

The Duty to Take Rescue Precautions

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ABSTRACT *There is much philosophical literature on the duty to rescue. Individuals who encounter and could save, at relatively little cost to themselves, a person at risk of losing life or limb are morally obligated to do so. Yet little has been said about the other side of the issue. There are cases in which the need for rescue could have been reasonably avoided by the rescuer. We argue for a duty to take rescue precautions, providing an account of the circumstances in which it arises. This novel duty has important implications for public policy. We apply it to the situation of some of the uninsured in the United States. Given the US clinician's duty to provide emergency care to all people regardless of ability to pay, some of the uninsured have a moral duty to purchase health insurance. We defend the duty against objections, including the possibility that a right to rescue can be waived, thus undermining a duty to take rescue precautions, that the duty of many professionals is voluntarily incurred, and that a distinction between actively assumed and passively assumed risks matters morally.*

Introduction

Individuals who encounter and could save a person who is at risk of losing life or limb, at no significant cost to themselves, are morally obligated to do so.¹ A professor on her way to lecture is morally obligated to save a child she finds drowning in a shallow pond, even though she might ruin her suit and be late to class.² Although most philosophers agree that there is this moral duty to rescue, there is significant disagreement regarding how demanding the duty is and the scope of circumstances in which it is generated.

Much ink has been spilled trying to answer these questions.³ In contrast, there has been very little attention by philosophers to the other side of the issue, namely, the possible obligations of potential rescuees. In particular, do potential rescuees have moral obligations to prospectively minimise the chances of needing to be rescued and/or reduce the burdens on others of rescuing them? The lack of attention to this question is understandable given that most rescues involve a crisis in progress.⁴ In such cases, asking what the victim should have done prospectively to avoid the need to be rescued is otiose and cruel. Yet, these features of rescue cases are a function of the way in which they are typically framed, not a function of the ethical issues they raise. In the absence of an on-going crisis, we can reasonably ask whether individuals have obligations to prospectively minimise the burdens on others of rescuing them. Our article aims to fill this gap in the literature on the moral duty to rescue.

We argue that sometimes individuals have duties to take rescue precautions. They have duties to minimise the chances of needing to be rescued and/or reduce the burdens on others of rescuing them. The grounds for these duties are familiar; just as with the duty to rescue, we have special reason to mitigate significant burdens on others when we can

do so at no morally significant cost to ourselves. This is all the more pressing, we shall argue, in a range of cases in which our own actions create the situation in which others need to rescue us. We use the broad label *duty to take rescue precautions* to include the many ways one might go about mitigating these burdens. What this duty requires of agents varies, as we will discuss, with the circumstances.

The most thorough discussions of duties to take precautions, generally, are those in the law of torts. In tort law, there is a calculus of negligence, what is known as the ‘Hand Test’. The test is named after Judge Learned Hand, who first proposed this formula for determining occurrences of negligence in *US v. Carroll Towing Co.*, 1947.⁵ Our argument for a moral duty to take rescue precautions differs in important ways from the tort calculus of negligence.

Foremost, we are concerned with a moral duty, not a legal one; though we recognise that moral duties are often enshrined in and reinforced by legal duties. More importantly, the Hand Test presupposes a legal duty of care and provides a formula for determining when it has been breached. Our primary purpose is to establish that there is in fact a moral duty to take rescue precautions, not to presuppose it. Next, the scope of our investigation is narrow — we are looking at an agent’s duty to mitigate the burdens of others complying with their own duties to rescue. The scope of negligence in tort law is far broader — applying to negligent actions more generally. What is interesting about the narrow duty we are investigating is that the negligence avoided in recognising a duty to take rescue precautions is negligence regarding the benefits that others are morally obligated to provide. This is a distinctive kind of negligence; it raises specific questions about the voluntariness of the burden incurred to rescuers and the possibility of rescuees to avoid negligent behaviour by waiving a right to the rescue benefit. Standard torts of negligence typically lack this peculiar and distinctive set of concerns. For these reasons, the moral duty to take rescue precautions warrants a special defence and detailed discussion that is not available in broader tort of negligence literature.

Though we think the duty to take rescue precautions could be generated in a range of situations in which others have a foreseeable duty to rescue, we will focus on contexts in which there is a professional duty to rescue. There are several reasons for this focus. It is controversial whether the general duty to rescue, held by all people in virtue of being moral agents, is more than minimally demanding.⁶ If individuals generally are obligated to rescue others only when the risks and burdens to themselves are very low, then potential rescuees will have minimal or no obligations to prospectively reduce these minimal risks and burdens. Uncontroversial, however, is that certain professionals have more demanding duties to rescue.⁷ Firefighters, police, and the military must often accept significant risks and burdens to rescue others; doctors and clinicians must frequently dedicate extensive resources and time to those in critical need. The obligations on teachers, coaches, and lifeguards to rescue their respective wards are more demanding than the duties on mere moral agents. The fact that professionals are morally obligated to accept greater risks and burdens in rescue cases raises the question of whether their potential rescuees have duties to reduce demanding burdens in some cases. Though we will focus on professional duties to rescue, if a more than minimally demanding *general* duty to rescue can be defended, then the duty to take rescue precautions will arise in a broader range of cases than we consider in the article.

In Section 1, we define and defend the duty to take rescue precautions. We identify the factors relevant to generating the duty to take rescue precautions, and then explore the

rough scope of the duty in the range of cases to which it might apply. Our argument has important practical and theoretical implications. Theoretically, the present analysis reveals that we are under many obligations that we have never agreed to take on. Even absent implicit or explicit agreements to act cooperatively, merely living out our lives in the company of other moral agents entails on us a range of obligations.

In Section 2, we demonstrate the practical import of the duty to take rescue precautions, showing how our argument supports a duty of individuals to buy health insurance to cover their acute and emergency care needs.⁸ This analysis offers a novel, unexplored angle on the much-discussed duty to rescue. It reveals that development of a duty to take rescue precautions is of pressing relevance to current policy concerns in societies that increasingly recognise public responsibility for positive duties of rescue and beneficence. Finally, in Section 3, we consider and respond to objections to the duty to take rescue precautions.

1. Contours of the Duty to Take Rescue Precautions

We begin with a case.

Tsunami: In 2011, an 8.9 magnitude earthquake near Japan caused a large tsunami in the Pacific Ocean. California surfers and swimmers were warned to stay out of the dangerous waters to protect themselves and to protect those who would have to rescue them. Should they have failed to heed the warning and lose control in the wild surf, the Coast Guard or local fire department may have been tasked with performing a dangerous water rescue. Nonetheless, Emily, an extreme surfer, ignores the warning and sets out to catch the big waves.

Regardless of whether Emily comes to peril, we would criticise her on the grounds that her lust for adventure put *others* in danger. The Coast Guard or local firemen and women would be required to attempt to rescue her, placing their own lives at risk, and diverting important rescue personnel and resources away from others who might be in need. Were Emily to need rescuing and were one of her rescuers to drown in the process, we would *blame* Emily for her carelessness. She could have and should have stayed out of the water. Our reactive attitude of blame toward Emily for her decision to choose to surf despite the warnings is an indicator that she had a *duty* to stay out of the waters in this case.

