

Spring 1980

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Recommended Citation

Brady, Viloa C. (1980) "The Duty to Rescue in Tort Law: Implications of Research on Altruism," *Indiana Law Journal*: Vol. 55 : Iss. 3 , Article 6.

Available at: <https://www.repository.law.indiana.edu/ilj/vol55/iss3/6>

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Notes

The Duty to Rescue in Tort Law: Implications of Research on Altruism

Whether or not an individual should be obligated to rescue a stranger in physical peril has been the focus of considerable scholarly controversy, even though relatively few court decisions have turned on the question. Scenes such as a child playing in the path of a train, or a person drowning while others watch, occur infrequently, and rarely lead to tort litigation against bystanders. Yet, it is not surprising that the duty to rescue problem stirs debate since it presents in dramatic form the fundamental question of duty to others that underlies all of tort law. The problem involves an acute dilemma: on the one hand, it is repugnant to absolve from liability one whose failure to render aid makes him appear a "ruthless savage and moral monster";¹ on the other hand, to require of an individual a positive act toward a stranger is, in the view of many, to require officious intermeddling and to restrict individual discretion unacceptably.

Current case law imposes a duty to aid only in limited circumstances. Those engaged in public callings, such as common carriers and innkeepers, are held to have undertaken a duty to provide services, including a duty to rescue patrons in peril. Those with a special status relationship to the person in peril are also obligated to render aid. For example, employers have a legal duty to aid employees. Finally, those who create a perilous situation by their own negligent actions have a duty to rescue the victim of their negligence. In the absence of these circumstances, there is no legal duty to aid, even if very little risk or inconvenience is involved.

Most of the debate over the duty to rescue has been deontological; that is, over whether there is a moral obligation for such a duty. Most participants in the debate contend that there is a moral basis for a duty to rescue.² This note, however, will not focus on moral or jurisprudential issues, but rather will analyze the duty to

¹ *Buch v. Amory Mfg. Co.*, 69 N.H. 257, 259, 44 A. 809, 810 (1897).

² Note, *The Duty to Rescue*, 47 IND. L.J. 321 (1972). See, for example, the views compiled in *THE GOOD SAMARITAN AND THE LAW* (J. Ratcliffe ed. 1966).

rescue in light of social-psychological research on altruism. First, it will be shown that legal rules regarding a duty to rescue or aid another person are generally consistent with the way people behave, as reflected by the results of social-psychological research on altruistic behavior. Second, the possible effects of a general widening of the legal duty to rescue will be assessed in terms of the various theories of altruistic behavior. It will be concluded that according to most of these theories, an expanded legal duty to aid would lead people to help others more often and in more varied situations than they do now.

A major difference between this note and previous discussions of the duty to rescue is that this note discusses not what people should do but what they are likely to do. It addresses the question of how people behave and how lawmakers can use information analyzing causes of altruistic behavior to devise a legal rule which will increase the tendency of persons to rescue others.

CONSISTENCIES BETWEEN ALTRUISM RESEARCH AND THE LEGAL DUTY TO AID

Three variables that studies have found to affect altruism are relevant to the legal duty to rescue: the victim's dependency on the potential benefactor, the potential benefactor's attribution of responsibility for the victim's peril and the effect of the presence of others on the potential benefactor. Although other variables have been found to affect altruistic behavior, most of them involve personality traits of the benefactor or recipient. Hence, they have little significance for a legal duty applicable to all persons.³

Dependency of the Victim

Several studies have shown that the more convinced the benefactor is that the outcome of the victim's plight depends on the benefactor's own action or lack of action, the more likely it is that

³ To the extent that a particular court tends to subjectivize the "reasonable man" standard in ascertaining legal liability, results of research on individual differences may be useful. For example, research demonstrates that females, as compared to males, tend to both give and receive more help. See, e.g., Schopler, *An Investigation of Sex Differences on the Influence of Dependence*, 30 *SOCIOMETRY* 50 (1967); Schopler & Bateson, *The Power of Dependence*, 2 *J. OF PERSONALITY & SOC. PSYCH.* 247 (1965). If a court takes this factor into account, it may be more likely that a female defendant who failed to render aid, as compared to a male defendant in a similar situation, would be determined to have acted "unreasonably" and held liable.

