

## The Kindness of Strangers: Interdisciplinary Foundations of a Duty to Act

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“I have always depended on the kindness of strangers.”  
— Blanche DuBois<sup>1</sup>

In American tort law, one has historically been allowed to do nothing and not be held liable for injuries to others resulting from that inactivity. Viewed perhaps more charitably, tort law does not punish citizens for minding their own business. People generally have no affirmative duties to aid or protect others—you can watch blind people walk into traffic and not be sued for failing to stop them.<sup>2</sup> It’s not nice, but it’s not tortious.

This essay examines the “no duty to act” rule in torts and the policy reasons typically offered in support of its enduring presence. It then explores state Good Samaritan statutes that provide immunity from liability in negligence if people decide to offer emergency assistance, and questions whether law should go further to enact “Bad Samaritan” statutes to compel citizens to assist strangers in emergency situations when they can reasonably do so.<sup>3</sup> The essay analyzes feminist critiques of the no duty to act concept, but proposes instead a much different basis for criticizing the no duty rule. Drawing on works in anthropology, education, ecology, sociology, and social psychology, this essay makes the interdisciplinary case for a duty to act to assist strangers in peril.

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1. TENNESSEE WILLIAMS, A STREETCAR NAMED DESIRE 102-03 (1947).

2. See RESTATEMENT (SECOND) OF TORTS § 314 ill. 1 (1965). See also W. PAGE KEETON ET AL., PROSSER AND KEETON ON THE LAW OF TORTS § 56 at 375 (5th ed. 1984 & Supp. 1988) (stating that “the law has persistently refused to impose on a stranger the moral obligation of common humanity to go to the aid of another human being who is in danger, even if the other is in danger of losing his life.”).

3. See Anthony D’Amato, *The Bad Samaritan Paradigm*, 70 NW. U. L. REV. 798 (1976).

## I. NO DUTY TO ACT: THE STATUTORY AND DECISIONAL TOPOGRAPHY

Our legal system has long distinguished between negligent *omissions* and negligent *commissions*. Our legal system, as Saul Levmore says, “regularly deters antisocial commissions” and “rarely deters antisocial omissions, and virtually never rewards rescuers.”<sup>4</sup> Tort law has traditionally punished misfeasance and more or less insulated nonfeasance from liability.

The common law of torts generally imposes a duty to aid only in limited circumstances: a contract or a property relationship, like being a landowner, can provide the basis for a duty to assist.<sup>5</sup> If one is in a special relationship with someone who needs assistance—like a master-servant, parent-child or schoolteacher-student relationship—or if one has a duty to control a dangerous person, that may create a duty to rescue.<sup>6</sup> A statute, such as a mandatory child abuse reporting statute, is another exception to the “no duty to act” rule (typically, those statutes only affect people in particular relationships to the victim).<sup>7</sup> Or if one has created a risk of harm to an individual or has voluntarily begun a rescue or assumed a duty of care, that may create a duty to complete the rescue efforts.<sup>8</sup> Otherwise, private citizens are free to do nothing to help strangers in emergency situations. The “no duty” rule is codified in the Torts Bible, the Restatement (Second) of Torts, Section 314: “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.”<sup>9</sup>

Also, government has few affirmative constitutional obligations to protect its citizens from harm, except in specialized circumstances. In *Deshaney v. Winnebago County Dept. of Social Services*,<sup>10</sup> the Supreme Court held in 1989 that a social service agency was not required to protect a child from severe abuse by his father. Even though social workers had reports of and noticed signs of physical abuse, and had even temporarily placed little Joshua into protective custody in a hospital, they had not permanently placed him into physical custody of the State. The abuse ultimately culminated in a beating so severe that

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4. Saul Levmore, *Waiting for Rescue* 72 VA. L. REV. 879, 880 (1986).

5. See, e.g., *Rust Int’l Corp. v. Greystone Power Corp.*, 133 F.3d 1378 (11th Cir. 1998) (upholding a jury verdict finding a utility company that had contracted with a county to provide power at traffic signals at the intersection where motorists were killed in a collision proportionately liable); *Tiedeman v. Morgan*, 435 N.W.2d 86 (Minn. Ct. App. 1989) (holding that homeowners owed a duty of care to daughter’s gentleman caller who became ill while visiting at their residence).

6. See RESTATEMENT (SECOND) OF TORTS § 314A.

7. See, e.g., WASH. REV. CODE ANN. § 9.69.100(1)(b)-(c) (West 1998) (requiring persons who witness the actual or attempted commission of a sexual offense against a child to notify the prosecuting attorney, law enforcement, medical assistance or other public official).

8. See, e.g., *Johnson v. Univ. of Chicago Hosp.*, 982 F.2d 230 (7th Cir. 1992); *Farwell v. Keaton*, 240 N.W.2d 217 (Mich. 1976).

9. RESTATEMENT (SECOND) OF TORTS § 314.

10. 489 U.S. 189 (1989).

four year-old Joshua suffered irreversible brain damage and “is expected to spend the rest of his life confined to an institution for the profoundly retarded.”<sup>11</sup> The State actors “did nothing,” and that was a permissible thing to do, according to the Court, because “no constitutional duty” exists on the part of state or local governments to “protect an individual against private violence.”<sup>12</sup> “Poor Joshua,” as Justice Blackmun said in dissent.<sup>13</sup>

After *DeShaney*, the political community, namely, the government, is apparently under no constitutional obligation to rescue or otherwise assist its needy and helpless citizens. After *DeShaney*, the relationship between the political community and the individual is parallel to the relationship at common law between individuals: they are legally strangers to one another, with no duty to rescue. In effect, *DeShaney* reasoned from, and applied, the private-law rule to the public-law setting.<sup>14</sup>

So, the lack of responsibilities on the part of government toward its citizens parallels the lack of responsibilities citizens have toward one another.

Citizens, for their part, take this lack of responsibility seriously. Recall the case of Kitty Genovese in 1964. In the Genovese case, a woman was stabbed repeatedly while thirty-eight of her neighbors watched and none of them helped her or called the police.<sup>15</sup> The attack lasted over half an hour. Genovese’s assailant followed her home in a middle-class neighborhood and began to stab her. When she cried for help, he fled. Then he noticed nobody was coming to help her; so he returned and stabbed her some more. Thirty-five minutes after the attack began, someone finally called the police, who arrived two minutes later. By that time, she was dead.<sup>16</sup>

Although the Genovese case prompted calls for reform nationwide, only the Vermont legislature acted. In 1967, Vermont enacted a statute imposing misdemeanor liability upon bystanders who fail to give reasonable assistance to strangers who they know are in emergency situations when they can do so “without danger or peril” to themselves or others.<sup>17</sup> By the 1990s—twenty years later—only three other states,

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11. *Id.* at 193.

