I Am My Brother's Keeper: A Trend Towards Imposing a General Duty Upon a Bystander to Assist a Person in Danger

Teresita Rodriguez
I AM MY BROTHER’S KEEPER: A TREND TOWARDS IMPOSING A GENERAL DUTY UPON A BYSTANDER TO ASSIST A PERSON IN DANGER

Since the early 1900’s, legal scholars have argued that an individual should have a legal duty to save another individual from bodily harm if he can do so without inconvenience to himself.1 This scholarly rule arose in reaction to the countless situations in our country where victims of accidents or sudden medical problems were left unattended by bystanders.2 Despite the continued occurrence of such shocking incidents,3 our legal system has not yet prescribed any general legal duty to aid a person in danger.4 In this country only a moral duty to help another in distress exists.5 Recently, however, it appears that what has been recognized as merely a moral duty to help someone in a perilous situation may become a legal duty. A trend toward imposing a general duty upon the mere bystander to assist a person in danger has been gaining momentum. For example, Minnesota recently passed legislation requiring a bystander to render reasonable assistance during an emergency to anyone exposed to or suffering from grave physical harm.6 Rhode Island has enacted a statute requiring any person who has witnessed a rape to report that incident to the police.7 Similarly, Massachusetts recently passed legislation which requires any person who has witnessed a crime to report that crime to the police.8


2 See Ames, supra note 1 at 112; see, e.g., Allen v. Hixson, 111 Ga. 460, 463-64, 36 S.E. 810, 813 (1900) (employer not liable for failure to remove hand of employee from mangle); Hurley v. Eddingfield, 156 Ind. 416, 417, 59 N.E. 1058 (1901) (doctor not liable for refusal to aid sick person, although doctor knew that he was the only one available and that person’s condition was serious).

3 In the Kew Gardens Section of New York City in 1964, 38 bystanders looked on while Catherine Genovese was attacked and beaten to death. N.Y. Times, March 27, 1964, at 1, col. 4. A year later, a seventeen year old boy was stabbed on a Brooklyn subway after coming to the rescue of some schoolgirls. N.Y. Times, March 14, 1965, at 1, col. 2. Even though the assailants had left the subway car, eleven other passengers failed to help or notify the authorities. Id. The boy bled to death. Id. In July 1983, a thirteen year old girl who wandered into a park area in St. Louis where other children were playing, was raped by two youths. N.Y. Times, July 30, 1983, at 5, col. 6. In spite of the girl’s screams, several people stood by without helping. Id. An eleven year old boy who was passing by summoned the police. Id.

4 See, e.g., 57 AM. JUR. 2d NEGLIGENCE § 41, at 389 (1971) (duties that are dictated merely by good morals, or by humane considerations, not within the domain of the law); see also W. PROSSER, HANDBOOK OF THE LAW OF TORTS, § 56 at 358-43 (4th ed. 1971) [hereinafter cited as PROSSER].

5 As the New Hampshire Supreme Court in Buch v. Amory Mfg. Co. aptly noted:

Suppose A, standing close by a railroad, sees a two-year-old baby on the track and a car approaching. He can easily rescue the child with entire safety to himself, and the instincts of humanity require him to do so. If he does not, he may, perhaps, justly be styled a ruthless savage and a moral monster; but he is not liable in damages for the child’s injury, or indictable under the statute for its death.


6 MINN. STAT. ANN. § 604.05 (West Supp. 1983). See infra notes 177-84 and accompanying text.


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that a bystander owes no duty to a person in danger. In Soldano v. O'Daniels, the court held that a business establishment has a legal duty to let bystanders use its telephone in an emergency. These legislative and judicial developments indicate that this country may at last be close to recognizing explicitly a legal duty to help someone in a perilous situation.

In the United States, the common law rule is that an individual has no duty to aid someone in a dangerous situation. As one court expressed it, "under the law, a man need not act as a [Good Samaritan]." The common law rule of no duty is partially based upon the individualistic philosophy of the early common law which regarded the individual as competent to protect himself without the help of others. Courts, however, have never been satisfied with the common law rule that no general duty to assist a person in danger exists. As a result, courts have developed exceptions which justify the imposition of a legal duty to render aid. For example, where a special relationship exists between the person endangered and the potential rescuer, courts will find a duty to render aid. In the absence of such a relationship, however, courts refuse to enforce what has been perceived as a moral duty to assist someone in danger. This moral duty to help someone in danger is the law in many European countries today. France, a country whose economic and social system is similar to that of the United States, has a law imposing a general duty to assist a person in a perilous situation.

This note will begin by examining briefly the history of the common law rule that no general duty to assist a person in danger exists, and the reasons why courts continue to adhere to this rule. Next, the note will discuss the major exception to the general rule which courts have created to justify the imposition of a legal duty to aid. The major exception to the common law rule is found where a special relationship between the parties creates a duty to act. The third section of the note will examine developments in

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10 Id. at 453, 190 Cal. Rptr. at 317.
11 See Prosser, supra note 4, § 56 at 340. See also infra notes 27-75 and accompanying text.
12 Davis and Shaw Furniture Co. v. Underwriter's Salvage Co. of N.Y., 96 F. Supp. 963, 966 (D. Colo. 1951), aff'd, 198 F.2d 450 (10th Cir. 1952).

The concept of the "Good Samaritan" was developed from the biblical parable told by Jesus. According to the parable, a Jewish man on his way from Jerusalem to Jericho was robbed and beaten by thieves. The man was left half-dead by the side of the road. As the man lay bleeding by the side of the road, several people, including a priest and a Levite, passed by and saw the man but refused to help him. Then along came a man from Samaria. The Samaritan saw the wounded man, had compassion on him, proceeded to bind up his wounds, and took the injured man to an inn so that his wounds could be treated properly. Luke 10:30-37.
14 See Hale, Prima Facie Torts, Combination, and Non-Feasance, 46 COLUM. L. REV. 196, 214 (1946) [hereinafter cited as Hale].
15 See infra note 78.
16 See Hale, supra note 14, § 56 at 340-43. See also infra notes 77-121 and accompanying text.
18 These countries include Belgium, Czechoslovakia, Denmark, France, Germany, Hungary, Italy, the Netherlands, Norway, Poland, Portugal, Rumania, Russia, Switzerland, and Turkey. See generally Rudzinski, The Duty to Rescue: A Comparative Analysis, in THE GOOD SAMARITAN AND THE LAW, 91 (J. Radcliffe ed., 1966) [hereinafter cited as Rudzinski].
19 See infra notes 249-83 and accompanying text for a discussion of French rescue law.
20 See infra text accompanying notes 27-75.
21 See infra text accompanying notes 77-121.
both statutory and common law which indicate a trend toward imposing a general duty to rescue.\textsuperscript{23} To show that imposing a legal duty to aid another in danger is a viable concept, this note will discuss comparative French law on rescue. In contrast to the United States, France has a law which imposes a general duty on its citizens to assist a person in a perilous situation.\textsuperscript{24} Finally, this note will suggest that given the current trend in the United States toward imposing a duty to assist, a rule of law imposing a general duty to rescue is not only inevitable, but also desirable and workable.\textsuperscript{25} The final section will propose a Model Act which state legislatures could adopt in formulating and implementing a rule of law imposing a general duty to assist persons in a dangerous situation.\textsuperscript{26} This Act reflects the current trend in American law by incorporating many of the terms of the recent legislative and judicial developments into a duty to rescue.

I. ORIGIN AND REASONS FOR RULE IMPOSING NO DUTY TO AID

Courts have historically been unwilling to interfere in situations where an individual, who did not create the danger, failed to assist another in peril regardless of whether the potential victim was subsequently harmed as a result of this omission.\textsuperscript{27} Very early in the law a distinction arose between misfeasance and nonfeasance.\textsuperscript{28} Misfeasance is defined as active misconduct working a positive injury to others.\textsuperscript{29} Nonfeasance is a passive inaction — failure to take positive steps to benefit others or to protect them from harm.\textsuperscript{30} This judicial distinction is based on the belief that by "misfeasance" an individual has created a new risk of harm to the potential victim.\textsuperscript{31} By nonfeasance, however, an individual has left the potential victim in the same position — he has not created a new injurious situation for which he should be held responsible.\textsuperscript{32} Rather, the individual has simply failed to bestow a benefit on the potential victim. This distinction has led to the general rule that an individual has no duty to aid another in danger if he did not create the perilous situation.\textsuperscript{33}

The results of this general rule have often been rather shocking.\textsuperscript{34} For example, in

\textsuperscript{23} See infra text accompanying notes 122-248.
\textsuperscript{24} See infra text accompanying notes 249-83.
\textsuperscript{25} See infra text accompanying notes 285-311.
\textsuperscript{26} See infra text accompanying notes 312-43; See also Appendix infra.
\textsuperscript{27} See Ames, supra note 1, at 111-13; McNiece & Thornton, Affirmative Duties in Tort, 58 Yale L.J. 1272, 1283 (1949) [hereinafter cited as McNiece & Thornton].
\textsuperscript{28} See Bohlen pt. I, supra note 1, at 219-20. Bohlen thus notes:
There is no distinction more deeply rooted in the common law and more fundamental than that between misfeasance and non-feasance, between active misconduct working positive injury to others and passive in action [sic], a failure to take positive steps to benefit others, or to protect them from harm not created by any wrongful act of the defendant.
\textsuperscript{29} Id. at 219.
\textsuperscript{30} Id. at 220.
\textsuperscript{31} Id.
\textsuperscript{32} Id.
\textsuperscript{33} Id. at 220-21.
\textsuperscript{34} See Prosser, supra note 4, § 56, at 340. Courts, therefore, have imposed tort liability on acts of misfeasance rather than on those of nonfeasance. See Note, The Bad Samaritan: Rescue Reexamined, 54 Geo. L.J. 629, 630-31 (1966) [hereinafter cited as Note, The Bad Samaritan].
\textsuperscript{35} See Allen v. Hixson, 111 Ga. 460, 463-64, 36 S.E. 810, 813 (1900) (employer not liable for failure to remove hand of employee from mangle); Ficken v. Southern Cotton Oil Co., 40 Ga. App. 841, 151 S.E. 688, 689 (1930) (no legal duty to aid employee after fall); Hurley v. Eddingfield. 156
Union Pacific Ry. v. Cappier, the decedent, a trespasser, had his arm and leg cut off by the car wheel of the defendant's freight car. The defendant's employees failed to call a surgeon or to render him any assistance. As a result, the decedent was left on the side of the tracks where he bled to death. In refusing to find that the railroad employees had any legal duty to assist, the court stated, "with the humane side of the question, courts are not concerned." Similarly, in Osterlind v. Hill, the plaintiff's decedent rented a boat from the defendant boat owner. Once in the lake, the boat overturned and the decedent cried out for help for half an hour before drowning. The defendant, who heard the cries, did nothing to help the decedent, but the Supreme Judicial Court of Massachusetts did not find the defendant guilty of any tort or crime. The court stated that the defendant's failure to respond to the cries for help after the boat overturned was not an infringement on any of the deceased's legal rights. In the more recent case of Yania v. Bigan, the Pennsylvania Supreme Court held that a landowner has no legal duty to prevent a visitor from drowning. In that case, the drowning victim was a business invitee on the defendant's land. The plaintiff alleged that the defendant had enticed the decedent to jump into water that was eight to ten feet deep and that after he had jumped, the defendant failed to help extricate him. According to the court, no cause of action existed because the defendant was not charged with pushing his guest into the water. The court stated that although the defendant may have had a moral duty to prevent the drowning, he had no legal obligation to do so.

