I hope to do three things in this paper: first, provide an intuitively plausible rationale for the distinction that private law draws between nonfeasance and misfeasance, a distinction which leads to the conclusion that there is no tort duty to rescue; second, show how a criminal penalty for certain failures to rescue might nonetheless be appropriate; and third, use the example of legal duties to rescue to examine some broader issues in political philosophy. In particular, I want to use this example to illustrate a more general account of the moral significance of a prominent legal conception of interaction. That conception sees people as radically independent, each pursuing his or her own ends separately from other people’s pursuit of their ends. On this view, duties to aid are different from duties of non-interference. When I interfere with your capacity to pursue your own ends, your incapacity becomes my problem. But your incapacity as such is not my problem, no matter how severe it is, or how easily I might remedy it. Many have found this conception of interaction perplexing; some have found it repugnant. I hope to make it somewhat more appealing. I will do so by situating it withing a broader account of what John Rawls has called the “division of responsibility” between individuals and the larger society. On Rawls’s view (or at least on my appropriation of it) we owe duties of support to just institutions, including institutions that aid those in need. But where just institutions are in place, particular individuals owe no duties of aid to others. To put the point in an

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1 An earlier version of this paper was presented at the conference “The Moral and Legal Limits of Samaritan Duties” at Georgia State University in June 1999. I am grateful to the audience members and other participants at the conference for their questions and comments. I am also grateful to Benjamin Zipursky, Malcolm Thorburn, Hamish Stewart, and Andrew Milne for written comments on the paper, and to Vicki Igneski for helpful discussions.
overly tendentious way, if just institutions are in place, it becomes legitimate to say, “I gave at the office.” But I will also argue – taking up a suggestion made by Joel Feinberg – that those very same just institutions may well impose a penalty on those who fail to do their part in emergency situations. In such cases, the criminal law may well respond to failures to aid which civil law regards as cases of nonfeasance lacking in legal consequences. This combination of responses may strike some as surprising – ordinarily the range of wrongs for which civil remedies are available is thought to be broader than that for which criminal sanctions are appropriate. The case of rescue shows why this need not always be the case.

Many people, myself included, find it difficult to resist the conclusion that there is a moral duty to make easy rescues. Yet many of the same people – here too I include myself – are uneasy about the idea that those who fail to rescue should be liable in damages for the consequences of their failure. I think that focussing on the division of responsibility helps to articulate and defend that intuitive sense. The question of a legal duty to rescue needs to be understood in its own terms, not as a matter of whether it is an appropriate way of encouraging people to do what morality already requires of them.

THE MORAL DUTY TO RESCUE

It is difficult to resist the idea that there is a moral duty to rescue others in peril, where such rescues can be affected at little or no cost to oneself. The deep rationale for such a duty is shared by any moral outlook that has room for any idea of duty: Human life is important; when lives can be saved without sacrificing anything of moral (or other importance) they should be. Other debates that divide moral philosophers – such questions as the relative significance of acts and omissions, or the differences between harm and benefit, or the foundational basis of morality – seem beside the point when so much is in the balance on one side, and so little on the other. But for all that, there is very little agreement about how to think about rescues, or how to relate them to the other cases in which the difference between acts and omissions, or that between harm and benefit,
seems to be very important indeed. Morally speaking, there is a good reason to treat different failures to aid differently.²

Private law – the area of law governing interactions among private parties – resolutely insists on treating all failures to aid as alike, taking no interest in them, no matter how pressing the peril or easy the remedy. Unless the person who withholds aid is somehow already connected to the victim, either through contract, some special duty, such as parents bear to their children, or by having exposed the victim to the peril, private law views the parties as independent. Outside of these special exceptions in which an agent’s own past conduct has somehow already imposed a duty, the failure to perform even the easiest rescue is treated as nonfeasance – the failure to confer a benefit, legally no different from the failure to confer any other sort of benefit. Many standard treatments of private law note this fact with disdain, supposing, plausibly enough, that not all failures to aid are morally alike.³ Others articulate the distinction between nonfeasance and misfeasance, explain how it is importantly different from that between acts and omissions, and presume that the task of explaining its place in fundamental social institutions is complete.⁴ Even supposing the line can be drawn, critics might well wonder why we, either individually or through our institutions, should take an interest in an act’s status along it. Sometimes the point is put in terms of a certain conception of freedom. Even here,

² The most compelling way of explaining the difference can be put in terms of Kant’s distinction between “perfect” and “imperfect” duties. Easy rescues are plausibly catalogued as requirements – “perfect duties” to use Kant’s phrase – which take priority over each person’s pursuit of his or her own projects. Other moral demands of aid are “imperfect duties”, ones that we should fulfill somehow or other, but which do not take automatic priority over each person’s pursuit of his or her own projects. For a clear and forceful defence of this point, see Vicki Igneski “Duties to Rescue and Duties to Aid” (unpublished MS).

³ See, for example, W. Page Keeton et al., Prosser and Keeton on the Law of Torts (St Paul: West Publishing, 1984) citing cases including Osterlind v. Hill, a case of an expert swimmer with a boat and rope at hand, who calmly watches another man drown.

⁴ See for example, the discussion in Ernest Weinrib, The Idea of Private Law. (Cambridge: Harvard University Press, 1995). Weinrib’s efforts to locate the distinction in terms of private law’s understanding of action are illuminating, although his explanation of that conception of action in terms of properties of the will seems to me less successful.
it is likely to strike many people as formalistic in the worst sense. At
the level of morality, any sort of priority we might hope to attach to
freedom\(^5\) has little, if any force in the case of easy rescues, whatever
force it might have in the case of more general failures to confer
benefits. We need some explanation of why the distinction would
matter from certain moral standpoints, but not others.

My aim is to explain how, and more importantly, when, it can
make sense to treat all failures to aid as alike. My strategy in
answering it will be to divide it up into a series of distinct questions
about whether it makes sense for particular institutions and practices
to treat all failures to aid as alike. Such an approach may strike some
as confused; they rightly may ask whether morality isn’t prior to
institutions and practices. Although I don’t mean to deny that there
is an important sense in which it is prior, there is another, equally
important, sense in which it is not. Where institutions and prac-
tices are absent, only moral duties apply to our actions. But where
they are present, we can intelligibly ask about the distinctions that
they ought to draw, distinctions which, because of the moral signifi-
cance of those institutions, become morally significant themselves.
Moreover, we can ask about the ways in which different institutions
might be required to give content to distinctive, though mutually
supporting, moral ideas.

