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DOI: <https://doi.org/10.1080/00948705.2022.2103423>

Posted at the Zurich Open Repository and Archive, University of Zurich

ZORA URL: <https://doi.org/10.5167/uzh-224987>

Journal Article

Accepted Version

Originally published at:

Reichling, Philipp (2022). Risky rescues – a reply to Patrick Findler. *Journal of the Philosophy of Sports*, 49(3):336-350.

DOI: <https://doi.org/10.1080/00948705.2022.2103423>

Risky rescues – a reply to Patrick Findler

ABSTRACT

In 2006, mountaineer David Sharp died on the slopes of Mount Everest. Sharp's death led to public outrage after allegedly 40 climbers passed by the dying Sharp on their way to the peak, without stopping to help. But, since the slopes of Everest are a high-risk environment and rescuing Sharp would have entailed great risks for the rescuers, it is not clear whether the other mountaineers had a moral duty to rescue him. In a recent article, Patrick Findler introduces a principle to analyse such cases which states that we have a duty to rescue under dangerous circumstances, if the involved risks are not higher than the risks we are already taking in the pursuit of our own, morally less worthy ends. However, Findler then rejects this principle as too demanding. In this paper I will defend the principle against its inventor and argue in favour of such a duty. And while it may be true that the other mountaineers were justified in passing Sharp for different reasons, the principle shows that not only climbers, but adventure-sport athletes in general and people who engage in high-risk endeavours, may have a duty to rescue that doesn't apply to others.

KEYWORDS Duty to rescue; supererogation; risk; adventure sports; mountaineering; Everest

I – Introduction

Every year, hundreds of mountaineers pay mountain guiding companies large sums of money for the chance to try to climb Mount Everest, the highest peak on earth.¹ Among experienced climbers it is understood that the technical difficulties to ascend Everest on the two main routes are not too demanding. What makes the push for the summit challenging are the environmental factors. At 8849 meters above sea level, its peak protrudes right into the jet-stream and can be hit by sustained winds of up to 160 kmh. Only in the spring is there a small window of opportunity when the incoming monsoon pushes the jet-stream farther north and the conditions can be relatively calm.² Even without the jet-stream, conditions are still dire. Storms are common and can reduce the number of good weather days to less than five in the whole season, temperatures are low (mean temperature on the summit is between -36°C in January and -19° C in July³), and in the aptly named death-zone above 8000 meters, oxygen

pressure is only about a third of what it is at sea level – not enough to sustain human life for an extended period without supplementary oxygen. To have a realistic chance of survival, mountaineers plan for several weeks of acclimatization during which they continuously shift their position from basecamp – at roughly 5000 meters above sea – to further, higher up camps, with fallbacks and rest days in between. On the day of their push for the summit, they start the ascent from their highest camp (around 8000 m above sea level) around midnight or in the early hours of the morning, and try to be on top of the world before noon, to ensure enough time for a safe return. But even with all this preparation, some of them die.

One death that generated global publicity was that of British mountaineer David Sharp in the particularly disastrous season of 2006. During his attempt to reach the summit, an exhausted Sharp huddled up under a rock overhang roughly 450 meters below the peak. As he sat there, dozens of climbers allegedly passed by, leaving him to die as they pursued their own ambitions of conquering Everest. The story caused significant public outrage with many mountaineers calling out fellow climbers for allegedly passing Sharp without helping him. Others, including Sharp's own mother, defended the other mountaineers, telling a newspaper that 'your responsibility is to save yourself – not to try and save anybody else'. (*Sunday Times*, May 28, 2006)

On the upper slopes of Mount Everest survival is challenging enough but saving someone who is exhausted, who possibly can't even walk from fatigue, and who may be confused from a lack of oxygen, is a different story altogether. It is not only difficult – it is dangerous and potentially life-threatening for the rescuers. These considerations seem to suggest that rescuing Sharp would have been a supererogatory act. If the other climbers had rescued him, they would have deserved praise. But nobody should blame them for letting Sharp die. So, was the outrage excessive and the criticisms of the other mountaineers uncalled for? Or did they have a duty to rescue Sharp – notwithstanding the risks to themselves?

