that would walk onto the street, they are far more likely to call aid/emergency services in a world with duty to rescue laws. Additionally, the law does not require them to put themselves in danger in order to help, only that they have to help. This means that in dangerous and threatening situations, the individual can wait until they are in a safe place before making the call and looking for other help.

In conclusion, after considering the objection against duty to rescue laws, the arguments for duty to rescue laws still stand. While it is true that this would infringe upon some personal autonomy, this is already the case with many laws in society. One is required to pay taxes, to abide by traffic laws, to report for jury duty if selected, and more. These laws already infringe upon personal autonomy for the greater good, and through these arguments for duty to rescue laws, it is clear that duty to rescue

laws are just another subsection under that. Thus, while duty to rescue laws may present challenges to personal autonomy and raise concerns about practical implications, the arguments in favor of their implementation, rooted in utilitarianism, societal norms, and addressing the collective action problem, ultimately advocate for their adoption as a means to promote greater societal welfare and foster a culture of mutual aid and responsibility.

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