MORALITY AND POLITICAL MORALITY

There’s a familiar picture according to which the law should enforce
those independently identified moral obligations for which coercive
enforcement is likely to be effective. Mill, for example, takes this
approach, both in his discussion of justice in chapter four of Util-
itarianism, and more concretely in On Liberty, where he famously
argues that restraints on liberty are likely to fail to make anyone’s
life go better. But related views can be found outside of the util-
itarian tradition. In particular, Lockean contractarian thought starts
with moral rights and obligations and moves to questions about the
legitimate role of the state. That role is fixed by considerations of
ideal consent (or, on the Hobbesian variant of this view, mutual

\(^5\) See, for example, Judith Jarvis Thomson, Rights, Restitution, and Risk
advantage). Again, from a very different perspective, T. M. Scanlon has offered normative accounts of the law of contract and punishment that turn on more general considerations about the morality governing interpersonal relations. On all such views, many of the hard questions of political philosophy concern whether the costs of coercion in some class of cases will outweigh its expected benefits, (including freedom costs); the views differ in their assessment of the appropriate way to measure such costs across persons. On this view, political philosophy is a chapter of moral philosophy, with the special concern of selecting appropriate general rules for enforcement. If we follow the familiar picture, the question of enforceable duties to rescue concerns the sort of legal duty (if any) that should give effect to the uncontroversial moral duty to make easy rescues.

My own view sees the terrain somewhat differently. I think that legal duties hang together on their own in an interesting way, and that certain moral requirements can only be discharged through appropriate institutions. Putting aside important matters of detail, I think that coercion is governed by a special morality, which legitimates the use of force in order to protect freedom, rather than to promote happiness or welfare. I mention this point because I think we gain important leverage on the question of rescue by considering the legitimate function of various means of enforcement, rather than the efficacy of competing ways in which morally desirable behaviour may be enforced. If there is a moral duty to rescue, it is not appropriate that we enlist the coercive apparatus of the state in whatever way seems most effective for encouraging it. Instead, we

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7 For a careful argument that both utilitarianism and Kantian moral philosophy lead to a tort duty to rescue, see Ernest Weinrib, “The Case for a Duty to Rescue,” Yale Law Journal 90 (1980): 247–293. Weinrib has subsequently rejected these arguments.

8 I don’t mean to deny that coercive enforcement is sometimes legitimate on other grounds, including, for example, public goods problems. Perhaps the justification of force in such circumstances can be explained in terms of freedom; perhaps not. My point is only that certain kinds of coercive institutions can be so justified.
need to look at the rationale for various types of coercive response, and see which, if any, would lead to an enforceable duty to rescue.9

In drawing a distinction between morality in general and political morality, I am not simply reiterating the familiar – but also persuasive – claim that a well-ordered society does not need to resolve all of the questions of moral philosophy. Instead, the distinctiveness I claim for institutional questions stems from what I take to be fundamental principles of political morality, principles which govern the occasions on which the use of force is legitimate. These ideas require considerable elaboration, some of which I hope to provide in what follows. Whatever their importance as principles of political morality, the ideas I will develop are considerably less appealing in the context of other aspects of moral life.10

THE DIVISION OF RESPONSIBILITY

In thinking through the questions of whether particular social institutions ought to draw particular distinctions, I will appeal to an idea put forward by John Rawls, according to which there is a division of responsibility between individuals and the state. On Rawls’s version of this division, society as a whole has a responsibility for guaranteeing that basic freedoms and a fair share of social resources are available to all, while each individual in society has a special responsibility for how his or her own life goes. Rawls puts the point in terms of the need for individuals to moderate the demands that they

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9 Those who think that we need to start from moral duties, can read me as saying that we have a moral obligation to set up institutions of two specific sorts. Only one of these would, or indeed could, enforce a duty to rescue.

10 Looking at the duty to rescue as a question of political morality also frees us from the distraction of a variety of questions which are probably too general to be of much help. For example, we need not probe the question of the distinction between what one does and what one allows to happen too deeply. That distinction strikes many as both metaphysically and morally suspect, and it is certainly not a distinction that carries great moral weight in its own right. As a result, any normative weight that might be attached to it must be inherited from another argument. My aim is to provide the missing argument. Properly understood, such an argument shows that the distinction between doing harm and failing to aid is of fundamental importance in the justification of compensatory damages, but of no importance to questions of criminal sanctions.
place on social institutions. I will develop Rawls's point in a slightly different way, though I do not think it is out of keeping with his more general purposes. The point can be put this way: society as a whole, acting through the state, has a responsibility to protect important liberties and opportunities, and also to set up and enforce important schemes of social cooperation that are prerequisite to an acceptable life for all. All persons have a responsibility to create and sustain just institutions, including those charged with providing people with the wherewithal to take responsibility for their own lives. Both schemes of cooperation and guarantees of liberties and opportunities serve to hold certain kinds of misfortunes and obstacles in common, to treat them as everyone's problem, rather than just as the problems of whomever they happen to befall. Once the appropriate institutions are in place, citizens are expected to take a special responsibility for how their own lives go. That special responsibility has two components to it: first, they must, as Rawls insists, avoid making excessive demands on social institutions. Second, they must also moderate their behavior with respect to the interests of others. As between two private parties, neither may set the terms of their interactions unilaterally. The point of the second requirement is that having a special responsibility for how one's own life goes has two dimensions. On the one hand, one adjusts one's aspirations in light of one's fair share of resources, which will reflect, at least in part, one's own past choices. On the other hand, one must also avoid displacing the costs of one's choices onto others. Although the idea that people ought to forbear from displacing costs onto others is sometimes associated with libertarianism or economic models of social life, its proper home lies at the core of the sort of liberalism defended by Rawls. In order for the way my life turns out to be my responsibility, others must forbear from interfering with my ability to direct it. Thus they must not injure me, or damage whatever goods I have acquired legitimately. Conversely, I must forbear from displacing costs onto others. To interfere with a person's ability to be self-directing in these ways is to undermine any claims about that person's responsibility for how his or her own life goes.