In a recently published article, Patrick Findler observed that the morally interesting issue raised by the controversy around the failure of rescuing Sharp lies in conflicting intuitions. Even people who think that we don't have a duty to rescue others, if such a rescue would pose a grave threat to us, are inclined to say that the other climbers should have tried to rescue Sharp. And in generalizing the case, it seems to follow that we sometimes have a duty to rescue others – even if such a rescue would entail a high risk for ourselves. This would be especially consequential for people who often find themselves in high-risk environments, like adventure sport athletes, or people in certain lines of work. Findler formulates a principle to analyze such cases – the *Principle of Comparable Risk* – which states that we have a duty to rescue under dangerous circumstances if the involved risks are not higher than the risks we are already taking in the pursuit of our own, morally less worthy ends. Surprisingly, Findler then rejects this principle and concludes that such a duty does not obtain, because it would be too demanding.⁴ In the following, I will first reconstruct Findler's arguments (section II), before showing that his rejection of the principle of comparable risk is unconvincing (section III). Subsequently, I will specify some aspects of the principle (section IV), and conclude by arguing that the principle only denotes a pro tanto duty, not an absolute duty to assume high risks for the benefit of others under certain circumstances (section V). While Findler's main interest is whether the other mountaineers had a duty to rescue Sharp, I will focus exclusively on the principle of comparable risk.

II – Findler's analysis

Findler starts his analysis by asking what moral principle(s) could justify a duty to rescue Sharp and therefore explain our intuition that letting Sharp die was wrong. In doing so, he identifies three possible answers, which he subsequently rejects. First, he points to a rather uncontroversial principle, which he borrows from Rulli & Millum and calls the *Duty of Easy Rescue*: 'If we can prevent a serious harm to another person at little cost to ourselves, then we

have a moral duty or obligation to prevent that harm' (Findler 2021, 13).⁵ But – as Findler rightly points out – such a principle cannot explain a duty to rescue Sharp, or a general duty to rescue others in high-risk environments for that matter, because it explicitly states that the duty only arises if the costs to ourselves are low.

A second principle that could be considered is one brought forward by Peter Singer, Peter Unger, and others, which Findler terms the *Duty of Hard Rescue*: 'If it is within our power to prevent something bad from happening, without thereby sacrificing anything of comparable moral importance, we ought, morally, to do it' (Findler 2021, 14).⁶ The duty of hard rescue is far more demanding than the duty of easy rescue. Still, as Findler correctly observes, it also doesn't entail a duty to rescue Sharp because the rescuers would have had to risk their own life to do so and, arguably, Sharp's life is not morally more important than the life of the rescuers. Furthermore, Findler adds, the duty of hard rescue wouldn't be a good principle to justify a moral duty to rescue Sharp, because most philosophers agree that the principle is too demanding and therefore implausible (2021, 14-15).

Finally, Findler suggests a new principle to justify a moral duty to rescue Sharp, which he calls the *Principle of Comparable Risk*:

If one can help to prevent serious harm to another without assuming risks greater than those one has *presently* voluntarily assumed in pursuit of an end which is, morally speaking, less important, then one has a duty to prevent the harm. (2021, 16)⁷

In contrast to the duty of easy rescue and the duty of hard rescue, the principle of comparable risk could entail a duty to rescue Sharp. This is because the potential rescuers are already in the process of risking their life by climbing Everest.

One could object here, that rescuing Sharp would be far riskier than summiting Everest and descending to the higher camps again. But this is at least contestable. On the one hand, climbing Everest itself is a project that entails life threatening risks for the mountaineers. Many climbers died on Everest and many more lost fingers, toes, and even arms or legs to

frostbite.⁸ Furthermore, there are many accounts of successful rescues on Everest and other peaks in the death-zone that didn't result in harm to the rescuers. I will therefore assume that there would have been at least one way of trying to rescue Sharp that would not have been riskier for the rescuers than going on and trying to summit Everest.

Though the principle of comparable risk could entail a duty to rescue Sharp, the question remains whether the principle itself is plausible and can be defended. Findler arrives at the conclusion that this is not the case, because he sees the principle as too demanding. The mountaineers who passed by Sharp on their way to the summit therefore didn't make a moral mistake as they were under no moral duty to rescue him (2021, 22-23). To establish this finding, Findler refers – as far as I can see – to one main argument and two additional reasons.

The main argument goes something like this: the principle of comparable risk is too demanding because it 'impose[s] onerous and arguably unreasonable burdens to rescue on mountaineers and others who engage in risky sport and recreation' (Findler 2021, 18). These burdens seem to be unreasonable for Findler because of their severity. Potential rescuers would have to take extreme risks to rescue others and the only reason why they have to take those risks lies in their decision to voluntarily engage in risky sport and recreation. Findler invites us to consider an additional example to make his point: During a storm, a surfer rides high waves near the coast, watched by some onlookers. Suddenly, a gigantic wave sweeps one of the onlookers into the sea and the currents threaten to drown him. Now, it seems clear, that the other bystanders don't have a duty to risk their life by trying to rescue the swept away onlooker. Even if one of them was an excellent swimmer, she still wouldn't have this duty due to the high risks that the action would entail. But the principle of comparable risk demands of the surfer that she risks her life to save the drowning man. And the only reason for this is the fact that she chose to engage in a risky sport.