Tsunami is a clear case because it is extreme. *Tsunami* involves high risk of very large burdens to potential rescuers. The rescuers face this risk because the agent chooses to undertake an activity for no morally significant reason. This analysis of the duty to take rescue precautions in *Tsunami* suggests that at least three questions are relevant to determining when there is a duty to take rescue precautions.

First, what specific factors or conditions must be present for an agent to incur a duty to take rescue precautions? Our quick assessment of *Tsunami* suggests that risk of the activity and the agent's reasons for undertaking it are some such relevant factors. Second, what are the thresholds on the relevant conditions that need to be exceeded in order to generate a duty to take rescue precautions? For example, how large must the burden on rescuers be before individuals have an obligation to minimise them prospectively? Third, what must individuals do to discharge their duty to take rescue precautions: must one always abstain from the risky activity altogether, as in *Tsunami*, or can

one adequately mitigate the rescue burdens through some other actions? We answer each of these questions in turn, though, as we will show, they are integrally related.

1.1. *The Conditions*

First, one person's duty to take rescue precautions depends on someone else having a potential duty to rescue them. In *Tsunami*, the duty to rescue is held by emergency responders — be it the Coast Guard or the local fire department. Importantly, these rescue professionals have the duty even though it may be very demanding, requiring that they risk their own life and limb, and the expenditure of limited and costly resources. There may be an upper limit to this duty, but emergency personnel routinely assume substantial risk to their own lives, and this is not viewed by them or the public as merely supererogatory.⁹ Further, emergency responders are required to rescue Emily even though she had the option not to surf, an option that, if chosen, would have eliminated the need to be rescued. The Coast Guard and Park Rangers do not determine who will get rescued based on their culpability or negligence.^{10,11}

The duty to take rescue precautions arises in response to the existence of others' duty to rescue. But it is not enough that they have a duty. They must be reasonably expected to discharge it. Imagine a world in which the Coast Guard men and women ignore their duty to rescue drowning swimmers and are widely known for their malfeasance. No one else has the duty to rescue. In this world, it would be implausible to argue that swimmers have a prospective duty to take precautions to minimise potential burdens that no one will ever bear. The duty to take rescue precautions is not to reduce burdens that others ought to accept; it is to reduce burdens that they both ought to accept and can be reliably expected to do so. Hence, the duty to take rescue precautions is generated only when individuals accept their obligation to rescue others.

The mere fact that some persons will predictably attempt to rescue someone in need is not sufficient to generate a duty to take rescue precautions. For there to be a duty to take rescue precautions, individuals must be morally obligated to rescue them. Consider the following case:

Base Jumper: Base jumpers leap off tall buildings or cliff sides with parachutes for the sake of extreme adventure. Extremely dangerous or costly rescue in the case of an accident — the parachute fails to open or the jumper becomes stranded on an impossibly steep cliff side — is merely supererogatory due to the infeasibility and high cost of rescue. No police or firefighters are morally required to attempt such treacherous, near-impossible rescues. Yet imagine there is a group of *superheroes*¹² who reliably help base jumpers who come into perilous predicaments. They can swoop in during free fall and rescue a jumper whose parachute fails to open; or they can access steep ravines where a base jumper might get trapped. The superheroes are not morally required to help. But they reliably do so anyway. A base jumper in peril can expect a superhero to come to her rescue.

Presumably, it would be good for the base jumpers if they took rescue precautions, particularly when the burdens of doing so are relatively low. But, do the base jumpers have a duty to take rescue precautions in light of this predictable, but supererogatory, benefit? Should they curtail their adventures, going only to familiar spots where the

superheroes can expertly navigate; or should they only jump during the daylight hours ‘to help the superheroes visibility’; or should they wear heavier but more reliable equipment?

One might answer *yes*. If one can predict that another will trouble herself to proffer the benefit that he will happily accept, this is sufficient to ground a duty to take precautions. The base jumper is glad to get this benefit, though he didn’t ask for it.¹³

This response fails to acknowledge that, by accepting rescue from the superhero while failing to minimise the associated burdens, the jumper does not treat the superhero unfairly. The benefit is freely given and the rescuer can choose not to proffer it without violating a general moral duty or a professional duty. The situation is altogether different in *Tsunami*, where someone will reliably provide a rescue benefit because they have a duty to do so. In this case, the surfer happily accepts a benefit that others are not free to withhold without violating their duties. To act in a manner that recklessly endangers one who is obligated to rescue you *does* treat this person unfairly.

The above reliability and duty conditions work together. The rescuer is not *morally* free not to provide the rescue benefit. Of course, she is free to act immorally. For that reason, provision of the benefit must be reasonably expected for it to generate a duty to take rescue precautions. In sum, the first condition for an agent to have a duty to take rescue precautions is that another person has a moral duty to rescue them, should they come to peril, and it is reasonably likely the person will act on that duty.

Next, in choosing to go surfing in the tsunami, Emily poses great risk to her potential rescuers. *Risk* has two components: the *chance*, or *probability*, of imposing a burden on rescuers and the *magnitude* of that burden. *Tsunami* is compelling because the probability that a surfer will need rescue is high and the potential magnitude of the burden to rescuers is enormous. Additionally, there are costs to the public at large. In this zero-sum game, rescue for one person can constitute a cost to other individuals who could have been rescued with these resources instead. Furthermore, each rescue is an opportunity cost on other worthwhile, public projects.

Finally, Emily has the option to greatly reduce this risk or avoid posing it altogether *at no morally significant cost* to herself; for though she will sacrifice the thrill of big wave surfing, mere thrill-seeking cannot justify imposing great risks on others.

This analysis of *Tsunami* suggests that there is a duty of an agent S to take rescue precautions *at least* when the following conditions obtain:¹⁴

1. Some individual(s) will have a moral duty to rescue S should she come to peril, which they can be reasonably expected to act on.
2. The probability that S will need rescuing is *high*.
3. The potential burdens to others of rescuing S are *great*.
4. The costs to S of reducing or eliminating the probability they will need rescue and/or the burdens of being rescued are *relatively minimal*.

Assuming *ought-implies-can*, S should be capable of taking some action to reduce or avoid imposing rescue risks on others and her opportunity to do so must be *foreseeable*. A surfer who could not have reasonably known that a tsunami is headed his way could not plausibly be the holder of a duty to avoid surfing, though in his case conditions 1–4 would be met. S must be reasonably expected to know that she is at great risk of needing to be rescued and that she risks imposing high burdens on others.

5. S knows or should know that she poses risks to would-be rescuers, and she (knows that she) is capable of taking some action at little cost to herself to reduce these risks.

Finally, it needs to be the case that no other party, including the would-be rescuers, is responsible for S undertaking the activity that potentially places her in need of rescue. Arguably, if others forced Emily to surf then they, not Emily, would be responsible for the potential burdens she places on her rescuers.

6. It is not the case that others are responsible for S undertaking the activity (being in the position) that potentially places her in need of rescue.

