

Laura Valentini

Social Samaritan justice: when and why needy fellow citizens have a right to assistance

**Article (Accepted version)
(Refereed)**

Original citation:

Valentini, Laura (2015) *Social Samaritan justice: when and why needy fellow citizens have a right to assistance*. [American Political Science Review](#). ISSN 0003-0554

DOI: [10.1017/S0003055415000490](https://doi.org/10.1017/S0003055415000490)

© 2015 [American Political Science Association](#)

This version available at: <http://eprints.lse.ac.uk/64612/>

Available in LSE Research Online: December 2015

LSE has developed LSE Research Online so that users may access research output of the School. Copyright © and Moral Rights for the papers on this site are retained by the individual authors and/or other copyright owners. Users may download and/or print one copy of any article(s) in LSE Research Online to facilitate their private study or for non-commercial research. You may not engage in further distribution of the material or use it for any profit-making activities or any commercial gain. You may freely distribute the URL (<http://eprints.lse.ac.uk>) of the LSE Research Online website.

This document is the author's final accepted version of the journal article. There may be differences between this version and the published version. You are advised to consult the publisher's version if you wish to cite from it.

Social Samaritan Justice:^{*}

When and Why Needy Fellow Citizens Have a Right to Assistance

Laura Valentini

London School of Economics and Political Science

Abstract: In late 2012, Hurricane Sandy hit the East Coast of the U.S., causing much suffering and devastation. Those who could have easily helped Sandy’s victims had a duty to do so. But was this a rightfully enforceable duty of justice, or a non-enforceable duty of beneficence? The answer to this question is often thought to depend on the kind of help offered: the provision of immediate bodily services is not enforceable; the transfer of material resources is. I argue that this double standard is unjustified, and defend a version of what I call “Social Samaritanism.” On this view, *within* political communities, the duty to help the needy—whether via bodily services or resource transfers—is always an enforceable demand of justice, except when the needy are reckless; *across independent* political communities, it is always a matter of beneficence. I defend this alternative double standard, and consider its implications for the case of Sandy.

Introduction

Consider the following two stories, which recently appeared in the media.

Story 1: On October 29, 2012, Glenda Moore was driving her Ford Explorer away from Hurricane Sandy, which was ravaging Staten Island. Her children, Brandon, 2, and Connor, 4, were with her. Ms Moore’s car got stuck. She and the children tried to reach for dry land, but the boys got pulled away by the current. Ms Moore cried for help, knocking on several doors. Her requests were ignored. Her children’s bodies were found a few days later. As was pointed out in a number of news articles, the bystanders who could have easily helped Ms Moore—e.g., by taking her in and calling the emergency services—but did not, acted wrongly.¹

^{*} Laura Valentini, Associate Professor of Political Science, London School of Economics and Political Science, London, UK (l.m.valentini@lse.ac.uk). I am grateful to Cécile Fabre, Joe Mazon, Mike Otsuka, Miriam Ronzoni, Andrea Sangiovanni, and Anna Stilz for reading and commenting on an earlier version of this article. I also thank the audiences at the Princeton workshop on Justice and Beneficence, the UCL Priority in Practice Workshop, the Aalborg conference on “Themes in Contemporary Political Philosophy,” the Turku Politics Seminar, the Warwick Political Philosophy Workshop, the LSE Best-of-POTY seminar, the 2014 Oxford Political Thought Conference, and the MSPT seminar at the Australian National University—particularly Matthew Clayton, Simon Cotton, Luara Ferracioli, Pablo Gilabert, Robert Jubb, Andrew Mason, Thomas Parr, Massimo Renzo, Adam Slavny, and Gerard Vong—for questions and comments. I am especially grateful to the reviewers of this article and the Editors of the APSR, for their critical scrutiny and helpful suggestions, and to Christian List for his support and continued intellectual engagement with my work.

¹ I am here assuming that Ms Moore’s request for help could not have been misinterpreted as a criminal attempt to gain access to others’ property for unlawful purposes.

They behaved as “bad Samaritans.”² Since in the state of New York the moral duty to help needy strangers is not legally enforceable, the negligent bystanders were immune from prosecution (Silver 2012).

Story 2: On January 28, 2013, the U.S. Congress approved a bill setting aside \$51 billion to aid Sandy’s victims. The governors of the affected states—New York, New Jersey, and Connecticut—acknowledged their fellow citizens’ “willingness to come to [their] aid as [they] take on the monumental task of rebuilding.” President Obama praised Congress for “giving families and businesses the help they deserve” (Hernandez 2013). Revenue obtained through coercive taxation was thus channelled to assist hurricane victims, who were perceived as having an *entitlement* to it.

One could say much about each of these stories. I want to focus on an important ethical question that they raise when taken together: the status of the duty to help needy strangers—i.e., individuals one does not personally know—at reasonable cost to oneself (henceforth “duty to help the needy”). This duty is at issue in both stories, yet its moral status differs across them. In the first story, the duty is treated as a matter of private *beneficence*. In the second, it is treated as generating rightfully enforceable demands of *justice*: the needy have a legal right to some of the resources of the better off. Is this disanalogy justified? More generally, under what conditions is the duty to help the needy not merely a demand of personal morality, but also a rightfully enforceable demand of justice?³

In this article, I examine different answers to the latter question—namely different views about what I call “samaritan justice”—and conclude that while the mode of performance of the duty to help the needy (bodily services vs resource transfers) makes no difference to its nature, societal membership does. Specifically, I argue that everyone has moral duties of *beneficence* to help the needy, independently of whether the needy belong to one’s community, but only fellow members of society have rightfully enforceable, *justice-based* duties to assist each other when in need.

The article is structured as follows. I start by putting the present topic into sharper focus, and offer a brief characterization of the distinction between duties of justice and duties of beneficence. I then set out some important desiderata that any plausible account of samaritan justice should satisfy. Next, I discuss four such accounts: Individualist Samaritanism, Social Samaritanism, Universalist Samaritanism, and Revised Social Samaritanism. I argue that, judged by our desiderata, the last of the four is superior to the first three. Subsequently, I consider “Anti-samaritanism,” the view that the duty to help the needy is never a matter of justice, and argue that only a restricted version of that view, which applies to the reckless needy, withstands scrutiny. I then combine the conclusions reached in the course of my discussion, and defend what I call

² The term famously derives from the “parable of the good Samaritan” (Gospel of Luke, 10: 29-37), in which a Samaritan (an “outsider”) selflessly assists a needy stranger who has been beaten and robbed on the road from Jerusalem to Jericho.

³ For related discussions, see Fabre (2002), Waldron (1986), and Øverland (2009).

“Qualified Social Samaritanism.” On this view, *within* a given political community—but not across *independent* political communities—the duty to help the needy is not only a matter of beneficence, but also a rightfully enforceable demand of justice, except when the needy’s plight stems from their own recklessness. Applied to the case of Hurricane Sandy, Qualified Social Samaritanism implies that (i) current legal practice ought to be modified so that “bad Samaritans,” like those who refused to help Ms Moore, may be prosecuted for what they did (not do) and, (ii) in line with current practice, members of U.S. society have rightfully enforceable duties of justice to transfer resources to Sandy’s victims. Finally, I consider objections and conclude.

Let me emphasize that the article is meant to offer a general framework for thinking about when the duty to help needy strangers qualifies as a duty of justice, and thus remains largely silent on matters of institutional design and policy-making. Moreover, the contribution of the article is not exhausted by the particular substantive view defended in it. Even those who remain unpersuaded by Qualified Social Samaritanism can benefit from the article’s systematic articulation of alternatives, and of their respective theoretical virtues and vices.

Justice, beneficence, and the needy

As Peter Singer (1972) famously put it, it would be morally unacceptable for bystanders to let a child drown in a shallow pond, when saving her would only cost them the inconvenience of getting their clothes wet. Similarly, it would be morally unacceptable for the world’s privileged to cling to their surplus resources, when transferring them to the world’s poor would save many lives. In short, it is beyond doubt that we have duties to help needy strangers when this is not too costly to us. What is at stake in the present discussion is the nature of these duties. Are they a matter of *beneficence* or also one of *justice*? Since justice and beneficence are different kinds of moral concerns, our answer has important implications.

Duties of justice have a specific function. They demand that we respect each other’s entitlements to an equal sphere of personal sovereignty or freedom, within which we may pursue our conceptions of the good protected from interference (Lamont 1941; see the account of justice in Kant 1999/1797; Stilz 2009; Rawls 1999). The function of duties of justice, in turn, explains their distinctive features: rights-correlativity and rightful enforceability (Buchanan 1987; Loriaux 2006; Valentini 2013).

First, duties of justice are *owed* to particular others, who are entitled to their performance: they are *correlative to rights*. For instance, when a burglar breaks into my justly owned property, he violates my rights: he interferes with my sphere of freedom and attempts to take possession of my means to pursue his own conception of the good (Ripstein 2004a; 2006, 9–10; Feinberg 1986, chs 18–19). Second, duties of justice are *rightfully enforceable*: no wrong is committed when the bearers of these duties are forced to act on them.⁴ After all, when agents are coerced in the name of justice, they

⁴ I am focusing on justice “politically” understood. For example, promises give rise to rights (hence, in some sense, to claims of justice), but promise-based rights are not rightfully enforceable.

are coerced for the sake of protecting or restoring others' spheres of freedom (Kant 1999/1797; see Ripstein 2009, 55ff.).