Ind. 416, 417, 59 N.E. 1058 (1901) (doctor not liable for refusal to aid sick person, although doctor knew that he was the only one available and that person's condition was serious); Union Pacific. Ry. v. Cappier, 66 Kan. 649, 654-55, 72 P. 281, 283 (1903) (railroad not liable for failure to care for person hit by train); Osterlind v. Hill, 263 Mass. 73, 76, 160 N.E. 301, 302 (1928) (no liability for renting canoe and then refusing to rescue person who capsizes the canoe); Buch v. Amory Mfg. Co., 69 N.H. 257, 260-61, 44 A. 809, 811 (1898) (no duty to prevent child-trespasser from being injured by defendant's factory machinery); Plutner v. Silver Associates, Inc., 186 Misc. 1025, 1027, 61 N.Y.S.2d 594, 595 (1st D. Munic. Ct., N.Y. 1946) (owner of premises had no legal duty to provide medical attention to patron who became ill); Riley v. Gulf, C. & S.F. Ry., 160 S.W. 593, 597 (Tex. Civ. App. 1913) (railroad not liable for negligent care of boy whose foot had been injured by train, since negligent employees were outside scope of employment in rendering aid); See also Restatement (Second), Torts § 314 (1965) [hereinafter cited as Restatement]. Section 314 reads as follows:

§ 314. Duty to Act for Protection of Others. The fact that the actor realizes or should realize that action on his part is necessary for another's aid or protection does not of itself impose upon him a duty to take such action." Id.

66 Kan. 649, 72 P. 281 (1903).
6 Id. at 650, 72 P. at 281.
37 Id.
38 Id.
39 Id. at 653, 72 P. at 282.
40 263 Mass. 73, 160 N.E. 301 (1928).
41 Id. at 74, 160 N.E. at 301.
42 Id.
43 Id.
44 Id. at 76, 160 N.E. at 302.
45 Id.
47 Yania, 397 Pa. at 322, 155 A.2d at 346.
48 Id. at 320, 155 A.2d at 345.
49 Id. at 318-19, 155 A.2d at 344-45.
50 Id. at 321-22, 155 A.2d at 346.
51 Id. at 322, 323, 155 A.2d at 346. For recent cases holding that bystander has no duty to warn
In all of these cases, the courts refused to impose legal sanctions upon a bystander where he was not responsible for creating the original perilous situation. Courts have refused to enforce what was perceived as a purely moral obligation, reasoning that the anticipated spiritual suffering of the bystander would be sufficient sanction.  

Judicial reluctance to require people to help their neighbors is based upon a recognition of several underlying policies and certain perceived practical difficulties involved in using a different rule. First among these policies is the spirit of independence and individualism inherent in the common law. The common law has traditionally regarded the individual as competent to protect himself without the help of others. Moreover, scholars have been concerned that the imposition of a general duty to aid would be a serious restraint on individual freedom and autonomy. Indeed, one scholar has suggested that if the government can legitimately require one person to act for the benefit of another, "it becomes impossible to tell where liberty ends and obligation begins."  

Furthermore, courts have a conceptual problem in imposing tort liability where no definite relationship exists between the parties. In any negligence action, a court must determine that one party owes a legal duty to another, otherwise an individual is not liable for an act which harms another. In determining whether a legal duty does in fact exist, courts will look primarily to the nature of the parties' relationship. Courts have of impending danger, see Mangeris v. Gordon, 94 Nev. 400, 403, 580 P.2d 481, 483 (1978) (defendant had no legal duty to warn decedent that third party was dangerous fugitive); Sidwell v. McVay, 282 P.2d 756, 759 (Okla. Ct. App. 1955) (man observing his neighbor's child hammering explosives has no duty to warn the child of the danger); Cramer v. Mengerhausen, 275 Or. 223, 227, 550 P.2d 740, 743 (1976) (owner of pickup truck had no duty to warn a mechanic working underneath vehicle that truck was about to slip off jack); Abalos v. Oil Dev. Co. of Texas, 526 S.W.2d 604, 608 (Tex. Civ. App. 1975) (although bystander could warn employee of danger of entanglement in machinery, there was no legal duty to do so). For a case holding that rescuer need not alleviate dangerous condition to prevent harm to an unknown potential victim, see Handihoe v. McCarthey, 114 Ga. App. 541, 542-43, 151 S.E.2d 905, 907 (1966) (property owner has no duty to secure swimming pool to prevent child-invitee from entering and drowning in pool).  

53 See Hale, supra note 14, at 214; McNiece & Thornton, supra note 27, at 1288.  
54 Id. See Bohlen pt. 1, supra note 1 at 221. See also Hope, Officiousness, 15 CORNELL L.Q. 25, 29 (1929). Commenting on the spirit inherent in English jurisprudence, Professor Hope states: Self direction or personal autonomy is a mark of the English race. The Englishman, as opposed to one of the Latin lineage, does not so easily coalesce with the mass. He distinctly wishes to live his own life, make his own contacts, or as he frequently says, "muddle through," in his own way. Id.  
55 See Minor, The Moral Obligation as a Basis of Liability, 9 Va. L. Rev. 420, 422 (1923); McNiece & Thornton, supra note 27, at 1288.  
57 See Prosser, supra note 4, § 56 at 338-43.  
58 See Spurlln v. General Motors Corp., 528 F.2d 612, 615 (5th Cir. 1976); Weirum v. RKO General, Inc., 15 Cal. 3d 40, 45-46, 539 P.2d 36, 39, 123 Cal. Rptr. 468, 471 (1975); Cuppy v. Bunch, 88 S.D. 22, 25, 29, 214 N.W.2d 786, 788 (1974); Maxted v. Pacific Car & Foundry Co., 527 P.2d 832, 835 (Wyo. 1974); see also Restatement, supra note 34, at § 328B.  
59 See Prosser, supra note 4, § 37 at 206.  
60 As Justice Cardozo pointed out in Palsgraf v. Long Island R.R.: "The risk reasonably to be perceived defines the duty to be obeyed, and risk imports relation; it is risk to another or to others within the range of apprehension .... Negligence, like risk, is thus a term of relation." Palsgraf v. Long Island R. R., 248 N.Y. 359, 344-45, 162 N.E. 99, 100-01 (1928). Having established a sufficient relationship between the parties, the courts then consider a second factor, whether the harm was foreseeable. See L.S. Ayres & Co. v. Hicks, 220 Ind. 86, 93, 40 N.E.2d 334, 337 (1942). See also Restatement, supra note 34, § 328B.
usually found the relationship between a victim and a mere bystander insufficient to impose on the bystander a legal duty to act.61

In addition, the common law rule of no duty reflects the bystander's understandable hesitancy to undertake a rescue.62 Not only does the bystander risk injuring himself if he does undertake a rescue, but also he may find himself involved in a lawsuit if his well-intentioned efforts aggravate the victim's injury.63 At common law, once an individual undertakes to aid another, even though he is under no duty to do so, he must conform to a standard of reasonable care to avoid liability for his actions.64

Finally, and perhaps most importantly, the common law rule of no duty owes its survival to the belief that imposing an alternative rule would be difficult.65 This belief is based upon a variety of problems in fixing liability on potential rescuers, such as: who among a crowd of potential rescuers should be legally obligated to assist;66 how much risk to himself a bystander must incur;67 what degree of care the bystander must exercise;68 and whether a rescuer should be compensated for injuries he sustains as a result of his efforts.69 The common law was not able to formulate a rule that would overcome these

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61 See supra notes 27-52.
62 See Linden, Rescuers and Good Samaritans, 34 Mod. L. Rev. 241, 242 (1971) [hereinafter cited as Linden].
63 Id.
64 See Glanzer v. Shepard, 233 N.Y. 236, 237, 135 N.E. 275, 276 (1922). The Glanzer court noted: "it is ancient learning that one who assumes to act, even though gratuitously, may thereby become subject to the duty of acting carefully, if he acts at all." See also RESTATEMENT, supra note 34, § 324; Slater v. Illinois Central R.R., 209 F. 480, 483 (M.D. Tenn. 1911); Black v. New York, N.H. & H.R. Co., 193 Mass. 448, 451, 79 N.E. 797, 798 (1907); Smith v. Twin State Improvement Corp., 116 Vt. 569, 570-71, 80 A.2d 664, 665 (1951). If the rescuer is injured in his rescue attempt, he can recover damages from the third party tortfeasor. Wagner v. International Ry., 232 N.Y. 176, 180, 133 N.E. 437 (1921). In Wagner, Justice Cardozo stated:

The cry of distress is the summons to relief. The law does not ignore these reactions of the mind in tracing conduct to its consequences. It recognizes them as normal. It places their efforts within the range of the natural and probable. The wrong that imperils life is a wrong to the imperiled victim; it is a wrong also to his rescuer.

65 See Tarasoff v. Regents of Univ. of Calif., 17 Cal. 3d 425, 435 n.5, 551 P.2d 334, 343 n.5; 131 Cal. Rptr. 14, 23 n.5 (1976). The common-law rule is "[m]orally questionable [and] owes its survival to 'the difficulties of setting any standards of unselfish service to fellow men, and of making any workable rule to cover possible situations where fifty people might fail to rescue . . . ." Id. (quoting PROSSER, supra note 4, § 56, at 341); see also Ames, supra note 1, at 112, McNiece & Thornton, supra note 27, at 1289.
66 See PROSSER, supra note 4, § 56 at 341. Professor Weinrib, however, has offered the following solution for the problem:

Even if there are many possible rescuers, the difficulties are no less surmountable than are those in cases of negligence involving many tortfeasors. Though potentially more complicated on average, the rules could be the same: the victim has a right to only one recovery, and all tortfeasors are liable to the victim, but they are entitled to contribution among themselves.

68 Id.
69 Id. at 4-5.
perceived problems with establishing a legal duty to help someone in a dangerous situation.\textsuperscript{70}

Thus, the individualistic philosophy of the common law, the absence of a definite relationship between the parties, the bystander's risk of liability and the difficulty in formulating and administering a new rule are factors which have contributed to a judicial and legislative resistance to impose a general duty on bystanders to assist someone in danger.\textsuperscript{71} Nevertheless, commentators have sharply criticized this judicial and legislative resistance to change the common law rule that no duty exists to help someone in danger,\textsuperscript{72} contending that the rule is morally questionable\textsuperscript{73} and outdated.\textsuperscript{74} Perhaps in response to such criticism, recent developments in both the common law and statutory law indicate a relaxing of the stringent judicial and legislative stance and a trend toward imposing a general duty to rescue.\textsuperscript{75} An indication that the judiciary was moving in the direction of encouraging rescue was the creation of exceptions to the common law rule of no duty.\textsuperscript{76}

\section*{11. Exceptions to the Common Law Rule}

Despite the judiciary's consistent refusal to impose on bystanders a general duty to aid persons in danger, courts have never been completely satisfied with the common law rule of no duty.\textsuperscript{77} One indication of dissatisfaction with the application of the general rule is evidenced by the judicial development of exceptions which justify imposing a legal duty to render aid.\textsuperscript{78} The major exception\textsuperscript{79} to the general rule that no cause of action is

\textsuperscript{70} See id.

\textsuperscript{71} See Linden, supra note 62, at 242.