To be clear, according to the principle of comparable risk, the surfer is not under an obligation just because she is there and potentially capable of rescuing the drowning onlooker

– the same could be true of the other bystanders and they would still not be under this duty.⁹

The deciding factor is the risk she herself is voluntarily taking by engaging in a sport she likes. For Findler this is not enough to justify a duty to take on a considerable risk to life and limb.

As Findler points out, there is an additional worry concerning the principle of comparable risk. As a matter of fact, most people in need of rescue in high-risk environments have voluntarily put themselves in danger. This is true for most mountaineers as well as for other people who engage in adventure sports. While this doesn't seem to matter in cases of easy rescue, it seems plausible that it matters a great deal in cases where the risk for the rescuers is substantial. Why should we have a duty to put our life on the line in order to rescue someone who voluntarily exposed themselves to high risks, just because we ourselves engage in a risky endeavour too?

And finally, there is the problem of uncertainty. At least in Sharp's case (and arguably in many other comparable cases) the probability of success seems to be, if not very low, at least not very high either. While, as Findler remarks, a low probability of success would change nothing in respect to our duty of easy rescue – we have to walk into Singer's famous shallow pond and grab the drowning child, even if we fear it is already too late – a low probability of success seems to make a difference in high-risk situations. Because it seems true that no one can demand from us to risk life and limb if there is a low probability that our action will have a meaningful impact on the rescuee's chance of survival.¹⁰

So, while Findler's principle of comparable risk could explain the public outrage in relation to Sharp's death, he himself argues against its validity. His main argument states that the principle is too demanding because it obliges us to accept serious risks for others – risks that are not demanded from other people – just because we voluntarily accept comparable risks for our own ends. He maintains that the fact alone that we are willing to risk our lives to climb a mountain or surf a big wave is not a strong enough reason to compel us to risk our

lives in the service of others. Furthermore, he urges us to consider that many of the relevant people in need voluntarily took on those same high risks and in many of the relevant cases the probability of a successful rescue is low.

Now, does this mean that the climbers who passed and ignored Sharp on their way to the summit can simply point to the fact that rescuing Sharp would have come with substantial risks for themselves to prove that they did nothing wrong? Does the risk that would be entailed by rescuing the (former) onlooker enable the surfer to let him drown? Or can we save the principle of comparable risk in some way, and justify our intuitions that it would be problematic to completely exonerate the other climbers solely based on the idea that rescuing Sharp would have been risky? In the following, I will argue that the principle of comparable risk holds and that we do – at least under certain circumstances – have a duty to assume high risks for the benefit of others, simply because we are already voluntarily assuming comparable risks for ends that are, morally speaking, less significant.

III – Defending the principle of comparable risk

Why does the intuition, that the other climbers should have helped Sharp, persist – *if* it does – despite Findler’s clear and concise reasoning against the principle of comparable risk? I think one reason for it could be that Findler treats rescue-missions as singular actions, affected by a certain risk for the rescuers. But in most cases, rescue-missions consist of many individual actions which all carry distinct risks for the rescuers. Checking up on the curled up Sharp, to see whether he needs any help or is just resting, would have been a completely different action from carrying him down to base camp. The same is true if another climber had provided him with some supplementary oxygen – which could mean that said climber would have had to abandon her summit attempt – or massaging his limbs to get the blood circulating again and, subsequently, assisting him to descend. Those actions all entail different amounts of risk for the rescuers and therefore, could be assessed distinctly. Even if we may agree that the oth-

er climbers did not have a duty to carry an unconscious or highly confused Sharp down the slopes of Everest, we can still maintain that they would have had a duty to check up on him and try to support him.

Note however, that this observation has no necessary connection to the discussion of the principle of comparable risk and is therefore no argument for its cogency. For it may well be true that the mountaineers had to take some of the aforementioned steps, even if the principle, as Findler concludes, is not valid. Because, one could argue, checking up on Sharp or supporting him could be far less dangerous than advancing on to the summit. Simply checking up on him may entail no risk at all and therefore be mandatory. This argument does not change the fact that there is no duty to help him further, when doing so would be too dangerous and the principle of comparable risk does not hold. This presupposes that the principle would have demanded more of the other mountaineers than simply checking up on Sharp. But, while it depends on the context of the specific situation what actions the principle demands, it seems convincing to me that simply checking up on Sharp would not have satisfied the principle, since it would not have been enough to *help to prevent serious harm* to him.¹¹ The intuition that the climbers did something wrong by ignoring Sharp may therefore just be a consequence of one's interpretation of the situation and compatible with the conclusion that the principle of comparable risk is not valid. I however want to argue, that the principle is in fact valid.