Unlike duties of justice, duties of *beneficence* are *neither correlative to rights, nor rightfully enforceable* (henceforth “enforceable” for short). They do not demarcate our rightful possessions, but demand that we lead our lives with appropriate concern for the good of others, by sometimes using what we rightfully possess to benefit them (Barry 1991). When I am under a duty of beneficence, none of the recipients has a *right* to be helped by me. Moreover, duties of beneficence may not be enforced without wrongdoing. Their enforcement is always *pro tanto* wrong—i.e., wrong in at least one respect, though susceptible to being outweighed by other considerations—since it involves invading duty bearers' spheres of freedom. To illustrate, while it is certainly wrong not to act on our duties of beneficence, so long as we are rightfully entitled to what we possess, it is also wrong to *steal* resources from us to promote others' good, even if promoting others' good is a morally obligatory end we wrongfully neglect. Two wrongs, after all, do not make a right.

Since the target of duties of beneficence is—within limits—dependent on duty-bearers' understanding of what it is to promote the good of others, in a world with many competing conceptions of the good, these duties are a diverse set. For instance, planting new trees in areas plagued by forest fires and donating money to art galleries may each be done in fulfillment of one's duties of beneficence. The duty to help the needy, then, pertains to cases of particularly urgent beneficence, where “promoting the good of others” in effect amounts to rescuing them from misery, whether through bodily actions—as in the drowning-child case—or resource transfers—as in the case of the poor (Fabre 2002, 128–129).

Crucially, even the more urgent duties of beneficence, targeting needy strangers, retain the features of non-rights-correlativity and non-rightful enforceability. Now, the idea that people have a right to do wrong—e.g., to vote for political parties that fail to promote just causes, to refrain from donating to worthy charities and so forth—is familiar and *prima facie* plausible (Waldron 1981). But the suggestion that a wrong *so serious* as a failure of easy rescue could be protected by a right seems problematic. If we go back to Singer's scenario, it is hard to resist the intuition that bystanders have justice-based duties to rescue the child. The opposite suggestion, namely that bystanders have a right to refrain from rescuing the child, seems morally dubious.

To establish whether this intuitive judgement can be vindicated, we need to answer the following question: Under what conditions, if any, does the duty to help the needy qualify not only as one of beneficence, but also as one of justice? Different answers to this question, in turn, offer different accounts of “samaritan justice.”

Desiderata

Before moving on, let me make explicit the desiderata that a good account of samaritan justice should meet. Three are particularly important.

(D1) Fit with evidence: An account of samaritan justice should fit at least some of our most strongly held considered moral judgements.

For instance, if our account of samaritan justice implied that slavery is sometimes just, we would probably reject it on grounds of lack of fit with the strongly held judgement that “slavery is always unjust.” To be sure, considered judgements only provide prima facie evidence in support of a given account of justice. On reflection, some such judgements might have to be abandoned in the course of the process of “reflective equilibrium.” Yet, an account that systematically clashed with a wide range of strongly held judgements about its subject matter would be unsatisfactory (Rawls 1999; Daniels 2013; see McDermott 2008).

(D2) Explanatory adequacy: An account of samaritan justice should bear the right explanatory relation to the evidence.

There are many ways in which an account of a given subject matter X may fail to explain the evidence. For instance, the explanation offered might: (i) account for only part of the evidence and thereby be incomplete, (ii) fit the evidence but in a far-fetched or unilluminating way, (iii) simply assert the phenomenon it aims to explain, thereby being merely stipulative, and/or (iv) fit a specific type of case without being generalizable to relevantly similar cases, thus being *ad hoc*. An account of samaritan justice that displayed one or more of these explanatory inadequacies would be unsatisfactory.

(D3) Consistency with theoretical fixed points: An account of samaritan justice should be consistent with widely accepted pieces of theoretical apparatus.

For example, the account should satisfy the “ought implies can” proviso, according to which we can have a moral obligation to do X only if we are capable of doing X. Similarly, it should be consistent with the claim that only moral agents—as opposed to inanimate objects or agents not capable of moral reasoning—can bear duties; and so forth.

D1 to D3 are familiar desiderata that any theory, whether positive or normative, should satisfy. When it comes to debates about samaritan justice, the particular piece of prima facie evidence we are trying to explain—or “ground/justify,” as philosophers sometimes say—is the intuitive judgement that, in easy rescue cases, bystanders have justice-based duties to help the needy. A satisfactory explanation, in turn, will have to bear the right relation to the evidence, and not clash with theoretical fixed points. If no account meeting these desiderata can be found, the intuitive justice-based duty to assist will remain unvindicated, leading us to conclude that there are no easy rescue cases in which that duty exists—despite our intuitions to the contrary.

Individualist Samaritanism

Some scholars start from the uncontroversial observations that: (i) needy strangers’ ability to pursue their conceptions of the good is severely compromised, and (ii) third parties have duties to help them at reasonable costs. They then conclude that

considering these duties a matter of justice, hence enforceable and correlative to rights, is most in tune with their aim and stringency.

In this vein, Pablo Gilabert (2010) argues that, even from a Kantian perspective, need that can be easily met generates justice-based duties to help.⁵ Similarly, Cécile Fabre claims that if “the needy have a right, as a matter of justice, to some of the resources of the well-off,” then “the imperilled [also] have a right, as a matter of justice, to the bodily services of those who are *in a position to help*” (Fabre 2002, 129 and 142, added emphasis; see also Feinberg 1984, 60).⁶ To return to the tragic event with which we started our discussion, on this view, Ms Moore had an enforceable right to assistance against those bystanders who could have easily helped her. If we assume that one of them was named Lily, it would then follow that Ms Moore had a right to be assisted by Lily, among others.

Since this view conceptualizes the justice-based duty to help the needy as an obligation that binds given individuals, I name it Individualist Samaritanism.

Individualist Samaritanism: The needy have an enforceable right to help against third parties, if the latter are *in a position* to help them at reasonable cost to themselves.

Despite its undeniable intuitive appeal, Individualist Samaritanism fails to vindicate the rights it claims to establish. Why? Because it grounds the needy’s rights to assistance in third parties’ “being in a position to help at reasonable costs.” Problematically, for any provider of help there are countless candidate recipients. For instance, Ms Moore is not the only needy person whom Lily—or anyone similarly positioned—*is in a position to* assist without too much sacrifice. There are hundreds of needy others Lily could help, say, by making small donations to targeted charities. Satisfaction of the condition “being in a position to help at little cost” does not allow us to identify Ms Moore (or any other needy person) as the *specific individual* whom Lily (or any other potential rescuer) ought to help. The necessary link, matching givers and recipients of help, is missing. So stated, Individualist Samaritanism fails to explain the moral phenomenon it aims to vindicate.

It might be suggested that Individualist Samaritanism can be easily repaired by grounding the needy’s rights to assistance not in third parties’ ability to help simpliciter, but in their being “*in a unique position*” to help.⁷ Appeal to uniqueness allows Individualist Samaritans to match particular givers to particular recipients of help and is, in this sense, an improvement. However, it is also implausibly *ad hoc*: it confines the applicability of the view to a very narrow set of cases, involving no more than *one* party in a position to offer assistance. It suffices for a second or third capable bystander to

⁵ Gilabert’s discussion, in turn, draws on David Cumminskey (1996).

⁶ Fabre (2002, 129, 135) mentions, but later abandons, the qualification “needy through no fault of their own.” It is thus unclear whether she endorses it.

⁷ I am grateful to an anonymous reviewer for suggesting this amended version.

turn up, that Individualist Samaritanism can no longer ground the needy's putative right to assistance, since none of the third parties is in a *unique* position to help them.⁸

This modification would thus render Individualist Samaritanism in-principle unable to vindicate the needy's rights in most real-world easy-rescue scenarios, where multiple bystanders are involved. Ms Moore's story is, of course, a case in point, as is the infamous murder of Kitty Genovese, which reportedly occurred in the presence of several idle bystanders (Martin 1989).

In response to this difficulty, proponents of Individualist Samaritanism might replace reference to third parties' being "in a unique position" to help, with reference to their being in a "*privileged position*" to do so. This would allow them to extend the coverage of their view to a much larger set of easy rescue cases. These are the cases in which, as Barbara Herman (1984, 595–596) explains, failures to help reveal a lack of commitment to responding to others' needs.⁹ Although we often have discretion regarding when and how to help others—e.g., by donating to this or that charity, by volunteering for this or that organization, on this or that day and so forth—in easy-rescue scenarios, this discretion typically disappears. One cannot (i) take the moral imperative of helping the needy seriously, (ii) be in a privileged position to rescue someone without much sacrifice, and (iii) remain inert. This explains why bystanders have a *duty* to assist those needy whom they are in a privileged position to help. But does it also explain how those needy acquire *rights* to be helped by those bystanders? I doubt so.

From a *formal* point of view, the rights asserted by Individualist Samaritanism are *special*: they hold between particular third parties and particular needy strangers, not between all human beings. Formally special rights, in turn, are typically grounded in special relationships—whether voluntary or non-voluntary. For instance, children have special rights against their parents by virtue of their family membership; contractual parties have special rights against each other by virtue of having voluntarily signed a contract; fellow citizens have special rights against each other by virtue of their common societal membership, and so forth (Hart 1955, 183; O'Neill 1996, 152). But Individualist Samaritans assert that needy strangers have formally special rights against third parties in the absence of special relationships. It thus remains unclear where these rights "come from"—namely what grounds them—other than raw intuition or simple stipulation. While it is beyond question that bystanders have a *duty* to help the needy, this, per se, is not sufficient to ground the needy's *entitlement* to their help. As Frances Kamm (2002, 483) explains—referring precisely to easy rescue cases—the mere "fact that someone has a duty stemming from another's [e.g., a needy person's] interest gives no one in particular a moral entitlement to his fulfilling the duty."¹⁰

⁸ I thank Seth Lazar for making this point.