12. *Id.* at 196-97, 202 (citing *Youngberg v. Romeo*, 457 U.S. 307, 317 (1982)).

13. *Id.* at 213 (Blackmun, J., dissenting).

14. See Sheldon Nahmod, *The Duty to Rescue and the Exodus Meta-Narrative of Jewish Law*, 16 ARIZ. J. INT’L & COMP. L. 751, 764 (1999).

15. See Jay Silver, *The Duty To Rescue: A Reexamination and Proposal*, 26 WM. & MARY L. REV. 423 (1985).

16. See Martin Ginsberg, *37 Who Saw Murder Didn’t Call the Police*, N.Y. TIMES, Mar. 27, 1964, at 1; Sungeeta Jain, Comment, *How Many People Does It Take to Save a Drowning Baby? A Good Samaritan Statute in Washington State*, 74 WASH. L. REV. 1181, 1189 (1999).

17. VT. STAT. ANN. tit. 12, § 519(a) (1973) (“A person who knows that another is exposed to grave physical harm shall, to the extent that the same can be rendered without danger or peril to himself or without interference with important duties owed to others, give reasonable assistance to

Minnesota, Rhode Island, and Wisconsin, had enacted similar provisions, although Wisconsin's statute only creates a duty to report a crime or provide assistance to the victim of a crime, not to accident victims generally.<sup>18</sup> Thirty years, four states—it hasn't been a groundswell of legislative activity.<sup>19</sup> At least nine other states require bystanders to report crimes they have witnessed.<sup>20</sup> And most states do require people involved in car accidents to report those accidents if the accidents involve property damage over a certain amount or personal injury.<sup>21</sup> But most jurisdictions have been distinctly uninterested in passing generalized "duty to assist" statutes that could be perceived as sticks, to beat people into good behavior, by threatening them with criminal liability.

The carrot theory has met with more success, or at least less legislative reluctance. One way to impel people toward good deed doing is to limit their liability for negative consequences from their volunteer efforts. All states have Good Samaritan statutes that instead of creating criminal liability, provide immunity from tort liability (at

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the exposed person unless that assistance or care is being provided by others.”).

18. See MINN. STAT. ANN. § 604A.01(1) (West Supp. 1999).

A 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 the person can do so without danger or peril to self 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. A person who violates this subdivision is guilty of a petty misdemeanor.

*Id.* See also R.I. GEN. LAWS § 11-56-1 (1999).

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 or she can do so without danger or peril to himself or herself or to others, give reasonable assistance to the exposed person. Any person violating the provisions of this section shall be guilty of a petty misdemeanor and shall be subject to imprisonment for a term not exceeding six (6) months or by a fine of not more than five hundred dollars (\$500), or both.

*Id.* See also WIS. STAT. ANN. § 940.34(2) (West 1999).

(a) Any person who knows that a crime is being committed and that a victim is exposed to bodily harm shall summon law enforcement officers or other assistance or shall provide assistance to the victim. . . . (d) A person need not comply with this subsection if any of the following apply: 1. Compliance would place him or her in danger. 2. Compliance would interfere with duties the person owes to others.

*Id.*

19. See, e.g., 144 Cong. Rec. S10118-19 (daily ed. Sept. 9, 1998) (statement of Sen. Barbara Boxer). H.R. 4531, 105th Cong. (1998) (proposing the “Sherrice Iverson Act,” an amendment to the Child Abuse Prevention and Treatment Act that would require states to compel third party witnesses of sexual crimes against children to report those crimes to law enforcement); *Good Samaritan Law: Helping Others, or Else*, SEATTLE TIMES, Feb. 15, 2000, at B4 (“A ‘Good Samaritan’ bill died in the Legislature this month as it has each year since 1996. The bill was born after 21-year-old Joey Levick was beaten and left in a Burien ditch; witnesses did nothing, and he died.”); Justin Hopkins, *Parents Resolute on ‘Good Samaritan’ Bill*, SEATTLE TIMES, Feb. 7, 2000, available at 2000 WL 5519584. “The Joey Levick Bill” would make the failure to give “‘reasonable assistance’ to someone who has suffered ‘substantial bodily harm’ a misdemeanor, punishable by up to 90 days in jail and/or a \$1,000 fine.” *Id.* The bill passed the House of Representatives in 1997 and 1998 but died in the Senate each time. In 1999, although the bill was introduced, it did not even receive a hearing. *Id.*

20. See Jennifer Bagby, *Justifications for State Bystander Intervention Statutes: Why Crime Witnesses Should Be Required to Call for Help*, 33 IND. L. REV. 571, 574 (2000) (listing Florida, Massachusetts, Minnesota, Ohio, Rhode Island, Vermont, Washington, and Wisconsin). See also HAWAII REV. STAT. § 663-1.6 (1984).

21. See, e.g., CAL. VEH. CODE § 20001 (West 1999); IOWA CODE ANN. § 321.263(1) (West 1997).

least for negligence) for anyone rendering emergency assistance to strangers.<sup>22</sup> Originally these Good Samaritan statutes applied only to medical personnel, but they now apply more generally in almost all instances.<sup>23</sup> Legislatures agonized over whether to pass them in these statutes in the 1980s, but issues arising under Good Samaritan statutes virtually never come up in the reported cases.<sup>24</sup> It is important to remember that these Good Samaritan statutes do not impose a duty that people stop and render assistance or call for help, they only create immunity from liability in negligence if people who have *already chosen* to be Good Samaritans render help ineptly.