To do so, I suggest looking at the problem from a different angle. Consider the example with the surfer again. As Findler points out, we don't think that the bystanders have a duty to rescue the drowning onlooker if it involves risking their own lives. If one of them jumped into the water to attempt a rescue, this could be laudable but not obligatory – a classic example of a supererogatory act (2021, 17).¹² However, if the principle of comparable risk is valid, the same would not be true for the surfer. She would have an obligation to attempt a rescue. How could that be plausible? 'If those of us standing on the sidelines, so to speak, do not have

a duty to risk life and limb in order to rescue others, why is the surfer, climber or other adventure-sport athlete taking similar risks for sport required to do this?' (2021, 17). I think the best way to answer this puzzle is not to ask why the surfer has an obligation to rescue, but to ask why the bystanders don't have such an obligation.

It seems true that the bystanders would have a duty to rescue the drowning onlooker if such a rescue did not come with the risk of drowning or serious injury for themselves. For example: if the water was only knee-deep, and if there was no storm. If we asked the bystanders in the original case, why they didn't jump into the stormy waters to rescue the onlooker, they could point at the high risk for themselves, and this would not only *explain* why they didn't do it but *justify* their non-action. The high risk is the reason for the rescue not to be morally obligatory but only supererogatory. But – as I argue – the same is not true for the surfer. It is the danger to the rescuer that makes the action of rescue supererogatory, but the surfer already assumes a comparable risk for her own goals. The surfer therefore can't point to the high risk as a justifying reason for her non-action *and then carry on doing something else that comes with a comparable risk*. If we asked her, why she let the onlooker drown, and she answered that it was too risky for her to attempt a rescue, we wouldn't take her as being sincere. The reason, the surfer could point to, to justify not helping the drowning man, namely that doing so would be too risky for her, is just not there anymore in a relevant sense. Therefore, we would – and should – hold her accountable.¹³

Now, is this a compelling answer to Findler's worries? Some may say 'yes', while others might insist that I just pointed out the different intuitions he and I have about these situations. While I think that the surfer can't justify her non-action by pointing out the risk, Findler may think that pointing out the risk is a perfectly sound justification.

Perhaps there is a reason, related to our goals, that explains why one could dismiss the principle of comparable risk. The principle assumes that once we accepted a certain risk and need arises, we must accept a comparable risk, no matter our motivations for accepting the

risk in the first place – provided our initial goal was morally inferior to helping someone in great need. And this may seem to be too demanding. It may well be that the other mountaineers are generally deeply risk-averse and only accepted this big a risk because it is unavoidable to achieve one of their lifelong dreams – to summit Mount Everest. It seems to be unfair to require them to accept the same risk for a goal they may share (rescuing the life of an unknown mountaineer) but for which they wouldn't have accepted such big a risk in the first place and wouldn't have had a duty to do so. And it may be equally true that the surfer – if she herself would have been a bystander, watching another surfer – wouldn't have accepted the risk entailed by rescuing a drowning man out of the stormy sea. And she would not have been obliged to do so. How can we therefore ask of her to accept such a risk, just because it so happens that she is voluntarily out at sea when help is needed? We may be willing to accept certain risks for goals that we value highly but from this it shouldn't follow that we have to accept the very same risks for goals we may share but don't value that high.¹⁴

To me it seems, however, that once you accept the risk, your initial motivation for accepting it is no longer relevant. Consider a final example: A social-media influencer is famous for the selfies he takes, while performing dangerous actions like jumping from rooftop to rooftop, dangling one-handed from construction cranes, or leaning out of the windows of moving trains. One day, he plans to take a photo of himself, hanging one-handed from the edge of the roof of a skyscraper, capturing a beautiful sunset in the background. As he is hanging there taking out his phone, he notices a toddler, poising on the sill of an open window just two meters to the right of him. If the toddler falls from the sill, it will surely die. Now, he could ignore the child and take the photos, as he intended – or he could climb the two meters to reach the toddler and push it back into the room from where it came (while accepting that the sun will have set till then and the photos will no longer be possible in the manner he intended). While I fully accept that to lower oneself one-handed from a rooftop to push a toddler from a windowsill back into a room is supererogatory, it seems completely implausible to

me, that the influencer would do nothing morally wrong by referring to that circumstance and insisting on the fact, that he was there to take photos, not to rescue babies. The initial motivation he had for assuming the risk doesn't matter for him to be under a duty to save the toddler, even though saving the toddler would have been supererogatory for him if he wasn't already hanging one-handed from the edge of the rooftop nearby.