The division of responsibility also has another important implication. Questions about duties, and about responses to their violation, often take the form of an inquiry into who did what—frequently, but
not always, to whom. Such inquiries have too often led philosophers
to suppose that the missing link must be located in metaphysics or
action theory. The idea of a division of responsibility allows us to
give different answers to questions about who did what, depending
on whether we are concerned with what happened between two
individuals, or what happened as between an individual and some
responsibility he had to the society more broadly. This intuitively
familiar distinction lets us see a single act in a variety of ways, and
along a variety of scales of seriousness. A trivial harm to another
person might be a serious wrong against schemes of social coopera-
tion – the person who pollutes violates terms of social cooperation,
despite the fact that her behaviour may have no measurable impact
on anyone in particular. Conversely, a serious harm to a person may
require a private remedy, but no response from the criminal law –
the person who injures another accidentally must pay damages, but
ordinarily faces no criminal sanction. And a single act might require
both a private remedy and a response from the criminal law, but
along vastly different scales of proportionality. A person who batters
another will be liable in damages for the actual cost of making up
the injury, but may be punished in proportion to the seriousness of
the battery, measured apart from the costs of compensation.\footnote{11
For example, the batterer will be liable in tort for any lost income resulting
from the attack, which will be calculated on the basis of the victim’s actual and
potential income. But any criminal punishment will not depend on the amount of
income lost.}

ACTION AND INACTION

To turn to the case at hand, the division of responsibility explains the
moral significance of private law’s distinction between action and
inaction. That distinction has neither the general moral significance
of the sort claimed by libertarians, nor the general lack of credentials
to serve as a moral distinction (as claimed by some utilitarians).
But it does have significance for institutions that recognize the divi-
sion of responsibility. That division leads to a certain conception of
interacting persons as concerned with pursuing their separate ends,
whether jointly or separately. When persons pursue their ends sepa-
ately, private law only requires that they avoid interfering with each
other. When they pursue them jointly, private law requires that they honour the terms of their arrangements.  

These austere requirements give expression to the idea that each person has a special responsibility for his or her own life, for they mark off the domain within which each person must take responsibility for his or her own life and avoid interfering in the lives of others. The only way that requirement can be satisfied for a plurality of persons is by making each person’s liberty and each other person’s mutually constraining. Thus within the realm in which parties bear a special responsibility for their own lives, parties are entitled to equal freedom, each allowed to pursue his or her own ends as he or she sees fit, secure against interference by others, provided that others are also entitled to a like liberty and security. Equal freedom can also be described as the idea that one person’s liberty will not be limited unilaterally by another’s vulnerability, nor one person’s security limited unilaterally by another’s choices. In order for all to interact on terms of reciprocity, a like liberty and like security must be guaranteed to all.

I’ve so far sketched out the relation between the division of responsibility and systems of private ordering. I now need to explain why this conception of interacting parties leaves no room for duties of aid. The core idea is one I have already laid out, namely that different persons pursue separate ends.  

In the first instance, tort law imposes duties of conduct, requiring people to exercise appropriate care for the interests of others as they pursue their separate ends. Each person is expected to moderate the pursuit of his or her ends in light of the security of others. Failure to exercise appropriate care exposes others to risk. Private law treats those inappropriate risks as belonging to the person who has created them. On this view, then, the boundaries between persons that all must respect are created by the idea of duty, rather than being prior to it.

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13 This is not meant as an empirical or metaphysical claim, familiar though it is. Private law conceives of persons in this way, whatever other ways of conceiving of them might also be appropriate. The justification for conceiving of them for purposes of regulating conduct comes from broader considerations of political morality, not from metaphysical argument.
There are important matters of detail here toward which I can only gesture. Most prominent is the question of how we identify which risks are imposed by which person. The risk of injury can always be represented as the joint product of the injurer’s actions that increase the likelihood of an injury given the plaintiff’s exposure and vulnerability, and the plaintiff’s actions which place him or her in the path of the peril. Had the plaintiff been elsewhere, or better protected, the defendant’s acts would be harmless; had the defendant acted differently, the plaintiff’s situation would not have exposed him or her to danger. The difficulty with this way of looking at things, of course, is that it makes everyone responsible for everything that ever happens. The distinction between what someone does and what merely happens only becomes relevant once a normative structure is imposed on it.

I have argued elsewhere that the question of whether or not a person is responsible for an injury he or she has caused depends on whether or not that person was exercising reasonable care for the safety of the injured person. I have also sought to explain reasonable care in terms of reciprocity. The required level of care is set based on the interests each of us has in both liberty and security; each of us has a liberty interest in being able to go about his or her own purposes, and a security interest in being free of injury by others. Those abstract interests in liberty and security will inevitably be interpreted in light of substantive views about the importance of particular interests in each. That interpretation is done through the familiar construct of the reasonable person. The reasonable person is neither a rational person who is effective in pursuit of his or her ends, nor the typical person. Instead, the reasonable person is the one who interacts with others on terms of reciprocity, moderating but not abandoning the pursuit of his or her activities in light of the important security interests of others. The reasonable person thus exercises appropriate care for the interests of others. If injury to others occurs despite the exercise of appropriate care, the injurer is not responsible, even if the possibility of those injuries could have been foreseen. Provided that the risk is reasonable – provided, that is, that it is compatible with interaction on terms of

reciprocity in light of an appropriate balance between interests in liberty and security – it is treated as one of life’s ordinary risks, risks which persons face in virtue of living in a world with others. On the other hand, those who fail to exercise such care behave unreasonably, and are responsible for the unreasonable risks they impose, for they have taken unreasonable risks with the safety of others. If those risks ripen into injuries, they are responsible for those injuries. The law demands that they take responsibility for such injuries by taking back the costs which they have imposed on others, even if they could not have foreseen the full extent of those costs.

To make injurers responsible for all injuries that might result from their conduct would burden liberty too heavily, for it would make each of us responsible for taking precautions against indefinitely many eventualities. The difficulty is not that liability would be too great – as it is, liability for negligent conduct may be enormous, depending on what ends up happening. The point is rather that freedom would be compromised if the law imposed a duty to exercise care against all injuries that might result from any conduct. In the limiting case, no freedom of action would remain, since virtually all actions carry some risk of injury to others. Again, leaving the cost of all accidental injuries to lie where they fall would burden security too heavily, because all would be vulnerable to the carelessness of others.

The reasonable person standard avoids both of these extremes, protecting both liberty and security. Each of us is given a like liberty and a like security: particular interests in liberty are protected, as are particular interests in security. Which interests are protected depends on substantive judgements about the importance of particular interests. Those judgements may be controversial in some cases; nonetheless, unless we make them, the problem of defining fair terms of interaction in terms of reciprocity cannot be solved.