the benefactor will act.⁴

The notion of dependency is present in situations in which a legal duty to aid exists because of the relationship between the victim and the benefactor. Court decisions holding that such a duty exists have involved such varied relationships as employers and employees,⁵ doctors and patients,⁶ common carriers and passengers,⁷ merchants and customers,⁸ taverns and patrons,⁹ landowners and invitees,¹⁰ high schools and students,¹¹ innkeepers and guests,¹² residential rental property owners and tenants,¹³ and cities and guests who were swimming in a municipal pool.¹⁴ Courts often refer to the relationship as a "fiduciary obligation" on the part of one party toward the other.

Although the rationale in these cases is not explicitly stated in terms of dependency, dependency is a common denominator of these relationships. The defendant holds some power or control over the plaintiff, in that the defendant has the opportunity to take certain precautions to decrease the probability that harm will come to the plaintiff. For example, a residential property owner has control over the upkeep of the premises and is obligated to rescue a tenant who falls down a dilapidated stairway. Thus, psychological studies predicting that altruistic behavior will occur

⁴ See, e.g., Berkowitz & Daniels, *Affecting the Salience of the Social Responsibility Norm: Effects of Past Help on the Response to Dependency Relationships*, 68 J. ABNORMAL & SOC. PSYCH. 275 (1964); Berkowitz & Daniels, *Responsibility and Dependency*, 66 J. ABNORMAL & SOC. PSYCH. 429 (1963); Bickman & Kamzan, *The Effect of Race & Need on Helping Behavior*, 89 J. SOC. PSYCH. 73 (1973); Goranson & Berkowitz, *Reciprocity and Responsibility Reactions to Prior Help*, 3 J. PERSONALITY & SOC. PSYCH. 227 (1966).

⁵ E.g., *Cortes v. Baltimore Insular Line, Inc.*, 287 U.S. 367 (1932); *Central Gulf S.S. Corp. v. Sambula*, 405 F.2d 291 (5th Cir. 1968); *Szabo v. Pennsylvania R.R.*, 132 N.J.L. 331, 40 A.2d 562 (1945); *Budd v. Erie Lackawanna R.R.*, 93 N.J. Super. 166, 225 A.2d 171 (1966), *aff'd.*, 98 N.J. Super. 47, 236 A.2d 143 (1967); *Rival v. Atchison, T. & S.F. Ry.*, 62 N.M. 159, 306 P.2d 648 (1957).

⁶ *O'Neill v. Montefiore Hosp.*, 11 App. Div. 2d 132, 202 N.Y.S.2d 436 (1960).

⁷ E.g., *Continental S. Lines, Inc. v. Robertson*, 241 Miss. 796, 133 So. 2d 543 (1961); *Murray v. Boston & Me. R.R.*, 107 N.H. 367, 224 A.2d 66 (1966).

⁸ *Poe v. Tate*, 161 Ind. App. 212, 315 N.E.2d 392 (1974).

⁹ *Slavitt v. Kauhi*, 384 F.2d 530 (9th Cir. 1967).

¹⁰ See *Pridgen v. Boston Hous. Auth.*, 364 Mass. 696, 308 N.E.2d 467 (1974); *Appling v. Stuck*, 164 N.W.2d 810 (Iowa 1969).

¹¹ E.g., *Mogabgab v. Orleans Parish School Bd.*, 239 So. 2d 456 (La. App. 1970), *writ refused*, 256 La. 1152, 241 So. 2d 253 (1970); *Schultz v. Gould Academy*, 332 A.2d 368 (Me. 1975).

¹² E.g., *Nordmann v. Nat'l Hotel Co.*, 425 F.2d 1103 (5th Cir. 1970); *Dove v. Lowden*, 47 F. Supp. 546 (W.D. Mo. 1942).