⁹ For further discussion, see also Stohr (2011, 61-62) and Hill (2002).

¹⁰ Kamm advances this claim in the context of a critical discussion of Joseph Raz's (1986, 167) interest theory of rights, which (concisely put) holds that a person has a right to X if and only if the person's interest in X is weighty enough to place duties on others. As Kamm (2002) rightly explains, the fact that I ought to safeguard your interests, because your interests matter morally, is not enough to show that I *owe it to you* to safeguard your interests.

To illustrate, consider two foreign travellers: Tom and Greg. They independently embark on the same excursion, but Tom hires a local guide, Jack, for assistance, while Greg goes it alone. On the excursion, both travellers get injured. Jack can easily assist both of them and, in the circumstances, he ought to. But are they both *entitled* to Jack's assistance? In Tom's case, the answer is straightforward: he has a right to Jack's assistance by virtue of their contractual relationship. In Greg's case, by contrast, no contractual or otherwise special relationship can be invoked. While Jack clearly ought to assist him, it is not clear where Greg's putative *entitlement* to assistance would come from. On what basis could Greg insist that Jack *owes him* assistance? On what basis could he claim: "I need not be grateful to Jack for his help; after all, *he owed it to me*" (but cf. Feinberg 1984, 58)?

Granted, intuitively, we may well want to assert that Greg has a right to be rescued. But this intuition is not self-validating, and Individualist Samaritanism—in all the versions discussed so far—fails to offer the required validation. It *stipulates* the existence of a right, without appropriately grounding it. In light of this, it fails to meet D2.¹¹

This type of explanatory inadequacy does not plague what I call Social Samaritanism, to which I now turn.

Social Samaritanism

On this view, a version of which has been defended by Arthur Ripstein (2000), helping the needy is one way for citizens to discharge their duty to comply with, and support, just institutions.¹² Just institutions provide citizens with equal freedom to pursue their ends and goals, including by protecting them from the kinds of misfortunes of which Ms Moore has been a victim—through emergency services and welfare provisions. Citizens, in turn, have duties, *owed to society*—i.e., all other citizens—to sustain just institutions. These duties can be discharged in a multiplicity of ways and, depending on the circumstances, they might include supplementing emergency services by assisting needy fellow citizens (Ripstein 2000, 774–779). As Ripstein emphasizes, though, "[t]hose who fail to [assist the needy] breach a duty to society as a whole, rather than to the particular person who is not rescued" (Ripstein 2000, 775; see also McIntyre 1994, 184). Succinctly put, this Social Samaritan perspective can be characterized as follows.

Social Samaritanism: Society has an enforceable right against citizens that they support just institutions—including by helping needy fellow citizens, when this is not too costly to them.

¹¹ An alternative critique of Individualist Samaritanism, suggested by an anonymous reviewer, holds that it *unfairly* burdens those who happen to be in a position to help the imperilled, by requiring them to bear the *entirety* of the costs of rescue. This critique can be countered by a small "universalist" amendment to Individualist Samaritanism (as suggested by the reviewer, and also Fabre 2002, 137–138). The amendment consists in specifying that, while the imperilled have an enforceable right to be rescued by those who are able to do so, the costs of rescue should be shared by humanity as a whole, through an appropriate compensation scheme. Although effective against the putative unfairness of Individualist Samaritanism, this amendment does not counter the explanatory inadequacies discussed in the main text.

¹² For a sketch of a structurally similar view, see McIntyre (1994, 181–184).

Social Samaritanism improves on Individualist Samaritanism by grounding the justice-based imperative to help the needy in the *special relationships* that exist between fellow citizens. These relationships are governed by an ideal of reciprocity, whereby, in Ripstein's words, "the misfortunes which stand in the way of each person being able to live a self-directing life [are] held in common, so that all have the wherewithal to participate as full and equal members of society" (Ripstein 2000, 765; cf. Sangiovanni 2007). Just institutions are the mechanisms through which the sharing of misfortunes and the maintenance of equal spheres of freedom is achieved. Fellow citizens *owe it to each other*, as a matter of justice, to support just institutions. On this view, considerations pertaining to what each citizen is in a privileged position to do only affect the mode of performance of this justice-based duty, i.e., the types of actions each citizen should undertake to fulfil it. The duty itself is *grounded* in the special relationships existing between each citizen and the rest of society.

While Social Samaritanism improves on Individualist Samaritanism in one respect, this improvement comes at a cost. As Fabre (2002, 130–132) points out, it commits proponents of Social Samaritanism to the explanatorily inadequate—because far-fetched—view that, by failing to help the needy, designated helpers wrong society, rather than the needy themselves. This is an unsatisfactory way of thinking about situations such as those involving Lily and Ms Moore in my earlier example. It would seem morally mistaken for one of Ms Moore's fellow citizens to reprimand Lily by saying "You have unacceptably wronged society!" A much more plausible complaint would be "You have unacceptably violated Ms Moore's rights." Yet Social Samaritanism regards the former complaint, not the latter, as the correct one.

It might be objected that it is (arguably) consistent with Social Samaritanism to hold that those who fail to help the needy commit both an institutional wrong of justice—i.e., by failing to discharge the obligation, owed to society, to support just institutions—and an interpersonal wrong of beneficence—i.e., by failing to respond to the plight of the needy.¹³ What Social Samaritans argue is that only the former, institutional wrong is a violation of an enforceable right, specifically of one of society's rights against its citizens.¹⁴ The *interpersonal* wrong, if it exists, falls outside the realm of rights. From an interpersonal, as opposed to institutional, perspective, the wrongdoer has a "right to do wrong" (Waldron 1981).

This response mitigates, but does not remove, our initial concern. It still remains explanatorily implausible to hold that, *from the point of view of justice*, someone who, say, fails to rescue a wounded child, violates a right of society, *and not* of the child himself. The locus of the injustice, if an injustice exists, must be the violation of the rights of the child, rather than of society. Adding one layer of explanation, by invoking wrongs that are not "directed," hence not rights violations, does not eliminate the original difficulty. I thus conclude that, like Individualist Samaritanism, Social

¹³ I say "arguably" because Ripstein (2000, 775–776) is explicit that "a duty to rescue ... is a non-relational duty, a duty owed to society at large rather than to some particular individual," and "not one of beneficence."

¹⁴ I am grateful to an anonymous reviewer for suggesting this response.

Samaritanism is explanatorily inadequate—it fails to meet D2—though for different reasons. Let us then turn to Universalist Samaritanism.

Universalist Samaritanism

On this view, failure to help the needy wrongs the needy themselves—not society—and the duty to help the needy binds humanity as a whole. Suitably placed individuals, in turn, have obligations to enact the duty “qua agents of humanity,” subject to fair compensation.

Consider the following analogy. University X is under an enforceable duty of justice to pay for the dinner expenses of academic visitor Jones. In other words, Jones has a right against University X to have his expenses paid. Professors Smith and Kelly are representatives of University X at dinner with Jones, and thereby in a privileged position to discharge their university’s duty.¹⁵ In the circumstances, either Smith or Kelly (or both) ought to pay for dinner on the university’s behalf, and later be reimbursed by it. Universalist Samaritanism suggests that individual helpers stand in relation to humanity and the needy in roughly the way in which Smith and Kelly stand in relation to University X and Jones.

Universalist Samaritanism: Needy human beings have enforceable rights to help against *humanity*, discharged by appropriately situated fellow humans on its behalf, when this is not too costly to them.

Although appealing at first, Universalist Samaritanism proves unsustainable, and collapses back into Individualist Samaritanism (with its associated difficulties). This is because “humanity”—unlike a university—is not the kind of collective that can be a *duty bearer* in anything more than a metaphorical sense. The only entities that can in principle bear duties are moral agents, namely agents with a capacity for moral reasoning. For instance, cats and dogs are not fit for bearing duties because they are not *moral* agents. Equally, stones and chairs cannot bear duties because they are not *agents* in the first place. From this it follows that a collective can bear duties *in its own right* only if it qualifies as a *group moral agent* (see, e.g., French 1984; List and Pettit 2011; Tuomela 2013; cf. Gilbert 1989).

Group moral agents are sets of individuals whose internal organization—i.e., decision-making processes—is complex enough to warrant the ascription of moral agency to them. For instance, states, corporations, and universities typically meet the criteria for group moral agency, hence they are fit for bearing duties. By contrast, unorganized collectives such as a set of people sunbathing on a beach, or the passengers sitting in a train carriage, do not together form an agent. While group moral agents can be duty bearers in their own right, unorganized collectives cannot (French 1984; List and Pettit 2011; Collins 2013). Only the individuals *within* unorganized collectives, in their personal capacities, can bear duties, since only they qualify as agents.

¹⁵ Assume that ex post reimbursement for external speakers is administratively impossible.

It is transparent that humanity in its entirety does not constitute a group moral agent, but is only a very large collection of individuals belonging to the same species. Universalist Samaritanism, then, clashes with a well-established piece of theoretical apparatus: namely that only moral agents can be duty-bearers. It thus fails to meet D3. Expressions such as “humanity has a justice-based duty to help the needy” are meaningful at most as shorthand for the claim that “suitably positioned individual human beings, members of the human species, have an enforceable duty to assist the needy, correlative to the needy’s right to assistance.” But this only takes us back to our original individualist picture, and its explanatory difficulties.