Satisfaction of these conditions in *Tsunami* explains why Emily has a duty to avoid surfing during the surge; they give us the paradigm, jointly sufficient conditions under which such a duty is generated. That is, *at least* in such cases, a duty to take rescue precautions is generated. The duty may be generated in other cases; this possibility is part of our exploration. In the next sub-section we explore thresholds for these conditions.

Underlying these conditions is the idea that when one can reduce the serious burdens that one imposes on others of providing rescue for oneself, one ought to do so, at least when the costs to oneself are minimal. Notice that the principle echoes the principle that grounds the duty to rescue. The duty to rescue is commonly supported by the principle that when one can confer a significant benefit to another at little to no cost to herself, then she ought to do so. More generally, when burdens to some are high and costs to others in mitigating those burdens are low, then there is a strong case for a duty to mitigate those burdens. This foundational principle need not be a consequentialist weighing principle — putting costs to one individual on one side and costs to another individual on the other side — seeing where the scale tips. The principle expresses the less controversial, theory-neutral idea that we should prioritise the alleviation of severe burdens to others when it is of little cost to ourselves to do so.

Further, the duty to take rescue precautions is agent-relative; it is not merely the impersonal application of the significant burdens principle just articulated. In one respect, then, the duty to take rescue precautions should be less controversial than a duty to rescue, where one might ask, ‘how did I come to have a duty to help others when I did nothing to put this person in jeopardy?’ With the duty to take rescue precautions, each agent can become responsible for the significant burdens *she* is responsible for placing on others.

1.2. The Thresholds

Can the duty to take rescue precautions be generated in cases less extreme than *Tsunami*? To explore the general contours of the duty to take rescue precautions, consider conditions 2–4.

2. The probability that S will need rescuing is *high*.
3. The potential burdens to others of rescuing S are *great*.
4. The cost to S in reducing or avoiding the burdens of rescue and/or the probability of needing to be rescued is *not significant*.

We will not attempt to provide an exact threshold at which each condition is met. In part, this traces to our view that these obligations do not yield exact thresholds for each condition across cases. Moreover, as we will show, the factors identified in these

conditions can interact with each other in interesting ways. Our intuitive guide in assessing cases is our reactive attitudes to the agents in the scenarios. Moral requirement is conceptually linked with attitudes of blame towards agents who, absent excusing reasons, fail to do the required act.¹⁵ Though agents can take a range of precautions and many of them may be recommended, if we would blame an agent for failing to take the recommended precautions, this is often a sign that she was morally required to have done so. In contrast with moral requirement is mere moral recommendation; though it would be good for an agent to take the precaution, she would not be blamed for failing to do so. In short, reactions of blame toward agents can signal the possibility of a violated moral duty. Of course, we do not want merely to take reactive attitudes at face value; a crucial next step is to consider whether our judgment is reasonable. Appeal to the principle prioritising significant burdens will help service this aim.

1.2.1. Magnitude

To begin, the duty to take rescue precautions can be generated when the magnitude of burden to rescuers is less extreme than in *Tsunami*, where less than the rescuers' lives are at stake. Here is another familiar scenario in which agents have a duty to take rescue precautions.

Adventure Hiker: a hiker sets out into dangerous backcountry. There is a high risk that she could become lost in the woods or could injure herself on the difficult terrain. Rescue of the hiker would require use of expensive helicopters to search the vast woods and to transport rescuers into the area. Helicopter rescue can cost \$3,400 an hour.¹⁶ One official estimated that rescues can cost up to \$50,000.¹⁷ In addition, helicopter rescue can take many hours, diverting both monetary and labour resources away from others in need.

For these reasons, hikers are commonly blamed for taking risks that impose the costs of rescue on others.¹⁸ The criticism of a careless hiker signals the presence of a duty to take some precautions. If the hiker can reduce significant burdens to others at little cost to herself, she has a duty to do so. For example, hikers might carry a GPS that would help rescuers find them, reducing the costs of rescue. In this case, the major costs of rescue are far less than endangerment of life or physical wellbeing; they are monetary and resource costs. Importantly, monetary costs are oftentimes burdens on publicly held resources. These rescue costs are passed on to taxpayers. Nonetheless, a duty exists to reduce these burdens, even when the burdens do not fall on the rescuers themselves.

This raises an important point. Though the cost of any particular rescue may be relatively small in terms of absolute dollar amount (as compared to the public coffers in total), assessing the burden of any particular rescue depends on whether it is one among many such cases. One could imagine a case similar to *Adventure Hiker*, where the absolute cost of rescue was significantly smaller, but the frequency of lost hikers in need of rescue was many times greater. Though any one rescue is manageable as an isolated case, considered in context, each additional rescue constitutes a large burden on an overtaxed system. Though \$1000 for the first rescue may come out of a budget surplus, the 30th time may mean cut wages for employees. Cost, or rather, *burden*, cannot be measured in isolation.

Further, rescue resources are often in limited supply. Diverting resources one way could constitute an opportunity cost to rescuing someone somewhere else. In summary, high costs of rescue to others include endangerment to life or limb, as well as monetary costs to rescuing agents or to the public, or opportunity costs of other possible rescues or worthwhile projects.

1.2.2. Probability

We've shown that the duty to take rescue precautions can be generated in lower burden cases than in *Tsunami*, but what about cases in which the probability of needing rescue is lower than in *Tsunami*? The magnitude of the harm being risked is important to this determination. We will tolerate a higher probability of harm if that harm is minor as compared to our low tolerance for a smaller chance of harm if that harm is very serious. A very expert surfer may run a relatively low probability of needing to be rescued in a storm because she is so skilled. Yet, were she to need rescue, given the treacherous waters, the danger to rescuing personnel would be very high. We are less willing to tolerate her pleas for permission to surf in the storm in this case, given the great potential (though low probability) cost to rescuers.

We can get a general sense of acceptable risk tolerance for imposing burdens on others by looking at our risk tolerance in a range of familiar activities. Alistair Norcross remarks:

We commonly accept that even small risks of great harms are unacceptable. That is why we disapprove of parents who fail to secure their children in car seats or with seat belts, who leave their small children unattended at home, or who drink or smoke heavily during pregnancy. Or consider commercial aircraft safety measures. The chances that the oxygen masks, the lifejackets, or the emergency exits on any given plane will be called on to save any lives in a given week, are far smaller than one in ten thousand. And yet we would be outraged to discover that an airline had knowingly allowed a plane to fly for a week with non- functioning emergency exits, oxygen masks, and lifejackets.¹⁹

Norcross's appeal to familiar examples suggests, as a first pass, that our risk tolerance for activities that impose severe costs is very low. The lifetime odds of dying in a car accident are less than 1/100; thus, the chances of dying in any given trip are very low.²⁰ Yet, as Norcross points out, we insist that parents secure their children before starting out. Similarly, we would fault someone who regularly transports others in their car, but declines to spend money they could afford to repair the passenger seatbelt. These examples suggest that we insist on individuals reducing the serious risks they pose to others, even when the chances of those risks being realised are very low. Presumably, our insistence that individuals reduce the risks they pose on others would be even stronger in the case of more optional activities, such as hiking and surfing.