\textsuperscript{72} See generally, Ames, supra note 1; Bohlen, supra note 1; D'Amato, The "Bad Samaritan" Paradigm, 70 NW. U. L. REV. 798 (1975) [hereinafter cited as D'Amato]; Edgar, The Bystander's Duty and the Law of Torts - An Alternative Proposal, 8 ST. MARY'S L.J. 302 (1976); Linden, supra note 62; McNiece & Thornton, supra note 27; Rudolph, The Duty to Act: A Proposed Rule, 44 NEB. L. REV. 499 (1965); Scheid, supra note 67; Seavy, supra note 46; Weinrib, supra note 66; Note, The Bad Samaritan, supra note 33; Note, The Duty to Aid One in Peril in Good Samaritan Laws, 15 HOW. L.J. 672 (1969) [hereinafter cited as Note, The Duty to Aid].

\textsuperscript{73} See PROSSER, supra note 4, at 341.

\textsuperscript{74} See Note, Stalking the Good Samaritan: Communists, Capitalists & The Duty to Rescue, 1976 UTAH L. REV. 529, 542 (1976).

\textsuperscript{75} See infra notes 122-248 and accompanying text.

\textsuperscript{76} See Linden, supra note 62, at 242.

\textsuperscript{77} Even judges who have dismissed claims by victims against non-rescuers have indicated the moral revulsion with which they regard the defendant's inaction. See Union Pacific Ry. v. Cappier, 66 Kan. 649, 653, 72 P. 281, 282-83 (1903); Buch v. Amory Mfg. Co., 69 N.H. 257, 260-61, 44 A. 809, 810 (1878). For a detailed discussion of Union Pacific Ry. v. Cappier, see supra notes 35-39 and accompanying text.

\textsuperscript{78} See, e.g., Maldonado v. Southern Pac. Transp. Co., 129 Ariz. 165, 169, 629 P.2d 1001, 1005 (1981) (defendant has a duty to assist person injured by instrumentality under defendant's control); Hardy v. Brooks, 103 Ga. App. 124, 127, 118 S.E.2d 492, 495 (1961) (persons who non-negligently create dangerous condition on highway are under a duty to take reasonable precautions against injury to persons using the highway); L.S. Ayres & Co. v. Hicks, 220 Ind. 86, 95, 40 N.E.2d 334, 337 (1942) (defendant has a duty to assist person injured by instrumentality under defendant's control); Tubbs v. Argus, 140 Ind. App. 695, 699-700, 225 N.E.2d 841, 843 (1967) (same); Fridgen v. Boston Housing Auth., 364 Mass. 606, 609-10, 144 N.W.2d 358, 367 (1966) (persons who non-negligently create dangerous condition on highway are under a legal duty to take reasonable precautions against injury to those using the highway); Simonsen v. Thorin, 120 Neb. 684, 687, 234 N.W. 628, 629 (1931) (same); Parrish v. Atlantic Coast Line R.R., 221 N.C. 292,
available for nonfeasance is where a special relationship exists between the parties. Where it can be shown that a definite special relationship exists between the parties "of such a character that social policy justifies the imposition of a duty to act," the courts have imposed a duty to act affirmatively. One example of such a relationship prompting a duty to aid is that of an employer and his employee. In Szabo v. Pennsylvania R.R., the decedent employee suffered a heat stroke while working. The employer ordered two of the employee's co-workers to take him home. The co-workers did so, but subsequently left the decedent in the house alone. The Court of Errors and Appeals stated that enough evidence was presented to raise a jury question of whether the employer had exercised due care in aiding the employee. The court declared that when an employee becomes ill during the course of his work, "dictates of humanity" require that an employer provide the necessary medical assistance. Another example of a relationship imposing a duty to act affirmatively for the protection of others is that of a common carrier and its passengers. In Yazoo, M.V. Ry. v. Byrd, a passenger, through no fault of the railroad, fell from a train. The railroad employees left him lying near the tracks for more than three hours. The railroad was held liable for failure to fulfill its duty to provide proper attention after an accident. The court declared that "railroads owe to their passengers the consideration and care of common humanity." Courts, therefore, have imposed a legal duty on an employer to come to the aid of his injured employee in an emergency, and of a carrier to come to the aid of its passengers. The existence of a special relationship between the parties was crucial to the courts' finding that there was a duty to act. In the absence of a special relationship between the

300, 20 S.E.2d 299, 305 (1942) (tortfeasors have a duty to aid those injured by their conduct); Montgomery v. Nat'l Convoy & Trucking Co., 186 S.C. 167, 176, 195 S.E. 247, 251 (1957); (persons who non-negligently create dangerous condition on highway are under a duty to take reasonable precautions against injury to persons using the highway).


80 See Prosser, supra note 4, § 56 at 340-43; Restatement, supra note 34, § 314A.

81 See Prosser, supra note 4, § 56 at 339.

82 Id. at 340-43.

83 Id. at 341-42; see also McNiece & Thornton, supra note 27, at 1278.

84 132 N.J.L. 331, 40 A.2d 562 (Ct. Err. & App., 1945).

85 Id. at 332, 40 A.2d at 562.

86 Id. at 334, 40 A.2d at 564.

87 Id. at 335, 40 A.2d at 564.

88 Id. at 334, 40 A.2d at 564.

89 Id. at 333, 40 A.2d at 563. See also Anderson v. Atchison, T. & S.F.R.R., 333 U.S. 821, 823 (1948); Carey v. Davis, 190 Iowa 720, 724, 180 N.W. 889, 891 (1921); Hunicke v. Meramec Quarry Co., 262 Mo. 560, 599, 172 S.W. 43, 54 (1914); Rival v. Atchison, 62 N.M. 159, 163-64, 306 P.2d 648, 651 (1957).

90 See Restatement, supra note 34, § 314A; Prosser, supra note 4, § 56 at 341; McNiece & Thornton, supra, note 27, at 1279.

91 89 Miss. 308, 42 So. 286 (1906).

92 Id. at 317, 42 So. at 287.

93 Id.

94 Id. at 321, 42 So. at 288.


parties, courts refuse to impose a legal duty to assist the one in danger. It seems somewhat anomalous, however, for a court to speak in terms of "the dictates of humanity" where it can identify a special relationship, and to state that with "purely moral obligations the law does not deal" where the court cannot identify a special relationship. Courts appear more likely to find a special relationship in situations in which the parties derive an actual or potential economic benefit. Commentators have suggested that courts are less reluctant to impose a duty to act affirmatively in those types of situations because the person placed under the obligation derives some economic advantage from the relationship. According to these commentators, the benefit that the party under the obligation expects to obtain justifies the requirement of a duty to act. Under the "benefit principle" theory, an employer has an affirmative duty to act because his business is enhanced by the services of his employees. The duty to aid, therefore, is a "price" to be paid for the benefit. Similarly, the common carrier obtains an economic benefit from its passengers. This economic benefit justifies imposing a duty on the carrier and its employees to aid a passenger.

Recently, courts have been expanding the concept of special relationships beyond those situations involving the flow of an economic benefit to the alleged defendant. For example, in Farwell v. Keaton, two friends out for a social evening became involved in a fight with a group of six youths. One of the two escaped, but the other was severely beaten. The friend who had escaped did not obtain any medical assistance for his friend nor did he notify anyone of his condition. Instead, he left his friend unconscious in a car at his grandparents' home. The friend who had been beaten died as a result of his

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See supra notes 27-74 and accompanying text.


See McNiece & Thornton, supra note 27, at 1282-87; See also Scheid, supra note 67, at 5-6.


Id. at 1282.

Id. at 1286.

Id. at 1285.

Id. Similarly, the activities of a sailor are of such benefit to the ship's captain that admiralty law has long held that a ship has a duty to save its seamen who have fallen overboard. See also Harris v. Pennsylvania R.R., 50 F.2d 866, 868 (4th Cir. 1931); Salla v. Hellman, 7 F.2d 953, 954 (S.D. Cal. 1925). Courts have also found a special relationship meriting a duty to assist between an innkeeper and a guest, Scholl v. Belcher, 68 Or. 310, 323, 127 P. 968, 973 (1912); a jailer and a prisoner, Thomas v. Williams, 105 Ga. App. 321, 326, 124 S.E.2d 409, 413 (1962); an innkeeper and an invitee, Weinburg v. Hartman, 65 A.2d 805, 809 (Del. 1949); Custer v. Atlantic & Pac. Tea Co., 43 A.2d 716, 717 (D.C. 1945); L.S. Ayers & Co. v. Hicks, 220 Ind. 86, 95, 40 N.E.2d 334, 337 (1942); Depue v. Flatau, 100 Minn. 299, 305, 111 N.W. 1, 2 (1907); Connelly v. Kaufman and Baer Co., 94 Pa. 261, 265, 37 A.2d 125, 127 (1944); a doctor and a patient, Tarasoff v. Regents of Univ. of Calif., 17 Cal. 3d 425, 435, 551 P.2d 334, 343, 131 Cal. Rptr. 14, 25 (1976); McNish v. Milano, 168 N.J. Super. 466, 489, 403 A.2d 500, 511-12 (1979). See also Restatement, supra note 34, at § 314A; Prosser, supra note 4, § 56, at 340-43.

Id. at 285, 240 N.W.2d at 219.

Id.
injuries. The decedent's father brought a wrongful death action against his son's friend. The father contended that his son would not have died if his friend had taken him to the hospital or notified someone of his condition. In finding for the plaintiff, the Supreme Court of Michigan held that the defendant had a duty to obtain medical assistance or at least to notify someone of his friend's condition. The court found that because the defendant and the decedent were companions on a social venture, a common undertaking constituting a special relationship was involved. The court concluded that implicit in such a relationship was the understanding that one companion would help the other in peril.

These decisions indicate that courts have been diminishing the scope of the common law rule of no duty to assist a person in peril by creating an exception based upon the relationship between the parties. The courts have also been expanding the list of special relationships which will justify a departure from the common law rule of no duty. The Restatement (Second) of Torts has recognized that "special relationship" is an expanding concept in tort law. According to the Restatement, the law appears to be heading toward a recognition of the duty to aid or protect in any relationship of dependence or mutual dependence. In addition to the expansion of the special relationship concept, recent legislative and judicial developments recognizing a duty to aid others regardless of the relationship between the parties, represent a further diminishing of the scope of the common law rule.

III. THE TREND TOWARDS IMPOSING A GENERAL DUTY TO AID

American scholars and commentators have long argued for laws imposing an affirmative duty to rescue one in peril. For example, in his treatise on torts, Harper hoped for the day when some "courageous court" would abandon the customary approach and hold that "the helplessness of the plaintiff and the ability of the defendant to aid or mitigate the injury is of sufficient significance to create a legal duty to give such reasonable aid as the circumstances of the parties require and permit." Recent devel-

112 Id.
113 Id. at 281, 240 N.W.2d at 217-18.
114 Id. at 285, 240 N.W.2d at 219.
115 Id. at 292, 240 N.W.2d at 222.
116 Id. at 291, 240 N.W.2d at 222.
117 Id.
118 See Caldwell v. Bechtel, Inc., 631 F.2d 989, 1000 (D.C. Cir. 1980) (recent holdings suggest that courts eroding general rule that no duty to help another in distress exists by creating exceptions based upon a relationship between the actors).
120 See RESTATEMENT, supra note 34, § 314A, comment b; see also Tarasoff v. Regents of Univ. of Calif., 17 Cal. 3d 425, 435, n.5, 551 P.2d 534, 345 n.5, 131 Cal. Rptr. 14, 23 n.5 (1976); Pamela L. v. Farmer, 112 Cal. App. 3d 206, 211, 169 Cal. Rptr. 282, 285 (1980); Mann v. State of California, 70 Cal. App. 3d 773, 779-80, 139 Cal. Rptr. 82, 86 (1977); PROSSER, supra note 4, at § 56, 339-40; Restatement, supra note 34, § 314A, comment b.
121 See supra note 72 and accompanying text.
opments in both statutory and common law indicate that the view espoused by these commentators is becoming generally accepted and that this country is moving towards imposing a general duty to aid a person in distress. This trend had its origin in statutes creating a duty to aid others in certain narrowly defined circumstances. Some states have enacted statutes extending the duty to help others in danger to more varied situations. The courts, too, have been more willing to recognize a general duty to aid others. These various legislative and judicial developments represent a movement towards recognizing a general duty to aid others in peril, regardless of any special relationship between the victim and the would-be rescuer.