Our discussion so far has alerted us to a number of theoretical pitfalls that any plausible account of “justice-based help to the needy” must avoid. A revised version of Social Samaritanism, I suggest, avoids them.

Revised Social Samaritanism

I first set out the main features of Revised Social Samaritanism, and then relate this view to my initial remarks about the function of justice.

The view

Revised Social Samaritanism: Needy citizens, qua members of society, have an enforceable right to help against the state, occasionally discharged by citizen-bystanders on its behalf, when this is not too costly to them.

Revised Social Samaritanism places the duty to help the needy on a group, but unlike Universalist Samaritanism, the group it selects is a genuine collective moral agent—namely the state—not an unorganized collection of individuals. Moreover, unlike Individualist Samaritanism, which problematically treats an agent’s being in a (privileged) position to help as the sole ground for placing justice-based duties on him/her, Revised Social Samaritanism grounds the justice-based duty to help the needy in the special relationship existing between the state and its citizens. The special relationship in question is twofold, and construed partly differently than in the original version of Social Samaritanism—to which Revised Social Samaritanism is nonetheless indebted.

On the one hand, the state has duties to provide citizens *in their private capacity as members of society* with roughly equal spheres of freedom, including by protecting them from the effects of natural catastrophes. They, in turn, have duties to comply with and support just institutions. On the other hand, citizens, *in their public capacity as members of the state*, are part-bearers of the state’s duties. This is a familiar phenomenon: citizens are routinely placed under obligations to act as civil servants (e.g., to perform social work) and, when they do act in that capacity, they represent the state (Feinberg 1984, 68; McIntyre 1994, 182; Ripstein 2000, 777). In a similar fashion, from a Social Samaritan perspective, when citizens are suitably positioned to assist the needy, they ought to act *in their capacity as members of the state*, and discharge a duty

on its behalf (Heyman 1994).¹⁶ Just as Smith and/or Kelly ought to pay for Jones's dinner in their capacities as members of University X, so too appropriately placed individuals ought to help needy fellow citizens qua members of the state. But it is not that suitably positioned citizens qua members of society have duties *to society* to help other needy members, as in the original version of Social Samaritanism. Instead, suitably positioned citizens, qua members of the state, have role-responsibilities to discharge the state's duties *towards other citizens who are needy*. In other words, each citizen is both a member of society "qua private person" with entitlements against the state, and a member of the state "qua public person" with obligations to act on its behalf.¹⁷

Crucially, obligations to act on the state's behalf are not *owed* to the state, rather, they are appropriate *concerns* of the state. A parallel with the criminal law might help in making this point. It is commonplace to suggest that crimes involve "public wrongs." One possible interpretation of this claim is that crimes are wrongs *against* the public, more specifically, against the state. The interpretation seems supported by the structure of criminal proceedings, which typically involves "the State" against the suspected criminal. As pointed out by R.A. Duff (2013), however, this interpretation is somewhat far-fetched, and thereby violates D2. In particular, it presupposes the view that individuals' duties not to engage in acts such as rape and murder are *owed to the state*, rather than to the relevant victims. But if we ask ourselves why rape and murder should be criminalized, surely the answer must involve the terrible violations of the rights of individual victims. It is the protection of the rights of the victims—*not of the state*—that explains why such conduct is criminal. In turn, since enforcing individual rights and protecting them are appropriate *concerns* of the state—i.e., they are among its chief functions—the state may aptly hold wrongdoers to account (Duff 2013, sec. 6; cf. Marshall and Duff 1998). In a similar way, Revised Social Samaritanism asserts that the state may appropriately hold "bad Samaritans" to account for failing to perform their role responsibilities, *and* that such failures wrong the needy, rather than society or the state itself. In so doing, Revised Social Samaritanism overcomes the explanatory deficiencies of the original version of Social Samaritanism.

Justice and Revised Social Samaritanism

Revised Social Samaritanism offers a plausible operationalisation of the requirements of justice. As I suggested at the outset, justice (i) gives each individual an in-principle right to a sphere of freedom roughly equal to that of others, and (ii) places a duty on each to respect others' spheres (cf. Kant 1999/1797; Ripstein 2009). This implies that, whenever our actions foreseeably and avoidably place constraints on others' freedom,

¹⁶ This claim and the general emphasis on citizens' double role—i.e., as members of the state and as private persons—also appear in a paper by Steven J. Heyman, which came to my attention after completing this article. Heyman's remarks, however, are embedded in a different, Hegel-inspired and strongly communitarian, version of Social Samaritanism. Moreover, for Heyman (1994, 730-731), each suitably positioned citizen owes the rescue not only to the relevant victim, but also to the state.

¹⁷ Importantly, Revised Social Samaritanism could be formulated in a more general fashion, whereby the recipients of the state's duty to help are not limited to citizens, but include other categories of members too—e.g., permanent residents. For simplicity, I confine my discussion to citizens.

they may be susceptible to justice-based assessment.¹⁸ If those constraints are consistent with others' rightful freedom they are just; if they restrict others' rightful freedom, they are not.

It is easy to see how these demands play out in "interactional" cases, involving transactions between individuals.¹⁹ For example, by purchasing the last basket of apples at the supermarket, I foreseeably and avoidably place constraints on the freedom of other shoppers: I deprive them of the opportunity of buying apples from that supermarket. Under normal circumstances, this freedom-restriction is perfectly consistent with justice: nobody's rights are violated by my purchase. But if another shopper were to snatch that basket from me, he would restrict my freedom, and unjustly so. I had a right to those apples, they were part of my "sphere of sovereignty," and by stealing them, the shopper usurped that right.

Crucially, as I have argued elsewhere, concerns of justice are also activated in "systemic" circumstances, where members of the same comprehensive, rule-governed social system—e.g., of the same society, regulated by the state—place on-going constraints on one another's freedom (Valentini 2011a and 2011b). By complying with the rules structuring their interactions, and contributing to their imposition, members foreseeably and avoidably set the boundaries within which each may pursue her life plans. In order to honour the duty to respect others' rightful freedom, they must arrange their common rules so as to guarantee a roughly equal sphere of sovereignty to all those subjected to them. Once such freedom-securing rules are in place, each member may be held responsible for her own life and decisions.²⁰

A social system containing no provision for helping the needy when this could be done at reasonable cost to others would not appropriately respect everyone's equal spheres of sovereignty. To see this, imagine that, following an economic crisis, some members of society lose their jobs. They find themselves in great financial difficulty, and their freedom to pursue their goals is significantly restricted. Those who have kept their jobs, by contrast, enjoy ample financial comfort.²¹ Would a system containing no provision for rebalancing the effects of the crisis count as a plausible instantiation of a right to roughly equal spheres of freedom? It would seem not. In that system, some would be denied the freedom to pursue their life plans, while others would continue to enjoy plenty of opportunities, benefiting from far wider spheres of sovereignty. A system of rules—of laws—that leaves the needy unassisted, when assistance could be provided at reasonable cost to others, is one that foreseeably and avoidably places unjustifiable constraints on the freedom of some: it is unjust.

If we apply this rationale to Ms Moore's case, we can conclude that respect for her (and her children's) right to freedom places a duty of justice on the state to address

¹⁸ If the conditions of foreseeability and avoidability were not met, we could not trace physical actions to the moral agency of the actor.

¹⁹ See also Thomas Pogge's (2008) distinction between interactional and institutional accounts of human rights.

²⁰ This is a familiar line of thought, variously expressed in much contemporary liberal-egalitarian work on justice. See Rawls (1999, 86ff.) and Dworkin (2000, 6–7). See also Ripstein (2004b) for helpful elaboration.

²¹ See the discussion of "background justice" in Rawls (1996, Lecture IV), and Ronzoni (2009).

her plight. Since emergency services cannot be omnipresent, appropriately placed citizens, like Lily, may acquire obligations they must carry out *on the state's behalf*, and for which they may need to be rewarded, so as to evenly spread society's "assistance" burden.

A state organized around Social Samaritan principles would adopt (at least) two mechanisms for enforcing the duty to help the needy: an *ex ante* and an *ex post* one. According to the first, the government calculates how much each member owes, given the expected nature and quantity of need to be met. The calculated sum is then deducted from each member's yearly income, and channelled where it would meet the most needs (Miller 2002, 119). According to the second, the government enacts a broad range of so-called "bad Samaritan" laws, punishing those who fail to perform easy rescues (Malm 2000). By contrast, those who do not shy away from their "easy rescue" responsibilities may report their praiseworthy acts to government authorities, and obtain a corresponding tax deduction (see Fabre 2002, 138; cf. Feinberg 1984, 68). In this way, each member does their fair share of helping the needy overall, and bystanders in easy rescue situations do not end up doing more than others (Murphy 2000).

The picture of society generated by Revised Social Samaritanism is appealing, and not too dissimilar from some real-world social systems. The welfare state might be thought to operate along the lines of the "ex ante" mechanism, raising revenue through taxes to finance public services. Moreover, "bad Samaritan" laws, much like those enacted in our hypothetical social samaritan society, have already been adopted by a number of countries in continental Europe and Latin America (Scordato 2008, 1452 n. 30). In light of this, should we settle for the revised version of social samaritanism?

Anti-Samaritanism(s)

Some are averse to any form of samaritan justice, defending what I call Unqualified Anti-Samaritanism.

Unqualified Anti-Samaritanism: The needy do not have an enforceable right to help.