¹³ E.g., *Kline v. 1500 Mass. Ave. Apt. Corp.*, 439 F.2d 477 (D.C. Cir. 1970); *Samson v. Saginaw Professional Bldg., Inc.*, 393 Mich. 393, 224 N.W.2d 843 (1975).

¹⁴ *Williams v. City of Baton Rouge*, 252 La. 770, 214 So. 2d 138 (1968).

when one party is dependent on the other are consistent with the legal duty to aid based on a relationship between the parties.

Linked to the notion of a legal duty to aid in dependency relationships is the legal duty to aid once a rescue has been undertaken.¹⁵ Once aid is undertaken, the victim becomes more dependent on the helper if the victim has foregone other possible routes to safety in reliance on the helper's conduct. Research data indicating that dependency engenders helping behavior are also consistent with the legal duty to aid once aid is undertaken.

Responsibility for the Peril

A second variable found by studies to influence altruistic behavior is the degree to which the potential benefactor perceives the victim as being responsible for his or her own plight. A potential benefactor is more likely to aid a victim when the benefactor perceives that the peril was caused by a source external to the victim rather than by the victim's own conduct.¹⁶

One explanation for this phenomenon is that an externally caused need is viewed as being more legitimate; peril arising from the victim's own action is less likely to cause the benefactor to feel a social responsibility to render aid. Another explanation is that potential benefactors resent the encroachment on their personal freedom less when a victim's peril arises from a source beyond the victim's control.

Again, these studies indicate a consistency between how people behave and legal rules for behavior. Traditionally, courts have held that there is no duty to aid when the victim's peril is a result of the victim's own conduct,¹⁷ but that there is a duty to aid when the peril is the result of the potential benefactor's conduct.¹⁸

¹⁵ See, e.g., *Schraff v. State*, 544 P.2d 834 (Alaska 1975); *Lee v. State*, 490 P.2d 1206 (Alaska 1971).

¹⁶ See, e.g., Berkowitz, *Reactance and the Unwillingness to Help Others*, 79 PSYCH. BULL. 310 (1973); Berkowitz, *Resistance to Improper Dependency Relationships*, 5 J. EXPERIMENTAL SOC. PSYCH. 283 (1969); Horowitz, *Effect of Choice and Locus of Dependence on Helping Behavior*, 8 J. PERSONALITY & SOC. PSYCH. 373 (1968); Schopler & Matthews, *The Influence of the Perceived Causal Locus of Partner's Dependence on the Use of Interpersonal Power*, 3 J. PERSONALITY & SOC. PSYCH. 609 (1965).

¹⁷ See *Lee v. Peerless Ins. Co.*, 175 So. 2d 381 (La. App. 1965), *aff'd.*, 248 La. 982, 183 So. 2d 328 (1966).

¹⁸ See *Simonsen v. Thorin*, 120 Neb. 684, 234 N.W. 628 (1931). Note, however, that results of research that tests the effect on altruistic behavior when a subject's own clumsiness or incompetence results in trouble for someone else have not been entirely consistent. Some studies have found that the clumsy or incompetent subjects are significantly more likely to

There is a recent trend toward holding defendants liable for a failure to render aid, even though the perilous situation is the result of the victim's own action.¹⁹ However, most of these cases involve parties who stand in some relationship which imposes a legal duty to aid, regardless of the source of the peril. Although these cases are not usually rationalized in these terms, they might be viewed as giving rise to a duty to aid because of actions of the defendant. For example, in the case of a tavern owner and patron, the very nature of the business tends to lessen a variety of human inhibitions. Thus, it might be said that the patrons of a tavern are placed in a dependent relationship vis-à-vis the owner, arising from the fact that the owner established a tavern.²⁰