IV – Interpreting the principle of comparable risk

In the previous section, I defended the principle of comparable risk against its inventor. While Findler argued that the principle is too demanding, I tried to show that it is valid. Still, I believe that the principle is somewhat vague and we therefore need to clarify some of its aspects. I am especially thinking about the terms *voluntarily*, *risk*, and *comparable*. Recall, the principle as it was first formulated by Findler:

If one can help to prevent serious harm to another without assuming risks greater than those one has *presently* voluntarily assumed in pursuit of an end which is, morally speaking, less important, then one has a duty to prevent the harm. (2021, 16)

A first question is: who is bound by the principle? The initial discussion in Findler's paper was provoked by Sharp's death and Findler focuses mainly on adventure-sports. In fact, one of his main arguments against the principle is the claim that it doesn't extend to workers and that defenders of the principle therefore would have to explain the relevant difference between workers and athletes:

For example, voluntarily risking life and limb for work as a construction worker on a dangerous job site does not entail a duty to assume comparable risks to rescue others. But if there is no duty of high-risk rescue in this case, why would there be a duty of high-risk rescue in cases where one has assumed the risks for sport? (Findler 2021, 18)

Findler just states this claim and doesn't explain how it is motivated. As my discussion of the influencer-case should make clear, I don't agree with Findler. I think the crucial

point here is the understanding of *voluntarily*. It seems obvious that adventure-sport athletes usually voluntarily assume the risks they assume, while this is less clear in the case of people who have to assume risks for their job. This is because it is often the case that those jobs, which come with a serious risk for the workers, are performed by people who are – in a sense – forced to do them, or by those who don't have many (and certainly no attractive) alternatives. Even if they find themselves voluntarily in a high-risk situation in the sense that they didn't actively physically resist, or just ended there through factors outside of their control, it seems to be a different level of voluntariness than in the case of a mountaineer.¹⁵ There seems to be a spectrum of voluntariness ranging from the construction worker doing forced labour in Qatar on the one side – who voluntarily assumes a risk in the sense that he voluntarily opted to work on the poorly paid construction of the roof of a football-stadium rather than doing some even poorer paid work on the ground – to an influencer on the other side, who voluntarily hangs one-handed from the roof of a skyscraper to get social-media likes and a well-paid advertising contract. Somewhere on this spectrum lies a threshold of voluntariness that has to be reached for the principle to apply. But I don't see that the fact that some people assume risks for recreational reasons, and others assume them for work-related reasons, should have necessary ramifications for the principle. I believe therefore, that the principle applies basically to every moral agent who fulfils the criteria of the principle.

A particular case – still concerning this first question – are epistemic errors. It seems convincing to me that, especially in adventure sports, people underestimate the risks they assume. While they may, for example, be willing to assume a certain risk to fulfil their lifelong dream of summiting Everest, they may only realize how big that risk actually is, when they approach a dying mountaineer on their way to the summit. In a sense, it still seems to be true that they voluntarily accepted the risk, but this voluntariness is based on an epistemic error. I therefore suppose that the principle doesn't apply to those people. Rescuing Sharp would still

be supererogatory for someone who only by approaching Sharp realizes how dangerous their environment actually is.

A second question concerns the kinds of risks that are affected by the principle. It is clear from the discussion in Findler's paper that he is concerned with risks to life and limb (2021, e.g. 15). But this is not clear from the formulation of the principle. And this could lead to a reading of the principle that makes it far more demanding than even Findler recognizes – too demanding, many would argue. The principle only speaks of risks 'greater than those one has *presently* voluntarily assumed' in pursuit of an end which is, morally speaking, less important than preventing serious harm to others. Arguably, we assume such risks – financial risks, risks to our good name, risks to our general well-being, etc. – all the time. A literal reading of the principle would therefore suggest that – whenever we are willing to take such risks for our own, morally inferior aims – we have to take such risks instead, to prevent serious harm to others. Instead of taking a financial risk to attempt to establish oneself as a business-owner, one should give the money to help people who are in danger of serious harm, for example the poor and the starving.¹⁶ This seems far too demanding and if the principle really encompasses such kinds of risks we should reject it. But that alone is no good reason to just restrict the kinds of risks one is concerned with. After all, a risk to life and limb seems far more serious than financial risks or a risk to our good name and if we have to assume the former to benefit those who are in danger of serious harm, we surely have to assume the latter as well. Instead of restricting the kinds of risks encompassed by the principle, I propose to restrict the kind of cases the principle should be applied to. Violetta Igneski (2006) persuasively argues that cases where we can actively rescue someone – like all the examples discussed in this paper – have a different moral structure from cases where we can help people in need, by, for example, giving money to charity. Rescue cases – she argues – are morally determinate for the agent, if the situation 'specifies what she must do and when (or by when) she must do it' (Igneski 2006, 440. See also pp. 443-450). This determinacy explains why we are under a