So understood, tort liability gives expression to the idea that one person may not set the terms of interactions with others unilaterally. By protecting each person from others, while providing a like liberty for each, it defines the range within which separate persons are responsible for how their own lives go. Those who stay within that range – that is, those who behave reasonably – are not
responsible for what happens to others. Those who fail to exercise appropriate care are responsible for whatever costs they impose on others. Just as those who are careless with their own safety are left with the costs of their own injuries, so those who are careless with the safety of others are left with the cost of those other persons’ injuries.

DAMAGES

Related to these ideas of reciprocity and equal freedom is the second element of private law, namely the law of damages. The basic idea is simple: damages are remedial; their purpose is to undo the effects of one person’s interference with another’s freedom. If one person interferes with another’s ability to live a self-directing life, the effects of that interference must be borne by the person who interferes. Accident law’s focus on compensatory damages can be understood as intrinsic to this conception of interacting parties, because it says (roughly) that any risks attendant on the failure to exercise appropriate care are borne by the person whose failure to behave appropriately has created them. As a result, any injuries that result from the actualization of a risk against which those terms of interaction protect are brought home to the risk imposer.

To leave those costs where they fall would be to allow one person to set the terms of their interactions with others unilaterally, for it would be to allow injurers to pursue their ends at the expense of others. Alternatively, to hold them in common would be unjust in a different way, for it would be to allow one person to demand extra resources from the state so as to spare him the costs of looking out for the security of others. Thus, the law of private damages is required in order to guarantee a regime of equal freedom.15 Seen in this light, the law of damages is integral to the idea that each of

15 Alternatives to the fault system, such as workers compensation and no-fault automobile insurance are compatible with this general approach. Each is a system meant to guarantee that people engaging in activities that endanger others have the financial wherewithal to cover the costs of their activities. This is standardly achieved through some scheme of mandatory insurance. Once such a scheme is in place, the actuarial categories can be dictated on grounds of administrative convenience.
us has a special responsibility for our own life, because it insures
that how a person’s life goes does not depend on the carelessness of
others.

The division of responsibility thus gives rise to an idea of private
ordering – provided that just institutions are in place, how a person’s
life goes is up to that person. Institutions of private law serve
to set the boundaries of acceptable behaviour toward others, and,
when those boundaries are transgressed, to enforce remedies to that
one person’s malice or mistake does not become another person’s
problem. Private law is a scheme of what Robert Nozick calls
“historical” distribution. Nozick was wrong to suppose that such
ordering requires no background justice. But he was right to suppose
that when conditions are right, how things transpire is essential to
the question of whether holdings are legitimate.

The Rawlsian perspective on private ordering enables us to see
that private ordering is justified only in a particular context, namely
provided that people have a fair chance to lead a self-directing
life. The law of damages sustains private ordering by ensuring that
each person is responsible for how his or her own life goes, rather
than leaving people at the mercy of either natural fortune or the
carelessness of others.

I pause here to note that although this conception of damages
in terms of sustaining private ordering by correcting the effects of
failures to exercise appropriate care is hardly novel, it has fallen
from favour in much contemporary legal scholarship. This disfavour
makes the law’s distinction between misfeasance and nonfeasance
puzzling. For example, if, as many commentators suggest, we
think of the payment of damages as a sort of sanction, the legal
system’s attitude seems perverse – serious wrongs go unremedied,
while minor ones can attract massive liability. Examples like this
have led many commentators to remark on the arbitrariness of the
common law’s steadfast refusal to impose tort liability for failures

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I discuss Nozick’s argument in Chapter 2 of my Equality, Responsibility, and the
Law, supra note 14.

17 See for example, William L. Prosser, “Palsgraf Revisited” 52 Michigan Law
Review 1 (1953) reprinted in Prosser, Selected Topics on the Law of Torts (Ann
Arbor: University of Michigan Law School, 1953); and Peter Cane, The Anatomy
to rescue. The leading hornbook on tort law, for example, cites examples that are selected for the alarming extent of the defendant’s indifference to human life.¹⁸

If we think about the place of the law of damages in a system of private ordering, though, the point of a different scale of seriousness becomes clear. Thinking through the contrasts between the rationale of compensatory damages and that of criminal punishment in a system of public order lets us see why the scale of seriousness runs in the other direction when it comes to criminal sanctions.

**PRIVATE ORDERING AND DISTRIBUTIVE JUSTICE**

If we focus on the division of responsibility, private ordering is not enough. Nor are duties of non-interference. Both make sense only in the context of a system that holds certain misfortunes in common, a system that sets up important social institutions to ensure that people have the opportunities and resources needed to carry on self-directing lives. That is where certain familiar duties of aid come in – for example, the duty to support equitable schemes of redistributive taxation, so as to pay for such essentials as health and education. In calling them essentials, I mean to emphasize the ways in which they are preconditions of a person’s ability to live a self-directing life. In conceiving of them as essentials, I mean also to emphasize the way in which they are neither deserved nor undeserved, but rather provide the basis for a person’s ability to take responsibility for his or her own life. Duties of aid are best thought of as discharged by mandatory contribution to those social institutions that most determine a person’s life prospects.

The division of responsibility thus gives rise to two quite different types of duties. Private law imposes relational duties, that is, duties that run from one person in particular to some other person in particular. The duty to exercise appropriate care is owed to those particular persons who might be injured by a lack of care; the duty to keep one’s contracts is owed exclusively to those with whom one has contracted, and the duty to return a mistaken payment is owed to the person to whom the money belongs. Duties to support just

institutions are non-relational; they are owed to society at large, not to any person in particular.19

Both aspects of the division of responsibility reflect a single conception of reciprocity. Reciprocity requires that the misfortunes which stand in the way of each person being able to live a self-directing life be held in common, so that all have the wherewithal to participate as full and equal members of society. Reciprocity also requires that each person be entitled to a like liberty and like security against the acts of others.

Conceiving of a division of responsibility between important social institutions enables us to steer a path between the unacceptable alternatives of a utilitarian doctrine of negative responsibility, and the libertarian doctrine that we owe nothing to others. Once we have the division of responsibility in place (conceptually, that is) the idea that each of us has a special responsibility for how our own life goes leads directly to the idea that no party may set the terms of interaction with others unilaterally. To allow the terms to be so set – to allow the idiosyncrasies of one party to set limits on how another’s life can go – would violate the idea that each person has a special responsibility for how his or her own life goes. As between the two parties in question, one person is not his brother’s or sister’s keeper. To be sure, it may seem unfair to leave someone to bear the costs of unusual needs they might have. That is where the division of labour comes in: we as a society have a responsibility to address those special needs that limit a person’s ability to take responsibility for how his or her life goes, to choose and pursue his or her own system of ends. As between the individual and the rest of us, it is appropriate that we as a society shoulder the burden collectively. But as between the individual in need and some other particular person, no argument of this sort is available, because any such argument would violate the condition of equal freedom, which requires that any limitation on one person’s freedom be justified in terms of reciprocity.