An argument in support of this view is implicitly suggested in the work of H.M. Malm.²² The argument—adapted to the context of the present discussion—goes as follows. A society organized around social samaritan principles requires a *public criterion of the good* on the basis of which duties to help the needy at reasonable costs are established. This criterion would determine: (i) what counts as a reasonable cost, and (ii) what types of situations require remedying. Problematically, under the

²² To be precise, Malm (1995 and 2000, 737–42) highlights a dilemma that arises in the "practical" context of *drafting and implementing* bad Samaritan laws, while granting that these may be justified in principle. On the one hand, if the existence of a duty to rescue is determined by reference to each person's *subjective* conceptions of value and risk, these laws will be too lax (i.e., virtually empty). On the other hand, if the existence of the duty is determined by reference to *objective* conceptions of value and risk, the laws will unfairly burden some—namely those who do not share those conceptions. In my discussion, I focus on the theoretical underpinnings of the latter difficulty, in relation to "value" alone (i.e., I leave considerations of risk aside).

circumstances that make justice possible and necessary—i.e., people’s adherence to different and conflicting conceptions of the good—a public conception of the good is unavailable. Enforcing the duty to help the needy would thus deprive at least some individuals of an adequate space within which to pursue their own conceptions of the good, and compel them to act on the basis of conceptions other than their own (Malm 2000 and 1995).

To make this point more vivid, consider the following scenario.

Old Lady: John and Mary are fellow members of society; he is a religious devotee, she a committed environmentalist. They are each faced with the same easy rescue scenario: on a Sunday morning, a seemingly injured old lady lies by the side of a quiet street. They both decide not to intervene, because doing so, they claim, would be too costly to them. Mary explains that assisting the lady would mean skipping her shift at the animal sanctuary where she volunteers. John insists that helping the lady would interfere with the religious imperative to spend Sunday morning in Church.

Proponents of Unqualified Anti-Samaritanism argue that, by adopting general guidelines to decide between these cases—as the *ex post* mechanism demands—a social samaritan state would privilege some conceptions of the good over others. Should the religious devotee be excused, but not the environmentalist, or vice versa? No matter what general criterion is adopted, appeal to *some* conceptions of the good (e.g., religious ones) will successfully defeat the enforceable duty to help, while appeal to other such conceptions (e.g., green ones) will not (Malm 1995, 21–24).²³ This generates an *unfair* burden on the pursuit of some conceptions of the good and, perhaps even more troublingly, implicitly establishes a public hierarchy between different such conceptions (see Patten 2012). Similar concerns arise, *mutatis mutandis*, when priorities are set for the allocation of state-based redistributive assistance, as in the *ex ante* mechanism described in the previous section.

Does Unqualified Anti-Samaritanism irremediably undermine the case for Revised Social Samaritanism? Unqualified Anti-Samaritanism raises an important objection, but in its current form, it is overstated. Although justice demands respect for individuals’ pursuit of their conceptions of the good, theories of justice themselves have to rest on some such conception. A purely formal theory of justice, which does not rest on any account of agents’ most important interests, is simply empty. Unsurprisingly, most existing conceptions of justice make some assumptions about what each person has reason to want to have. To be sure, this gives rise to particularly “slender” accounts of the good—whose value is *instrumental* to people’s pursuit of their own conceptions of the good—but accounts of the good nonetheless. John Rawls (1999, 54ff.), for instance, famously defends a list of “primary social goods,” including liberties, opportunities, income, wealth and the social bases of self-respect, as central to his

²³ In addition, such laws would likely misfire, since it is difficult to acquire the necessary information to determine whether any specific intervention is too costly for an agent. See Malm (Malm 2000, sec. II) and Fabre (2002, 140–141).

theory of justice. Martha Nussbaum (2000), by contrast, advocates a much-debated list of basic capabilities, which each individual ought to have in a just society.

In the absence of considerable convergence between different conceptions of the good, anything a state does in the name of justice is bound to be in tension with at least some such conception. Even something as uncontroversial as a legal prohibition on murder may interfere with an eco-centric extremist's pursuit of his conception of the good, by preventing him from killing people in defence of the environment. Yet very few would challenge such a legal prohibition on the grounds that it places an *unfair burden* on the extremist's pursuits.

In other words, if we believe that the duty to help the needy should not fall under the purview of justice because this would make the state unjust, then we should also think—counterintuitively—that other demands of any plausible conception of justice are problematic because they make the state unjust. By this line of reasoning, *any* account of justice with *some* content is (paradoxically) unjust: a conclusion that is simply too strong, and *clashes with a wide range of considered judgements*, thereby failing to meet D1.

Although the unqualified rejection of a justice-based duty to help the needy has absurd implications, there is a lesson to learn from it. In some—but not all—instances, Revised Social Samaritanism leads to unjust outcomes, which unduly shrink some people's spheres of sovereignty. This is when the needy may plausibly be held responsible for their plight, through rampant negligence or repeated risk-prone behaviour. When this is the case, considering the state under an obligation to assist them *on grounds of justice*, and considering the “reckless” needy entitled to help, misconstrues the moral position of the parties involved.

As we saw in the previous section, from the perspective of justice, disadvantage for which fellow members cannot plausibly be held responsible should be compensated for by the state. Redistributive taxation and taxation supporting public services are aimed precisely at this; and so are duties of immediate rescue performed on the state's behalf. This is what establishing a *fair background*, in which each has roughly equal spheres of sovereignty, demands. Once such a background is in place, however, each is responsible for what happens in their lives (Rawls 1999, 86ff.; Ripstein 2004b).

To see this, consider the following case.

Jenna: Jenna, a young woman, has the same opportunities as her fellow members of society, but she is a risk-taker, repeatedly (but non-pathologically) gambles away most of her possessions, and becomes economically badly off as a result.

What is the most morally accurate characterization of her situation? A proponent of Revised Social Samaritanism is committed to saying that if Jenna becomes badly off and others can help her at small cost to themselves—e.g., by paying taxes to contribute to Jenna's subsistence—then, if they refuse to help, a fair background is no longer in place. Jenna's gambling habits automatically turn her more prudent and better off fellow citizens into “thieves” who unjustly hold on to resources that are actually Jenna's, i.e.,

part of her fair share. Similar conclusions would follow if Jenna's reckless risk-taking were to put her in immediate danger (e.g., a road accident), with bystanders in a position to rescue her at small personal cost. According to Revised Social Samaritanism, bystanders would have a duty *of justice* to help, acting on the state's behalf.

This conclusion counterintuitively implies that some people's (the non-reckless's) spheres of sovereignty should be restricted for the sake of benefiting "the reckless." It may well be that a morally good person should help unreasonable risk-takers for whom things have not gone well. Others' neediness, independently of its causes, typically makes a difference to what we should do with our entitlements: it activates concerns of beneficence. However, it seems odd—i.e., at odds with considered judgements (in violation of D1)—to suggest that others' recklessly self-inflicted neediness makes a difference not only to what we should do with our entitlements, but also to what those entitlements are.

If this is correct, then we have reason to defend a qualified form of Anti-Samaritanism, setting out conditions under which the duty to help the needy should not be viewed as a matter of justice.

Qualified Anti-Samaritanism: The reckless needy do not have an enforceable right to help.

In the next section, I combine the conclusions reached so far to develop a plausible account of when the duty to help the needy qualifies not merely as a demand of beneficence, but as an enforceable, rights-correlative duty of justice.

Qualified Social Samaritanism

Our discussion has shown that justice-based duties to help the needy are best construed as social, rather than individual, ones—in accordance with Revised Social Samaritanism. Our discussion has also revealed that only those needy who act responsibly, and may not plausibly be held accountable for their plight, have justice-based entitlements to help. The "reckless" needy, on the other hand, are only appropriate recipients of beneficence.²⁴ Taken together, these observations speak in favour of a view I call Qualified Social Samaritanism (assuming the revised version of Social Samaritanism as my starting point).

Qualified Social Samaritanism: Non-reckless needy citizens, qua members of society, have an enforceable right to help against the state, occasionally discharged by citizen-bystanders on its behalf, when this is not too costly to them.

From the perspective of Qualified Social Samaritanism, non-recklessness and societal membership generate justice-based entitlements to help against the state. Fellow membership matters because, as we have seen, those who place constraints on each

²⁴ The same point could also be made in terms of degrees. The more responsible one is for one's plight, the lesser one's claim to assistance on grounds of justice. Thanks to Joe Mazor for this suggestion.

others' agency, by belonging to the same comprehensive rule-governed social system, owe it to each other to shape their common rules consistently with everyone's equal right to freedom. Non-recklessness matters because, once a fair background is in place, each person is to be held responsible for her choices (cf. Ripstein 2004b; Ripstein 2000).

But what about those needy whose plight is caused neither by socially mediated bad luck (e.g., Ms Moore, or the victims of an economic crisis), nor by personal recklessness (e.g., Jenna), but rather by others' unjust behaviour? To see how Qualified Social Samaritanism handles this case, consider the following scenario.