A. Public Welfare Statutes

One of the first indications that the law is moving towards encouraging rescue is the expansion of the affirmative duties one party owes another where public safety is concerned. For example, many states have enacted hit-and-run statutes imposing a duty on a driver involved in an accident to stop and render assistance to any person injured in an accident. The hit-and-run statutes usually require that a driver provide reasonable assistance, including transporting the injured party to a hospital if necessary. Courts have interpreted hit-and-run statutes to impose a duty on either party to the accident, regardless of fault. For example, in Brooks v. E.J. Willig Transport Co., the Supreme Court of California upheld a jury instruction that to knowingly refuse to stop after an accident was a breach of a civil duty independent of the driver’s negligence or the victim’s contributory negligence. Similarly, in Meadows v. State, the Supreme Court of Mississippi stated that one of the main purposes of its hit-and-run statute was, “to compel the driver of the car involved to render humanitarian assistance to the persons injured, whether he was guilty of negligence in the operation of his vehicle at the time of the accident or not.”

The effect of hit-and-run statutes, therefore, is to impose on each driver involved in an accident the duty to render aid, even though the injured party may have been the one who caused the accident. If the driver refuses to assist and the victim is further injured

124 See text accompanying notes infra 126-49.
125 See infra text accompanying notes 163-90.
126 See infra text accompanying notes 198-247.
128 See, e.g., CAL. VEH. CODE § 20003 (West 1971 & Supp. 1984). Section 20003 reads in part: The driver of any vehicle involved in an accident resulting in injury to or death of any person . . . shall render to any person injured in the accident reasonable assistance, including the carrying or the making arrangements for the carrying of such person to a physician, surgeon or hospital for medical or surgical treatment if it is apparent that treatment is necessary or if such carrying is requested by the injured person.
Id.
129 Id.
130 40 Cal. 2d 669, 225 P.2d 802 (1953).
131 Id. at 678-79, 225 P.2d at 808-09.
132 211 Miss. 557, 52 So. 2d 289 (1951).
133 Id. at 563, 52 So. 2d at 291.
134 But see RESTATEMENT, supra note 34, § 322, comment a (if actor’s conduct, whether tortious or innocent, causes bodily harm to another, actor under duty to exercise reasonable care to prevent future harm).
as a result, the driver is civilly liable for any aggravation of the injuries. Hit-and-run 
statutes are a means of protecting the general welfare of the public because they 
courage an individual to render necessary aid to accident victims who might otherwise be left 
unattended by the roadside. Professor Prosser suggests that the hit-and-run statutes are 
one indication of a gradual movement towards a general rule that mere knowledge of 
another person in a serious or life threatening situation which an individual can avoid 
with slight inconvenience may impose a duty to aid.

Another example of the trend toward imposing a general duty to rescue are statutes 
requiring individuals to report incidents of child abuse. State legislatures have recog-
nized that to treat the problem of child abuse adequately, state agencies need the public's 
help. All fifty states have imposed an affirmative duty on certain individuals to report 
incidents of child abuse. The early reporting statutes required only physicians to report 
instances of child abuse. Recognizing that other nonmedical professionals also had 
regular contact with children, states began to expand the list of mandated reporters. 
Currently, several states require that "any person" who knows or has reasonable cause to 
suspect an incident of child abuse to report that incident. Sanctions for violating such

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(defendant found liable for failure to render aid even though jury exonerated him of all misfeasance 
relating to the original accident).

136 Meadows v. State, 211 Miss. 557, 563, 52 So. 2d 289, 291 (1951). In Summers v. Dominguez, 
29 Cal. App. 2d 308, 312-13, 84 P.2d 277, 279 (Cal. Ct. App. 1938), the court stressed the existence 
of two distinct causes of action and stated that the liability under section 20003 of the California 
Vehicular Code "is not imposed as a penalty for the actor's original misconduct, but for a breach of a 
separate duty to aid . . . ."

137 See Prosser, supra note 4, § 56 at 343.


139 The magnitude of the child abuse problem was not fully perceived by the public, however, 
until an article describing the problem was published in the Journal of the American Medical 
(1977) [hereinafter cited as Comment, Civil Liability]. According to the article, proper treatment of 
the child abuse problem includes the reporting of such incidents to the authorities. Id. (citing Kempe, 
Silverman, Steele, Droegemueller & Silver, The Battered Child Syndrome, 181 J.A.M.A. 24 (1962)).

140 See Freiman, Unequal and Inadequate Protection Under the Law: State Child Abuse Statutes, 50 
Child Abuse Protection, 66 Colum. L. Rev. 679, 711 (1966). Paulsen notes that in the history of the 
United States, few legislative proposals have been so widely accepted in so little time as the manda-
tory reporting of incidents of child abuse. Id.

141 See Paulsen, Child Abuse Reporting Laws: The Shape of the Legislation, 67 Colum. L. Rev. 1, 3 
(1967).

142 See Freiman, supra note 140, at 256-57.

143 States that require any person to report include Delaware, Florida, Rhode Island and Texas.

Fraser, A Glance at the Past, A Gaze at the Present, A Glimpse at the Future: A Critical Analysis of the 
Development of Child Abuse Reporting Statutes, 54 Chi-Kent L. Rev. 641, 658 n.113 (1977)[hereinafter cited as Fraser]. Typical of these statutes is the following provision from the Rhode Island Statute: 
§ 40-11-3. Any person who has reasonable cause to know or suspect that any child has 
been abused or neglected . . . shall . . . transfer such information to the department for 
children and their families . . . .
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statutes vary from state to state. Although some states have chosen to impose criminal sanctions for failing to report, others have chosen to impose only civil penalties. In addition to the statutory penalties, a recent court decision indicates that nonreporters may be subject to civil liability for subsequent injuries to the child.

Child abuse reporting statutes requiring anyone to report incidents of child abuse are significant to the development of a rule requiring rescue because they impose an affirmative duty on everyone to aid children in peril regardless of their relationship to the child. Liability in this instance is imposed not for an act but for an omission. Child abuse reporting statutes, therefore, represent another step toward a general recognition that liability may be imposed for nonfeasance as well as misfeasance.

In addition to the enactment of statutes imposing a duty to act in the limited situations of car accidents and child abuse, other developments in the law encourage rescue. For example, many states have enacted Good Samaritan statutes which protect physician rescuers from liability.

§ 40-11-6.1. Any person ... required by this chapter to report known or suspected child abuse . . . who knowingly fails to do so or who knowingly prevents any person acting reasonably from doing so shall be guilty of a misdemeanor and upon conviction . . . thereof shall be subject to a fine of not more than five hundred dollars ($500) or imprisonment for more than one (1) year or both.


See Freiman, supra note 140, at 261.


See, e.g., ME. REV. STAT. ANN. tit. 22 § 4009 (West 1983-84) (civil violation).

See Landeros v. Flood, 17 Cal. 3d 399, 551 P.2d 389, 131 Cal. Rptr. 69 (1976). In this case, child's guardian ad litem sued the child's physician in the plaintiff's name, claiming that the defendant was liable to plaintiff under the California reporting statute for failure to report, and under common-law malpractice for failure to diagnose the battered child syndrome. Id. at 405, 555 P.2d at 390-91, 131 Cal. Rptr. at 70-71. The trial court sustained defendant's demurrer to the complaint. Id. On appeal, the California Court of Appeals held that liability for failure to report could not be based on malpractice. Landeros v. Flood, 123 Cal. Rptr. 713, 717-20 (Cl. App. 1975). The Supreme Court of California vacated the lower court's judgment and held that recovery could be had on either basis. 17 Cal. 3d at 412-13, 551 P.2d at 396, 131 Cal. Rptr. at 76. See generally, Comment, Civil Liability, supra note 139, at 135; Brown & Truitt, Civil Liability in Child Abuse Cases, 54 CHI-KENT L. REV. 755 (1977).

See, e.g., FLA. STAT. ANN. § 827.07 (5) (West 1976 & Supp. 1983): "Any person, including, but not limited to, any physician, nurse, teacher, social worker, or employee of a public or private facility serving children, who has reason to believe that a child has been subject to abuse shall report or cause reports to be made to the department."

See, e.g., N.Y. Soc. Ser. Law § 420 (1) (McKinney 1983) (any person, official or institution required by title to report a case of suspected child abuse or maltreatment who willfully fails to do so is guilty of a class A misdemeanor). At common law, no liability existed for omissions. See Ames, supra note 1, at 112.

Fraser notes that the number of reported cases of child abuse has increased on a yearly basis since the first reporting statute was enacted in 1962. Fraser, supra note 143, at 646.

growing concern that the threat of malpractice suits was preventing many physicians from rendering emergency aid at the scene of an accident. Good Samaritan statutes seek to encourage prompt treatment of accident victims by exempting physicians from civil liability when their conduct is less than grossly negligent. Recently, several states have extended the protection of Good Samaritan statutes to exempt all volunteers from civil liability. These statutes provide that individuals who render emergency care shall not be liable in civil damages for any act or omission not amounting to gross negligence. One commentator has noted that these statutes come very close to a legal recognition of a duty to aid by granting immunity to all persons who render emergency care. The effect of these statutes, therefore, is to encourage rescue.

Another example of a legislative development encouraging rescue is the enactment of statutes indemnifying individuals who are personally injured or suffer property damage in aiding the prevention of a crime or in the apprehension of a criminal. Citizens who help prevent crime are assuming some of the responsibilities of state officials. California has extended the coverage of its indemnification law. Under California law, the state will also indemnify individuals for injuries or property damages they sustain in rescuing someone in a life threatening situation, such as a "fire, drowning or other catastrophe." The statute specifically states that the state


152 Franklin, supra note 151, at 52. Physicians were aware that they had to conform to the usual standard of care in providing emergency care. Id.; see also supra note 64. If they failed to provide reasonable care they would be subject to liability. Franklin, supra note 151, at 52-53. Thus, physicians lobbied the legislature to reduce the standard of care during an emergency. Id. at 53. See generally, Note, Good Samaritans and Liability for Medical Malpractice, 64 Colum. L. Rev. 1901 (1964).

153 See Note, The Duty to Aid, supra note 72, at 676; see supra note 151 and accompanying text.


155 Id.

156 See Note, A Duty to Aid, supra note 72, at 651.

157 Id.


159 See Comment, The Duty to Rescue, supra note 18, at 68.


161 Id. Section 13970 of the California Code reads as follows:

§ 13970 DIRECT ACTION OF CITIZENS AS BENEFITING PUBLIC; INDEMNIFICATION IN CERTAIN CASES.