perfect moral duty to help in such cases. While we still have a moral duty to aid the needy, such a duty is imperfect if the sketched determinacy is missing, meaning, that we have different acceptable options to act according to this duty. I believe this to be a useful distinction that goes some way to showing why the principle of comparable risk only applies in cases of moral determinacy.

A final question concerns the name of the principle. Findler calls it the principle of *comparable* risk, but the principle only demands partial comparability, namely comparability in magnitude. To make a rescue demanded, the associated risk must not be greater than the risk, one already voluntarily assumes. But one could at least argue that the risk should also be similar in different aspects. I am especially thinking about similar kinds of risk. Consider again the surfer, riding big waves in the stormy ocean, and imagine a plane making an emergency landing on the beach and catching fire. I'm not sure whether the surfer would have a duty to get to the shore and climb into the burning plane to rescue passengers, even if the magnitude of the risk would be comparable to that of surfing in the stormy sea. This is just an intuition and I have no argument to back it up, but I believe it has something to do with assumed capabilities.¹⁷ Still, it seems convincing to me, that the risks one has to take not only have to be comparable in magnitude but also of a similar kind.

V – The scope of the principle of comparable risk

In the previous two sections, I defended the principle of comparable risk and tried to clarify how I think we should interpret it. Yet, one could argue that even if I showed that people actually have to assume certain risks in certain situations, the principle is still too demanding, since it requires us to assume a high risk to rescue those in need, no matter what else is the case (presupposed we already are assuming a comparable risk for our own, morally less valuable, ends). But this is not my position – I don't believe that the principle spells out an absolute moral duty. And that should not be surprising – even uncontroversial principles, like the

Duty of Easy Rescue, describe only pro tanto duties. For example, even if we could save someone's life with little cost to ourselves by giving them a blood transfusion, we don't have a duty to do so if said person doesn't want to be saved like that.

The position I want to defend is therefore not that whenever we assume a high risk for our own, morally inferior ends, we must assume a comparable risk to rescue those in need, no matter what else is the case. Rather, I believe, the principle of comparable risk shows that certain people in certain situations can't point to the high risk of a rescue-operation to justify their non-action in the face of a serious threat to the life and limb of others. *While the high risk would usually render the action as supererogatory, the fact that the potential rescuers are already assuming a comparable risk changes the normative status of the action.*

There may, however, be additional reasons present in a situation, which may lead to the conclusion that rescuing someone is not obligatory – even though the principle is valid. Consider again the case of Sharp. There may be many different reasons, why the other mountaineers didn't have a duty to rescue Sharp – even though the principle of comparable risk is valid. This would mean that, while they couldn't point to the high risk that came with rescuing Sharp, they could point to these other reasons.¹⁸

Some of these reasons seem to be risk-independent – meaning that they would be valid reasons to omit a rescue even in cases where there was no risk for the rescuers. For example, if the potential rescuers didn't rescue Sharp because they didn't realize his plight.¹⁹ Or if he would have actively waived them on and relinquished his claim to help. But other, more interesting reasons might only come into play in high risk situations. I am thinking here especially about the reasons which Findler counted as additional reasons against the principle of comparable risk, namely Sharp's own actions and the high uncertainty of success. Sharp voluntarily exposed himself to a situation from which he needed rescuing and arguably violated his own duty to take rescue precautions.²⁰ Reportedly, he only took two bottles of supplementary oxygen with him, enough for 8-12 hours, but hardly enough for the whole trip. He also refrained

from taking a two-way radio or a satellite phone to inform others of his position, he climbed solo, without the assistance of a Sherpa or a guide, and didn't inform anybody when he left the highest camp to make his bid for the summit (Findler 2021, 13). Furthermore, as Findler already pointed out and as should be clear from the discussion, trying to rescue Sharp would have come with high uncertainty regarding the chances of success. Those and similar reasons may count against rescuing someone in high-risk circumstances even though they lose their force in situations where there is nothing at stake for the rescuers.