Presence of Others

Perhaps because of their concern with such sensational events as the murder of Kitty Genovese in New York City, the studies of helping behavior that are best known to non-psychologists are those dealing with the so-called "bystander effect." These studies have found that the presence of others serves as a deterrent to aid.²¹ Two explanations are usually given for this effect. First, the

help others generally than are non-clumsy subjects, but are significantly less likely to help persons they have harmed by their own awkward behavior. *See, e.g.*, Freedmen, Wallington & Bless, *Compliance Without Pressure*, 7 J. PERSONALITY & SOC. PSYCH. 117 (1967); Regan, Williams & Sparling, *Voluntary Expiation of Guilt*, 24 J. PERSONALITY & SOC. PSYCH. 42 (1972). Other studies have found that clumsy or incompetent subjects are more likely to help the victim of their clumsiness, but only if other people are aware of the fact that they have caused the victim's plight. *See, e.g.*, Silverman, *Incidence of Guilt Reactions in Children*, 7 J. PERSONALITY & SOC. PSYCH. 338 (1967); Wallace & Sadalla, *Behavioral Consequences of Transgression: I. The Effects of Social Recognition*, 1 J. EXPERIMENTAL RESEARCH PERSONALITY 187 (1966).

¹⁹ *See, e.g.*, Cruz v. American Export Isbrandtsen Lines, Inc., 310 F. Supp. 1364 (S.D.N.Y. 1970); Sparks v. Ober, 192 So. 2d 81 (Fla. Dist. Ct. App. 1966); Smith v. 601 Liquors, Inc., 101 Ill. App. 2d 306, 243 N.E.2d 367 (1968); Hernandez v. Toney, 289 So. 2d 318 (La. App. 1973); Gorby v. Yeomans, 4 Mich. App. 339, 144 N.W.2d 837 (1966).

²⁰ This analysis could explain an Illinois appellate court case, reversed on appeal, in which an exchange company was held subject to liability to a patron for not turning over money to robbers in exchange for the patron's life. According to the court, the exchange had lured, tempted and enticed persons with criminal motive by keeping large sums of money on its premises. Boyd v. Racine Currency Exch., Inc., 8 Ill. App. 3d 140, 140, 289 N.E.2d 218, 219 (1972), *rev'd*, 56 Ill. 2d 95, 306 N.E.2d 39 (1973).

²¹ *See, e.g.*, Bickman, *The Effect of Another Bystander's Ability to Help on Bystander Intervention in an Emergency*, 7 J. EXPERIMENTAL SOC. PSYCH. 367 (1971); Clark & Word, *Why Don't Bystanders Help?*, 24 J. PERSONALITY & SOC. PSYCH. 392 (1972); Latané & Darley, *Group Inhibition of Bystander Intervention in Emergencies*, 10 J. PERSONALITY & SOC. PSYCH. 215 (1968); Latané & Rodin, *A Lady in Distress: Inhibiting Effects of Friends and Strangers on Bystander Intervention*, 5 J. EXPERIMENTAL SOC. PSYCH. 189 (1969);

presence of others who are not going to a victim's rescue leads to a perception that it is undesirable, inappropriate or unnecessary to do so. Second, the presence of others leads to a "diffusion of responsibility"; since no individual bystander views the victim as dependent on his or her personal aid, no one feels personally responsible for the victim.²² These data are consistent with the absence of a legal duty to aid imposed on unrelated bystanders who have not caused the perilous situation.²³

In summary, results of research on how people behave are generally quite consistent with the present state of the legal duty to aid. These and other studies also indicate the possible effects that an expanded legal duty to aid would have on actual behavior.

PREDICTIONS OF THE EFFECT OF A LEGAL DUTY TO AID

Opponents of a legal duty to aid have argued that such a duty would be ineffective in increasing rescue behavior because our laws cannot make us better, and morality cannot be legislated.²⁴ Although there have been no direct tests of the effect on behavior of an expanded legal duty to aid, some predictions of possible effects can be based on various theories of the causes of altruism. Four such theories will be considered here. The two theories most favored by social psychologists, the normative and social exchange theories, both lead to a prediction that imposition of an expanded legal duty to aid would cause more persons to render aid.