19 The criminal law imposes both relational and non-relational duties; one’s duty not to murder is owed to particular persons but also to society at large. That is why the state is always a party to a criminal action. But the criminal law also imposes duties that are non-relational; laws governing pollution and public goods fall into this category, as do laws requiring the giving of assistance in emergencies – or so I shall argue.
To sum up, one aspect of the division of responsibility requires that people contribute to creating appropriate social institutions so as to enable all to lead self-directing lives; the other aspect requires that, provided such institutions are in place, no further obligations to confer benefits on others be enforced. To overstate the point, provided that just institutions are in place, one can say, as a matter of political morality, “I gave at the office.” Provided appropriate institutions of distributive justice are in place, no person in particular can be required to make special sacrifices for another.20

REASONABILITY AND RECIPROCITY WITHOUT RESCUE

Someone might accept, even welcome, all of this talk about reasonableness and reciprocity, but wonder why reasonable persons wouldn’t look out for the vital interests of others when they can do so at little cost to themselves. After all, a pressing security interest is balanced against a minor inconvenience. The worry here is that although the division of responsibility may well require that some costs lie where they fall, it does not seem to follow that failures to aid cannot be breaches of duties. Indeed, it might be thought that the same interests in liberty and security are at stake: each of us has a liberty interest in pursuing our own ends, without being overly occupied with perils faced by others. But each of us also has a security interest in being secure against perils in which we might find ourselves. Why not use the idea of a reasonable person to conclude that the risk of injury or death because of the failure of an easy rescue properly lies with the person who could have rescued the other? On this understanding, any small limitation on the rescuer’s freedom is justified by the contribution it makes to the freedom of the rescuee, just as any other limitation on my ability to pursue my ends is justified by a concern for the security of others.

20 I concede that this sort of view raises thorny questions about individual responsibilities in non-ideal circumstances, in particular in those circumstances in which distributive institutions are inadequate or absent. I put that matter aside because, as I shall argue below, rescuing others in emergencies should be seen as a duty to contribute to just distributive schemes, rather than as a duty owed to particular persons. So understood, most countries have appropriate distributive institutions in place for dealing with certain kinds of emergencies.
whom I might harm. My colleague Hamish Stewart put the point especially forcefully: "Even if there must be some general way of saying 'that is your problem (or the state’s problem), not mine', when one is confronted with a panhandler or with a stranger who wants to use one as a free marriage counsellor, where the stranger’s interest is in life itself and can be met with a minor impingement on one’s own projects, why doesn’t the balance between liberty and security favour easy rescue?"

But matters are more complicated. Although the reasonable person test imports substantive judgements to determine what counts as adequate care for the safety of others, it only operates within the boundaries marked by the distinction between nonfeasance and misfeasance. The reasonable person test sets limits on what risks a person may impose as a by-product of the pursuit of his or her aims, and sets out a conception of equal freedom requiring that all persons limit the pursuit of their aims in the same way. But it is a measure of the limits persons must accept as they act to pursue their aims, whatever they happen to be. It does not mandate, and cannot require, that persons adopt a particular aim or perform a particular act. It requires only that they forbear from acting in ways that will interfere with the freedom of others. The invisibility of need from the balance reflects the idea that people are free to pursue their separate ends. That idea requires a sharp distinction between limiting one’s pursuit of one’s own ends and adopting some other end. The distinction is sharp precisely because it looks neither to the ease or difficulty with which aid can be rendered on a particular occasion, nor to what would be lost if aid is not rendered. Like the parallel distinction between the precautions one must take for the safety of others, and those one need not take, the ease or difficulty of discharge on a particular occasion, and the costs to others of the failure to discharge it, are irrelevant.

That is, the reasonable person provides a way of dividing the risks of injury that accompany any interaction. That idea only makes sense against the background of the idea that those risks that arise independently of any interaction simply lie where they fall (or are held in common on some other basis). So, for example, I bear the risk that a sudden unforeseeable wave will wash me into the ocean as I walk along the beach on a calm day; I also bear the risk that I
will have a heart attack, or trip and fall in a way that puts my life in peril. In the same way, I run the risk of frostbite if I get lost in a snowstorm, even if my getting so lost is in no way my fault.

If I suffer some misfortune, I have no claim against you in particular unless there is some reason for singling you out. I cannot simply pick your name out of the phone book, or choose you because you happen to be able to pay. Instead, we must be related in some appropriate way. There are a number of ways in which we might be so related – we might voluntarily relate ourselves to each other, through contract. I might somehow become responsible for your deeds, either by making a representation on which you rely, or by exploiting some mistake you have made. I might find myself in possession of your goods (or of you). Or I might wrongfully interfere with your capacity to pursue your ends. What all of these ways of interacting have in common is that they involve persons pursuing their own ends in ways that relate them to outcomes that befall others. In each case, the effect on you is the result of my pursuit of my own ends.

That is, a system of private ordering that conceives of parties as separate persons interacting requires that it be possible to say of some outcome “it would have happened anyway” where “anyway” does not mean “regardless of what the defendant might have done, indeed even if the defendant had intervened to prevent it,” but “If defendants hadn’t been there at all.” Put slightly differently, “it would have happened anyway” is to be understood as “independently of the acts the defendant did in pursuit of his ends” not as “even if defendant had briefly abandoned pursuit of those ends.”

The same point can be made in terms of Kant’s conception of right. We are only cognizable under the aspect of right insofar as we act externally, that is, as each of us pursues his or her own ends in the world, with the attendant possibility of impinging on others as they pursue their ends. The fact that my capacity to pursue my ends is limited does not depend on whether or not you pursue your ends, and so does not set a limit on that pursuit. This is in many ways a cold and gray picture of human interaction, since it never requires one person to confer a benefit on another – if I have a hotel, and you open a successful restaurant near it, cashing in on my hungry guests, I do not have a duty to keep the hotel open, or
to forbear from opening a restaurant of my own. My pursuit of my ends may confer a benefit on you, but that conferral does not create an entitlement in you, against me. Instead, I have a responsibility to refrain from those activities which would impinge on your capacity to pursue your ends, not on your actual pursuit. I have no juridical duty to provide favourable conditions in which you might pursue those ends.²¹

Indeed, the same idea that each person has a special responsibility for how his or her own life goes finds expression in another doctrine of private law that many have found troubling, the doctrine according to which an injurer is not responsible for an injury that is the result of an unusual sensitivity on the part of the injured person. So I do not need to stay home, even if the sight of me makes you break out in hives. Nor does your notifying me of your sensitivity make me answerable for that sensitivity. If you tell me of a severe allergy, I can decline to serve you in my restaurant, and by serving you I become responsible for your reaction. Outside of situations in which I can agree or decline to protect you from some specific risk, I am not responsible for injuries resulting from your unusual sensitivities, even if I can look out for them at little or not cost to myself. This is true even if you inform me of it. I am not rendered responsible simply by knowing of it, if I was not responsible for it in advance. Instead, as between the two of us, it is simply your problem.