Note however, that these reasons do not invalidate the principle of comparable risk. Rather, they may limit its scope by denoting situations in which the principle is trumped. Which of the competing considerations wins out – the principle on the one hand, these reasons on the other – must be assessed in each individual situation, especially as most of these reasons seem to be gradual. One can refrain from taking rescue precautions in ways that are extreme to mild while chances of success may range from almost inexistent to good but not great.

VI – Conclusion

I argued against Findler that the principle of comparable risk is valid and not too demanding. Still, there may be reasons in specific situations that restrict the principle and lead to us not having a duty to rescue someone. Moreover, I tried to spell out how the principle should be interpreted.

Finally, I want to close this discussion with the observation that many mountaineers – and arguably, many other people – actually think and act according to what the principle demands. There are a great number of examples of mountaineers who risked their lives to save their peers, and most of them don't consider their actions as purely supererogatory. Recounting the notoriously disastrous season of 1996, the author and mountaineer John Krakauer describes how the presence of an inexperienced, and in many eyes ill-prepared Taiwanese team

was of grave concern for the other expeditions on Everest. The other teams feared that the Taiwanese would need help, and that they would have to risk their lives to rescue them.²¹ For them, it was not a question whether they would have to help in such a situation, but a hope, that the need wouldn't arise.

Notes

¹ Everest-expert Alan Arnette estimates that most people pay around 45,000 USD to climb Everest – with some paying up to 160,000 USD. Arnette, Alan. 2021. 'How much does it cost to climb Everest?' *Climbing.com*, April 20. <https://www.climbing.com/news/how-much-does-it-cost-to-climb-everest-2021-edition/>

² Everest has been climbed in all seasons and although winter and summer were never popular, due to adverse weather conditions, there were years in which the autumn season saw its fair share of expeditions (despite the great masses of newly fallen snow). However, since the start of the new millennium, there have hardly been any expeditions in autumn. The data for all expeditions on Everest can be found on the *Himalayan Database*. Accessed 21 January 2022. <https://www.himalayandatabase.com>

³ Since information about Everest (like height, climate etc.) has to be constantly updated with new scientific findings, a lot of outdated facts can be found about the mountain. I rely on the comprehensive and regularly updated article 'Mount Everest' in the *Encyclopedia Britannica*. Accessed 21 January 2022. <https://www.britannica.com/place/Mount-Everest>

⁴ Findler tackles and rejects a second strategy to argue for a duty to rescue Sharp. However, in this paper I am only concerned with the question whether rescuing Sharp was supererogatory from the beginning due to the high risk for the rescuers.

⁵ Original: Rulli & Millum (2016, 1).

⁶ Original: Singer (1972, 231).

⁷ Findler differentiates between four formulations of the principle of comparable risk. The difference lies in the point of time a potential rescuer assumes a risk. The specific principle Findler discusses (and that therefore is the focus of our interest), states that the relevant risks are those that a potential rescuer assumes *presently*, meaning at the point of time, the rescue would be necessary. This is the principle cited here and referred to by Findler as CR1. For the remainder of the paper, I will refer to CR1 as 'the principle of comparable risk'.

⁸ Sharp himself lost toes due to frostbite in an earlier attempt to climb Everest in 2003 (Heil 2008, 110).

⁹ Although it seems to be true – for Findler and in general – that those two criteria have to be fulfilled as well, for the duty to arise.

¹⁰ One could think that the latter two arguments are not directed at the principle of comparable risk, since it could be possible that they identify criteria that have to be fulfilled independently of the principle to make a rescue mandatory. But this is at least not the way Findler presents those arguments, since he thinks that they ‘cast further doubt’ on the principle (Findler 2021, 18-19). I will say something more about this issue in section V.

¹¹ An anonymous reviewer pointed this out to me.

¹² Findler calls the act supererogatory but not a classic example of such acts, which is my addition.

¹³ According to Scanlon’s contractualism, actions are wrong if we cannot justify them to the people they affect (Scanlon, 1998 (see also Parfit (2003) for a discussion)). While I’m not sure, whether I want to fully commit to Scanlon’s view, it seems convincing to me in the cases discussed here. Namely, the fact that someone can’t reasonably justify ignoring a person in need to them, indicates that they are not allowed to do so.