Normative Approach

The normative approach maintains that altruistic behavior is dictated by societal norms.²⁵ There are several reasons individuals usually conform to norms as recognized standards of behavior. One

Liebhart, *Empathy and Emergency Helping: The Effects of Personality, Self-Concern, and Acquaintance*, 8 J. EXPERIMENTAL SOC. PSYCH. 404 (1972); Ross & Braband, *Effect of Increased Responsibility on Bystander Intervention, II*, 25 J. PERSONALITY & SOC. PSYCH. 254 (1973); Smith, Smythe & Lien, *Inhibition of Helping Behavior by a Similar or Dissimilar Nonreactive Fellow Bystander*, 23 J. PERSONALITY & SOC. PSYCH. 414 (1972).

²² Latané & Darley, *supra* note 21.

²³ See, e.g., *Anderson v. Atchison, T. & S.F. Ry.*, 31 Cal. 2d 117, 187 P.2d 729 (1947); *Duval v. Armour Packing Co.*, 119 Mo. App. 150, 95 S.W. 978 (1906).

²⁴ See Note, *supra* note 2, at 325.

²⁵ See, e.g., F. HEIDER, *THE PSYCHOLOGY OF INTERPERSONAL RELATIONS* (1958); G. HOMANS, *SOCIAL BEHAVIOR: ITS ELEMENTARY FORMS* (1961); J. THIBAUT & H. KELLEY, *THE SOCIAL PSYCHOLOGY OF GROUPS* (1959).

is the concern about the reactions of others, since people often react adversely to "abnormal" behavior. Another reason is that norms help to reduce uncertainty. Faced with an ambiguous situation, people tend to rely on norms that prescribe how to react rather than evaluating the particular situation. From this perspective, a legal duty to aid would serve as a societal norm and thus increase the tendency of persons to aid others in need.

Research to support this normative theory of altruism consists primarily of studies on the effect of models.²⁶ These studies have found that if subjects see an experimental confederate, or a "model," behave either altruistically or non-altruistically toward someone in need of help, the subjects are significantly more likely to behave in the same manner in a subsequent situation in which help is needed. This result is found both in studies using children as subjects and studies using adults. Models serve to inform subjects of what an appropriate response is when another person is in need of help, and to decrease any concerns the subjects might have over being ridiculed for inappropriate behavior.

These results suggest that a legal duty to aid would result in an increase in helping behavior as it would decrease the ambiguity that often surrounds situations of peril by providing a norm, or prescription of appropriate conduct.

Social Exchange Approach

According to exchange theorists, an individual's behavior is guided by the principle of maximizing profits and minimizing costs in order to obtain the most profitable outcome in any human interaction.²⁷ Profits include material benefits such as money or goods, and social rewards such as approval, recognition or power. The costs include the converse of these: loss of material goods or social disapproval. According to the exchange approach, altruism is a behavior which increases the likelihood of receiving future rewards, or of avoiding future costs.

The existence of a legal duty to aid would enter into a potential

²⁶ See Berkowitz, *Social Norms, Feelings and Other Factors Affecting Helping and Altruism*, in 6 *ADVANCES IN EXPERIMENTAL SOCIAL PSYCHOLOGY* (L. Berkowitz ed. 1972); Staub, *Instigation to Goodness: The Role of Social Norms and Interpersonal Influence*, 28 *J. Soc. ISSUES* No. 3, 131 (1972).

²⁷ P. BLAU, *EXCHANGE AND POWER IN SOCIAL LIFE* (1964); G. HOMANS, *supra* note 25. For a recent economic analysis of the duty to rescue, see Landes & Posner, *Salvors, Finders, Good Samaritans, and Other Rescuers: An Economic Study of Law and Altruism*, 8 *J. LEGAL STUDIES* 83 (1978).

helper's exchange calculus and influence the helper's decision whether to help. A legal duty to aid would add a cost, legal liability, that could be avoided by rendering aid. The result would be an increase in the tendency of persons to help others in need.