House Fire: Newlyweds Jenny and Tom have just moved into their new home. Blinded by jealousy, Henry, Jenny's former partner, sets their house on fire, and flees to Canada. Sarah—Jenny's and Tom's neighbour—can help them escape at low cost to herself.²⁵

According to Qualified Social Samaritanism, qua private persons, better-off fellow members like Sarah are innocent bystanders, unconnected with Jenny's and Tom's plight. Yet, qua members of the same state, they share a small fraction of responsibility towards the victims of injustice. As we have seen, the state has duties to secure citizens' equal spheres of sovereignty; and when some suffer injustices, the state ought to restore their equal sovereignty through compensation. If compensation cannot be extracted from the culprits—in this case, Henry, who has a *primary, and personal*, duty of justice vis-à-vis Jenny and Tom but has fled to Canada—then it will have to be obtained elsewhere. Fellow citizens may therefore appropriately be called upon to contribute to the costs of assistance to the victims on *remedial* grounds of justice, even though, qua private individuals, their duties towards the victims would be at most a matter of beneficence (on remedial responsibility see Miller 2001).

In summary, Qualified Social Samaritanism allows us to offer nuanced and plausible responses to the question of when the duty to help the needy is not only a matter of beneficence but also one of justice. When the needy's plight is recklessly self-inflicted, they only qualify as recipients of beneficence. When, by contrast, they are not responsible for their predicament, in addition to reasons of beneficence, help is mandatory on either remedial or primary grounds of justice, occasionally discharged by specific individuals, on behalf of the state.

The table below schematically represents the verdicts of Qualified Social Samaritanism, in relation to the various scenarios encountered up to this point.

	Transfer	Rescue	Does the state have a duty of justice to help?
Needy's recklessness	Jenna	Jenna	No (private beneficence)
Others' injustice	House fire	House fire	Yes (remedial)

²⁵ For instance, by placing a mattress underneath Tom's and Jenny's bedroom window, for them to jump onto.

Socially-mediated bad luck	Hurricane Sandy	Hurricane Sandy (Ms Moore)	Yes (primary)
-----------------------------------	-----------------	----------------------------	---------------

Let me expand a little on the cases occupying the bottom row, involving Hurricane Sandy. In both cases, *as I have described them*, the needy are non-reckless.²⁶ From the perspective of Qualified Social Samaritanism, the hurricane’s victims thus have justice-based claims to assistance on the part of the state, on top of being appropriate recipients of private beneficence. This means that their claims are correlative to rights and in-principle rightfully enforceable. If meeting these claims demands resource transfers towards the victims, then setting aside a substantial portion of the federal budget to meet them is perfectly in line with the demands of justice. It is what organizing our common social rules so as to respect everyone’s equal right to freedom demands. The U.S. Congress’s decision to set aside \$51 billion is beyond moral reproach. Qualified Social Samaritanism commends current practice in this respect.

What about assistance to be delivered through direct actions? Here Qualified Social Samaritanism tells us that fellow citizens who could have helped non-reckless victims at reasonable costs but refused to do so are, *qua members of the state* (as opposed to personally), guilty of injustice. Of course, ascertaining whether, in any given circumstance, the conditions for condemning the relevant individuals hold—i.e., can help be offered at reasonable personal cost, and are the needy really non-reckless?—is epistemically difficult. But, as Feinberg (1984, 66) and Fabre (2002, 140) point out, so is ascertaining whether, in any given circumstance, an act of self-defence qualifies as reasonable: something the law does routinely.

The scenario involving Ms Moore, *as I have described it*, assumes this epistemic difficulty away. According to Qualified Social Samaritanism, then, legal practice in the state of New York ought to be altered such that “bad Samaritans,” like those who failed to assist Ms Moore, could be rightly prosecuted for their omission.

Objections

I have argued that Qualified Social Samaritanism sets out plausible conditions for the duty to help needy strangers to qualify not only as one of beneficence, but also as one of justice. Below, I consider and respond to three objections against this view.

Harshness towards the “reckless”

Some might find Qualified Social Samaritanism unreasonably harsh towards the reckless needy. This objection is often raised against “luck-egalitarian” approaches to justice, which hold people responsible for the consequences of their choices.²⁷ Elizabeth Anderson (1999, 295–296) famously discusses the case of an uninsured driver, who

²⁶ In reality, things are made more complicated by the fact that evacuation had been ordered from coastal areas of Staten Island. *If* Ms Moore’s tragedy was traceable to her ignoring the order to evacuate, her non-recklessness would have to be questioned. See D’Anna (2012). Thanks to Mike Otsuka for bringing this to my attention.

²⁷ For a helpful overview, see Kasper Lippert-Rasmussen (2013).

makes an illegal turn, collides with another car, and is left dying by the side of the road on the grounds that his circumstances are the result of reckless choices. Of course, Anderson suggests, any morally decent person must consider this scenario unacceptable, and yet luck egalitarians regard it as just. Qualified Social Samaritanism may appear to carry similarly unacceptable implications: if the needy are reckless, they should be left to their own devices. Qualified Social Samaritanism may thus seem to clash with important considered judgements, thereby failing to meet D1.

This is not what Qualified Social Samaritanism—or, indeed, luck egalitarianism, in its most sophisticated versions—implies (Arneson 2000; Cohen 2003). First, Qualified Social Samaritanism is a view about when the needy ought to be helped on *grounds of justice* in particular. From the perspective defended here, it would remain true that those who are in a privileged position to assist the injured driver at reasonable costs to themselves have *duties of beneficence* to do so. Morally speaking, then, the needy are not “left to their own devices.”

Still, a non-enforceable duty of beneficence may seem too weak in this context. After all, if there was someone around who could help the injured driver at little personal cost but refused to, would it really be impermissible to force him to discharge his duty of beneficence? The obvious answer seems “no,” and I agree: in the circumstances, forcing someone to rescue the reckless driver appears morally permissible, if not mandatory.

This answer is not inconsistent with the picture I have proposed. Even if, unlike justice, beneficence is not *rightfully* enforceable, this need not imply that it is always *all-things-considered impermissible* to enforce it. The non-enforceability condition is open to a weaker and, in my view, more plausible interpretation. On this interpretation, there may be circumstances in which the enforcement of beneficence is all-things-considered justified as the “lesser evil,” while still involving a *pro tanto* wrong, i.e., the violation of the rights of the coerced. On this view, the difference between the enforcement of a duty of justice and the enforcement of (at least some) duties of beneficence is that the latter, but not the former, always involves rights-violations demanding compensation. Cases of immediate rescue are precisely of the sort in which enforcing beneficence may be all-things-considered justified (Valentini 2011b, 52–53).

From a qualified social samaritan perspective, then, it is permissible for a state to place its members under an *ex ante* enforceable obligation to rescue the imperilled, when this can be done at reasonable cost to them. This obligation, however, would have to be coupled with a further, *ex post*, obligation falling on the reckless needy, to compensate their rescuers for the help received. Unlike the non-reckless needy, who are *owed* assistance by the state, their reckless counterparts are *not owed* assistance to begin with. If they receive it, they need to provide adequate compensation to those who have been wrongfully forced to provide it. If the rescuers are of a morally generous disposition, they will refuse to accept compensation, claiming to have acted out of beneficence.

In addition to acknowledging the stringency of duties of beneficence, the harshness worry can be further mitigated by noticing that (a) when someone qualifies as reckless and (b) which consequences of recklessness it is plausible to hold someone

responsible for are complex questions, the answers to which need not be unreasonably unforgiving.

Regarding (a), assume that the driver in Anderson's example was unable to buy insurance because he had recently lost his job due to a sudden economic crisis. Assume, further, that he had taken an illegal turn in a desperate attempt promptly to deliver his seriously ill father to the hospital. Under these circumstances, it would seem odd to describe our driver as reckless. First, the decision not to buy insurance wasn't voluntary, but dictated by unfortunate, in fact unjust, social circumstances. Had society been justly organised, the driver would have been compensated for the job loss (as argued above), and would have been in a position to insure himself. Second, given the urgency of the situation, the decision to take an illegal turn was not beyond the bounds of reasonableness. This being so, even if our driver appears reckless at first, he is not. Many real-world cases will probably take a similar form, where people's apparent recklessness is in fact the product either of injustice, or of exceptional circumstances (see Kaufman 2004). But what about those cases in which the needy are genuinely reckless?

Regarding (b), as Serena Olsaretti (2009, 171) has convincingly argued, "the commitment to holding people responsible if their choices meet certain conditions [—recklessness in our case—] does not settle the question of what costs they should be held responsible for." As Olsaretti explains, it would be unreasonable to hold a reckless driver involved in an accident responsible for every single negative consequence of her behaviour. While we might hold her responsible for, say, her own medical bill, the costs of repairing her car, and the costs of compensation to whomever she injured, it may seem unduly harsh to hold her responsible for health problems she develops twenty years later, but which are causally traceable to the accident. Developing a full account of what costs are appropriate in any given instance of reckless behaviour goes beyond the scope of this article. All I wish to highlight is that, on a plausible account of these costs, Qualified Social Samaritanism can avoid the harshness-towards-the-reckless objection.

Harshness towards needy foreigners

A reader might worry that Qualified Social Samaritanism fails to respond to the plight of needy foreigners. Indeed, she might complain that, say, if a hurricane were to hit New Zealand, from a qualified social samaritan perspective, only fellow New Zealanders would have duties of justice to assist the relevant victims. But what about everyone else in the world? Even more troublingly, Qualified Social Samaritanism seems to suggest that if we encounter people in need, we can have duties of justice to rescue them only if they are fellow members of our society. If Ms Moore, for instance, had been an Australian tourist visiting the U.S., Qualified Social Samaritanism appears to imply—implausibly—that American bystanders would not have had a duty of justice to help her.