Direct action on the part of private citizens in preventing the commission of crimes against the person or property of others, or in apprehending criminals, or rescuing a person in immediate danger of injury or death as a result of fire, drowning, or other catastrophe, benefits the entire public. In recognition of the public purpose served, the state may indemnify such citizens, their surviving spouses, their surviving children, and any persons dependent upon such citizens for their principal support in appropriate cases for any injury, death, or damage sustained by such citizens, their surviving
indemnifies the rescuer because of the important public purpose he has served. By extending its coverage to situations not involving criminal activity, the California statutes explicitly recognize the desirability of encouraging rescue in our modern society.

B. Recent Rescue and Reporting Statutes

In a growing number of instances, state legislatures have been actively encouraging rescue. This is illustrated by the enactment of the Good Samaritan statutes and the Indemnification statutes. Various state legislatures have imposed a duty to assist injured automobile accident victims and abused children by enacting hit-and-run statutes and child abuse reporting statutes. Recent statutory developments in some states, however, go beyond imposing a duty in the limited situations of injured automobile accident victims and abused children and impose liability on bystanders who do not rescue persons in a perilous situation when they have the ability to do so. Additionally, various states impose a duty on its citizens to report a crime they have witnessed to the police.

Vermont was the first state to pass a law requiring an individual who sees another in danger to give reasonable assistance. Such assistance is required by law only when no risk is involved for the rescuer. The Vermont statute was adopted in response to reported incidents of persons refusing to render aid in emergency situations for fear of legal liability. Of particular concern to the Vermont legislature was the reported hesitancy of physicians to respond to emergency situations. One of the goals of the Vermont legislature, therefore, was to enact a law which would provide physicians and the general public with protection from civil liability. More importantly, the legislature wanted to encourage rescue by imposing criminal sanctions on reluctant rescuers. The spouses, their surviving children, and any persons dependent upon such citizens for their principal support as a direct consequence of such meritorious action to the extent that they are not compensated for the injury, death, or damage from any other source.

Id.

See Franklin, supra note 151, at 55.


See Comment, Endangered Act, supra note 167, at 145.

Id. at 145.
Vermont legislature accomplished its goals by adopting the "Duty to Aid the Endangered Act," which both provides immunity to rescuers and imposes a criminal penalty on bystanders who refuse to come to the rescue of individuals in danger. An individual who willfully fails to render aid is subject to a fine of not more than $100 under the statute. The statute, however, does not state whether a civil action may be brought against an individual who has failed to assist someone in danger.

As a means of further encouraging rescue, the Vermont legislature adopted a standard lower than the traditional standard of reasonable care. Under the statute, an individual who provides "reasonable assistance" during a rescue is immune from civil liability for any damages he causes as long as his conduct is not grossly negligent. Thus, the Vermont statute seeks to encourage rescue by penalizing individuals who fail to assist someone in danger and by granting civil immunity to rescuers whose conduct is less than grossly negligent.

Minnesota recently passed a law similar to the Vermont statute imposing a fine on bystanders who do not aid persons in a perilous situation. The law requires a bystander to render reasonable assistance during an emergency to anyone who is exposed to or has suffered from grave physical harm. Included in the statute's definition of reasonable assistance are such acts as calling the police and obtaining medical help. The statute does not, however, require a bystander to act if he would risk danger to himself.

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171 VT. STAT. ANN. tit. 12, § 519 (Equity 1973 & 1983 Supp.). One commentator has pointed out that "both characteristics are intended to promote the altruistic purposes of the statute." Comment, Endangered Act, supra note 167, at 144.

172 VT. STAT. ANN. tit. 12, § 519(c) (Equity 1973). D'Amato states that criminal sanctions are more appropriate than tort liability because: a) the duty to rescue is owed to society and not to the individual; b) when society has been wronged a criminal sanction is appropriate; c) criminal sanctions heighten the public moral sensibility while the safeguarding of prosecutorial discretion promotes fairness; and d) tort actions are subject to abuse and are ineffective against judgment proof defendants. D'Amato, supra note 72, at 806-08.


174 VT. STAT. ANN. tit. 12, § 519(b) (Equity 1973). See Franklin, supra note 151, at 57. Franklin states that Vermont chose a lower standard since the bill was initially designed only to lower the standard of care. Id.

175 VT. STAT. ANN. tit. 12, § 519(b) (Equity 1973). When the Vermont Legislature was considering enacting a rescue law, it was apparently aware of the French rescue law. See Comment, Endangered Act, supra note 167, at 158-60. Given the similarities between the Vermont statute and the French rescue law, the Vermont legislature may have chosen the French statute as a model in creating its rescue law. For the exact language of each statute, see supra note 165 and infra note 264.

176 See Comment, Endangered Act, supra note 167, at 144.

177 MINN. STAT. ANN. § 604.05 (West 1983 Supp.). Section 604.05(1) of the Minnesota statute reads as follows:

(1) DUTY TO ASSIST. Any person at the scene of an emergency who knows that another person is exposed to or has suffered grave physical harm shall, to the extent that he can do so without danger or peril to himself or others, give reasonable assistance to the exposed person. Reasonable assistance may include obtaining or attempting to obtain aid from law enforcement or medical personnel. Any person who violates this section is guilty of a petty misdemeanor.

Id.

178 Id.

179 Id.

180 Id.
Additionally, the statute exempts the rescuer from liability for civil damages resulting from his rescue efforts.\textsuperscript{181}

The Minnesota law was passed as an amendment to the state's Good Samaritan statute.\textsuperscript{182} The sponsor of the bill pointed out that the bill was enacted as a result of the alleged gang rape of a woman in a New Bedford, Massachusetts tavern.\textsuperscript{183} In March 1983, a woman who entered a tavern to buy a pack of cigarettes was reportedly raped by four men in the presence of cheering patrons.\textsuperscript{184} The New Bedford incident has prompted other state legislatures to consider making it a crime for a witness to fail to report a rape or other felony to the police.\textsuperscript{185} In May 1983, Rhode Island enacted a law making it a misdemeanor for anyone, other than the victim, to fail to report a rape that takes place in his or her presence.\textsuperscript{186} Failure to report a rape is now punishable in Rhode Island by up to one year in jail, a $500 fine or both.\textsuperscript{187} Similarly, Massachusetts enacted a law in December 1983 which requires any person witnessing a crime to report that crime to the police.\textsuperscript{188}

\textsuperscript{181} Id. at § 604.05(2).
\textsuperscript{182} MINN. STAT. ANN. § 604.05 (1982) amended by MINN. STAT. ANN. § 604.05 (West 1983 Supp.).
\textsuperscript{186} R.I. GEN. LAWS §§ 11-37.3.1-3.3 (1983). Pertinent provisions of section 11-37 read as follows: 11-37-3.1. Duty to Report Sexual Assault. — Any person, other than the victim, who knows or has reason to know that a first degree sexual assault or attempted first degree sexual assault is taking place in his/her presence shall immediately notify the state police or the police department of the city or town in which said assault or attempted assault is taking place of said crime. 11-37-3.3. Failure to Report — Penalty — Any person who knowingly fails to report a sexual assault or attempted sexual assault as required under section 11-37-3.1 shall be guilty of a misdemeanor and upon conviction thereof shall be punished by imprisonment for not more than one (1) year or fined not more than five hundred dollars ($500) or both.
\textsuperscript{187} Id. at §§ 11-37-3.1 & 3.3.
\textsuperscript{188} Id. at § 11-37-3.3. The author of the Rhode Island bill stated that the statutory penalties were derived from the state's child abuse reporting statute which makes it a crime to fail to report an incident of child abuse. Telephone interview with former Rhode Island State Senator Gloria Kennedy Fleck on October 5, 1983. See supra note 143 for relevant provisions of Rhode Island's child abuse reporting statute, R.I. GEN. LAWS §§ 40-11-3, 40-11-6.1 (Supp. 1983).
\textsuperscript{189} MASS. GEN. LAWS ANN. ch. 268, § 40 (West Supp. 1985). The Massachusetts statute reads as follows:

§ 40. Reports of crimes to law enforcement officials

Whoever knows that another person is a victim of aggravated rape, rape, murder, manslaughter or armed robbery and is at the scene of said crime shall, to the extent that said person can do so without danger or peril to himself or others, report said crime to an appropriate law enforcement official as soon as reasonably practicable. Any person who violates this section shall be punished by a fine of not less than five hundred nor more than two thousand and five hundred dollars.

Id.
The statute makes it a misdemeanor, punishable by a fine, for any witness to a rape, aggravated rape, homicide or armed robbery to fail to report such an incident to the police. Such reporting is required by law only when no risk is involved for the witness. At the same time, Massachusetts' Good Samaritan statute was amended to exempt from civil liability any person who provides or attempts to provide assistance for a victim of a crime. Pennsylvania is considering passing legislation requiring any person witnessing a crime to report that crime to the police.

The Minnesota, Rhode Island and Massachusetts statutes, therefore, follow the trend set by the Vermont legislature. The main difference between the Rhode Island and Massachusetts crime reporting statutes and the Vermont and the Minnesota rescue statutes is that in Rhode Island and Massachusetts, witnesses would need only to summon assistance by making a telephone call, whereas actual intervention is required when necessary under the Vermont and Minnesota statutes. It is too early to tell what impact these recent rescue and reporting statutes will have in encouraging bystanders to help persons in danger. One commentator has suggested that the Vermont statute would be more effective in promoting rescue if, in addition to the statutory penalty, civil liability were imposed. According to this commentator, a statute imposing civil liability would further encourage rescue and would at least compensate the victim for injuries resulting because the bystander did not provide assistance. Although the effectiveness of these statutes has yet to be demonstrated, their existence alone signifies a recognition by some state legislatures that imposing a general duty to aid others in trouble is desirable and feasible.

189 Id.
190 Id.
191 MASS. GEN. LAWS ANN. ch. 258A, § 9 (West Supp. 1985). The Massachusetts statute reads as follows:
§ 9. "Good Samaritans"; liability
No person who in good faith provides or obtains or attempts to provide or obtain assistance for a victim of a crime as defined in section one shall be liable in a civil suit for damages as a result of his acts or omissions in providing or obtaining, or attempting to provide or obtain said assistance unless said acts or omissions constitute willful, wanton or reckless conduct.

192 See R.I. GEN. LAWS §§ 11-37.3.1-3.3 (1983), supra note 186.
193 See MASS. GEN. LAWS ANN. ch. 268, § 40 (West Supp. 1985), supra note 188.
195 See MII. STAT. ANN. § 604.05 (West 1983 Supp.), supra note 177.
196 See Comment, Endangered Act, supra note 167, at 176-81. The commentator further asserts that section 519 is difficult to enforce because a) prosecutorial resources are limited and prosecutors handling a full caseload may not have the time or money to handle a section 519 prosecution; b) the elements of a section 519 offense are not easily discernible; and c) section 519 has not been interpreted by courts in the context of a criminal prosecution. Id. at 161 n.119, 172 & n.178. Similarly, Franklin states that while the Vermont statutory scheme is criminal in nature, civil liability for statutory violations may be desirable because a) the criminal penalties need reinforcement, b) civil liability is no less appropriate here than in cases of negligence or violations of other statutory duties, and c) a criminal statute puts the public on notice of proper social behavior and thus later high civil awards are not unexpected. Franklin, supra note 151, at 56-57.
197 Comment, Endangered Act, supra note 167, at 176-81.
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C. Judicial Developments in Rescue Law

Courts, like the legislatures, have recognized increasingly that bystanders have an affirmative duty to act when someone is in danger. For example, in *Tarasoff v. Regents of University of California*, the Supreme Court of California held that psychotherapists owe an affirmative duty of reasonable care to third parties who are threatened by patients under the psychotherapist's treatment. In *Tarasoff*, a psychologist at a university hospital was informed by one of his patients that he intended to kill a certain young woman. Although the psychologist notified campus police that the patient was dangerous and should be committed, he failed to warn the intended victim. The patient subsequently killed the young woman. In a suit brought by the young woman's parents against the therapists, the campus police, and the Regents of the University of California as their employer, the California Supreme Court considered whether a psychologist has a duty to warn third parties of threats made toward them by patients during therapy. Although the court acknowledged that the common law rule imposed no duty to warn individuals endangered by such conduct, the *Tarasoff* court nevertheless found that the relation-

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199 17 Cal. 3d 425, 551 P.2d 334, 131 Cal. Rptr. 14 (1976). This case vacated the opinion in *Tarasoff v. Regents of the Univ. of Calif.*, 13 Cal. 3d 177, 529 P.2d 553, 118 Cal. Rptr. 129 (1974).