To say that as between the two of us something is simply your problem may seem cold and unfeeling. Worse, it may seem morally incoherent, since your ability to use your freedom – presumably the only reason you would value that freedom – is set by chance. If you are vulnerable to ordinary environmental conditions, you will be less free to pursue your ends than others are, even though legal institutions purport to protect your freedom and the freedom of others equally. This remains the case regardless of how you came to be so vulnerable. Why, you might ask, is it all right for the extent of your freedom to depend on your unusual sensitivities, but objectionable for the extent of mine to depend on the very same sensitivities? It looks like sleight of hand to focus on which of us is so affected; if freedom is so important that it should not depend on individual

sensitivities, whose freedom it is that so depends may seem to be beside the point.

The difference is while there is surely a point of view from which it is arbitrary in both cases, in the case where I am asked to compromise my freedom for the sake of your sensitivity, the terms of my freedom are set unilaterally by your sensitivity. You may ask why you should be left with fewer options than others enjoy, since your situation is not of your own making. Your question has real force, but less force, I think, than my question as to why I should be made to bear the special burden of your sensitivity. To be sure, if we are all part of some larger whole so that our welfare is interchangeable, my question lacks force. But freedom is different, in part because freedom is in each case the freedom of someone in particular. However arbitrary the limits on your freedom might be, it is difficult to see how that arbitrariness is addressed by shifting those limits onto me. This point retains its importance even in those cases where the actual cost to me is trivial.

There is, however, a different solution to the limits placed on your ability to exercise your freedom, about which I will have more to say below. It is not to place the burden on me in particular, but to spread it more broadly. That is, there are compelling reasons in favour of holding certain sorts of misfortune – such as those you face in virtue of your sensitivity – in common, and treating them as everyone’s problem, which turns out to have arbitrarily befallen one person in particular. By holding them in common – something that can be accomplished through broad-based taxation, for example – we each ensure that the value of important freedoms is not compromised. But that argument should not be confused with the claim that some particular person should bear its costs. We will examine its implications for the issue of rescue shortly.

“EXTERNALITY” AND FORESIGHT

An enforceable duty to make easy rescues sits uneasily with the idea of equal freedom in another way as well. Ordinarily, if one person has a duty to avoid injuring others in some way, that duty is not changed by the ease or difficulty by which it can be discharged on that very occasion. If an activity is unacceptably risky to others,
those who engage in it are liable for the losses they create, whether or not it would be easy to render it safer in some particular case. (This point should not be confused with the idea that in determining whether something is unacceptably dangerous we need to consider the importance of the interests in both liberty and security that are at stake. That balance is struck in terms of a representative reasonable person, who has interest in both liberty and security. It is not done on a case by case basis, measuring the liberty cost to a particular injurer against the security interest of a particular victim. To do so would be at odds with the idea that each of us has a special responsibility for how our own life goes, for it allows the security of some to be sacrificed to the convenience of others.) The cost to the particular injurer of avoiding a type of injury is irrelevant to the question of whether that injurer is under a duty to avoid those injuries. In just the same way, where there is no duty to avoid exposing others to a particular risk, the fact that the risk could be reduced easily on a particular occasion does not impose a duty where there was none before.

The same reasoning applies to rescues: the fact that a rescue would be easy to make does not create a duty where there was none before. To suppose that it does is to suppose that a person's entitlement to be rescued varies with the rescue's subjective difficulty for the rescuer. That is, it is to suppose that the rescuee's right to aid depends upon its cost to the rescuer. Such an idea is foreign to the idea that neither party may set the terms of interaction unilaterally. Its natural home is in the very different idea that duties are imposed as some sort of scheme to promote the overall welfare – where costs are too high, the duty is waived. It is to reject the idea that each person has a special responsibility for how his or her own life goes in favour of the idea that all are responsible for how lives go in general, even if we are generally situated so that it is easiest to help ourselves.

It might be thought that talk about freedom is misleading here, since making an easy rescue does not actually compromise the rescuer's freedom in any way, and, where life is in peril, it makes all the difference in the world to the freedom of the person in peril. But the point is not that rescuing is too big an imposition on freedom, but that the grounds that make rescue morally significant, namely need,
are invisible to private law for important systematic reasons. The costs of rescuing on a particular occasion may be trivial, but private law pays no heed to ease or difficulty on particular occasions. As a result, the ease or difficulty of discharge on a particular occasion cannot create a duty where there was none before. Although the invisibility of need from private law is perhaps troubling in the case of rescues, it is, as I have argued, fundamental to the idea that each of us has a special responsibility for how our own life goes.

Here again we see the difference between a conception of tort law that focuses on fair terms of interaction and one that focuses on costs. From the point of view of costs, the costs of discharging a duty on a particular occasion might well be relevant to whether there was a duty on that occasion. From the point of view of fair terms of interaction, they are not.