## II. SHOULD GOVERNMENT COMPEL CARING?: THE THEORETICAL DEBATES

### A. History, Tradition, and Individualism

Historically in this country, we have not penalized people who fail to come to the assistance of strangers in peril. Early Anglo-American law distinguished between misfeasance, actively causing harm to someone else, and nonfeasance, doing nothing to help someone else.<sup>25</sup> In the early years of this country, it wasn't that people thought that they shouldn't help others in distress, it was in part that a much more powerful sanction than tort law existed. People thought they would burn in hell, rather than be sued in tort, for failing to be Good

22. See Justin T. King, Comment, *Criminal Law: "Am I My Brother's Keeper?" Sherrice's Law: A Balance of American Notions of Duty and Liberty*, 52 OKLA. L. REV. 613, 618 (1999). See, e.g., FLA. STAT. ANN. § 768.13 (West 1984); IOWA CODE ANN. § 613.17 (West Supp. 1984); N.H. REV. STAT. ANN. § 508:12 (1983).

23. See ALA. CODE § 6-5-332 (1997); ALASKA STAT. § 09.65.090 (Michie 1998); ARIZ. REV. STAT. § 32-1471 (West 1993); ARK. CODE ANN. § 17-95-101 (Michie 1995); CAL. HEALTH & SAFETY CODE § 1799.102 (West 1990); COLO. REV. STAT. ANN. § 13-21-108 (West 1999); CONN. GEN. STAT. ANN. § 52-557b (West 1991); DEL. CODE ANN. tit. 16 § 6801 (1995); D.C. CODE ANN. § 2-1344 (1994); FLA. STAT. ANN. § 768.13 (West 1997); GA. CODE ANN. § 51-1-29 (1982); HAW. REV. STAT. § 663-1.6 (1985); IDAHO CODE § 5-330 (Michie 1998); IOWA CODE ANN. § 613.17 (West 1999); KAN. STAT. ANN. § 65-2891 (1999); KY. REV. STAT. ANN. § 411.148 (Michie 1992); LA. REV. STAT. ANN. § 9:2793 (West 1997); ME. REV. STAT. ANN. tit 14 § 164 (West 1980); MASS. GEN. LAWS ANN. ch. 268 § 40 (West 1990); MINN. STAT. ANN. § 604A.01 (West 1994); MO. ANN. STAT. § 537.037 (West 2000); MONT. CODE ANN. § 27-1-714 (1999); NEV. REV. STAT. ANN. § 41.500 (Michie 1991); N.H. STAT. ANN. § 508:12 (1997); N.J. STAT. ANN. § 2A:62A-1 (West 1987); N.M. STAT. ANN. § 24-10-3 (Michie 2000); N.Y. PUB. HEALTH LAW § 3000-A (McKinney 1993); N.C. GEN. STAT. § 90-21.14 (1999); N.D. CENT. CODE § 39-08-04.1 (1997); OHIO REV. CODE ANN. § 2305.23 (Anderson 1998); OKLA. STAT. tit. 76 § 5 (1995); OR. REV. STAT. § 30.800 (1999); PA. STAT. ANN. tit. 42 § 8332 (West 1998); R.I. GEN. LAWS § 11-56-1 (1994); S.C. CODE ANN. § 15-1-310 (Law. Co-op. 1976); S.D. CODIFIED LAWS § 20-9-4.1 (Michie 1995); TENN. CODE ANN. § 63-6-218 (1997); TEX. CIV. PRAC. & REM. CODE ANN. § 74.001 (Vernon 1997); UTAH CODE ANN. § 78-11-22 (1996); VT. STAT. ANN. tit. 12 § 519 (1973); VA. CODE ANN. § 8.01-225 (Michie 2000); WASH. REV. CODE ANN. § 4.24.300 (West 1988); W. VA. CODE § 55-7-15 (1994); WIS. STAT. ANN. § 940.34 (West 1996); WYO. STAT. ANN. § 1-1-120 (Michie 1999).

24. See Jessica R. Givelber, Note, *Imposing Duties on Witnesses to Child Sexual Abuse: A Futile Response to Bystander Indifference*, 67 FORDHAM L. REV. 3169, 3186 (1999) ("[T]he physician good samaritan law . . . statutes have produced almost no litigation.").

25. See Francis H. Bohlen, *The Basis of Affirmative Obligations in the Law of Tort*, in STUDIES IN THE LAW OF TORTS 33 (Francis H. Bolen ed., 1926).

Samaritans.<sup>26</sup> The waning influence of the church may have left a hole in tort law.

But this idea that historically law has not compelled helpfulness has become one of its justifications: one reason for retaining the “no duty” rule is, shades of Fiddler on the Roof, “Tradition!” America has never had such a rule. Of course, simply because we have always done something one way or believed something is not a good moral justification for a position—it is simply an argument in favor of the status quo.<sup>27</sup> We burned witches, firmly believed that the sun revolved around the earth, and also thought that the earth was flat for the longest time too. Tautological arguments that begin with the premise and end with the conclusion that the status quo is basically good should be scrutinized more closely.

Courts and commentators have offered a number of other policy reasons why no general duty to rescue exists in tort. The first reason is that if lawmakers were to impose a duty to care for strangers, that requirement would infringe on autonomy and liberty—it would offend American individualism, in its laissez-faire form. As one commentator in the mid-1940s put it: “a rugged, independent individual needs no help from others, save such as they may be disposed to render him out of kindness, or such as he can induce them to render by the ordinary process of bargaining, without having the government step in to make them help.”<sup>28</sup> Think John Wayne, Clint Eastwood, Richard Posner. This argument has to do with the role of government in enforcing kindness and beneficence.

This individualism argument is related to yet another objection to the imposition of affirmative duties—where will it all end? If we require strangers to help each other, will the government next compel private citizens to donate to charity, feed the poor or house the homeless?

### *B. Economics, Inactivity, and Responsibility*

Law and economics chimes in by saying that the “no duty to act” rule promotes efficiency.<sup>29</sup> The imposition of a duty to rescue would cause people to avoid risky but pleasurable activities or potential rescue

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26. See Herbert Fingarette, *Some Moral Aspects of Good Samaritanship*, in *THE GOOD SAMARITAN AND THE LAW* 213, 217-19 (James M. Ratcliffe ed., 1966) (tracing classical religious teachings regarding obligations to help strangers).

27. See Steven J. Heyman, *Foundations of the Duty to Rescue*, 47 *VAND. L. REV.* 673, 676 (1994).

28. Robert L. Hale, *Prima Facie Torts, Combination, and Non-Feasance*, 46 *COLUM. L. REV.* 196, 214 (1946), cited in Linda C. McClain, “Atomistic Man” Revisited: *Liberalism, Connection and Feminist Jurisprudence*, 65 *S. CAL. L. REV.* 1171, 1233 (1992).