201 *Tarasoff*, 17 Cal. 3d at 430, 551 P.2d at 339, 131 Cal. Rptr. at 19.

202 *Id.* at 430, 551 P.2d at 339-40, 131 Cal. Rptr. at 19-20.

203 *Id.* at 430, 551 P.2d at 339, 131 Cal. Rptr. at 19.

204 The therapist defendants included the psychologist who examined the patient and concluded that the patient should be committed; two other psychiatrists who concurred with the examining therapist's decision; and the chief of the department of psychiatry, who overruled the examining psychologist's decision and directed that no further action be taken to confine the patient. *Id.* at 430 n.2, 551 P.2d at 340 n.2, 131 Cal. Rptr. at 20 n.2.

205 *Id.* at 432, 551 P.2d at 341, 131 Cal. Rptr. at 21. In addition, the California Supreme Court had to consider whether as the therapists' employer, the University of California, could be held liable for the therapists' failure to warn the intended victim of the patient's threats. *Id.* at 430, 551 P.2d at 340, 131 Cal. Rptr. at 20. The court held that the plaintiffs' complaint could be amended to state a cause of action against the Regents for the therapists' breach of their duty to exercise reasonable care to protect plaintiffs' decedent. *Id.* at 442, 551 P.2d at 348, 131 Cal. Rptr. at 28. The California Supreme Court also had to consider whether the campus police had a duty to warn the intended victim of the patient's violent intention. *Id.* at 444, 551 P.2d at 349, 131 Cal. Rptr. at 29. The court held that the campus police did not have a duty to warn because they did not have a special relationship with either the victim or the patient. *Id.*

206 *Id.* at 435, 551 P.2d at 343, 131 Cal. Rptr. at 23. See Richards v. Stanley, 43 Cal. 2d 60, 65, 271 P.2d 23, 27 (1954); and cases cited *supra* note 51. See also *Restatement, supra* note 34, § 315. Section 315 reads as follows:

Title A. Duty to Control Conduct of Third Persons. There is no duty so to control the conduct of a third person as to prevent him from causing physical harm to another unless

a) a special relation exists between the actor and the third person which imposes a duty upon the actor to control the third person's conduct, or

b) a special relation exists between the actor and the other which gives to the other a right to protection.

*Id.*
ship between a psychotherapist and his patient was of a sufficiently special nature to impose an affirmative duty for the benefit of third persons. The court held, therefore, that a psychotherapist has an affirmative duty to exercise reasonable care to protect the foreseeable victim from danger even though no special relationship exists between the therapist and the intended victim.

Given the nature of the relationship between a psychotherapist and his patient, the holding in Tarasoff is a significant indication that courts are recognizing a general duty to assist others in peril regardless of the relationship between the parties. Traditionally, the law has afforded special protection to doctor-patient relationships because of the trust and confidence implicit in the relationship. In Tarasoff, however, the court was apparently more concerned with public safety than with protecting the doctor-patient relationship. In reaching its decision, the Tarasoff court carefully weighed the competing interests of public safety against the need for confidentiality in psychotherapy. The court stated that the obligation to protect a patient's confidences must yield where the public peril begins. Furthermore, the court noted: "Our current crowded and computerized society compels the interdependence of its members. In this risk-infested society, we can hardly tolerate the further exposure to danger that would result from a concealed knowledge of the therapist that his patient was lethal."

The Tarasoff court held that the psychotherapist's duty to a potential victim outweighed his duty to keep his dangerous patient's confidences. In Tarasoff, no special relationship existed between the psychotherapist and the intended victim. This decision, therefore, is an example of judicial recognition of the principle that one can owe a duty to rescue to another regardless of the relationship between the rescuer and the person in danger.

The principle of Tarasoff was further extended under California law in Soldano v. O'Daniels. A California Court of Appeals held in Soldano that a public establishment had a legal duty to let a Good Samaritan use its telephone in an emergency. In Soldano, a bar patron rushed into a nearby restaurant and informed an employee that a man had been threatened in the bar. The patron asked the restaurant employee either to call the police or some other form will depend on the circumstances.

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207 Tarasoff, 17 Cal. 3d at 436-37, 551 P.2d at 343-44, 131 Cal. Rptr. at 23-24. The court emphasized that the psychotherapist's position of trust and authority, his potential power to initiate commitment proceedings and his special knowledge of his patient were sufficient to establish the special relationship required to impose a duty for the benefit of the third person. Id. at 436 n.6, 551 P.2d at 343 n.6, 131 Cal. Rptr. at 23 n.6.

208 Id. at 436, 551 P.2d at 344, 131 Cal. Rptr. at 24. According to the Tarasoff court, whether this duty takes the form of a duty to warn, a duty to call the police or some other form will depend on the circumstances. Id. at 431, 551 P.2d at 340, 131 Cal. Rptr. at 20.


211 Id.

212 Id. at 442, 551 P.2d at 347, 131 Cal. Rptr. at 27.

213 Id.

214 Id. at 442, 551 P.2d at 347-48, 131 Cal. Rptr. at 25-26.

215 Id. at 436-37, 551 P.2d at 343-44, 131 Cal. Rptr. at 23-24.


217 Id. at 453, 190 Cal. Rptr. at 317.

218 Id. at 446, 190 Cal. Rptr. at 312.
police or to allow him to do so.\textsuperscript{219} The employee refused, and subsequently the man being threatened was shot.\textsuperscript{220} A wrongful death action against the owner of the restaurant was brought by the decedent's son.\textsuperscript{221}

The issue before the \textit{Soldano} court was whether the restaurant or any of its employees had a legal duty to assist the Good Samaritan.\textsuperscript{222} In \textit{Soldano}, the defendant restaurant argued that the request that its employees either call the police or allow the third party the use of its telephone required affirmative action on its part.\textsuperscript{223} The defendant relied on the established rule that absent a special relationship, no affirmative duty exists to assist someone in danger in contending that it was not liable for the decedent's death.\textsuperscript{224} The \textit{Soldano} court admitted that no special relationship existed between the restaurant and plaintiff's decedent,\textsuperscript{225} but stated in a unanimous opinion that the common law rule of no duty needed to be "re-examined in light of the circumstances of the case."\textsuperscript{226} The court subsequently found a strict application of the general rule unsatisfactory and held that the restaurant owed the plaintiff's decedent a duty either to call the police or permit the Good Samaritan to call the police.\textsuperscript{227} According to the \textit{Soldano} court, the bystander's duty arose because the harm to the victim appeared to be "abundantly foreseeable."\textsuperscript{228} The court noted that the bartender's alleged conduct displayed a "disregard for human life that can be characterized as morally wrong."\textsuperscript{229}

The \textit{Soldano} court based its decision on several factors. First, the court examined several recent California statutes which recognized the importance of citizen involvement in crime prevention and were designed to stimulate active public involvement in crime control.\textsuperscript{230} The court noted that the statutes demonstrate that "that attitude of extreme individualism so typical of anglo-saxon [sic] legal thought may need limited re-examination in light of current societal conditions."\textsuperscript{231} Second, the \textit{Soldano} court examined elements the Supreme Court of California had previously considered in determining whether a duty is owed to third persons.\textsuperscript{232} These elements included the foreseeability of harm,\textsuperscript{233} the connection between the defendant's conduct and the harm,\textsuperscript{234} the moral
blame attached to the defendant's conduct, the policy of preventing future harm, and the consequence to the community of imposing a duty to exercise care. In light of such factors, the court found that the defendant was under a duty to let the bystander use the telephone. Third, the court found that the facts of the case came very nearly within the provisions of Section 327 of the Restatement (Second) of Torts. That section states that liability may be imposed when a person interferes with another's efforts to render assistance. According to the court, the restaurant employee interfered with the Good Samaritan's efforts to obtain help by not allowing him to call the police. The Soldano court thus concluded that, under the facts of this case, the restaurant owed a duty to the plaintiff's decedent.

The Soldano decision is a further indication that courts are recognizing that bystanders have an affirmative duty to assist someone in danger. In Soldano, the court looked beyond the special relationship concept in determining whether a duty to assist existed. In this respect, the court departed from the customary approach taken by courts in determining whether a duty to assist is owed. The Soldano decision imposes a duty on business establishments to let bystanders use business telephones in an emergency. Although this decision does not represent a "global change" in the common law rule that bystanders have no duty to assist, it does at least modify the rule. The Soldano decision is thus further evidence of a movement by courts and legislatures towards establishing a general rule that mere knowledge of another person in a serious or life threatening situation may generate a duty to assist.

phone to call the police. Id. at 451, 190 Cal. Rptr. at 315-16. The bartender's refusal prevented the police from helping. Id. at 451, 190 Cal. Rptr. at 316.

Id. The court found that the employee's conduct displayed a disregard that could be characterized as morally wrong; he was callously indifferent to the possibility that the victim would die as a result of his refusal to allow a Good Samaritan to use the telephone. Id.

Id. The court emphasized that finding a duty in these circumstances would promote a policy of preventing future harm. Id.

Id. The court found that the burden to the defendant was minimal and exposed him to no risk. Id.

Id. at 451-52, 190 Cal. Rptr. at 316. The court concluded that imposing a duty on business establishments would not "overburden the courts." Id. at 452, 190 Cal. Rptr. at 316.

Id. at 453, 190 Cal. Rptr. at 317.

Id. See Restatement, supra note 34, at § 327.

See Restatement, supra note 34, at § 327.

Soldano, 141 Cal. App. 3d at 451, 190 Cal. Rptr. at 316.

Id. at 453, 190 Cal. Rptr. at 317.

Id. at 449, 190 Cal. Rptr. at 314.

See supra notes 79-121 and accompanying text.

141 Cal. App. 3d at 452, 190 Cal. Rptr. at 316-17.

Id. at 455, 190 Cal. Rptr. at 318. Although the Soldano court held that business establishments have a duty to let good Samaritans use the business telephone when informed of an emergency, the court's ruling is very limited. Id. at 452, 190 Cal. Rptr. at 316. The court thus stated that "a citizen would not be required to summon the police." Id. The court should have gone further, however, and imposed a duty on business establishments to call the police when informed of an emergency. Such a holding would not have been burdensome on the defendant and would have resulted in a benefit to society.