1.2.3. Cost to the Agent

This brings us to the third factor — *costs of taking the precaution*. If it would be too costly for the agent to take a precaution, this might defeat a putative duty to do so. But merely *some* cost to the agent is not enough to defeat a duty; we must take on some of the burden of the risks we impose on others. If the precaution would mean sacrifice of an essential

good, then it is too high. The precaution must bring the probability of harm or the burden of rescue, or both, below the acceptable threshold, without unduly burdening the agent.

This relates directly to the question of what precaution an agent is required to take in any particular case. In *Tsunami*, wearing a life jacket would not help mitigate the great burdens of rescue during such severe conditions. Abstention from the activity is the only acceptable option. But in *Adventure Hiker*, we suggested that carrying a GPS that would signal to rescuers the hiker's exact location in the case she became lost could do a lot to mitigate the time costs associated with rescue.²¹ When there is more than one way to mitigate the burdens of rescue to others, determining which precaution the hiker has a duty to take must include consideration of the alternatives, including abstention, as well as the efficacy of each in reducing the burdens. The agent may have more than one acceptable option. The key question is whether the precaution can move either the chance of rescue or the magnitude of the rescue burden below the unacceptable threshold, without overburdening the agent herself.

Consider now,

Poor Working Hiker. Pete must traverse the dangerous backcountry to get to work each day. The terrain is treacherous and Pete is at risk of falling and injuring himself. Getting rescue personnel to the backcountry poses great risk to rescuers, for there is no safe place to land a helicopter and they too risk injuring themselves on the steep slopes. Pete can purchase a GPS that, at the very least, would signal his location to rescuers should he come to peril, thus reducing the amount of time they would spend searching for him. The GPS is expensive, and is no small burden on Pete's monthly budget. Pete has no safer way to get to work. He has other opportunities for work, which do not pose burdens on others, but they pay significantly less money, and Pete is already poor.

In this case, Pete runs a high chance of needing rescue at some time and the magnitude of rescue burdens to others is high. There is a *prima facie* case for a duty to take rescue precautions. But what would Pete be required to do? Arguably, Pete is not required to abstain from the dangerous activity given the significant costs to his livelihood this would entail. But Pete could purchase the GPS. Though it is costly, assuming he can afford it without sacrificing other essential resources, and given the great risk he poses to rescuers, the duty to take rescue precautions suggests that he morally ought to.

Our goal in this section was to show that the duty to take rescue precautions can arise in a range of cases with less extreme conditions than *Tsunami*. It is not possible to state precise thresholds for each condition — the chance of needing rescue, the magnitude of the rescue burden, or the cost to the agent in taking the precaution — for as we've argued, the conditions can interact. A very high magnitude of burden to rescuers and others can compensate for a moderate risk of needing rescue, for instance. A great burden in taking the precaution can offset a duty that would otherwise be generated under high-risk conditions. The determination of a duty to take rescue precautions in any particular case will involve a context-sensitive assessment of these conditions and their impact on all parties, including the rescuing parties, the tax-paying public, and the agent undertaking the activity.

What we've shown is that a duty to take rescue precautions is not just of interest in extreme cases, but can arise when there is great burden to public resources, making the

duty immediately relevant to public policy questions. We turn to one such application next.

2. Emergency Health Insurance Mandate

We want to explore a provocative, perhaps unexpected, application of the duty to take rescue precautions. We argue that some US citizens have a duty to purchase health insurance to cover their acute and emergency care needs, given that US clinicians have a moral and legal duty to provide this care regardless of the person's insurance status.²²

Since the passage of President Obama's Patient Protection and Affordable Care Act (ACA) in 2010, the insurance mandate — the requirement that individuals purchase health insurance — has figured centrally in US political and public debate. It continues to cause controversy, being challenged on constitutional grounds and ultimately upheld in the 2012 Supreme Court rulings on the act.²³ It was the major point of contention in the October 2013 Senate Republican filibuster over implementation of the ACA and the subsequent government shutdown. No doubt it will continue to be a central source of disagreement as the controversial features of the ACA are rolled out in 2014 and as future legislators debate the merits of the ACA.

The debate over the mandate takes its form in the language of states' rights and constitutionality; but the central issue is a moral one.²⁴ Liberals have argued for the mandate by appealing to the collective good: expanded insurance coverage is only possible if most everyone participates, effectively pooling the risks of the healthy and the sick. Libertarian opponents reject this appeal, arguing that a requirement to contribute to the collective good violates respect for individual liberty.

We identify a different ground for a *minimal* insurance mandate that does not depend upon appeal to the collective good. The situation of some of the uninsured in the US meets the conditions that generate a duty to take rescue precautions: some people have a duty to rescue the uninsured should they have emergency or acute medical needs; the risk of posing such rescue burdens on others is substantial; the cost to others in providing this care is burdensome; the cost to some such individuals of buying minimal insurance is not overly burdensome; and individuals can be reasonably expected to know about these risks and are capable of taking precautionary action by buying health insurance to cover emergency and acute care needs. This argument for a moral duty to buy health insurance is one that both liberals and minimally decent libertarians — those who accept a minimal duty to rescue — can agree to.

2.1. Clinicians' Duty to Rescue

US clinicians have a moral requirement grounded in the duty to rescue to provide emergency, acute care to individuals regardless of ability to pay.²⁵ The clinician's moral duty to rescue is enshrined in law under the Emergency Medical Treatment and Active Labor Act (EMTALA), which legally requires hospitals to provide emergency care to people regardless of insurance status.²⁶ Physicians accept their moral duty to rescue. In 2008, primary care physicians not associated with emergency departments donated \$7.8 billion in free care to the uninsured.²⁷ The US has more than 8,000 community health centres that provide basic health services regardless of ability to pay.²⁸

Hospitals and doctors provide acute care when the costs in doing so are much more than minimal, both in the particular and the aggregate. Provision of care to the uninsured costs tens of billions of dollars.²⁹ It is estimated that hospitals recover only about 10% of the costs of treating uninsured individuals.³⁰ The majority of remaining costs are paid for by taxpayers; approximately 75%, i.e. \$43 billion of the \$56 billion, of uncompensated care in 2008 was subsidised by public funds.³¹

Though libertarians reject an insurance mandate that appeals to the collective good, the basis of our argument for an insurance mandate relies on clinicians' duty to rescue, which is already entrenched in law and endorsed by any minimally plausible morality. Thus, we start with a ground that the minimally decent libertarian can agree to.