29. William Landes & Richard Posner, *Salvors, Findors, Good Samaritans, and Other Rescuers: An Economic Study of Law and Altruism*, 7 *J. LEGAL STUD.* 83 (1978). But see Eric H. Grush, *The Inefficiency of the No Duty to Rescue Rule and A Proposed Similar Risk Alternative*, 146 *U. PA. L. REV.* 881 (1998) (offering the economic arguments in favor of a rescue rule).

situations for fear that they would assume untold rescue duties. “For example, someone who swims well might avoid beaches where poor swimmers are known to swim” or might choose to play racquetball instead of going for a swim to avoid all those pesky potential drowning victims.<sup>30</sup> And, say the law and economics mavens, law should encourage self-reliance.<sup>31</sup> A rescue rule smacks of encouraging people to become public charges.

Another rationale for the “no duty” rule has to do with responsibility and obligation on the part of the tort defendant. If a defendant has not engaged in conduct that hurts someone else or puts that person at risk, she should not face liability. The defendant did not bring about the plaintiff’s circumstances.<sup>32</sup> Tort law should handle affirmatively dangerous conduct—causing harm—not doing nothing.

### *C. Feminist and Humanist Critiques of the No Duty Rule*

Several feminists have offered a critique of the “no duty to rescue” rule. Law professor Leslie Bender makes the argument that “caring about and for others’ safety and interests . . . is a part [of reasoning about tort law] that has been subordinated because of its gendered identification with women.”<sup>33</sup> Building on Carol Gilligan’s research in developmental psychology that suggests men reason with an “ethic of justice,” while women reason with an “ethic of care,” Bender argues that if feminist ethics “based upon notions of caring, responsibility, interconnectedness, and cooperation” were applied to the rescue situation, tort law would jettison the “no duty” doctrine and replace it with a duty for people to act as “‘responsible neighbors’ or with the care and concern of ‘social acquaintances’”<sup>34</sup> to “aid or rescue within one’s capacity under the circumstances.”<sup>35</sup> She says flatly that tort law should

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30. Grush, *supra* note 29, at 882.

31. See Richard A. Epstein, *A Theory of Strict Liability*, 2 J. LEGAL STUD. 151, 203 (1973).

32. See W. PAGE KEETON ET AL., PROSSER & KEETON ON THE LAW OF TORTS § 56 (5th ed. 1984) (explaining that “the reason for the distinction may be said to lie in the fact that by ‘misfeasance’ the defendant has created a new risk of harm to the plaintiff, while by ‘nonfeasance’ he has at least made his situation no worse, and has merely failed to benefit him by interfering in his affairs.”).

33. Leslie Bender, *An Overview of Feminist Torts Scholarship*, 78 CORNELL L. REV. 575, 580 (1993).

34. Leslie Bender, *A Lawyer’s Primer on Feminist Theory and Tort*, 38 J. LEGAL EDUC. 3, 30, 34 (1988). See also Leslie Bender, *Feminist (Re)Torts: Thoughts on the Liability Crisis, Mass Torts, Power, and Responsibilities*, 1990 DUKE L.J. 848 (1990).

35. Bender, *supra* note 33, at 580-81.

The duty to act with care for another’s safety, which under appropriate circumstances would include an affirmative duty to act to protect or prevent harm to another, would be shaped by the particular context. One’s ability to aid and one’s proximity to the need would be relevant considerations. Whether one met that duty would not be determined by how a reasonable person would have acted under the circumstances, but by whether one acted out of a conscious care and concern for the safety, health and well-being of the victim in the way one would act out of care for a neighbor or friend.

Bender, *supra* note 34, at 36.

not “condone the inhumane response of doing absolutely nothing to aid or rescue when one could save another person from dying.”<sup>36</sup>

Another feminist, Linda McClain, has critiqued Bender’s theory in several respects. One argument she makes is that concerns about aiding and caring for others are not particular to feminism, but are, more broadly (no pun intended) the teachings of a liberal, communitarian form of humanism: “if an ethic of care can recognize a web of connection based on our common humanity, then it shares with liberalism the notion of duties arising out of personhood. Such duties could, and perhaps should, provide a basis for a legal duty to aid when there is no significant risk or burden to oneself.”<sup>37</sup> So, should feminism or humanism provide the basis for a duty to rescue? One reason McClain suggests the ethic of care finds a better home in liberalism is that its “possible origins in female subordination [may] render it suspect.”<sup>38</sup> In short, if feminism is used as a basis for requiring helping behavior, the doctrine will command little respect—the “F” word really offends some people.

An interesting discussion is occurring in the liberal feminist community at the turn of the new millenium: whether humanism or feminism [or humanistic feminism or feminist humanism] is the best avenue toward the goals of justice, care, and women’s liberation. In her book, *Caring for Justice*, Robin West points out that most people don’t think justice and care have much to do with each other. Historically, West observes, “our capacity to care has not been regarded as necessary to our capacity to do justice.”<sup>39</sup> But West argues that the concepts are not “oppositional” and, in fact, intertwine; that judges, to do justice, must have compassion for the litigants who appear before them.<sup>40</sup> She argues for a justice of care in which judges have obligations to empathize with litigants and consider their particular, contextual circumstances rather than to universalize the situations through mechanistic general rules.<sup>41</sup>

This question of whether a feminist model or a liberal humanist model is better for answering the specific no duty to act question, conceptualizing a tort system, or, even more expansively, for the future

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36. Bender, *supra* note 33, at 581.

37. McClain, *supra* note 28, at 1242.

38. *Id.* at 1197.

39. ROBIN WEST, *CARING FOR JUSTICE* 9 (1997).

40. *Id.* at 20, 24-25.

41. *See id.* at 58.

[A] judge has a special obligation to the very particular litigants before her, as the parent has a special obligation to her children. He or she must listen to the injured patient, the ruined farmer, or the despondent mother to understand the particularizing details of their predicament, not simply universalize each case, each injury, and each contract so as to fit it within a more general rule.

*Id.*

of legal theory, is one that is beyond the scope of this essay.<sup>42</sup> I would note, though, that this issue is coming up repeatedly in feminist conversations, even at the most basic level of how to teach feminism: should we begin classes by talking about the “F” word, which causes some people to shut down immediately or is stealth preferable and should we begin classes by talking about the humanistic idea of “equal rights” for which most people have at least a vague fondness?