See O'Hara v. Western Seven Trees Corp., 75 Cal. App. 3d 798, 142 Cal. Rptr. 487 (1977). In O'Hara, the appellate court imposed liability upon a landlord for failing to warn or take other precautions on behalf of his tenants to avert the possibility of another rape occurring in the rented premises. Id. at 808-04, 142 Cal. Rptr. at 490-91. The court held the landlord liable for failure to
IV. FRENCH RESCUE LAW

In contrast to the law of the United States, most European countries currently impose on their citizens a duty to rescue. Although the European statutes imposing such a duty vary in scope, they all require that individuals assist a person in a perilous situation. This section of the note will focus specifically on French rescue law because of the many similarities between the French and the American experience in the area. First, prior to 1941, the French judicial position regarding the legal imposition of a legal duty to aid was similar to the law in this country — no legal duty existed to render aid. Second, the French legislative developments that eventually led to a law requiring rescue were similar to developments in the United States discussed earlier. The forty-year history of the French statute requiring rescue illustrates that a general duty to rescue does not entail the difficulties thought to be prohibitive in creating a duty to aid in this country. The French experience demonstrates that a rule imposing a general duty to assist someone in danger is possible in the United States.

Enforcing a duty to rescue was a radical change in French law. Before 1941, France
did not recognize that an individual had a legal duty to rescue someone in peril. An omission did not give rise to civil liability unless the omission constituted the breach of a contractual duty. Under French tort law, one of the first exceptions to the rule of no duty was created imposing a duty to rescue on certain individuals such as landowners and manufacturers. This exception is analogous to the exception developed under American tort law where a duty to assist has been imposed on the defendant when the relation between the parties is of some economic advantage to the defendant.

In 1941, the Vichy government enacted a statute providing punishment of citizens who failed to inform on would-be criminals and citizens who failed to assist someone in peril. The statute imposed a duty to inform or assist, however, only if to do so did not involve a serious risk to the rescuer or any third party. The French Government declared this statute void in 1945, but later enacted Article 63 of the Penal Code which is very similar to the 1941 legislation. Article 63 imposes a duty to render aid on those persons who know that another is in serious danger. If an individual cannot personally perform the rescue, the statute requires that he obtain help. As under the 1941 statute, a rescue is required only where no risk is involved for either the rescuer or other persons. Furthermore, the statute only applies where the potential rescuer is aware that a person is in danger and that the aid is urgently needed. Finally, no violation of the statute occurs unless the failure to rescue is voluntary and intentional. In determining whether a breach of the statutory duty to aid occurred, French courts have considered whether the potential rescuer's behavior was reasonable and necessary under the particular circumstances. Individuals who are found to have voluntarily refrained from rescuing someone in danger may face criminal sanctions — a jail sentence as well as a fine.

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236 See Note, A Comparative Study, supra note 79, at 639.
237 Id.
238 See id.
239 See supra notes 79-121 and accompanying text.
240 Note, A Comparative Study, supra note 79 at 639-40. The Vichy Government was the name given to the French government during the German occupation of France from 1940 to 1944.
241 Id. According to Rudzinski, this early statute was enacted to quell the activities of the anti-Nazi underground. See Rudzinski, supra note 19, at 94.
243 Id.
Whoever abstains voluntarily from giving such aid to a person in peril that he would have been able to give him without risk to himself or to third persons by his personal action or by calling help . . . shall be punished by imprisonment of a month to three years and/or a fine.
Id.
245 See Tunc, supra note 262, at 48; Rudzinski, supra note 19, at 107. France extends the duty to rescue to every person, even persons not present, who have reason to know that a person is in serious danger. Rudzinski, supra note 19, at 102.
246 Rudzinski, supra note 19, at 106.
247 Id. See also Tunc, supra note 262, at 47.
248 See Tunc, supra note 262, at 48.
249 Id. at 50.
250 See Rudzinski, supra note 19, at 110.
addition to the criminal penalties, violation of Article 63 gives rise to civil liability. French courts will impose civil liability whenever they determine that a reasonable man under similar circumstances would have helped the person in danger. The injured party’s claim is usually handled as part of the criminal proceedings against the individual who failed to rescue. Thus, the consolidation of the criminal and civil actions saves time and money for the court and the parties involved.

In France, if an individual in his efforts to rescue the victim further injures him, French courts will compare the rescuer’s behavior with the behavior of an ordinary person under similar circumstances to determine liability. In determining whether the rescuer is responsible for any damages caused by his actions, French courts will also consider the emergency conditions under which the rescuer acted. If the rescuer is the one who is injured, French courts will indemnify him for any expenses or injuries he incurred as a result of the rescue. Possible sources of indemnification under French law include the individual who was rescued, and the individual who caused the negligent situation prompting the rescue.

In France, the judiciary has resolved various problems thought to be inherent in imposing a general duty to aid. For example, problems in fixing liability on potential rescuers, such as who among a crowd of potential rescuers should be legally obligated to assist, and how much risk to himself a bystander must incur, have been considered by French courts. In cases where more than one bystander witnessed an accident, French courts have held that each bystander was under a legal duty to assist the individual in peril. French courts have held that assistance is required by law only when no risk is involved for the rescuer. Judicial resolution of these issues in France illustrate that a working rule for rescue situations is possible.

One French commentator has noted that Article 63 of the French Penal Code has served “as an incentive to everybody to behave like the good samaritan.” The French experience demonstrates that the imposition of a general duty to aid could be accom-

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171 Id. at 113, n.61; Tunc, supra note 262, at 48-49. Tunc states that “when the failure to rescue constitutes a crime, it can no longer be disputed that civil liability is incurred.” Id. at 49.

172 See Note, The Bad Samaritan, supra note 33, at 641. As this commentator pointed out, by using this analysis in determining whether a bystander is civilly liable for not rendering aid to a person in distress, French courts thus avoid having to determine the causation element. Id. Similarly, Tunc notes: “Since causal connection is now undisputed in the application of penal law, it can no longer be disputed in the application of civil law.” Tunc, supra note 262, at 49.

173 See Rudzinski, supra note 19, at 115.

174 See Tunc, supra note 262, at 50-51.

175 Id.

176 Id.

177 Id. at 52. In this situation, French courts will find an implied contract under which the beneficiary of the person rescued must indemnify the rescuer. Id.

178 Id. at 52-53.


181 See supra note 279.

182 See supra note 280.

183 See Tunc, supra note 262, at 62. In 1962 alone, 52 persons were imprisoned and 12 were fined under Article 63 for failure to rescue. Id. at 58.
plished in the United States without difficulty and could produce similarly desirable results.

V. ARGUMENT FOR A LAW REQUIRING RESCUE

The United States appears to be moving closer toward explicitly recognizing a legal duty to help someone in a perilous situation. In a growing number of instances, the law has imposed a duty to assist. State legislatures have enacted statutes creating a duty to assist others. In addition to enacting such statutes, legislatures have explicitly recognized the merits of rescue by exempting the rescuer from liability and by compensating him for any injuries and expenses he incurred as a result of the rescue. Similarly, the courts have begun to impose a more general duty to aid others, regardless of the existence of any special relationship between the parties. These developments indicate that states' law imposing a general duty to help others in a perilous situation would be effective and workable. Such a rule, declared by statute and enforced by the courts, would reflect the current trend in American law by incorporating the intent of these developments into a general duty to rescue. Concern over the personal safety and well-being of each individual in our society prompted various state legislatures to enact laws creating a duty to aid others in specifically defined circumstances. A law requiring rescue would reflect this concern in a more authoritative and effective way. Incidents where individuals could have helped others in danger but failed to do so have inspired various legislatures to prohibit such omissions. Similarly, a law imposing a general duty to assist persons in a dangerous situation would perhaps help prevent the reoccurrence of such events. The judicial branch has recognized that our current societal conditions compel interdependence among people. A law requiring rescue would reflect this awareness.

Recent developments in both case and statutory law imposing upon a bystander a general duty to assist persons in danger have made traditional arguments against a law requiring rescue lose their significance. For example, critics of a legal rule requiring rescue have argued that requiring a person to act is more of a constraint on a person's liberty than is limiting his ability to act. State legislatures, however, have been steadily
increasing the instances in which an individual is required to act. This trend is evidenced by the enactment of the hit-and-run statutes,\(^{287}\) the child abuse reporting statutes\(^{298}\) and the recent rescue and reporting statutes.\(^{299}\) A law requiring rescue would be but a short extension of the legislative trend increasing the instances in which one party must affirmatively act for the benefit of others.

Another objection to a rule requiring rescue is that such a rule would run counter to the common law concept of individualism.\(^{300}\) Recent decisions, however, point to an increasing judicial awareness of the need for interdependence among members of our society.\(^{301}\) For example, in \textit{Tarasoff} the California Supreme Court held that a psychotherapist must exercise reasonable care to protect third parties who are threatened by patients under the psychotherapist's care.\(^{302}\) The court made it clear that the confidential relationship between a psychotherapist and his patient must yield "where the public peril begins."\(^{303}\) Similarly, a California Court of Appeals in \textit{Soldano} stated that the individualism inherent in the common law needed to be "re-examined in light of our current societal conditions...."\(^{304}\) A law imposing a general duty to help persons in danger would be a logical extension of the judicial awareness that our complex society compels the need for its members to help one another in times of distress. As one commentator suggests, "the law exists for the realization of the reasonable needs of the community. If the interest of an individual runs counter to this chief object of the law, it must be sacrificed."\(^{305}\)

Attempts to create a law requiring a general duty to rescue have succeeded.\(^{306}\) Most European countries today have a law recognizing a legal duty to come to the aid of one in peril.\(^{307}\) Many of these countries have had such a law since the 19th century\(^{308}\) and have accepted the imposition of such a duty as a matter of course.\(^{309}\) France, a country which has an economic and social system similar to that of the United States, has a law requiring rescue.\(^{310}\) France's rescue law, in effect now for over forty years, illustrates that such a law is workable.\(^{311}\) The French experience, therefore, should serve as a paradigm for the recognition in America of a general duty to rescue.

VI. A PROPOSED MODEL ACT

Given this background, therefore, it should not prove too difficult for states to enact a law imposing a general duty on citizens to help others in a perilous situation. To assist

\(^{287}\) See \textit{supra} notes 127-37 and accompanying text.

\(^{288}\) See \textit{supra} notes 138-50 and accompanying text.

\(^{289}\) See \textit{supra} notes 165, 177, 186, and 188.

\(^{290}\) See \textit{supra} notes 53-54 and accompanying text.

\(^{291}\) See \textit{Tarasoff}, 17 Cal. 3d at 442, 551 P.2d at 347, 131 Cal. Rptr. at 27; \textit{Soldano}, 141 Cal. App. 3d at 450, 190 Cal. Rptr. at 315. See also \textit{supra} notes 199-248 and accompanying text.

\(^{292}\) Id. at 442, 551 P.2d at 347, 131 Cal. Rptr. at 27.

\(^{293}\) 141 Cal. App. 3d at 450, 190 Cal. Rptr. at 315.

\(^{294}\) See Ames, \textit{supra} note 1, at 110.

\(^{295}\) Most European countries today have a law requiring rescue. See \textit{supra} note 19.

\(^{296}\) Id.

\(^{297}\) These countries include Belgium, Czechoslovakia, Denmark, France, Germany, Hungary, Italy, the Netherlands, Norway, Poland, Portugal, Rumania, Russia, Switzerland and Turkey. See \textit{generally}, Rudzinski, \textit{supra} note 19.

\(^{298}\) Id.