2.2. Magnitude of Rescue Burdens

The costs of routine and emergency care are expensive. The average appendectomy costs \$15,850.³² The costs of delivering a baby can range from \$9,600 for a normal delivery to over \$21,000 for a caesarean section with complications.³³ The hospital bill for the average uninsured patient for all indications is \$22,000.³⁴ The vast majority of patients cannot afford to foot these bills out of pocket.³⁵ On average only 12% of the uninsured who are hospitalised have the assets to pay their bills in full.³⁶ As such, these expenses are passed on to health care providers, hospitals, insured individuals who absorb these costs in their premiums, and taxpayers. Every year, hospitals incur tens of billions of dollars in bad debt.³⁷ Aggregating uncompensated costs amounted to \$56 billion in 2008.³⁸ In that same year, unpaid care increased federal spending by \$25.6 billion, it increased state spending by \$17.2 billion, and increased private spending by \$14.5 billion.³⁹

One might argue that the cost of one uninsured person's medical care will be a tiny fraction of public dollars available. When the burden to rescuers is relatively small, the duty to take rescue precautions will be likewise weak. This response confuses costs and burdens. Iterated instances of rescue costs aggregated over time or across people are greatly burdensome. Any one person's failure to pay for her medical care then is burdensome in a system already over-tasked in trying to answer the needs of others. Furthermore, one who fails to pay for her medical care when she could have purchased insurance risks using emergency health care resources that could have gone to someone else in need. Additionally, the public subsidisation of uninsured health care costs comes at the expense of other valuable social programs including education.⁴⁰ In a system of limited resources, the burdens of rescuing some include the opportunity cost in terms of other important resources for all.

2.3. Chance of Needing Emergency Care

While some people have a greater risk of requiring health care — due to existing illness or conditions — virtually everyone needs medical care at some point in their lives. Only 3.1% of Americans do not see a health professional in a 5-year span;⁴¹ only 1% never see one over the course of their lifetime.⁴²

For all that, some people think that young adults face low risk of needing medical care and could pose an exception class to our proposed duty to buy health insurance. This is significant because uninsured young adults, ages 19–29, represent 14 million uninsured, one of the largest segments of the uninsured population.⁴³

However, the belief that young adults pose only a minimal risk of needing emergency acute care is mistaken.⁴⁴ Consider, for instance, that 15% of young adults, ages 19–29, have asthma, arthritis, cancer, diabetes, heart disease or hypertension.⁴⁵ In addition to this, over half of them are overweight or obese, which poses additional medical risks. One-quarter of all HIV/AIDS diagnoses occur in this age range.⁴⁶ Also, in 2007, women in the age range accounted for 2.6 million live births.⁴⁷ And finally, 24% of people in this age range made an emergency room visit in the course of a year.⁴⁸

It is a mistake to equate youth with health. Young adults pose a substantial risk of needing health care — nearly a quarter will use the ER in a year.⁴⁹ Extrapolating from this ‘low risk’ age group, we can confidently say that the probability of any individual needing acute or emergency care is substantial-to-high.⁵⁰

2.4. Cost to the Agent

The primary reason for people’s failure to buy health insurance is its monetary cost.⁵¹ Some people are greatly burdened by cost. They would have to forego essentials, such as sufficient heating or food, in order to purchase it. Inability or difficulty affording health care provides a very weighty reason against a duty to purchase it.

For others, though cost is the primary reason for failure to buy health insurance, they could afford the insurance without great hardship. According to the Census Bureau, 20% of the uninsured have household incomes of greater than \$75,000.⁵² 10% of the uninsured earn over 400% of the federal poverty level.⁵³ The National Bureau of Economic Research estimates that one quarter to three quarters of the uninsured population could afford to purchase health insurance based on a plausible range of assumptions.⁵⁴ Presumably some of these people could afford insurance with minimal hardship. Government subsidies guaranteed by the ACA expand the population of those who can afford health insurance. The preceding discussion suggests that those who can afford health insurance to cover their emergency and acute care have a moral duty to purchase it.

Assessment of the factors relevant to the duty to take rescue precautions in the context of the US uninsured provides a strong case for the generation of such a duty. Purchasing health insurance to cover acute and emergency care needs is the most effective way to meet this requirement. Unlike *Tsunami* there is no way to avoid the risk altogether. Other precautions are insufficient.

Some ACA opponents worried that a Congressional mandate to purchase health insurance opened the door to a host of other requirements, leading to the famous ‘broccoli objection:’ it seems on the same grounds that Congress can now require people to purchase and consume broccoli for their health.⁵⁵ But this concern is mistaken: eating broccoli is neither necessary nor sufficient for mitigating the costs of being uninsured; purchasing health insurance is both. Recall, our argument is narrow in scope: it is for a duty to take rescue precautions given that others have a duty to rescue. It is not a broader argument about what obligations people have in social cooperative schemes — such as insurance risk pools — to curb risky behaviour that imposes burdens on others. Perhaps the reasoning behind the duty to take rescue precautions — the principle that we ought to prioritise the alleviation of severe burdens to others when it is of little cost to do so — may be extended to social cooperative schemes and thus mandate eating broccoli, for example. This is a further question that falls outside the scope of this argument. Suffice

it to say here, the expansion of the argument is not at all obvious. For one, we are oftentimes willing to externalise costs of certain activities in the case that strict-internalisation of such costs would be more liberty restricting than not.⁵⁶ Strict dietary mandates may differ crucially in this way from an insurance mandate.

3. Considering Objections

In this section, we will consider objections to the argument that there is a duty to take rescue precautions in some cases where others have a duty to rescue.

3.1. *Waiving One's Right to Rescue*

Critics might object that individuals who have not asked to be rescued cannot be obligated to reduce the burdens of rescuing them. A surfer who knows the perils of surfing in a tsunami may have no expectation that she will be rescued if she gets swept up by the waves. Though she may welcome rescue, she wouldn't expect it or demand it. This response involves a series of related objections. First, the surfer might exclaim: 'I didn't ask to be rescued. How can I be obligated to take rescue precautions?'

The underlying assumption in this objection is that one cannot be obligated to take some action without having voluntarily incurred that obligation — in this case by requesting the rescue benefits. But this objection is a non-starter. For the duty to rescue itself shows that we can be required to help others even when we did not voluntarily incur this obligation.⁵⁷ Some obligations arise as a matter of circumstance — you can save someone from significant harm at no morally significant cost to yourself. Recall that the significant burden principle underlies both the duty to rescue and the duty to take rescue precautions. The duty to rescue shows that one need not be responsible for the surrounding circumstances that generate these conditions. But those in a position to take rescue precautions oftentimes *are* responsible, by virtue of incurring certain risks, for structuring the scene such that others have a duty to rescue. For this reason, it is more rather than less plausible to think that they face certain obligations to mitigate the risks they impose on others.

What the surfer might mean by this exclamation is rather 'I wouldn't accept these benefits if I knew they would obligate me.' Here, the surfer is voicing the objection of the base jumpers. She'll gladly accept free rescue; but she wouldn't accept it if she must therefore modify her surfing behaviour to mitigate rescue costs.

Some clarification is necessary here. Our argument is that the surfer *was* obligated to take certain rescue precautions prior to coming to peril. We are not arguing that by accepting the rescue benefits *she becomes* obligated to reciprocate in some way. We need to reinterpret the surfer's objection to capture this chronological difference. She might instead say: 'I won't accept the benefit, should I come to peril. I waive my right to be rescued.'

Can a person avoid the duty to take rescue precautions by waiving the right to rescue benefits? Though we've framed the question in terms of her explicit waiver of rescue benefits, one might implicitly waive her right to rescue benefits just by undertaking some risky activity without proper precautions.