The “no duty” concept is an intriguing window on what we think is important in life and in law. It is a larger proposition, really, of contemplating what view of human nature and what values our systems of tort and criminal law should promote with reference to how we treat strangers and what obligations government should impose between private citizens. My own take on the more specific issue of “no duty to act” is that while humanism and feminism can inform the debate, we should consider knowledge in other disciplines to help us answer the question.

### III. LAW, MORALITY AND HUMAN BEHAVIOR

In *Bowling Alone: The Collapse and Revival of American Community*, Harvard international affairs professor Robert Putnam puts forward the thesis that America is becoming a nation of strangers.<sup>43</sup> The book’s title refers to one aspect of the phenomenon that he describes: people don’t play in bowling leagues much any more. They also engage in less volunteer activity, donate blood less often, don’t join clubs as much—the Moose and Elks are becoming endangered species—participate less in political life, labor unions, parent-teacher organizations, and other civic associations than did past generations.

Now there may be some interesting feminist critiques of his lament: we *have* moved away from our traditional Flintstones-like patterns because Fred and Barney aren’t going to the Water Buffalo Lodge with their fraternal organization—they would rather spend time with their families, and that’s not a bad change.<sup>44</sup> Or perhaps the nature of our civic engagement has changed: witness the rise of support groups, soccer leagues, Sierra Club or AARP membership.<sup>45</sup> And there may be some other, geographically neutral or less progressive explanations of the phenomenon: externally, urban sprawl and internally, more television —

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42. See NANCY LEVIT, *THE GENDER LINE: MEN, WOMEN AND THE LAW* (1998) (arguing that despite suggested substitute terms, like “humanism” and “egalitarianism,” feminism remains a richly historical and politically useful and viable label for the movement).

43. See ROBERT D. PUTNAM, *BOWLING ALONE: THE COLLAPSE AND REVIVAL OF AMERICAN COMMUNITY* (1999). See also Robert D. Putnam, *Bowling Alone: America’s Declining Social Capital*, 6 J. DEMOCRACY 65 (Jan. 1995).

44. See Katha Pollitt, *For Whom the Ball Rolls*, NATION, Apr. 15, 1996, at 9.

45. See Mark Chaves, *Are We ‘Bowling Alone’—and Does It Matter?* 117 CHRISTIAN CENT. 754 (July 19, 2000).

people have fewer meaningful interactions with each other and more meaningful evenings interacting with their television sets.

But Putnam has put his finger on something. The social connections we are forging are less civic-minded, more focused on our individual self-interests. We are losing something—participatory democracy, building communities, a concern for others. It is increasingly becoming acceptable to care only for ourselves or for those close to us.

Perhaps law can assist in examining and maybe even changing this culture. In exploring the arguments supporting the “no duty” rule, this may entail unpacking the individualism argument, rather than just blithely accepting that a posture championing individual rights in a constitutional system must be a winning argument. We need to more clearly separate autonomy and anomie, self-reliance and self-interest or self-absorption.

One argument that flavors the “no duty” debate is the idea that government should not compel good behavior. Individual autonomy, the argument goes, should not be sacrificed for the government to require niceness. Let’s not kid ourselves. Government is already coercive. If the stakes are high enough, government coerces: tax laws, homicide laws, traffic laws, seat belt laws, and child abuse reporting laws.

Curiously, at times, state legislatures find property interests important enough to require finders to act responsibly toward strangers’ property even where they refuse to require rescuers to save strangers themselves. For instance, a Missouri statute requires a finder of lost property (e.g., jewels, a wallet) worth ten dollars or more to take it to a state agent to aid the true owner in recovering the property.<sup>46</sup> Missouri has no statute, however, requiring bystanders to rescue strangers in need. This leads to a stark irony. If a woman falls into Brush Creek and is swept away screaming in the current, bystanders can watch the event and have no obligation to report or help. If those same bystanders pick up her purse on a bridge after the unfortunate drowning, they do have a legal duty to report the loss—of the property, that is. The simple point is that laws sometimes do require helpfulness and compel good behavior.

Indeed, law seems to be at its best and most influential when it undertakes the difficult task of contemplating what behavior it wants of

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46. See MO. ANN. STAT. § 447.010 (West 1999).

“If any person finds any money, goods, right in action, or other personal property, or valuable thing whatever, of the value of ten dollars or more, the owner of which is unknown, he shall, within ten days, make an affidavit before some judge of the circuit court of the county, other than a municipal judge, stating when and where he found the same, that the owner is unknown to him, and that he has not secreted, withheld or disposed of any part thereof.”

*Id.*

a population and constructs decisions that build “social capital” or connections among citizens: witness the Supreme Court’s statement of moral condemnation in *Brown v. Board of Education* that, in part, mobilized a civil rights movement.<sup>47</sup> One can find moral appeals in many other court pronouncements or statutes, such as proposed or enacted legislation in the child welfare or environmental areas.<sup>48</sup> And compelling helpfulness may not be a bad thing for government to do.

Now, law may well be relatively unimportant compared to other institutions in life that teach and promote good deed doing: families, schools, churches, the media, and so on. But it is emblematic,<sup>49</sup> and it may be necessary. It is almost impossible to measure whether people are merely abiding by a law from fear of punishment or are spurred to be benevolent and helpful because that is the expectation of the law,<sup>50</sup> but some studies of helping behavior suggest that bystanders tend not to intervene in rescue situations. They may not notice the situation or may misinterpret the need for help; they may be reluctant to take responsibility. Curiously, the more people who are around, the less likely it is for any one of them to help. In one study, a person simulated a seizure in a public place. When people were alone and viewed this emergency, they provided help 85% of the time; if other people were around, individuals helped only 31% of the time.<sup>51</sup> “Furthermore, a phenomenon called pluralistic ignorance occurs when everyone present in a situation assumes there is no emergency because nobody is acting like there is an emergency.”<sup>52</sup> In short, government may need to require helping behavior because bystanders tend not to intervene to help.<sup>53</sup>

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47. *But see* GERALD ROSENBERG, *THE HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE?* (1991); MARK TUSHNET, *TAKING THE CONSTITUTION AWAY FROM THE COURTS* 141-46 (1999); Michael Klarman, *Brown, Racial Change, and the Civil Rights Movement*, 80 VA. L. REV. 7 (1994).