Is the view I have defended really unduly harsh towards the foreign needy? It is not.²⁸ To see why, we need to remind ourselves of the demands of justice presupposed by Qualified Social Samaritanism:

- In interactional contexts, justice requires that we refrain from acting in ways that foreseeably and avoidably undermine others' spheres of freedom.
- In systemic contexts, justice requires that we arrange our common rules in such a way as to give each member a roughly equal sphere of freedom.

To go back to the objector's initial example, assuming that New Zealand and "our" country (whatever this might be) were entirely independent from each other, it is true that Qualified Social Samaritanism would not place a duty of *justice* on "us" to help New Zealanders post-hurricane, or to rescue an injured New Zealander visitor. As I have argued in the previous section, however, this in no way denies our having duties of *beneficence* to help needy foreigners which, in extreme circumstances, may be justifiably enforced all things considered. Qualified Social Samaritanism, then, would not leave foreigners without moral protection.

Moreover, in the world in which we live, the full independence condition is hardly ever met. There will be many cases—both interactional and systemic—where our agency is implicated in foreigners' conditions, hence duties of justice apply between "us" and "their needy." Just to offer a simple "interactional" example, if a U.S. corporation were to engage in ruthless deforestation in Bangladesh, thereby foreseeably leading to particularly disastrous consequences during the rain season, those affected would have a claim of justice not only vis-à-vis fellow Bangladeshi citizens, but also against the U.S. corporation. The latter acted in ways that foreseeably and avoidably led to unjustifiable harm (i.e., freedom-restrictions) for Bangladeshi citizens, and are thus morally obligated to address at least part of such harm on grounds of justice.

From a "systemic" perspective, it is important to note that, in an increasingly globalized world, some of the considerations that, under Qualified Social Samaritanism, render the duty to help the needy a matter of justice domestically also apply across borders. At least as far as a number of policy areas are concerned, large portions of the world may be accurately described as governed by systems of rules placing significant constraints on people's freedom.²⁹ If so, Qualified Social Samaritanism demands that these systems should be arranged consistently with everyone's right to roughly equal spheres of freedom.

Consider, for instance, the global financial crisis of 2008. This has caused people from all over the world to become "needy," often through no fault of their own, and through causal mechanisms that can only partly be traced to the actions of *specific* agents. Rather, their "bad luck" is the product of a near-global system of rules—those of

²⁸ My discussion in the next few paragraphs is in line with, and partly draws on, Valentini (2013 and 2011b).

²⁹ See the "social connection" model of responsibility defended in Iris Marion Young (2011).

finance in this case—which foreseeably and avoidably restrict the freedom of some. As I have argued earlier in the article, some such freedom restrictions are inconsistent with any plausible interpretation of what an equal right to freedom demands. The logic behind Qualified Social Samaritanism thus requires the relevant rules to be arranged so as to provide help to the (non-reckless) needy on grounds of justice.

Of course, it is hard to establish what exactly this involves at the international level, where the relevant systems of rules are less well-demarcated and less all-encompassing, compared to the state (Julius 2006). Handling such difficulties, however, is the job of a full theory of global justice and goes beyond the scope of this article.³⁰ For present purposes, the point to bear in mind is that, despite these difficulties, in an ever-more globalised world, the logic behind Qualified Social Samaritanism pushes us to expand the circle of justice-based help to the needy beyond domestic communities.

Some might remain dissatisfied, and continue to insist that “bad luck” requires justice-based compensation also when it occurs between individuals who do not share a system of rules. From this perspective, anyone who is needy and non-reckless (i.e., unlucky) should have an entitlement to help “on behalf of humanity.” As I have explained, however, this universalist position is theoretically weak, because humanity is not a unitary moral agent, capable of bearing duties. Our objector might respond that such a global moral agent ought to be brought about. This response, though, does not undermine Qualified Social Samaritanism.

First, the burden of proof falls on the objector to show that there is a duty to bring about a global group agent, an entity akin to a global state. This is undoubtedly a mammoth task, intellectually speaking. Second, and more importantly, *even if* the relevant duty existed, this would not undermine my objection to Universalist Samaritanism. Establishing the existence of a duty to bring about a particular institutional structure does not automatically also establish the rights and duties that *would exist* if that structure were already in place. To illustrate, establishing that, say, we have a moral duty to set up a new school in a village does not suffice to establish the rights and responsibilities attached to schools as institutions. Until the school has been set up, nobody has an entitlement to be paid by it, or to receive tuition from it, or a duty follow the headmaster’s directives: indeed, there is no school or headmaster to speak of. Similarly, until a global group agent has been brought into existence, Universalist Samaritanism cannot ground the foreign needy’s entitlement to help, since those entitlements are *conditional on* the existence of such a complex institutional structure.

Finally, Qualified Social Samaritanism has the advantage of offering a coherent vindication of the widely held view that fellow citizens who are victims of a natural catastrophe have a more stringent claim to our help (via the state) than equally needy victims belonging to a different community. From a Qualified Social Samaritanism perspective, our duties of justice track the involvement of our agency in others’ life circumstances: this is what explains their special stringency. Fellow citizens are interdependent in ways that members of entirely separate communities are not; and this

³⁰ For my attempt to lay the foundations of such a theory, see Valentini (2011b).

interdependence justifies the greater weight of the duties that fellow members have to each other.

The underspecification challenge

Finally, an objector might express dissatisfaction with my analysis, by suggesting that the view I defend, namely Qualified Social Samaritanism, is susceptible to too many different interpretations, depending on how exactly its parameters—needs, costs, and (non-)recklessness—are specified. Throughout my discussion, I have not committed myself to particular specifications of those parameters. Instead, I have relied on uncontroversial examples that any plausible specification of those parameters should fit. But this, the objector might continue, gives us too little guidance in those difficult cases where guidance is most needed.³¹

This is an important observation. I have four things to say in response. First, my lack of specification of the parameters of Qualified Social Samaritanism can be seen as a strength, rather than as a weakness, since it makes my view appeal, in principle, to a wider audience. It allows “users” of my proposal to choose their favoured specification of the relevant parameters, and it clarifies where the loci of possible disagreements (i.e., different interpretations of the relevant parameters) are.

Second, there is a good methodological reason for confining my discussion to uncontroversial cases of need, recklessness etc.; the same reason that speaks in favour of using clean evidence in the sciences. If, in order to develop Qualified Social Samaritanism, I had appealed to our considered judgements in hard cases, in which it is not clear whether recipients are indeed needy or reckless, then I would not have been able to draw any firm conclusions about the relevance of need or recklessness to samaritan justice.

Third, offering a complete specification of the relevant parameters would be both too ambitious in the confines of a single article and strictly speaking theoretically misguided. This is because needs, costs and (non-)recklessness are—beyond the “straightforward” cases I have discussed—highly context sensitive: they vary across different societies, as well as across different individuals *within* the same society, especially when societies are pluralistic. In light of this, there are good reasons for “outsourcing” the development of a relevant metric of needs, costs and recklessness to each political community, through open and inclusive consultation with its citizens. The content of these different metrics should be the object of public reasoning, rather than imposed via philosophical fiat (cf. Sen 2005).

Having said that, and this is my fourth and final point, for *immediate* policy purposes—which are not the main concern of this article—one might rely on the definitions of “costs,” “need” and “(non-)recklessness” already adopted by the legal system of the society under consideration (for general definitions see Law and Martin 2009).³²

³¹ I am grateful to an anonymous reviewer for raising this objection.

³² I thank an anonymous reviewer for emphasizing this point.

Conclusion

I have discussed different accounts of conditions under which we ought to help the needy on grounds of justice. The view I have defended, Qualified Social Samaritanism, tells us that we should help the non-reckless needy on grounds of justice when our agency is in some ways intertwined with theirs—the most straightforward case being when we are fellow citizens, acting on behalf of the state. From the perspective of Qualified Social Samaritanism—by contrast to the Biblical parable—those obligated to offer assistance *on grounds of justice* do not come “from the outside,” but are members of the community. Equally, of course, everyone is bound by beneficence-based duties, no matter whether one is a fellow member of society or not.

This means that U.S. citizens have enforceable duties of justice to help the victims of Hurricane Sandy, and that legal practice in the state of New York ought to be altered such that “bad Samaritans,” like those who refused to help Ms Moore, may be prosecuted for their omission. I have also emphasized, however, that how far the “social” in “Social Samaritanism” extends is a contingent matter, and that, in an increasingly globalized world, justice-based help may have to extend beyond national borders, even on social samaritan grounds. If I am correct, Qualified Social Samaritanism offers a plausible picture of the nature of our duties to help the needy, one that effectively allows us to criticize existing practices, without reaching conclusions so extreme as to defy moral common sense.

