

Psychological Perspectives on Rescue: The Behavioural Implications of Using the Law to Increase the Incidence of Emergency Intervention

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I. INTRODUCTION

LAWYERS HAVE LONG BEEN FASCINATED by the idea of rescue. Some have argued that intervention or non-intervention in emergency

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situations should give rise to legal sanctions;¹ others have insisted that the provision of aid should be a question for personal morality alone.² It is not the aim of this paper to side with either camp. Of the many (arguably) desirable effects that "rescue laws" could have,³ the most important is an increase in the incidence of succour. The object of this article is to objectively explore that possibility.

The lawyer's chief contribution to the rescue debate obviously must be to explain the *legal* implications of using the law to promote emergency intervention. In doing so, however, he must appreciate that the law does not operate in a vacuum, and that it cannot independently generate satisfactorily complete answers to complex social issues. Unfortunately, notwithstanding the importance of the matter, the legal literature is strikingly wanting a detailed and comprehensive examination of the likely *behavioural* impact of rescue laws.⁴ That lacuna is undoubtedly attributable to the fact that the lawyer's field of study does not normally encompass those disciplines best suited to providing such information. This paper will attempt to fill the void by drawing upon the learning of one such discipline: psychology.

¹ See, e.g., J. Bohlen, "The Moral Duty to Aid Others as a Basis of Tort Liability" (1908) 56 U. Pa. L.R. 217 and 316; E. Weinrib, "The Case for a Duty to Rescue" (1980) 90 Yale L.J. 247; and F.D. Rose, "Restitution for the Rescuer" (1989) 9 Oxford J. of Legal Studies 167.

² See, e.g., R. Epstein, "A Theory of Strict Liability" (1973) 2 J. Legal Studies 151 at 199; and J.C. Smith, *Liability in Negligence* (Toronto: Carswell, 1984) c. 3.

³ It will suffice to cite but three examples. First, such laws could bring the law into line with commonly held notions of morality. (It is recognized that the extent to which the law should mirror morality is an open question: see, e.g., L.L. Fuller, *The Morality of the Law*, rev'd ed. (New Haven: Yale University Press, 1969); P. Devlin, *The Enforcement of Morals* (Oxford: Oxford University Press, 1965); and H.L.A. Hart, *Law, Liberty and Morality* (Oxford: Oxford University Press, 1963).)

Second, such laws could further the goal of allowing all worthy classes of individuals who suffer at the hands of another to claim compensation. (It is recognized that there are complex issues of causation which make it difficult to conclusively attribute a victim's loss to a bystander's refusal to render aid.)

Finally, rescue laws could provide psychological appeasement for those who feel aggrieved by another's actions. See, e.g., A. Linden, *Canadian Tort Law*, 3d ed. (Toronto: Butterworths, 1982) at 14-16; and P. Cane, *Tort Law and Economic Interests* (Oxford: Clarendon Press, 1991) at 486.

⁴ Two articles that have examined the matter in a cursory way are: V. Brady, "The Duty to Rescue in Tort Law: Implications of Research on Altruism" (1980) 55 Ind. L.J. 551; and E. Radcliffe "A Duty to Rescue: The Good, The Bad and The Indifferent — The Bystander's Dilemma" (1986) 13 Pepperdine L.R. 387 at 399-402.

The rewards attainable through such a course of study are threefold. First, by examining the work of psychologists, the lawyer can more fully appreciate the nature of the situations with which he is dealing. If the difficult issues involved in the rescue debate are to be resolved, it will not be on the basis of misinformed assumptions. The objection here is not so much to the use of hackneyed scenarios (eg. an infant drowning in a shallow pool) as it is to the simplistic characterization of bystander responses. Almost invariably, legal analysts have speculated as to why people react as they do when confronted by emergencies. One of the most pleasantly surprising conclusions found in the psychological literature is that the lack of a helpful response in a given situation is usually *not* the result of callous indifference or an erosion of societal bonds.⁵ Nor is the manner in which a bystander decides whether or not to intervene as linear or as simplistic as most law review articles would seem to suggest; rescue and non-rescue are the products of complex processes.