To sum up. I have so far argued that there can be no private law duty to rescue. To impose such a duty would violate the idea that each person has a special responsibility for his or her own life. That idea requires that we treat losses and perils as lying where they fall unless they are the results of interactions between persons with separate ends. To impose a duty to rescue is at odds with that idea in three ways. First, it makes the demands placed on potential rescuers depend upon the particular vulnerabilities of those in need. Second, it makes the rights of those who might be rescued depend upon the ease with which a particular rescuer might offer aid. Third, it makes one person responsible for another's peril by becoming aware of it. In each case, the difficulty comes with the ways in which the existence of a duty depends upon the ease or difficulty with which the rescuer can contribute to what is presumed in advance to be a common project. The idea that each person has a special responsibility for how his or her own life goes is just the idea that (once basic liberties and enabling resources are in place) such common projects can fall into only two categories: those into which parties enter voluntarily, and those common projects necessary to create and sustain just institutions. The former may involve duties to particular persons, but only involve them if they are undertaken voluntarily; the latter are non-voluntary, but do not involve duties to particular persons.
So much the worse for private ordering, some might say. I think there is a good deal to be said in favour of private ordering, though only within a certain context. The idea that each person has a special responsibility for how his or her own life goes is only morally significant provided that people have a fair chance to make what they will of their lives. In principle, the conceptual apparatus of private ordering can be applied to any sort of interaction between persons. So we can say, for example, as between the two warlords in a Hobbesian state of nature, one may not take it upon himself to deprive the other of his wrongful gains, or to treat his security with indifference. In this sense, distributive concerns and background conditions need not be addressed for us to ascertain who has done what to whom. Again, there is a perspective from which we can say that, as between two thieves, the one who steals from the original owner of the goods has a higher claim to the stolen goods than the one who steals those goods from the first thief; there is also a perspective from which we can similarly say that the careless driver who injures the stolen property cannot avoid liability by pointing out that the damaged property was stolen. As between the two parties, only doing and suffering matter. But although we can say all of these things abstractly, and apply the apparatus of private ordering in an equally abstract way to these cases, we can also insist that ideas or private ordering only have a claim on our normative interest provided that some semblance of just institutions are in place. Any interaction between persons can be treated de novo, as though no transactions had ever taken place before. But it is only if just institutions are in place that there is any normative reason to intervene on behalf of those who have been injured. But what does background justice require?

PUBLIC INSTITUTIONS – OR HOW TO GIVE AT THE OFFICE

A system of purely private ordering strikes many as too harsh, and for good reason. Unless there is some public ordering standing in the background, there is little reason to take an interest in questions of responsibility and corrective justice, for without some measure of distributive justice, we may well conclude that the benefits and burdens the parties had at the outset were the result of factors just as
arbitrary as the shift brought about by a particular interaction of the parties. As a result, it may make sense to treat certain misfortunes for which nobody is responsible as everyone’s problem, to hold them in common. Holding misfortunes in common is a fundamentally different strategy than making some particular person bear them. If the risk (or misfortune) of ill health is held in common across a society – through socialized medical care, for example – no particular person is singled out to bear the costs of some other person’s misfortune. Instead, the burdens are shared among a large number of people, either in equal shares, or perhaps partially in proportion to their ability to pay, through a progressive tax system. The key point here is that the idea that one person in particular must bear the costs of another’s misfortune is inseparable from the idea of private ordering. Whether private orderings are complete or only partial, shifting costs is only an issue within private ordering.

RESCUE AS A PUBLIC INSTITUTION

I now want to argue that there can, and should be a duty of easy rescue enforced by the criminal law. The crucial feature of any such duty, however, is that it is not owed to the particular person being rescued. Instead, it is owed to society in general. That is, the duty to rescue is best thought of as part of the more general duty to sustain just institutions, where just institutions are ones that ensure that persons have the capacity to lead self-directing lives. Such policies fall into several categories. One category includes redistributive taxation. The duty to pay one’s taxes is not owed to the recipients of social services; it is a duty that has the character and magnitude that it does because of the existence of appropriate institutions. Another category includes public provision of police and fire protection and emergency services more generally. It is the latter sort of scheme that explains the existence of an enforceable duty to rescue.

Discussions of the law’s appropriate attitude towards rescues often quote disapprovingly from McCauley’s “Notes on the Indian Penal Code”. McCauley argued that there could be no duty to rescue, because it would require unlimited aid to those in need. McCauley’s mistake, it seems to me, comes from looking at the
question of criminalization from a private law conception of inter-
action. As we’ve seen, private law treats all cases of conferring
benefits as alike. But public law does not, and need not. Taxation
provides a familiar but compelling example. The fact that I can be
taxed to pay for social services for those in need, or a fire depart-
ment that protects everyone, does not mean that I must give away
my resources whenever someone else needs, or wants them more.
Instead, I can be compelled to contribute to institutions of social
coordination without being required to contribute directly to those
who need or want my help. Once we recall this familiar point, it
becomes possible to draw a principled line between enforceable and
non-enforceable duties of aid. That line demarcates the tasks carried
out by legitimate institutions of distributive justice.

Emergency rescues are like the other tasks discharged by insti-
tutions of distributive justice in some respects, but unlike them in
others. They are like them inasmuch as they are necessary to enable
people to lead self-directing lives. They are also like them in that
they require considerable coordination. But they are unlike them
insofar as they do not always consume scarce resources. Unlike
providing medical care for a person with water in his lungs, for
example, throwing a ring buoy to a drowning swimmer does not
consume resources that might be put to other uses. Instead, the
emergency begets the need. (This is not always the case – main-
taining a fire department and ambulance service does consume
scarce resources.)

But the similarities are more important than the differences: a
duty to rescue is important because it is a need-based task that
sustains the conditions of equal freedom. As such it is a non-
relational duty, a duty owed to society at large rather than to some
particular individual. Those who fail to contribute breach a duty to
society as a whole, rather than to the particular person who is not
rescued. Again, the penalties that attach to failures to contribute to
schemes of social cooperation are typically not tied to the direct
effects of those failures on other persons. Even if tax evasion led to
readily identifiable consequences for some other person in partic-
ular, the tax evaders would not be liable in damages. The same
point applies to those who fail to move out of the way of emergency
vehicles – a fine, even a large fine, might be an appropriate response,
but liability for whatever catastrophe might have been prevented is not.22

SINGLING PEOPLE OUT

One question remains: a duty to rescue seems different from the duty to, for example, pay one’s taxes, because the duty to rescue falls unevenly; it falls on the person who happens to be in a position to effect a rescue. I want to take up this challenge by endorsing the converse of a claim once made by Robert Nozick. Nozick quipped that taxation is on a par with forced labour; I want to accept the equivalence and argue that the forced labour involved in making an easy rescue is on a par with taxation23 – a duty of a citizen in virtue of the existence of legitimate political institutions. Weinrib talks about a duty to rescue as a free-floating duty of beneficence, which somehow “descends” on particular persons. The image of duties descending is an appealing one, but the free-floating duty is not one of beneficence. Nor is it a duty that runs from one individual to another.

Instead, it is a social duty to contribute to important institutions, whether that contribution is required by the fact that all benefit – as in the case of laws prohibiting pollution, for example – or because justice requires the creation of institutions to provide for basic needs – as in the case of the payment of taxes to support education. Some cases may include aspects of two or more of these models, such as the duty to build buildings in conformity with fire codes, or to accept a vaccination against an infectious disease.