48. *See, e.g.*, *People v. Foley*, 731 N.E.2d 123 (N.Y. Ct. App. 2000) (upholding state statute prohibiting the promotion and dissemination of sexual performance by a child over the internet); Daniel A. Farber, *Politics and Procedure in Environmental Law*, 8 J.L. ECON. & ORG. 59, 60 (1992) (describing environmental laws as “utilizing a moral discourse appealing to concepts of the common good.”).

49. *See, e.g.*, *SMOKING POLICY: LAW, POLITICS, AND CULTURE* 60-64 (Robert L. Rabin & Stephen D. Sugarman eds., 1993) (discussing the relations between anti-smoking laws and public attitudes).

50. *See* Harry Kaufmann, *Legality and Harmfulness of a Bystander's Failure to Intervene as Determinants of Moral Judgment*, in *ALTRUISM AND HELPING BEHAVIOR: SOCIAL PSYCHOLOGICAL STUDIES OF SOME ANTECEDENTS AND CONSEQUENCES* 77, 81 (Jacqueline R. Macaulay & Leonard Berkowitz eds., 1970) (noting that “knowledge of ‘peer’ opinion has a greater effect on moral judgment than knowledge of legal prohibition,” but that “an illegal failure to intervene was seen as more reprehensible (morally wrong and deserving of punishment) than such an act when it is legal.”).

51. *See* John M. Darley & Bibb Latane, *Bystander Intervention In Emergencies: Diffusion of Responsibility*, 8 J. PERSONALITY & SOC. PSYCHOL. 377 (1968), *cited in* David N. Kelley, *A Psychological Approach To Understanding the Legal Basis of the No Duty To Rescue Rule*, 14 *BYU J. PUB. L.* 271, 289 (2000).

52. Kelley, *supra* note 51, at 290.

53. *See* Jay S. Coke et al., *Empathic Mediation of Helping: A Two-Stage Model*, 36 J. PERSONALITY & SOC. PSYCHOL. 752, 765 (1978) (demonstrating that taking the perspective of a person in need of assistance increases empathy for the other, and that this in turn increases helping

And if government requires affirmative action, people tend to do it. Most people are law abiding: the vast majority of citizens pay taxes, comply with insurance requirements, and stop at stop signs (or at least slow down substantially).

#### IV. THE INTERDISCIPLINARY CASE FOR A DUTY TO ACT

My vision of “the good” in this nation of “self centered loners”<sup>54</sup> is that one thing law not only can, but should require, is empathy and concern for others. The moral foundation for this duty comes not only from the feminist ethic of care and the humanist idea of the obligations of personhood, but also from the teachings of history, religion, education and the biological and social sciences. In deciding moral questions, we need to look at cross-cultural evidence and at the cumulative, comprehensive and converging evidence from a variety of disciplines.<sup>55</sup> Validation from numerous other disciplines and other countries is some evidence regarding the moral wisdom of government-compelled kindness toward strangers.

Historical explorations and studies in the social sciences indicate practical, good results from cooperative behavior, but they also support the need for law to reinforce cooperative impulses. Consider the relation between social norms and law. One norm of small groups is neighborliness.<sup>56</sup> Law and economics scholars use this to argue that law is not necessary and, in fact, is inefficient where norms prevail; private norms, they argue, are superior to legal norms. But even if in small, homogeneous groups, fairness can come from ongoing relationships without the formality of law;<sup>57</sup> the work of other scholars emphasizes that in *diverse* social groups formality is necessary for fairness.<sup>58</sup> Sociological studies show that people are more likely to help others like themselves, but less likely to assist others who differ from them in economic or racial class.<sup>59</sup>

A host of social science studies explore what people do in cross-race situations. In a typical one, the scientist has a black female assistant stage an accident in which she spills a bag of groceries. Later, a

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behavior).

54. *Hard Times for Service Clubs*, CHI. TRIB., July 16, 2000, at 16.

55. See Nancy Levitt, *Listening To Tribal Legends: An Essay on Law and the Scientific Method*, 58 FORDHAM L. REV. 263, 270 (1989).

56. See Robert C. Ellickson, *Of Coase and Cattle: Dispute Resolution Among Neighbors in Shasta County*, 38 STAN. L. REV. 623, 686 (1986).

57. See also ROBERT C. ELLICKSON, *ORDER WITHOUT LAW: HOW NEIGHBORS SETTLE DISPUTES* 55-56 (1991).

58. See Richard Delgado et al., *Fairness and Formality: Minimizing the Risk of Prejudice in Alternative Dispute Resolution*, 1985 WIS. L. REV. 1359; Trina Grillo, *The Mediation Alternative: Process Dangers for Women*, 100 YALE L.J. 1545 (1991).

59. See Richard Delgado, *Rodrigo's Eleventh Chronicle: Empathy and False Empathy*, 84 CAL. L. REV. 61, 78-79 (1996).

white one does the same thing, and they record what happens. Sometimes they do something similar with stranded motorists. The studies show that people go to the aid of persons of their own race more readily than they do to persons of another race or ethnicity.<sup>60</sup>

These findings comport with recent brain research that shows how the brain chemically reacts upon registering a racial difference in another human. Tested subjects had unconscious positive responses upon seeing a white face and negative responses upon seeing a black face.<sup>61</sup> This finding is reminiscent of Charles Lawrence's work on unconscious racism,<sup>62</sup> but this time verified in a laboratory setting. The bottom line is that the "norms of neighborliness" may not prevail without official legal encouragement in larger, heterogeneous groups.

A canvass of other disciplines finds evidence that attests to the morality or evolutionary usefulness of cooperative or helping behavior. Anthropological studies show, for example, that children raised on kibbutzim with a communal lifestyle show greater emotional and environmental maturity in adolescence than children raised in nuclear families.<sup>63</sup> They have been taught to help communities. Contemporary ecological theory supports the idea of biotic communities: in evolutionary terms animals do not engage in relentless or hierarchical "survival of the fittest" competitions to beat each other, but they find a niche and do something helpful.<sup>64</sup> Those niches are dynamic, not static, but at least they are useful to a larger community. Political scientists advocate "governmental policies that foster cooperative efforts."<sup>65</sup> Educational theorists have begun to stress collaborative learning techniques. "Collaborative learning marshals the power of interdependence among peers . . . . In the short run, collaborative learning demonstrably helps students learn better—more thoroughly, more deeply, more efficiently—than learning alone."<sup>66</sup> The areas of

60. Richard Delgado, *Rodrigo's Roadmap: Is the Marketplace Theory for Eradicating Discrimination a Blind Alley?*, 93 NW. U. L. REV. 215, 238 (1998).