The exemption by waiver possibility makes sense to the extent that the duty to rescue is grounded in the rights or demands of potential rescuees. If it is so grounded, and if it

is possible to waive a right to be rescued, then an individual's waiving of such a right would free others from the duty to rescue. However, the duty to rescue is not solely rights-based.⁵⁸ It is more accurately seen as grounded in an *obligation* that agents owe to others as compassionate and decent individuals. Whether there are correlative rights to this obligation is a separate question; our point is that the duty to rescue is not grounded solely in the rights of rescuees. Thus, waiver of these rights does not eliminate the duty, even if one maintains that it is possible to waive these rights.

This becomes apparent once we consider what honouring a putatively waived right to rescue would entail. Consider a medically uninsured motorist who agrees to waive her right to emergency care and has this waiver printed on her driver's license. If the right to be rescued is the only grounds of the duty to rescue and this right is waivable, then were she to get into a life-threatening car accident, medical personnel could fail to treat her *with moral impunity*. EMT personnel would be permitted to let her bleed to death or suffer whatever physical trauma she incurred even when providing needed care would be easy, inexpensive, and immediate. Imagine the EMT personnel are on the scene and need only to apply bandages to staunch the bleeding. But she has waived her right to these resources. If a waiver of her right is all it takes to exempt them from a duty to rescue her, then they have done no moral wrong in this situation.

This is an unacceptable result. Compassionate and moral emergency personnel would not and do not consider their duty to rescue so easily undermined.⁵⁹ Nor would most of us think they could permissibly stand by, ignoring her cries for help, and let her bleed to death when they have the resources to save her. Denial of a duty to rescue, even in this case, is not consistent with our compassionate, helping natures or the values at the core of medicine. Moreover, as a society of compassionate and benevolent people, we would not endorse doctors' refusal to provide emergency care to the uninsured. EMTALA and the public assumption of the costs of uncompensated care are a testament to these social values. All of this is evidence for the grounds of the duty to rescue in benevolence — as a requirement of decent and compassionate people — rather than merely rights — as in what others demand of us.⁶⁰ At the same time, these cases should not be conflated with a very different type of case that can arise in the medical setting.

Competent adults can reject certain kinds of health care on the grounds that they conflict with their fundamental values; adult Jehovah's Witnesses refuse to have life-saving blood transfusions, and this decision should be respected. The point here is that while *waiving* a right to rescue does not defeat our duty to rescue, *rejecting* (specific types of) rescue might do so. The Jehovah's Witness rejects a blood transfusion because it is not consistent with his own view of the good.⁶¹ In forcing a transfusion upon him, we are failing to respect his present, autonomously endorsed values and preferences.

However, in providing life-saving treatment to the uninsured motorist, we are acting in harmony with her chosen values and preferences, assuming that treatment is consistent with her present desires. Unlike the Jehovah's Witness, she did not fail to take precautions because she does not want to be rescued; rather she failed to buy insurance because she failed to plan, or was negligent, or she made an active decision that it was not worth the cost.⁶² None of these choices imply, even at that time, that she would not want to be rescued. She may not feel *entitled* to treatment due to her choice to go uninsured, but she still desires life-saving treatment; treatment promotes her (own view of her) interests. Thus, whereas rejection of being rescued expresses a

person's desire not to be saved and may defeat others' duty to rescue, a waiver of one's right to be rescued expresses that one may not feel entitled (or is not entitled) to rescue, though she may still desire it. But since the duty to rescue is not solely rights based, in the latter case, there may still be a duty of others, grounded in benevolence, to rescue her.

To argue that full respect for her autonomy requires us to allow her to suffer the consequences of her earlier autonomous choice is hardly defensible. In some cases, the person will have made the waiver decision without full consideration or understanding of the consequences; the decision may simply fail to be fully autonomous. In other cases, even if the decision is fully autonomous, the individual may change her mind. Respect for autonomy should allow agents to change their minds. Letting someone die, lose a limb, or suffer excruciating pain because she chose to waive her health care by not buying insurance is a disproportionately large consequence for lack of foresight or changing her mind.⁶³ 'Honouring' her autonomous decision by ensuring that she live out all of its consequences is not more respectful of her autonomy than is providing her with benefits in line with her current values and preferences. Indeed, insisting that we deny treatment for the sake of autonomy is retributive treatment of the individual — giving her what we think she deserves — masquerading as an argument from autonomy. We consider it both implausible and cruel to insist that one who forgoes insurance deserves to go without emergency care and, if it comes to that, deserves to die.

There may be some people — call them morally consistent libertarians — who do not want to be rescued in the future and who would not want to be rescued even in the moment of needing emergency care. Rescue would go against their deeply held beliefs about their independence from others and commitment to their previous autonomous decisions. Perhaps there are such morally consistent libertarians; it is a separate matter of public policy to determine how to accurately identify them. But most people are not morally consistent libertarians. The vast majority of uninsured people welcome free acute and emergency care when they need it; the vast majority of hikers, surfers, and other adventurers happily hop on rescue helicopters.

3.2. Voluntarily Incurred Burdens of Professionals

Professional role moralities can generate demanding duties to rescue. One might argue that certain professionals voluntarily incur these demands. As such, they have no complaint against others that they reduce the burdens of rescue. After all, demanding rescues are part of their job. In the base jumpers case, the fact that the superheroes freely provide the supererogatory rescue benefit is crucial to blocking a duty of base jumpers to take precautions. Isn't one's choice of profession similarly free?

The fact that an obligation was incurred voluntarily does not give the beneficiary of that obligation license to ignore the burdens of discharging the obligation. Firefighters have volunteered to put out fires and save lives. As such they have a very demanding duty to rescue. When I host a neighbourhood bonfire, I know that if there's an accident and the fire spreads, they'll put out the fire. But the fact that firefighters have volunteered for this duty does not entail that I may act carelessly when I light the bonfire. I cannot recklessly impose burdens on them; in fact, I have a duty not to do so.

Furthermore, the burdens of rescue in many professional role morality cases are not just to the rescuing agent — the firefighter, police, or doctor — they are burdens on public

resources held in common by all community members. Moreover, each rescue that the firefighter has to undertake is a diversion of limited resources away from others in need. The costs of one's own needing to be rescued is not just those voluntarily incurred by the rescuing profession, it may be imposed on others who have little say in the matter.

3.3. Risky Activities versus Natural Risk

Potential rescuees may have a responsibility to mitigate rescue burdens when they undertake optional risky activities as in *Tsunami*. In contrast, one might argue that needing acute health care is not the result of any activity, nor is it optional; it is an inevitable part of a person *merely living out their life*. One might base an objection on this distinction: people cannot be required to mitigate risks for which they bear no responsibility, including merely living out their lives. If this objection were to succeed, it would undermine application of the duty to take rescue precautions to the health insurance case and would restrict its application to only risky, voluntary endeavours. But we do not think the duty to take rescue precautions need be so limited.