The second benefit of studying the work of psychologists flows from an appreciation of the way in which the mind works. Once it is known what factors facilitate or inhibit rescue, the task of devising legal inducements to intervention can become more principled. Is a bystander apt to be responsive to a threat of legal liability for failing to render aid? Will he pursue a reward? Or will he be petrified by a fear of punishment in the event that he mismanages an effort?

Finally, while the sophisticated articulation of psychological theories may be a relatively recent phenomenon, the patterns of behaviour exhibited by bystanders surely are not. While its environment has changed considerably over the years, the human mind surely operates today much as it has for centuries; bystanders of yesteryear were likely responsive to many of the same factors that influence behaviour now. As a social instrument, the law was likely (perhaps intuitively) moulded to reflect its subjects' propensities. Though empirically unverifiable, it will be suggested throughout this paper that the frequent "co-incident" of legal doctrine and psychological fact may not be entirely haphazard.

By way of a preface to the discussion that follows, a number of definitions are in order, First, "rescue laws" will collectively refer to those legal provisions that could be used to govern behaviour in

⁵ See, e.g., B. Latané & J. Darley *The Unresponsive Bystander: Why Doesn't He Help?* (New York: Appleton-Century-Croft, 1970) at 6; J. Piliavin et al., *Emergency Intervention* (New York: Academic Press, 1981) at 181.

emergency situations. Several possibilities exist.⁶ A general duty to rescue could be introduced in tort or criminal law, and (respectively) damage awards, or penal sanctions or fines could be imposed on individuals who fail to act as required. Further, compensation could be made available to rescuers. Those who provide aid could be permitted to claim reimbursement for expenses they incur, remuneration for services they render, or rewards. Such compensation could be made payable by the rescued, by third parties, or by the state. Finally, some form of immunity from suit could be made available to rescuers with regard to harm that they cause in the course of intervention.

A number of psychological terms also require definition. Though the type of assistance that one can afford another can be described in a variety of ways, the following scheme will be used in this paper. "Helping behaviour" will refer to acts that are executed with the intention of benefitting another, whether or not external rewards (including the avoidance of punishment) are anticipated in return. As a subcategory, "altruistic behaviour" will refer to acts, executed with the intention of benefitting another, that are performed out of (generally) selfless concern for the other. An expectation of external rewards will prevent an act from being classified as being altruistic, though the anticipation of internal rewards, such as an increase in self-esteem, will not.⁷ The aim of this article is to examine laws that could increase the incidence of *helping behaviour*. Altruism is certainly laudable,⁸ but it is too much to expect from the population generally. Further, it is, in a sense, inconsistent with legally induced motivation;

⁶ Of course, a number of the following possibilities already exist in some form. Those rescue laws that currently exist will be referred to throughout this paper as they become relevant.

It should be noted that the focus of this paper will be on Canada's common law provinces and territories. The rescue laws already existing in Quebec will not be examined in detail. Those laws impose a duty to rescue (see, e.g., *The Charter of Human Rights and Freedoms*, R.S.Q. 1977, c. C-12, s. 2; and S. Rodgers-Magnet "The Right to Emergency Medical Assistance in the Province of Quebec" (1980) 40 R. du B. 373), provide some rescuers with compensation for injuries sustained (*An Act to Promote Good Citizenship*, R.S.Q. 1977, c. C-20, as am.), and reward some rescuers with monetary rewards or decorations (*An Act to Promote Good Citizenship*, ss. 15-17).

⁷ Some would disagree. If the term is to have any application, however, allowances must be made. It would seem impossible to ever entirely exclude references to self-gratification or personal gain. Even acts that entail the sacrifice of one's life can be explained as being executed in pursuit of a benefit — e.g., posthumous glory.