61. See David Berreby, *How, But Not Why, the Brain Distinguishes Race*, N.Y. TIMES, Sept. 5, 2000, at D3.

62. See Charles R. Lawrence, III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317 (1978).

63. See A.I. RABIN, *GROWING UP IN THE KIBBUTZ* 69-70 (1965); Ariella Shapira & Jacob Lomranz, *The Kibbutz: Growing Up in a Society of Peers*, 12 PSYCHOL. 53, 54-57 (1975).

64. See, e.g., DANIEL B. BOTKIN, *DISCORDANT HARMONIES: A NEW ECOLOGY FOR THE TWENTY-FIRST CENTURY* (1990). Some sociobiologists believe that natural selection has favored the evolution of empathetic tendencies. See, e.g., Edward O. Wilson, *The Genetic Evolution of Altruism, in ALTRUISM, SYMPATHY, AND HELPING: PSYCHOLOGICAL AND SOCIOLOGICAL PRINCIPLES* 11, 12 (Lauren Wispe ed., 1978). See also ROBERT M. AXELROD, *THE EVOLUTION OF COOPERATION* 124-29 (1984) (observing that cooperative behavior is likely to emerge among self-interested participants in a game, but that it depends on repeated interactions or trust that others are playing by the same rules).

65. Rochelle Cooper Dreyfuss, *Collaborative Research: Conflicts on Authorship, Ownership and Accountability*, 53 VAND. L. REV. 1161, 1164 (2000).

66. KENNETH A. BRUFFEE, *COLLABORATIVE LEARNING: HIGHER EDUCATION, INTERDEPENDENCE, AND THE AUTHORITY OF KNOWLEDGE* xii (2d ed. 1999). See Jay R. Dee &

scientific and technological invention are often collaborative ventures.<sup>67</sup> The entire history of scientific advancement is cooperative. Remember Sir Isaac Newton's line: "If I have seen further . . . it is by standing on the shoulders of giants."<sup>68</sup> And he wasn't just being modest.

Other countries have not shied away from converting moral obligations to assist into legal requirements. In 1867, Portugal became the first country to adopt a generalized duty on the part of bystanders to assist endangered strangers when help can be given without peril to the rescuer; this legal obligation exists today in most civil law countries in Europe.<sup>69</sup>

In short, the cumulative evidence from other countries and from other disciplines suggests that cooperative behavior is helpful in evolution and virtually every other area of the sciences and social sciences where it has been studied. But in tort law we still shiver away from legal rules that would require minimal reciprocity or concern for others who are strangers.

A second suggestion I would have in deciding whether to transform the moral obligation to aid others in peril into a legal obligation is to carefully examine the reasons for resistance to it. It is important to question whether the objections to such a duty serve the better purposes of mankind or undermine them.

A major strand of the reasoning that a compulsion to assist strangers is undesirable rests on the idea that a "duty to aid others may

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Alan B. Henkin, *Collaborative Learning, Communication, and Student Outcomes in Higher Education: Assessing Verbal Interaction*, 16 J. STAFF PROGRAM & ORG. DEV. 125 (1998-99).

67. See, e.g., Lawrence M. Sung, *Collegiality and Collaboration in an Age of Exclusivity*, 3 DEPAUL J. HEALTH CARE L. 411 (2000).

68. Letter from Isaac Newton to Robert Hooke (February 5, 1675), in THE OXFORD DICTIONARY OF QUOTATIONS 362 (3d ed., 1979).

69. See Silver, *supra* note 15, at 434-35.

The resistance of Anglo-American law to a rescue duty is not typical of other legal systems. Nearly all of continental Europe, for example, has adopted the duty. Portugal did so first, including it in the Portuguese Civil Code of 1867. Since then, these European countries have followed suit: the Netherlands (1881), Finland (1889), Italy (1889 and 1930), Norway (1902), Russia (1903-1917 and 1960), Turkey (1926), Denmark (1930), Poland (1932), Germany (1935 and 1953), Rumania (1938), France (1941 and 1945), Hungary (1948 and 1961), Greece (1950), Czechoslovakia (1950), Bulgaria (1951), Yugoslavia (1951), Albania (1952), Switzerland (in several cantons at various times), Spain (1960), and Belgium (1961).

See also Daniel Yeager, *A Radical Community of Aid: A Rejoinder to Opponents of Affirmative Duties to Help Strangers*, 71 WASH. U. L.Q. 1, 58 n.28 (1993) ("Belgium, Czechoslovakia, Denmark, France, Germany, Holland, Hungary, Italy, the Netherlands, Norway, Poland, Portugal, Rumania, Russia, Switzerland, and Turkey impose criminal penalties for failure to engage in 'easy rescue.'"). But see Saul Schwartz, *The Risk of Rescue—The Plight of the Good Samaritan*, available at <http://www.sarbc.org/goodsam.html> (last visited October 22, 2000).

Little uniformity exists among Canadian laws to protect the good samaritan. Some provinces have laws that protect the rescuer from liability, unless there is evidence of gross negligence, but do not force a person to assist. Every province except Prince Edward Island has a criminal compensation scheme which would compensate good samaritans injured because of a criminal act. . . . Quebec is unique in Canada in imposing a duty on everyone to help a person in peril. Violators can also be liable to pay damages to the person who suffers.

also lead to an uncertainty about when to act and create problems of strangers intervening in the affairs of others.”<sup>70</sup> The wonderful problem of too many rescuers or the more realistic objection that the obligation to rescue someone in an “emergency” situation when the rescue will not “imperil” the rescuer may be a bit vague.

The actual duty is somewhat vague, but not in a constitutionally problematic way—it gives fair warning that people should be reasonably helpful (this concept of reasonableness has been around a long time in torts and criminal law) without putting themselves in danger.<sup>71</sup>

The other discomfort that some commentators have with helping strangers also has to do in one sense with uncertainty, the uncertainty of responsibility; but in the language of tort law, it is called a problem of causation.<sup>72</sup> There can be no liability for inactivity—failing to save a drowning stranger or watching a toddler walk into traffic—because one has not caused the harm.