We presumably each have a moral obligation to move out of the way of emergency vehicles, quite apart from any social institutions

22 The example I am imagining involves a driver who continues to drive, not one who is blocking other traffic which includes an emergency vehicle. In such a case, the driver would have failed to contribute to a scheme of social coordination for dealing with emergencies, yet not be liable in damages to the person whose emergency treatment was delayed. This seems to be the right result from the point of view of the law, but it does not appear to have been addressed, let alone resolved, in the case law. It is not surprising that no such cases have been litigated. Even if there was a duty owed, for example, to the person being transported by the ambulance, causation in such a case would almost always be impossible to prove.

23 I’m grateful to Frances Kamm for suggesting this wording.
that may be in place. In the same way, perhaps we have to allow them to cross our property, though may charge them for the damage that they do. But the grounds for penalizing those who fail to move out of their way is presumably that “everyone knows” we have this way of dealing with emergencies, and that this way of doing things requires people to make small sacrifices on particular occasions in which they find themselves in the right sort of situation.

The examples I have just offered are sometimes thought of as duties that arise in the absence of institutions, or on those occasion in which an institutional response is unavailable. I want to take up Joel Feinberg’s suggestion that, quite to the contrary, such duties are part of the coordinating apparatus of social institutions.24

Consider some other examples of legal duties that select people on the basis of their availability and capacity. Some familiar examples include military service in time of war, and conscription to build a dyke in a flood, or fight a forest fire that threatens a town. These are large-scale examples where many people are required, but they are selected on the basis of their availability. Other examples select fewer people, perhaps a single individual: The police may commandeer my vehicle, or deputize me to stand lookout. These examples are by their nature exceptional – we normally have other, more systematic, ways of making sure that people make their contributions toward projects required for the security of all, such as police and fire services, and we ordinarily have professionals charged with carrying out those project. When there isn’t sufficient time for ordinary arrangements, people can be pressed into service.25 Again, consider Feinberg’s example of the duty to report a

24 I am not certain whether this is Feinberg’s view; he sometimes describes duties of easy rescue as arising where the emergency is one for which there is insufficient time for appropriate institutional response. Yet in the concluding paragraph of his discussion, he says of such duties that “a sound system of social coordination would assign them to everyone. A citizen’s duty to call the fire department, after all, is a vital part of our coordinated system of fire-fighting.” The present essay can be thought of as drawing out some of the implications of Feinberg’s insight. See Joel Feinberg, “The Moral and Legal Duties of the Good Samaritan” in his Freedom and Fulfilment (Princeton: Princeton University Press 1992), p. 196.

25 The relation between methods of selection and the urgency of the situation helps to explain why military conscription is so frequently controversial. First of all, in many countries it is a standing policy, rather than a response to an
fire: that duty presupposes the existence of a fire department charged with putting out fires; it is a duty to do a small part in relation to an ongoing social structure. Some people are charged with putting out fires (those people are specially trained to do so, and paid based in part on the dangers they face); the remainder of the citizenry is charged with both fire prevention and informing the fire department in case of fire. Those who fail to report a fire undermine the ability of the fire department to respond to emergencies. Like those who fail to pay their taxes, they are liable for penalties. But holding them responsible for that failing does not entail that they are responsible for the full extent of the loss which they could have prevented. Again, the medieval English duty to raise the hue and cry when one spotted a crime in progress has a similar structure; it arises within a practice of dealing with some class of social problems. Those who fail to raise the hue and cry wrong society, not just the particular crime victims. When they refuse service, they can be coerced, just as they can be coerced if they refuse to contribute to more everyday institutions of social coordination.

A criminal penalty for those who fail to aid thus has many analogues. The person who refuses to build the dyke or throws his keys down a sewer grate so that the police many not commandeer his car is answerable to society at large, not to the particular person who suffers injuries or losses as a result of his stubbornness. In the same way, a duty to rescue should be thought of on the model of these other duties imposed by a scheme of social coordination. Like the duty to pay one’s taxes, or the duty to report a crime, the discharge of such a duty serves to sustain important social institutions, as well as to benefit some particular person or persons. The point of focussing on the institutional nature of any such duty is that it draws our atten-

emergency. Second, in many countries the urgency and peril of the situations is controversial, or dubious. Indeed, the questionable motives that sometimes lead governments to conscript soldiers may offer an argument of policy against military conscription – it may be thought too dangerous in fact. But any such arguments do not undermine the idea that in extreme circumstances in which ordinary arrangements break down, extraordinary demands may be placed on individuals who are selected for no better reason than their availability.

tion to the ways in which the duty has the structure it does because of the social institutions that are already in place.\textsuperscript{27}

CONCLUSION

I have argued that, for systemic reasons inherent in the idea of private ordering, those who fail to make easy rescues cannot be held liable in tort for their failures. Those reasons are expressions of the idea that each of us has a special responsibility for how his or her own life goes, an idea that, I argued, allows people to ignore the needs of others as they pursue their separate ends. I have also argued that the criminal law can be used legitimately to enforce a duty to rescue. It might be thought that I have given with one hand, only to take away with the other. If demanding easy rescues is too much of a violation of freedom in the tort context, why is it an acceptable demand in the context of the criminal law? The answer is that demanding easy rescues does not, in fact, interfere with a person’s pursuit of his or her own ends. Hence imposing such a demand via the criminal law does not actually abridge anyone’s freedom. Tort law lacks the resources to limit duties of aid to those cases in which the interference with freedom is small. As a result, adding such a duty to tort law would wreak havoc with its structural core. To do so would interfere with freedom.

University of Toronto
215 Huron Street #1029
9th Floor
Toronto, ON M5S 1A1
Canada
(E-mail: ripstein@chass.utoronto.ca)

\textsuperscript{27} Ordinarily, the violation of a criminal statute gives rise to civil liability under the doctrine of negligence \textit{per se}. As a result, it might be thought that civil liability enters through the back door, in virtue of the existence of a criminal statute imposing a requirement, and the failure to discharge it leads to avoidable injury. I want to suggest otherwise, because although the proposed criminal statute would aim to save lives and prevent injuries, it is best thought of as a requirement to contribute to a scheme of social cooperation. Like other cases in which someone fails to contribute appropriately, either by failing to pay taxes or call the fire department, life may be lost as a result of the failure to discharge one’s duty, the purpose of which is to save lives. Just as the breach of those duties does not give rise to civil liability, so too the breach of a duty of easy rescue need not.