⁸ Again, some would disagree. It leads, some say, to learned helplessness, a lack of initiative, a restraint on freedom, and economic inefficiency. See, e.g., A. Rand, *The Virtue of Selfishness* (New York: New American Library, 1964).

the purpose of introducing rescue laws would be to entice bystanders to modify their behaviour in response to external rewards (*i.e.*, the avoidance of punishment or the receipt of compensation).

II. MODELS OF BYSTANDER INTERVENTION

THE MODELS OF BYSTANDER INTERVENTION devised by Latané and Darley and Piliavin *et al.* have been chosen as the basis for the discussion that follows because of their merits, and also because they facilitate an examination of the work of other leading psychologists.⁹ Special mention must be made of one such individual. As will become evident, Shalom Schwartz has contributed a great deal to the understanding in the area. However, because most of the relevant elements of his theories can be discussed in the context of the models formulated by Latané and Darley and Piliavin, this paper does not contain a separate section devoted to Schwartz.

A. Latané and Darley

The events of 13 March 1964 have a special significance for the rescue debate. It was on that night that a young woman, Kitty Genovese, was raped and murdered in front of her New York apartment complex. Though the attack lasted for over 30 minutes, and though it was known to 38 of her neighbours, Ms Genovese was left to face her assailant alone. The episode became a *cause célèbre* as both experts and the general public asked soul-searching questions about human nature and the state of social relations. For lawyers the incident served as a catalyst for reform proposals and led to the symposium that produced the seminal text, *The Good Samaritan and the Law*.¹⁰ A similar reaction occurred among psychologists; Kitty Genovese's

⁹ A number of psychologists have developed theories and models dealing with the subject of emergency intervention. Almost all are of relatively recent vintage. Since its emergence as a recognized discipline, psychology has occupied itself in varying degrees of enthusiasm with the question of helping behaviour. It was not until the 1960s, however, that the matter received intensive consideration. The reasons for the boom are numerous and need not be rehearsed here. The area's history and trends are discussed in J.F. Dovidio, "Helping Behavior and Altruism: An Empirical and Conceptual Overview" (1984) 17 *Adv. in Exper. Soc. Psych.* 361 at 363.

¹⁰ J.M. Ratcliffe, ed. (New York: Anchor Press, 1966).

death motivated Latané and Darley to write their landmark text,¹¹ *The Unresponsive Bystander: Why Doesn't He Help?*¹²

A dozen experiments (not all of which were conducted by the authors) provided the empirical basis for the theories put forth in *The Unresponsive Bystander*. Working in both laboratory and field settings, researchers devised and implemented studies designed to reveal factors that either facilitate or inhibit intervention. The studies ranged from the mundane (e.g., a request for directions) to the apparently criminal (e.g., the theft of a case of beer from a store) to the heart-wrenching (e.g., an epileptic seizure suffered by an individual sitting in a room alone), but generally all involved the manipulation of bystander group size or composition. Most were aimed at discovering how people who witness an emergency are affected by the presence of others. A few were designed to determine the effect of assigning some form of responsibility to one of several bystanders.

On a general level, Latané and Darley drew two conclusions. The first, based on their appreciation of the inhibitory factors at play, was that it is surprising that bystanders sometimes *do* intervene in an appropriate manner. Pressed unexpectedly into a unique and urgent situation, unable to coolly consider different options, incapable of reflexively responding on the basis of past similar experiences, and subjected to conflicting cues and norms, the bystander finds himself in an "unenviable" situation.¹³ The second conclusion drawn by Latané and Darley was that particular forms of behaviour are not necessarily correlated to particular attitudes or beliefs.¹⁴ A failure to intervene cannot be assumed to be the product of apathy, cruelty or social alienation. It is more apt to be the product of a particular environmental factor. That conclusion is obviously welcomed by those seeking to increase the incidence of succour; it is easier to manipulate specific factors than it is to fundamentally alter personalities.