\(^{300}\) See \textit{supra} notes 249-83 and accompanying text.
state legislatures, this section proposes a Model Act which legislatures could adopt or use as a point of reference in formulating and implementing such a rule of law.\textsuperscript{312} This Act provides that an individual who sees another in danger must give reasonable assistance.\textsuperscript{313} The Act reflects the current state of the law in the United States by incorporating many of the terms of the public welfare statutes\textsuperscript{314} and the rescue and reporting statutes\textsuperscript{315} in effect in many states.

The Act contains limitations which should be imposed on a rule creating a duty to assist so that such a rule does not oppress the rescuer.\textsuperscript{316} For example, the Act provides that an individual has a legal duty to assist only in cases of extreme danger to the life or the health of another.\textsuperscript{317} Under the Act, the form of assistance required would depend upon the type of emergency involved.\textsuperscript{318} Sometimes a warning of impending danger would suffice. Other times, as under Rhode Island law, a call to the police or proper authorities would be appropriate.\textsuperscript{319} At times, personal intervention will be necessary.\textsuperscript{320} No one, however, would be required to assist another when to do so would involve a serious threat to either himself or others.\textsuperscript{321} The rescuer's standard, as suggested in the Act, both in recognizing the gravity of the danger involved and in assessing the form of assistance required, should be that of the reasonably prudent person under the same or similar circumstances.\textsuperscript{322}

The Act provides that once a rescue is undertaken the standard of care required would be lower than that of a reasonably prudent person.\textsuperscript{323} Through Good Samaritan laws, legislatures have recognized the injustice of holding a volunteer to a high standard of care when he renders assistance in an emergency situation.\textsuperscript{324} The effect of these statutes is to lower the standard of care that a rescuer must observe when rendering emergency care. These Good Samaritan statutes, therefore, relieve the volunteer from liability for all but gross negligence.\textsuperscript{325} This principle is reinforced in the Act by making the rescuer conform to a lower standard of care.

The Act also addresses situations in which more than one bystander witnesses an

\textsuperscript{312} See Appendix infra.
\textsuperscript{313} Id.
\textsuperscript{314} See supra notes 127-63 and accompanying text.
\textsuperscript{315} See supra notes 164-98 and accompanying text.
\textsuperscript{316} See Appendix infra. "If the encouragement of [a law requiring rescue] and the discouragement of its breach would be a hardship to some... the law should not endorse it." Honore, Laws, Morals and Rescue, in The Good Samaritan and the Law, 225, 233 (J. Ratcliffe ed., 1966) [hereinafter cited as Honore].
\textsuperscript{318} See Appendix infra.
\textsuperscript{319} See R.I. Gen. Laws §§ 11-37.3.1-3.3 (1983). See also supra note 186.
\textsuperscript{321} Id. See Appendix infra.
\textsuperscript{322} See Appendix infra. This standard is analogous to the standard used by French courts both in recognizing the gravity of the danger involved and in assessing the form of assistance required. See supra note 272 and accompanying text.
\textsuperscript{323} See Appendix infra. See also Vt. Stat. Ann. tit. 12, § 519 (b) (Equity 1973). See also supra notes 164-76. The standard of care required under the Vermont rescue legislation appears to be lower than the traditional standard of care. Id. See supra notes 64 and 174 and accompanying text.
\textsuperscript{324} See supra notes 151-57 and accompanying text.
\textsuperscript{325} Id.
accident or criminal attack.\textsuperscript{326} Under the Act, each bystander would be bound to assist the individual in peril in a reasonable manner.\textsuperscript{327} If no one helps the person in danger, each bystander will be liable but only for the amount of injury directly resulting from his failure to assist.\textsuperscript{328} The victim would have a right to one recovery from all the bystanders, who would be entitled to contribution among themselves.\textsuperscript{329}

Recognition of a general duty to rescue, however, does not mean that liability will automatically be imposed. Liability will depend upon whether a statutory duty to rescue has been breached. Courts can determine whether a bystander breached his statutory duty to render assistance by adopting the approach taken by the French courts.\textsuperscript{330} American courts should impose liability whenever they determine that a reasonable man under similar circumstances would have helped the person in danger.\textsuperscript{331} All that the court would have to determine is that the defendant knew of the dangerous situation threatening the plaintiff, and refused to act even though such action would not have resulted in harm to himself or others.\textsuperscript{332} If the court does find that the bystander did breach his statutory duty to assist the person in danger, a fine, similar to the one provided in the Vermont or Minnesota statute, should be imposed.\textsuperscript{333} As a supplement to the fine, legislatures may want to consider creating a statutory action for civil damages as well\textsuperscript{334} so that a potential victim could bring a civil action against the individual who failed to assist him. Civil liability encourages rescue by compensating the injured party as well as by penalizing the wrongdoer.\textsuperscript{335}

As a means of further encouraging rescue, the proposed Act exempts the rescuer from liability for any damages he causes to persons or property while rendering aid as long as his conduct is less than grossly negligent.\textsuperscript{336} The protection from civil liability currently provided by Good Samaritan statutes is reflected in the Act.\textsuperscript{337} The Act extends civil immunity to anyone who undertakes a rescue as long as his conduct is not grossly negligent.\textsuperscript{338} Similarly, the Act compensates a rescuer for any injuries and expenses he

\textsuperscript{326} See Appendix infra. As the Tarasoff court pointed out: "Morally questionable, the [common law] rule owes its survival to the difficulties of setting any workable standards of unselfish service to fellow men, and of making any workable rule to cover possible situations where fifty people might fail to rescue . . . ." 17 Cal. 3d at 435 n.5, 551 P.2d at 343 n.5, 131 Cal. Rptr. at 23 n.5.

\textsuperscript{327} See Appendix infra. See also Weinrib, supra note 66, at 262.

\textsuperscript{328} Id.

\textsuperscript{329} Id.

\textsuperscript{330} See supra note 272 and accompanying text.

\textsuperscript{331} Id.

\textsuperscript{332} In determining the duty issue this way, courts will eliminate the causation problem. See Note, The Bad Samaritan, supra note 33, at 641.

\textsuperscript{333} See Appendix infra. See also Vt. Stat. Ann. tit. 12, § 519 (Equity 1973), supra note 165.

\textsuperscript{334} See Appendix infra. Civil liability is also incurred in France for failure to rescue. See supra notes 271-72 and accompanying text.

\textsuperscript{335} See Comment, Endangered Act, supra note 167, at 145. Professor Franklin states that civil liability "is no less appropriate here than in cases of negligence or violation of other statutory duties." See Franklin, supra note 151, at 55.

\textsuperscript{336} See Appendix infra. See also Vt. Stat. Ann. tit. 12, § 519 (b) (Equity 1973). See also supra notes 165, 174-76 and accompanying text. The Vermont rescue statute exempts the rescuer from liability for any damages he causes while rendering aid. Id. See Minn. Stat. Ann. § 604.05 (2) (West 1983 Supp.). See also supra notes 177, 181 and accompanying text.

\textsuperscript{337} See supra notes 151-57.

\textsuperscript{338} See Appendix infra.
incurs as a result of the rescue.\textsuperscript{339} Possible sources of indemnification would include the person who caused the dangerous situation,\textsuperscript{340} the victim\textsuperscript{341} and the state.\textsuperscript{342} In those cases where the victim or the negligent tortfeasor lack the sufficient funds to compensate the rescuer, the state should indemnify the rescuer for any injuries and or expenses he incurred as a result of the rescue. This indemnification policy would be a logical extension of the statutes which currently indemnify rescuers for their injuries and expenses.\textsuperscript{343} By exempting the rescuer from civil liability and by compensating him for his injuries and expenses, legislatures will explicitly recognize the merits of rescue.

**CONCLUSION**

In the United States no general duty to assist someone in a dangerous situation exists. Courts have refused to enforce what is arguably a moral duty to assist someone in peril. Nevertheless, a trend in both state legislatures and state courts toward imposing upon a bystander a general duty to assist a person in danger has been gaining momentum. The cumulative effect of these legislative and judicial developments indicates that this country is moving closer toward recognizing a legal duty to help someone in a perilous situation. Given the current trend in the United States toward imposing a duty to assist others in danger, a rule of law imposing a general duty to rescue is desirable and workable. This note has proposed a Model Act state legislatures could adopt or use in formulating such a law.

A law imposing a general duty to rescue would reflect the moral obligation of common decency and humanity to come to the aid of another human being who is in danger. Such a law would reflect that shared morality of our community\textsuperscript{344} — that members of our society have a moral responsibility to help one another in times of emergency.\textsuperscript{345} As one commentator so aptly points out: "It should not be forgotten that a system of law which lags too far behind the universally received conceptions of abstract justice, in the end must lose the sympathy, the confidence, perhaps even the respect of the community."\textsuperscript{346}

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\textsuperscript{339} See Appendix infra. See also CAL. GOVT. CODE § 13970 (West 1980), supra note 161.

\textsuperscript{340} See Appendix infra. See also Wagner v. International Ry., 232 N.Y. 176, 180, 133 N.E. 437 (1927). See also supra note 64.

\textsuperscript{341} See Appendix infra. See also Britt v. Mangum, 261 N.C. 250, 255-56, 134 S.E.2d 235, 239 (1964). See also supra note 64.

\textsuperscript{342} See Appendix infra. See also CAL. GOVT. CODE § 13970 (West 1980), supra note 161.

\textsuperscript{343} Id. See also supra notes 158-65.

\textsuperscript{344} See Honore, supra note 316, at 231.

\textsuperscript{345} One American judge has stated: [It is undoubtedly the moral duty of every person to extend to others assistance when in danger; to throw, for instance, a plank or rope to the drowning man, or make other efforts for his rescue, and if such efforts should be omitted by anyone when they could be made without imperilling his own life, he would, by his conduct, draw upon himself the just censure and reproach of good men . . . .]


\textsuperscript{346} Bohlen pt. 2, supra note 1, at 337.
APPENDIX

The Model Act provides the following:

(a) Any person at the scene of an emergency, who knows or has reason to know that another person is exposed to grave physical harm, has a duty to provide reasonable assistance. Such assistance is required only where no serious risk is involved for the rescuer. The standard required in recognizing the gravity of the danger involved and in assessing the form of assistance required should be that of the reasonably prudent person under the same or similar circumstances.

(b) Reasonable assistance may include notifying the appropriate authorities of the dangerous situation or obtaining assistance from the proper authorities. At times, personal assistance will be required if no serious risk is involved for the rescuer or any other third party.

(c) Where several witnesses are present at the scene of an accident or other dangerous situation, each witness is legally bound to provide assistance in a reasonable manner.
   (i) If none of the witnesses assists the injured party, each witness is liable, but only for the amount of injury directly resulting from his failure to assist.
   (ii) The injured party has the right to only one recovery from all the witnesses, who are entitled to contribution among themselves.

(d) Any person willfully violating this Act shall be fined not more than $500.00.
   (i) Any person willfully violating this Act must compensate the injured party for damages arising from his failure to help.

(e) A person who provides reasonable assistance in accordance with this Act shall not be liable in civil damages unless his acts constitute gross negligence.

(f) A person who provides reasonable assistance in accordance with this Act is entitled to be compensated for any injuries or property damage he sustained as a result of his rescue efforts.
   (i) The rescuer is entitled to reasonable compensation from either the victim or from the person who originally created the dangerous situation prompting the rescue.
   (ii) In those situations where either the victim or the person who originally created the dangerous situation prompting the rescue lacks the sufficient funds to provide compensation, the state shall compensate the rescuer for his injuries and damages.