Developmental Approach

The developmental approach views altruism as a learned behavior.²⁸ Although proponents of this approach recognize that the cognitive ability to carry out altruistic acts depends on the capacity to make moral judgments and to empathize with others' needs, they argue that one has to learn to be altruistic from parents, peers and other adults. In contrast to the normative approach, which analyzes altruistic behavior on the societal level, the developmental approach focuses on the behavior of the individual. Since individuals differ in their personal experiences and in their learning opportunities, they also differ in the degree to which they behave altruistically. As discussed above in relation to the normative approach, several studies have shown that observation of peer or adult models who are behaving altruistically enhances children's subsequent generosity.²⁹

Under this approach, a legal duty to aid would lead only indirectly to an increase in helping behavior. Assuming that a legal

²⁸ See, e.g., A. BANDURA, SOCIAL LEARNING THEORY (1971); Bryan, *Why Children Help: A Review*, 28 J. SOC. ISSUES 87 (1972); Bryan, Redfield & Mader, *Words and Deeds About Altruism and the Subsequent Reinforcement Power of the Model*, 42 CHILD DEV. 1501 (1971); Bryan & Walbek, *Preaching and Practicing Generosity: Children's Actions and Reactions*, 41 CHILD DEV. 329 (1970); Bryan & Walbek, *The Impact of Words and Deeds Concerning Altruism Upon Children*, 41 CHILD DEV. 747 (1970); Elliott & Vasta, *The Modeling of Sharing: Effects Associated with Vicarious Reinforcement, Symbolization, Age, and Generalization*, 10 J. EXPERIMENTAL CHILD PSYCH. 8 (1970); Grusec, *Demand Characteristics of the Modeling Experiment*, 22 J. PERSONALITY & SOC. PSYCH. 139 (1972); Grusec & Skubiski, *Model Nurturance, Demand Characteristics of the Modeling Experiment, and Altruism*, 14 J. PERSONALITY & SOC. PSYCH. 352 (1970); Harris, *Reciprocity and Generosity: Some Determinants of Sharing in Children*, 41 CHILD DEV. 313 (1970); Hartup & Coates, *Imitation of a Peer as a Function of Reinforcement from the Peer Group and Rewardingness of the Model*, 38 CHILD DEV. 1003 (1967); Midlarsky, Bryan & Brickman, *Aversive Approval: Interactive Effects of Modeling and Reinforcement on Altruistic Behavior*, 44 CHILD DEV. 321 (1973); Midlarsky & Bryan, *Affect Expressions and Children's Imitative Altruism*, 6 J. EXPERIMENTAL RESEARCH PERSONALITY 195 (1972); Rosenhan & White, *Observation and Rehearsal as Determinants of Prosocial Behavior*, 5 J. PERSONALITY & SOC. PSYCH. 424 (1967); Rushton, *Generosity in Children*, 31 J. PERSONALITY & SOC. PSYCH. 459 (1975); Staub, *Helping a Person in Distress*, 17 J. PERSONALITY & SOC. PSYCH. 137 (1971); Staub, *A Child in Distress*, 14 J. PERSONALITY & SOC. PSYCH. 130 (1970); Yarrow, Scott & Waxler, *Learning Concern for Others*, 8 DEVELOPMENTAL PSYCH. 240 (1973).

²⁹ Schopler & Matthews, *supra* note 16.

duty to aid would influence more adults to help others in distress, these adults would serve as models and reinforcers for children.

Cultural Approach

Some writers have proposed a socio-biological explanation of altruism based on notions of evolution.³⁰ Under this theory, an external threat to the existence of any society or group increases both individuals' hostility toward the threatening outgroup, and individuals' solidarity within the group. This solidarity is exhibited through loyalty, cooperation and altruistic behavior. Individuals are even ready to sacrifice their lives for the group cause in situations of external threat. It has been suggested that these reactions have had survival value in the history of human societies or groups. Groups and societies that were able to increase ethnocentric, self-sacrificial loyalty have had a better chance to survive than groups not able to command such loyalty.³¹ Thus, theorists suggest that the disposition for ethnocentric and altruistic behavior has become inborn as a result of biological and socio-cultural evolution.

To the extent that altruistic behavior does in fact result from biological and socio-cultural evolution, it is unlikely that a legal duty to aid would have much effect on rescue behavior.