Firstly, the distinction between actively undertaking risky endeavours and passively merely living out one's life is dubious. Much of 'merely living out one's life' involves actively taking risks often in more or less optional activities. Riding in a car, is an obvious example of a risky activity that most people merely living out their lives regularly undertake. Merely living out their lives also involves consuming foods, medicines, and purchasing things, all of which constitute engaging in actions that carry with them some risk.

In addition, people can be responsible for risks they impose on others even when they are the result of a failure to act. Many people do not actively choose where they reside; they may be born in a specific place and never have had reason or the resources to move elsewhere. Some geographic regions bring with them a host of weather-related or natural disaster risk. When a natural disaster can be predicted, residents are ordered by their local governments to evacuate the area. Staying in the area endangers both them and those who would be required to rescue them. When the risk to themselves and others is high enough, people have an obligation to evacuate the area.⁶⁴ They have an obligation to *take an action* to avoid imposing risk on themselves and others. But here the risky choice is inactivity — staying where one resides. Thus, sometimes we do have a moral duty to take precautionary measures even when it comes to the risks of 'merely living out our lives.'

Conclusion

Our article develops a novel, unexplored angle on the much-discussed duty to rescue, revealing the potential for reciprocal duties held by beneficiaries of the former. The duty to take rescue precautions, though most obviously arising in high risk, high burden cases where precautions are easy to take, can arise in a range of less extreme circumstances. This conclusion reveals that any acceptable moral theory will have to recognise that we have a broad range of obligations that we did not agree to take on. The duty to take rescue precautions also has practical import. We've shown that the situation of many of the uninsured in the US generates a duty to take rescue precautions in the form of a duty to buy emergency and acute care health insurance. Finally, we've argued that the duty to

take rescue precautions cannot be avoided by waiving one's right to be rescued because a duty to rescue is not solely rights based. The duty is not undermined by the voluntariness of certain rescuing professionals, nor is it vulnerable to the distinction between taking active risks or passively incurring them. We conclude that individuals have a duty that has not been previously recognised in the philosophical literature; people have a duty to take rescue precautions.⁶⁵

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NOTES

- 1 For different formulations of this principle, see Peter Singer, 'Famine, affluence, and Morality', *Philosophy & Public Affairs* 1 (1972): 229–43; T.M. Scanlon, *What We Owe To Each Other* (Cambridge, MA: Harvard University Press, 1998), pp. 224–28. That there is a duty to rescue is a basic assumption of our article. Our arguments won't convince an extreme libertarian who rejects a duty to rescue; but we do not think extreme libertarianism is a plausible theory of morality.
- 2 Singer op. cit.
- 3 For a sample of this literature, see Peter Unger, *Living High and Letting Die: Our Illusion of Innocence* (Oxford: Oxford University Press, 1996); Garrett Cullity, 'International aid and the scope of kindness', *Ethics* 105 (1994): 99–127; Barbara Herman, 'The scope of moral requirement', *Philosophy & Public Affairs* 30 (2001): 227–256; David Schmitz, 'Islands in a sea of obligation: Limits of the duty to rescue', *Law and Philosophy* 19 (2000): 683–705; Patricia Smith, 'The duty to rescue and the slippery slope problem', *Social Theory and Practice* 16 (1990): 19–41; Dale Jamieson (ed.), *Singer and His Critics* (Malden, MA: Blackwell Publishers, 1999); Liam Murphy, *Moral Demands in Nonideal Theory* (Oxford: Oxford University Press, 2000).
- 4 Or they are the results of dilapidated infrastructure or other non-ideal institutional causes. See Tina Rulli & Joseph Millum, 'Rescuing the duty to rescue', *Journal of Medical Ethics* (2013): doi:10.1136/medethics-2013-101643.
- 5 159 F.2d 169 (2d. Cir. 1947). The Hand Test states that negligence occurs when the burden to the agent in taking adequate precautions to prevent harm is less than the probability of injury multiplied by the cost of that injury.
- 6 For scepticism about a merely minimal burden duty to rescue, see Unger op. cit., pp. 136–39.
- 7 See Rulli & Millum, op. cit.
- 8 See Tina Rulli, Ezekiel Emanuel & David Wendler, 'The moral duty to buy health insurance', *Journal of the American Medical Association* 308,2 (2012): 137–183.
- 9 Consider the public outrage at the Alameda, CA police and firefighters who acted under a putative limit to their duty to rescue, allowing a suicidal man to drown himself. Steven Greenhut, 'The Alameda incident: "First responders" who don't', *Los Angeles Times* (2011) 20 July. Online at: <http://articles.latimes.com/2011/jul/20/opinion/la-oe-greenhut-police-firefighters-un20110720>. Accessed 2 March 2014.
- 10 Also see Unger op. cit., pp. 25–27, discussing an example where culpability for one's predicament does not undermine a strong duty to rescue; See Seana Valentin Shiffrin, 'Paternalism, unconscionability doctrine, and accommodation', *Philosophy and Public Affairs* 29,3 (2000): 205–250 at pp. 274, 281, 288, 294, where she discusses and gives examples of where we absorb the costs of others free, morally relevant choices in cases where the consequence of the choice is much more severe than the significance of the choice.
- 11 Might an individual's repeated instances of neglectful endangerment of others undermine the others' duty to rescue, so that after some threshold, if an individual fails to take precautions, then others are released from their duty to rescue? Perhaps, though this is a question for all accounts of the duty to rescue and is not particular to our inquiry. Note, however, that professional rescuers like firefighters, police, and doctors, are not typically allowed to take into account someone's past behaviours in determining whether to rescue them or not. They must still rescue.