Bibliography

- Anderson, Elizabeth S. 1999. "What Is the Point of Equality?" *Ethics* 109 (2): 287–337.
- Arneson, Richard J. 2000. "Luck Egalitarianism and Prioritarianism." *Ethics* 110 (2): 339–49.
- Barry, Brian. 1991. "Humanity and Justice in Global Perspective." In *Liberty and Justice: Essays in Political Theory 2*, 182–210. Oxford: Clarendon Press.
- Buchanan, Allen. 1987. "Justice and Charity." *Ethics* 97 (3): 558–75.
- Cohen, G. A. 2003. "Facts and Principles." *Philosophy & Public Affairs* 31 (3): 211–45.
- Collins, Stephanie. 2013. "Collectives' Duties and Collectivization Duties." *Australasian Journal of Philosophy* 91 (2): 231–48.
- Cumminskey, David. 1996. *Kantian Consequentialism*. New York: Oxford University Press.
- D'Anna, Eddie. 2012. "As Hurricane Sandy Nears, Mayor Bloomberg Orders Evacuation of Zone A; Thousands of Staten Islanders Affected." *Staten Island Advance* - *SILive.com*.
http://www.silive.com/news/index.ssf/2012/10/mayor_bloomberg.html.
- Daniels, Norman. 2013. "Reflective Equilibrium." In *The Stanford Encyclopedia of Philosophy*, edited by Edward N. Zalta, Winter 2013.
<http://plato.stanford.edu/archives/win2013/entries/reflective-equilibrium/>.
- Duff, Antony. 2013. "Theories of Criminal Law." In *The Stanford Encyclopedia of Philosophy*, edited by Edward N. Zalta, Summer 2013.
<http://plato.stanford.edu/archives/sum2013/entries/criminal-law/>.
- Dworkin, Ronald. 2000. *Sovereign Virtue: The Theory and Practice of Equality*. Cambridge, MA: Harvard University Press.
- Fabre, Cécile. 2002. "Good Samaritanism: A Matter of Justice." *Critical Review of International Social and Political Philosophy* 5 (4): 128–44.
- Feinberg, Joel. 1984. "The Moral and Legal Responsibility of the Bad Samaritan." *Criminal Justice Ethics* 3 (1): 56–69.
- . 1986. *Harm to Self*. New York: Oxford University Press.
- French, Peter A. 1984. *Collective and Corporate Responsibility*. New York: Columbia University Press.
- Gilabert, Pablo. 2010. "Kant and the Claims of the Poor." *Philosophy and Phenomenological Research* 81 (2): 382–418.
- Gilbert, Margaret. 1989. *On Social Facts*. Princeton, N.J.: Princeton University Press.
- Hart, H. L. A. 1955. "Are There Any Natural Rights?" *The Philosophical Review* 64 (2): 175–91.
- Herman, Barbara. 1984. "Mutual Aid and Respect for Persons." *Ethics* 94 (4): 577–602.
- Hernandez, Raymond. 2013. "Congress Gives Final Approval to Hurricane Sandy Aid." *The New York Times*, January 28, sec. N.Y. / Region.
<http://www.nytimes.com/2013/01/29/nyregion/congress-gives-final-approval-to-hurricane-sandy-aid.html>.
- Heyman, Steven J. 1994. "Foundations of the Duty to Rescue." *Vanderbilt Law Review* 47: 674–755.
- Hill, Jr., Thomas E. 2002. "Meeting Needs and Doing Favors." In *Human Welfare and Moral Worth: Kantian Perspectives*, 201–43. Oxford University Press.
- Julius, A. J. 2006. "Nagel's Atlas." *Philosophy & Public Affairs* 34 (2): 176–92.
- Kamm, Frances M. 2002. "Rights." In *The Oxford Handbook of Jurisprudence and Philosophy of Law*, edited by Jules L. Coleman, Kenneth E. Himma, and Scott J. Shapiro, 476–513. Oxford: Oxford University Press.

- Kant, Immanuel. 1999. *Metaphysical Elements of Justice: Part I of The Metaphysics of Morals*. Translated by John Ladd. Indianapolis: Hackett Publishing.
- Kaufman, Alexander. 2004. "Choice, Responsibility and Equality." *Political Studies* 52 (4): 819–36.
- Lamont, W. D. 1941. "Justice: Distributive and Corrective." *Philosophy* 16 (61): 3–18.
- Law, Jonathan, and Elizabeth A. Martin. 2009. *A Dictionary of Law*. 7th ed. Oxford: Oxford University Press.
- Lippert-Rasmussen, Kasper. 2013. "Justice and Bad Luck." In *The Stanford Encyclopedia of Philosophy*, edited by Edward N. Zalta, Fall 2009. Accessed December 7. <http://plato.stanford.edu/archives/fall2009/entries/justice-bad-luck/>.
- List, Christian, and Philip Pettit. 2011. *Group Agency: The Possibility, Design, and Status of Corporate Agents*. Oxford: Oxford University Press.
- Loriaux, Sylvie. 2006. "Beneficence and Distributive Justice in a Globalising World." *Global Society* 20 (3): 251–66.
- Malm, H. M. 1995. "Liberalism, Bad Samaritan Law, and Legal Paternalism." *Ethics* 106 (1): 4–31.
- . 2000. "Bad Samaritan Laws: Harm, Help, or Hype?" *Law and Philosophy* 19 (6): 707–50.
- Marshall, S.E., and R.a. Duff. 1998. "Criminalization and Sharing Wrongs." *Canadian Journal of Law & Jurisprudence* 11 (01): 7–22.
- Martin, Douglas. 1989. "About New York; Kitty Genovese: Would New York Still Turn Away?" *The New York Times*, March 11, sec. N.Y. / Region. <http://www.nytimes.com/1989/03/11/nyregion/about-new-york-kitty-genovese-would-new-york-still-turn-away.html>.
- McDermott, Daniel. 2008. "Analytic Political Philosophy." In *Political Theory: Methods and Approaches*, edited by David Leopold and Marc Stears, 11–28. Oxford: Oxford University Press.
- McIntyre, Alison. 1994. "Guilty Bystanders? On the Legitimacy of Duty to Rescue Statutes." *Philosophy & Public Affairs* 23 (2): 157–91.
- Miller, David. 2001. "Distributing Responsibilities." *Journal of Political Philosophy* 9 (4): 453–71.
- . 2002. "'Are They My Poor?': The Problem of Altruism in the World of Strangers." *Critical Review of International Social and Political Philosophy* 5 (4): 106–27.
- Murphy, Liam B. 2000. *Moral Demands in Nonideal Theory*. Oxford: Oxford University Press.
- Nussbaum, Martha C. 2000. *Women and Human Development: The Capabilities Approach*. Cambridge: Cambridge University Press.
- Olsaretti, Serena. 2009. "Responsibility and the Consequences of Choice." *Proceedings of the Aristotelian Society* 109 (1): 165–88.
- O'Neill, Onora. 1996. *Towards Justice and Virtue: A Constructive Account of Practical Reasoning*. Cambridge: Cambridge University Press.
- Øverland, Gerhard. 2009. "Forced Assistance." *Law and Philosophy* 28 (2): 203–32.
- Patten, Alan. 2012. "Liberal Neutrality: A Reinterpretation and Defense." *Journal of Political Philosophy* 20 (3): 249–72.
- Pogge, Thomas. 2008. *World Poverty and Human Rights: Cosmopolitan Responsibilities and Reforms*. Cambridge: Polity.
- Rawls, John. 1996. *Political Liberalism*. New York: Columbia University Press.
- . 1999. *A Theory of Justice*. Oxford: Oxford University Press.
- Raz, Joseph. 1986. *The Morality of Freedom*. Oxford: Clarendon Press.

- Ripstein, Arthur. 2000. "Three Duties to Rescue: Moral, Civil, and Criminal." *Law and Philosophy* 19 (6): 751–79.
- . 2004a. "Authority and Coercion." *Philosophy & Public Affairs* 32 (1): 2–35.
- . 2004b. "Justice and Responsibility." *Canadian Journal of Law and Jurisprudence* 17 (2): 361–86.
- . 2006. "Beyond the Harm Principle." *Philosophy & Public Affairs* 34 (3): 215–45.
- . 2009. *Force and Freedom*. Cambridge, MA: Harvard University Press.
- Ronzoni, Miriam. 2009. "The Global Order: A Case of Background Injustice? A Practice-Dependent Account." *Philosophy & Public Affairs* 37 (3): 229–56.
- Sangiovanni, Andrea. 2007. "Global Justice, Reciprocity, and the State." *Philosophy & Public Affairs* 35 (1): 3–39.
- Scordato, Marin, Roger. 2008. "Understanding the Absence of a Duty to Reasonably Rescue in American Tort Law." *Tulane Law Review* 82 (4): 1447–1503.
- Sen, Amartya. 2005. "Human Rights and Capabilities." *Journal of Human Development* 6 (2): 151–66.
- Silver, Jay Sterling. 2012. "Can the Law Make 'Bad Samaritans' Be Decent?" *The New York Times*, November 6, sec. Opinion. <http://www.nytimes.com/2012/11/07/opinion/can-the-law-make-bad-samaritans-be-decent.html>.
- Singer, Peter. 1972. "Famine, Affluence, and Morality." *Philosophy and Public Affairs* 1 (3): 229–43.
- Stilz, Anna. 2009. *Liberal Loyalty: Freedom, Obligation, and the State*. Princeton, N.J.: Princeton University Press.
- Stohr, Karen. 2011. "Kantian Beneficence and the Problem of Obligatory Aid." *Journal of Moral Philosophy* 8 (1): 45–67.
- Tuomela, Raimo. 2013. *Social Ontology: Collective Intentionality and Group Agents*. Oxford: Oxford University Press.
- Valentini, Laura. 2011a. "Coercion and (Global) Justice." *American Political Science Review* 105 (01): 205–20.
- . 2011b. *Justice in a Globalized World: A Normative Framework*. Oxford: Oxford University Press.
- . 2013. "Justice, Charity, and Disaster Relief: What, If Anything, Is Owed to Haiti, Japan and New Zealand?" *American Journal of Political Science* 57 (2): 491–503.
- Waldron, Jeremy. 1981. "A Right to Do Wrong." *Ethics* 92 (1): 21–39.
- . 1986. "Welfare and the Images of Charity." *The Philosophical Quarterly* 36 (145): 463–82.
- Young, Iris Marion. 2011. *Responsibility for Justice*. Oxford: Oxford University Press.