ATTRIBUTION OF CAUSALITY AND PSYCHOLOGICAL REACTANCE RESEARCH

Two other areas of social-psychological research should be mentioned in connection with the effect on conduct of a legal duty to aid. These two areas are concerned not specifically with altruism and its causes, but more generally with the effect of rules on attitudes and behavior.

A growing body of "attribution of causality" research³² has gathered strong support for the proposition that behavior causes rather than reflects beliefs. We behave in certain ways because of external

³⁰ Campbell, *Ethnocentric and Other Altruistic Motives*, in 13 NEBRASKA SYMPOSIUM ON MOTIVATION 283 (D. Levine ed. 1965); Cohen, *Altruism: Human, Cultural, or What?*, 28 J. Soc. ISSUES No. 3, 39 (1972).

³¹ "In a long history in which groups and individuals have varied widely and in which only some have survived, the surviving groups will tend to have those social customs and genes which have furthered survival in intergroup conflict." Campbell, *supra* note 30, at 295.

³² See, e.g., the articles appearing in *ATTRIBUTION: PERCEIVING THE CAUSES OF BEHAVIOR* (E. Jones, D. Kanouse, H. Kelley, R. Nisbett, S. Valins & B. Weiner eds. 1971).

circumstances, and make inferences regarding our beliefs on the basis of this behavior. Over time, our beliefs may become "fixed" and actually serve as the causal force for subsequent behavior.³³

On the basis of attribution research, it can be predicted that if people were to become aware of a legal duty to aid another, and if, for reasons discussed under the normative and social exchange approaches, they were to behave consistently with this legal duty, they would eventually come to believe in the duty to aid. In other words, it may be that morals can be legislated, that our laws can make us better.

Another area of social-psychological research, however, suggests that a legal duty to aid might actually reduce such altruistic behavior. So-called "psychological reactance" research³⁴ focuses on the desire of persons for freedom and control, and on the resentment, or psychological reactance, created by threats to freedom. This reaction can be manifested in different ways. One is to simply refuse to behave in the way one is "supposed to" behave, thereby maintaining a sense of freedom and control. Another is the formation of negative attitudes toward the source of the external restraint on freedom, the object toward which behavior is directed, or both.

To the extent a legal duty to aid is viewed as a threat to freedom, psychological reactance may operate to cause people (1) to fail to come to the aid of others, even though they might have done so in the absence of a legal duty; (2) to come to the aid of others, but to resent the law because of the restraints it puts on their freedom; or (3) to aid others, but to dislike those persons they help. More research would be needed before attempting to predict which of these would be most likely to occur among individuals. There is no indication, however, that the current limited legal duty to aid has led to any of these responses. Although all three of these possible results involve a price, the price connected with the third, that a rescuer will dislike the victim rescued, is a small price to pay compared with the benefits to be achieved.³⁵ The price connected with the first two possibilities is greater. But considering the uncertainty as to whether psychological reactance exists, and the uncertainty over the form it might take, it is not justifiable to permit

³³ Bem, *An Experimental Analysis of Self-Persuasion*, 1 J. EXPERIMENTAL SOC. PSYCH. 199 (1965).

³⁴ See J. BREHM, *A THEORY OF PSYCHOLOGICAL REACTANCE* (1966).

³⁵ Moreover, it is doubtful that the law should concern itself with whether or not people like each other.

the possibility of psychological reactance to alone serve as a basis for refusing to expand the legal duty to aid.

SUMMARY

There is a symmetry between situations in which people tend to help others and situations in which a legal duty to aid exists. This finding supports arguments against abolishing the legal duty to aid in situations where the duty already exists. It also undermines the argument that a legal duty to aid may actually deter helping behavior. Research on causes of altruism suggests that an expanded legal duty to aid may lead to more rescue behavior, primarily because the legal duty would (1) decrease ambiguity surrounding situations in which help is needed by providing a rule or norm of what behavior is considered appropriate, and (2) affect the cost-reward calculus people undertake in deciding whether to come to another's rescue.

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