The studies also led Latané and Darley to two more specific conclusions. The first was that intervention or non-intervention is the product of a certain process, which they conceptualized as a *decision*

¹¹ An indication of the text's influence is revealed by a survey done of "rescue" articles published in psychological journals in the mid-1970s; it was cited in approximately 80% of those papers: M. Smithson, P.R. Amato, & P. Pearce, *Dimensions of Helping Behavior* (New York: Pergamon Press, 1983) at 3-4.

¹² *Supra*, note 5.

¹³ *Ibid.* at 31.

¹⁴ *Ibid.* at 5-6.

tree. The second conclusion is more startling: the prospect of helping behaviour *decreases* as the number of on-lookers *increases*. The *bystander effect*, as it was termed, appears somewhat counter-intuitive; indeed, absent compelling data and explanative theories, it would be tempting to dismiss Latané and Darley's findings as being anomalistic. Time, however, has verified the claim that the presence of others may not only reduce the likelihood that a *particular* witness will enter upon a rescue, it may also reduce a victim's chances of receiving aid from *anyone*.¹⁵ Crowd-induced restraint can actually be so strong that the decreased probability of rescue attributable to the inhibiting influence of others' presence exceeds the increased probability of rescue attributable to the greater number of potential intervenors. The decision tree and the bystander effect warrant further examination.

1. The Decision Tree

The essence of Latané and Darley's decision tree is that rescue will occur only if a bystander responds favourably at each step in a five stage process.¹⁶ Progression through the decision tree is not always a simple matter. First, the five steps to intervention need not be taken in any particular sequence. A bystander may experience *cycling*, as he goes back and forth within the model, reconsidering some decisions and temporarily bypassing others. Second, a failure to intervene may be due to *blocking*. Startled, confused, perhaps frightened, a bystander may be rendered incapable of settling the dilemmas confronting him.¹⁷ Inaction in such a case will be the product of a *lack* of a decision, rather than of an *uncharitable* decision. Finally, a type of inertia can draw a bystander into *commitment*. As indecision at any of the stages stretches from seconds into minutes, it becomes

¹⁵ See, e.g., B. Latané, S. Nida, & D. Wilson, "The Effects of Group Size On Helping Behavior" in J.P. Rushton & R.M. Sorrentino, eds., *Altruism and Helping Behavior* (Hillsdale, N.J.; Lawrence Erlbaum Assoc., 1981) at 306-09; B. Latané & S. Nida, "Ten Years of Research on Group Size and Helping" (1981) 89 *Psych. Bull.* 308 at 321-22.

¹⁶ An exception to the universality of the decision tree's applicability would appear to be *impulsive helping*, discussed *infra* at note 99.

¹⁷ It may seem harsh to impose liability in such cases. The law may often seem harsh, however. For example, the standard of care in tort law is based on the objective, "reasonable person" concept, which occasionally requires more of a tortfeasor than he is able to do. In the rescue context, the "sudden emergency doctrine" may provide some relief to bystanders who experience psychological blocking. The degree of care expected in a particular situation is that which would have been provided by a reasonable person *in like circumstances*. Some emergencies may be so horrific that even the reasonable person would "freeze up": see, e.g., L. Klar, *Tort Law* (Toronto: Carswell, 1991) at 220-22.

increasingly difficult for an individual to act. It may be easier for him to adhere to his initial reaction and to remain idle, despite the knowledge that some form of action would be appropriate. A delayed response would, if effect, amount to an embarrassing confession that his earlier inaction was improper.

The five stages of the decision tree are as follows:

- (a) noticing that something is wrong,
- (b) deciding that the event is an emergency,
- (c) assuming a degree of responsibility,
- (d) recognizing specific modes of intervention; and
- (e) implementing the intervention.¹⁸

(a) NOTICING THAT SOMETHING IS AMISS

The first stage of the decision tree requires a bystander to notice that something is amiss. It is difficult not to notice the indicia of some emergencies. A collision between two automobiles, for example, will almost invariably captivate attention. Often, however, crises are not conspicuous, either because they are inherently inaudible (*e.g.*, an infant suffocating face down in its crib) or because they are too common to excite the senses. Further, as will be discussed shortly, social forces can inhibit perceptiveness.