¹⁴ In my opinion, this seems to be the relevant difference between the discussion of the principle of comparable risk and the discussion of the so called all or nothing problem which was introduced by Joe Horton in 2017 (one could argue that Ulla Wessels already discussed the problem in 2002). While Horton’s solution to the All or Nothing Problem seems to entail the principle of comparable risk, it is clear from the discussion, that Horton means for it only to apply to cases, where we are willing to make a sacrifice to bring about an outcome, that is *morally good, for the sake of this outcome*. Horton’s aim, therefore, is to explain, why we have to do the morally better (for example saving two people), and are not allowed to do the morally good (saving just one) if both actions demand the same great sacrifice (and are therefore supererogatory) once we decided to make that sacrifice *in order to do the morally good*. For the principle of comparable risk, on the other hand, the motivation for assuming the initial risk is not relevant and more often than not, this motivation has nothing to do with moral reasons.

¹⁵ This is not to deny that mountaineers – especially professional ones – can also feel some (external or internal) pressure that leads them to *voluntarily* assume higher risks than they would without this pressure.

¹⁶ One could argue, that giving away money is not the same as a financial risk, since a risk usually involves the possibility of losing what is risked as well as gaining something. But one could also defend the view that reckless spending is a risk to one’s financial situation and – in conclusion – to one’s general well-being.

¹⁷ An anonymous reviewer pointed this out to me.

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- ¹⁸ One obvious reason which in my opinion should be dismissed is the fact that for many of those mountaineers, climbing Everest was a life goal. Because even then it would be a goal that is, morally speaking, less important than saving someone.
- ¹⁹ As Heil (2008) tells the story, this may well be the most important reason why so many climbers passed Sharp – They didn't even see him. Passing him in the early – still dark – hours of the day, they were oblivious to him being there. And the few who noticed him thought he was already dead or beyond saving. Of the mountaineers who saw him on their way back – now in daylight – many of those who still had some energy left in them, tried to help him – moving him into sunlight, giving him oxygen and something to drink. But by then it was too late to save his life.
- ²⁰ Rulli & Wendler (2016) argue for a duty to take rescue precautions. However, they deny that one can release others of the duty to rescue by communicating to them that one doesn't want to be rescued or by violating one's own duty to take rescue precautions (esp. pp. 252-255).
- ²¹ To be fair, I have to add that there are people with other views. Japanese Mountaineer Eisuke Shigekawa famously said: 'We climb by ourselves, by our own efforts, on the big mountains. [...] Above 8,000 meters is not a place where people can afford morality'. (Cowper 1996) But arguably, they never heard of the principle of comparable risk.

Acknowledgments

I would like to thank all the participants in the colloquium for applied ethics at the University of Zurich for their questions and comments on an earlier version of this article. For valuable discussions about my arguments, I am very grateful to Daniel Messelken, Lukas Naegeli, Stefan Riedener, and Jack Williams. Finally, I would like to thank the two anonymous reviewers and the editor of the JPS for their helpful comments.

Disclosure statement

The author reports there are no competing interests to declare.

References

Cowper, R. 1996. "The Climbers Left to Die in the Storms of Everest." *The Financial Times*, May 18.

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- Findler, P. 2021. "Climbing High and Letting Die." *Journal of the Philosophy of Sport*, 48 (1): 10-25. doi: 10.1080/00948705.2020.1869559
- Heil, N. 2008. *Dark Summit*. New York: Henry Holt and Company.
- Horton, J. 2017. "The All or Nothing Problem." *The Journal of Philosophy*, 114 (2): 94-104. doi: 10.5840/jphil201711427
- Igneski, V. 2006. "Perfect and Imperfect Duties to Aid." *Social Theory and Practice*, 32 (3): 439-466. doi: <https://doi.org/10.5840/soctheorpract200632321>
- Krakauer, J. 1997. *Into Thin Air*. New York: Villard.
- Parfit, D. 2003. "Justifiability to Each Person." *Ratio*, 16 (4): 368-390. doi: 10.1046/j.1467-9329.2003.00229.x
- Rulli, T. & Millum, J. 2016. "Rescuing the Duty to Rescue." *Journal of Medical Ethics*, 42 (4): 260-264. doi: <https://doi.org/10.1136/medethics-2013-101643>
- Rulli, T. & Wendler, D. 2016. "The Duty to Take Rescue Precautions." *The Journal of Applied Philosophy*, 33 (3): 240-258. doi: 10.1111/japp.12115
- Scanlon, T. 1998. *What We Owe to Each Other*. Cambridge: Belknap Press of Harvard University Press.
- Singer, P. 1972. "Famine, Affluence, and Morality." *Philosophy & Public Affairs*, 1 (3): 229-243.
- Wessels, U. 2002. *Die Gute Samariterin*. Berlin: de Gruyter.