This argument seems to rest on what philosophers know as the fallacy of uncausality—the somewhat primitive belief that actions or events have one and only one cause.<sup>73</sup> But even in tort law, other areas of tort law to be sure, courts have begun to recognize that injuries can have multiple causes, and sometimes one of those causes—think sexual harassment, products liability or toxic torts—can be doing nothing.<sup>74</sup>

This is a second way that the “no duty” debate itself provides an intriguing window on contemporary legal thinking. In law, judges and theorists are still uncomfortable with uncertainty, although other disciplines have not only recognized, but built on the concept of uncertainty for years. In physics, the Heisenberg uncertainty principle—the idea that one cannot measure both the velocity and the location of a subatomic particle at one time, because the measurement of one variable affects the other—has been around since the 1920s.<sup>75</sup>

Quantum physics assumes knowledge is probabilistic, tentative—a bit uncertain.<sup>76</sup> In the Hawthorne experiments during the 1930s,

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70. Natalie Perrin-Smith Vance, Comment, *My Brother's Keeper? The Criminalization of NonFeasance: A Constitutional Analysis of Duty to Report Statutes*, 36 CAL. W. L. REV. 135, 139 (1999).

71. See, e.g., *State v. LaPlante*, 521 N.W.2d 448 (Wis. Ct. App. 1994) (upholding Wisconsin's failure to aid statute against a constitutional vagueness challenge).

72. See, e.g., Jean Elting Rowe & Theodore Silver, *The Jurisprudence of Action and Inaction in the Law of Tort: Solving the Puzzle of Nonfeasance and Misfeasance from the Fifteenth Through the Twentieth Centuries*, 33 DUQ. L. REV. 807 (1995).

73. See generally Robert A. Baruch Bush, *Between Two Worlds: The Shift from Individual to Group Responsibility in the Law of Causation of Injury*, 33 UCLA L. REV. 1473 (1986).

74. See, e.g., *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998); *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742 (1998); *Bastian v. TPI Corp.*, 663 F. Supp. 474 (N.D. Ill. 1987); *Lipson v. Superior Court*, 182 Cal. Rptr. 629 (1982). See generally Glen O. Robinson, *Multiple Causation in Tort Law: Reflections on the DES Cases*, 68 VA. L. REV. 713, 739 (1982).

75. See STEPHEN W. HAWKING, A BRIEF HISTORY OF TIME 54-55 (1988).

76. See RICHARD P. FEYNMAN ET AL., THE FEYNMAN LECTURES ON PHYSICS: QUANTUM MECHANICS 2-8 to 2-9 (1966).

researchers raised the lighting at the Hawthorne Works of Western Electric Company. Worker productivity improved. Researchers then lowered the lights. Worker productivity improved again! Not because the working conditions were better, but because someone cared enough to tinker with and ask about the working conditions.<sup>77</sup> Social science recognized the effect of the observer on the observed conditions and the uncertainty of measurement. Other disciplines are even making the effort to harness uncertainty: chaos theory in mathematics demonstrates that there is some predictability in what were once thought to be random events and that seemingly disparate influences may be interconnected.<sup>78</sup> “If a butterfly flaps its wings in Tokyo, then a month later it may cause a hurricane in Brazil.”<sup>79</sup> Physicist Richard Feynman concluded that “[a]ll scientific knowledge is uncertain.”<sup>80</sup> At least in other disciplines, there is a growing acceptance of uncertainty and even attempts to understand it.

The idea of uncertainty is actually an argument *for*, rather than *against*, imposing legal duties of empathetic understanding. This scientific idea of uncertainty and perspectivalism has a moral foundation as well. Einsteinian notions of relativity require us “to give equal concern and respect to others’ frames of reference in addition to one’s own in order to give an adequate account of the physical universe.”<sup>81</sup>

Law has been much more reluctant to accept uncertainty. Only recently, for example, have courts accepted such ethereal torts as infliction of emotional distress and loss of a chance.<sup>82</sup> Law needs to work its way out of mechanistic Newtonian certainties and be open to context, position, and a bit of uncertainty in the pursuit of the good.

On a theoretical level, uncertainty exists. Applied to the question before us, we cannot predict the myriad circumstances in which a duty to rescue might arise. But we can see from physics, ecology,

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77. See F.J. ROETHLISBERGER & WILLIAM J. DICKSON, *MANAGEMENT AND THE WORKER: AN ACCOUNT OF A RESEARCH PROGRAM CONDUCTED BY THE WESTERN ELECTRIC COMPANY, HAWTHORNE WORKS*, CHICAGO (1939).

78. See, e.g., JACK COHEN & IAN STEWART, *THE COLLAPSE OF CHAOS* 191-93 (1994); JAMES GLEICK, *CHAOS: MAKING A NEW SCIENCE* 11-31 (1987); IAN STEWART, *NATURE’S NUMBERS* 108-27 (1995).

79. Cohen & Stewart, *supra* note 78, at 191.

80. RICHARD P. FEYNMAN, *THE MEANING OF IT ALL: THOUGHTS OF A CITIZEN SCIENTIST* 26 (1998).

81. R. Randall Kelso, *A Post-Conference Reflection on the Lawyer’s Duty to Promote the Common Good*, 40 S. TEX. L. REV. 299, 303, 304 (1999). Einstein said that absolute space and time are not useful concepts:

It is not meaningful to talk about either distance or duration without specifying the states of motion from which that distance and that duration are being measured. Using the example of a moving train against the stationary background of an embankment, Einstein shows that there can be no absolute agreement in the units of space and time measured from these two different frames of reference. Wai Chee Dimock, *Rethinking Space, Rethinking Rights: Literature, Law, Science*, 10 YALE J.L. & HUMAN. 487, 496 (1998) (citing ALBERT EINSTEIN, *RELATIVITY: THE SPECIAL AND THE GENERAL THEORY* 25-26 (Robert W. Lawson trans., Crown Publishers, Inc. 1961) (1916)).

82. See Nancy Levitt, *Ethereal Torts*, 61 GEO. WASH. L. REV. 136 (1992).

2001]

*The Kindness of Strangers*

479

anthropology, and sociology, that acceptance of uncertainty is a good thing and that cooperation, empathy, and even altruism feed the better purposes of mankind. One slice of this cooperation is that law should compel bystanders to assist strangers or at least call for help in easy rescue situations when they can do so with no harm to themselves.