- 12 The superheroes are other extreme adventurers equipped with wing suits that enable them to ‘fly’ at top speeds and manoeuvre deftly.
- 13 For a related discussion, see Robert Nozick, *Anarchy, State and Utopia* (New York: Basic Books, 1974), p. 90.
- 14 Similar conditions are used in assessing negligence through the ‘Hand Test’ in tort law. See fn. 5. Unlike the ‘Hand Test,’ we do not set forth a specific formula for the conditions, since we do not think matters can be so precise.
- 15 See Stephen Darwall, *The Second Person Standpoint* (Cambridge, MA: Harvard University Press, 2006), pp. 26–27; Peter Strawson, ‘Freedom and resentment’ in J.M. Fischer & M. Ravizza (eds) *Perspectives on Moral Responsibility* (Ithaca, NY: Cornell University Press, 1993): 45–66.
- 16 See Leslie Kaufman, ‘Technology leads more park visitors into trouble’, *New York Times* (2010) 21 August. Online at: <http://www.nytimes.com/2010/08/22/science/earth/22parks.html>. Accessed 2 March 2014.
- 17 See Tiffany Sharples, ‘Get into trouble outdoors — who pays for the rescue?’ *Time* (2009) 25 April. Online at: <http://www.time.com/time/nation/article/0,8599,1892621,00.html>. Accessed 2 March 2014.
- 18 See Sharples op. cit.
- 19 Alistair Norcross, ‘Puppies, pigs, and people: Eating meat and marginal cases’, *Philosophical Perspectives* (2004): 229–245, at p. 233.
- 20 See Robert Roy Britt, ‘The odds of dying’, *Live Science* (2005) 6 January. Online at www.livescience.com/3780-odds-dying.html. Accessed 2 March 2014; See Tara Parker-Pope, ‘How scared should we be?’ *New York Times* (2007) 31 October, which puts the odds at 1/84, citing National Safety Council statistics. Online at: <http://well.blogs.nytimes.com/2007/10/31/how-scared-should-we-be/> Accessed 2 March 2014.
- 21 Granted, the GPS ought not to enable her to increase the net risks she imposes on others. See ‘Tired from a hike? Rescuers fear yuppie 911,’ *Life* on NBCNEWS.com, 23 October 2009. Online at: <http://www.msnbc.msn.com/id/33470581/?GT1=43001#.T4wwk1E9khM>. Accessed 2 March 2014.
- 22 See Rulli, Emanuel & Wendler, op. cit.
- 23 *National Federation of Independent Business v. Sebelius*, 567 U.S. (2012), 132 S.Ct 2566.
- 24 See David Cole, ‘Is health care reform unconstitutional?’ *New York Review of Books* (2011) 24 February. Online at: <http://www.nybooks.com/articles/archives/2011/feb/24/health-care-reform-unconstitutional/>. Accessed 2 March 2014.
- 25 Clinicians have a duty to provide *at least* acute and emergency care; they might have more expansive moral obligations in some cases.
- 26 Congressional Act EMTALA 1986.
- 27 Jack Hadley, John Holahan, Teresa Coughlin & Dawn Miller, ‘Covering the uninsured in 2008: Current costs, sources of payment, and incremental costs’, *Health Affairs* 28 (2008): w399–w415, at p. w403. doi: 10.1377/hlthaff.27.5.w399
- 28 Eli Y. Adashi, H. Jack Geiger & Michael D. Fine, ‘Health care reform and primary care: The growing importance of the community health center’, *New England Journal of Medicine* 362 (2010): 2047–2050.
- 29 Hadley et al., op. cit.
- 30 Cole op. cit.
- 31 Hadley et al., op. cit., p. w403.
- 32 Appendectomy Prices, *Healthcare Fees*. Online at: <http://www.healthcarefees.com/appendectomy-prices/>. Accessed 2 March 2014.
- 33 US Agency for Healthcare Research and Quality. HCUPnet, Healthcare Cost and Utilization Project. Online at: <http://hcupnet.ahrq.gov/>. Accessed 2 March 2012.
- 34 Office of the Assistant Secretary for Planning and Evaluation, US Department of Health & Human Services, ‘The value of health insurance: Few of the uninsured have adequate resources to pay potential hospital bills’, (May 2011). Online at: <http://aspe.hhs.gov/health/reports/2011/valueofinsurance/rb.pdf>. Accessed 4 December 2013. Moreover, this figure does not include physician fees, ambulance fees, or post-acute care expenses.
- 35 *Ibid.*, p. 3, tbl. 1. In 2006–2007, the median financial assets for an uninsured family was \$20.
- 36 *Ibid.*, p. 6, tbl. 4a.
- 37 American Hospital Association, Uncompensated Hospital Care Cost Fact Sheet (November 2008). Online at: <http://aha.org/content/00-10/08-uncompensated-care.pdf>.
- 38 Hadley et al., op. cit., pp. 403–406.
- 39 *Ibid.*
- 40 Ezekiel Emanuel, ‘What we give up for health care’, *New York Times: Opinionator* (2012) 21 January. Online at: <http://opinionator.blogs.nytimes.com/2012/01/21/what-we-give-up-for-health-care/>. Accessed 2 March 2014.

- 41 National Center for Health Statistics, US Department of Health & Human Services, Summary Health Statistics for US Adults: National Health Interview Survey, 2009, Vital & Health Stat. Series 10, Number 249, at 124 tbl. 37 (December 2010). Online at: http://www.cdc.gov/nchs/data/series/sr_10/sr10_249.pdf.
- 42 Ibid., at 125 tbl. 37.
- 43 Sara R. Collins & Jennifer L. Nicholson, 'Rite of passage: Young adults and the Affordable Care Act of 2010', *The Commonwealth Fund Issue Brief* (2010). Online at: http://www.commonwealthfund.org/-/media/Files/Publications/Issue%20Brief/2010/May/1404_Collins_rite_of_passage_2010_v3.pdf
- 44 Jennifer L. Nicholson et al., 'Rite of passage? Why young adults become uninsured and how new policies can help, 2009 update', *The Commonwealth Fund Issue Brief* (2009). Online at: http://www.commonwealthfund.org/-/media/Files/Publications/Issue%20Brief/2009/Aug/1310_Nicholson_rite_of_passage_2009.pdf
- 45 Ibid., p. 7.
- 46 Ibid., p. 7.
- 47 Ibid., p. 7.
- 48 Ibid., p. 7.
- 49 Ibid., p. 7
- 50 To the extent that individuals' susceptibility to illness traces to factors for which society is responsible, society may have an obligation to share in the costs of the insurance. For example, if society declines to take steps to reduce pollution and the resulting pollution increases individuals' susceptibility to lung cancer, society may have an obligation to cover that portion of individuals' insurance.
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- 52 'The "real" uninsured', Factcheck.org. Online at: <http://www.factcheck.org/2009/06/the-real-uninsured/>. Accessed 2 March 2014.
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- 55 See Wendy K. Mariner, George J. Annas & Leonard H. Glantz, 'Can Congress make you buy broccoli? And why that's a hard question', *New England Journal of Medicine* 364 (2011): 201–203.
- 56 Shiffrin op. cit.
- 57 We acknowledge as a separate matter that certain professionals incur more demanding duties to rescue in virtue of their chosen profession.
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- 59 Shiffrin (op. cit., p. 294) makes a related point about the costs to compassionate caretakers in a scheme in which all agents must internalise the consequences of their voluntary choices.
- 60 See Onora O'Neill, 'Rights, obligations, and world hunger' in F. Jimenez (ed.) *Poverty and Social Justice: Critical Perspectives: A Pilgrimage Toward Our Own Humanity* (Tempe, AZ: Bilingual Press, 1987), pp. 86–100.
- 61 See Raanan Gillon, 'Four scenarios', *Journal of Medical Ethics* 29, Festschrift Edition (2003): 267–68.
- 62 We leave aside the possibility that she might have been too poor to purchase insurance, since the purpose of this case is to foster discussion of someone who waived a right to rescue to avoid an obligation, not someone who cannot fulfil the obligation anyhow.
- 63 Shiffrin (op. cit., p. 281) argues that we might accept externalisation of some costs of voluntary behaviour when the consequences to an individual in shouldering those costs alone is disproportionate to the significance of the choice.
- 64 Amy Fairchild, James Colgrove & Marian Moser Jones, 'The challenge of mandatory evacuation', *Health Affairs* 25,4 (July 2006): 958–67. Online at: <http://content.healthaffairs.org/content/25/4/958.full>. doi:10.1377/hlthaff.25.4.958
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