Schwartz has identified four variables that affect the presence and depth of awareness.¹⁹ First, an emergency must be sufficiently *prominent* within its environment to garner attention. As will be discussed in relation to Latané and Darley's theory of informational social influence, rescue laws could help to bring the plight of victims into focus. For example, bystanders who are aware of the need for assistance could be legally motivated to action, thereby bringing the situation to the attention of the impercipient. Similarly, the behaviour of legally motivated bystanders could enhance *clarity* of emergency situations, the second variable identified by Schwartz. Awareness is also a function of an individual's *receptivity to need cues*. Receptivity, in turn, is largely a function of one's propensity to consider the negative consequences of not intervening. A duty to rescue, and its attendant threat of liability, would invite otherwise uninterested bystanders to direct their minds to such matters, and to be more attentive to the indicia of possible emergencies. Finally, the *intensity* or *seriousness* or a perceived need will affect a bystander's awareness.

¹⁸ Latané & Darley, *supra*, note 5 at 32-35.

¹⁹ S. Schwartz, "Normative Influences on Altruism" (1977) 10 *Adv. in Exper. Soc. Psych.* 221 at 246-50.

The existence of rescue laws would not alter the objective seriousness of a victim's need, but for the reasons that have been discussed, it could affect how that need is subjectively viewed.

(b) INTERPRETING THE EVENT CORRECTLY

Even if an emergency is noticed, it will not lead to intervention unless it is correctly interpreted. Again, the matter is not as simple as it might seem. Was that yet another meaningless wail from the neighbour's baby, or is the child truly in need of help? In conditions of ambiguity, the costs that may attend upon a decision that an emergency does exist will often argue in favour of a benign interpretation. Ultimately, however, the resolution in each instance will turn on a host of variables. As will be fully discussed shortly, of great interest to Latané and Darley is the fact that one bystander's perceptions will be coloured by the presence of others.

(c) ASSUMING RESPONSIBILITY

At the third stage in the decision tree, Latané and Darley note that even if stimuli are noticed and correctly interpreted, help will still not be given if responsibility is not assumed.

Schwartz has examined the various means by which feelings of responsibility can be fostered.²⁰ For ease of discussion, those means can be divided into two groups.²¹ The first group can generally be thought of as being *descriptive* of the currently settled legal position regarding rescue; it represents those human propensities that the courts and legislatures have chosen to honour through the imposition of an obligation. Ongoing role relationships, for instance, almost invariably entail feelings of responsibility, and very frequently have been used to justify exceptions to the "no duty" rule.²² Similarly, a condition of dependency will often generate a sense of responsibil-

²⁰ By "responsibility," Schwartz refers not to a sense of moral obligation, but rather to "a sense of relatedness or connectedness with the person in need": *ibid.* at 246.

²¹ Schwartz mentions several factors not relevant to the present discussion.

²² See, e.g., *Timm v. R.*, [1965] 1 Ex. C.R. 174; *Ellis v. Home Office*, [1953] 2 All E.R. 149; *Howley v. R.*, [1973] F.C. 184; *Farmer v. State* (1955) 224 Miss. 96, 79 So. 2d 528 (jailer and prisoner); *Rival v. Atchison, Topeka and Santa Fe Rwy.* 62 N.M. 159, 306 P. 2d 648 (1957); and J. Fleming, *The Law of Torts*, 7th ed. (Sydney: Law Book Co., 1987) at 136 (employer and employee).

ity.²³ Corresponding legal duties are legion.²⁴ Psychology and law again coincide with regard to those bystanders who are causally connected to the creation of a victim's condition. Such individuals are more apt to both feel responsible and act responsibly,²⁵ and can, of course, be burdened with legal liability.²⁶ Finally, Schwartz suggests that bystanders may feel a heightened sense of responsibility when they are particularly suited to the task of providing help as a result of special opportunities, skills, or knowledge that they possess.²⁷ In exceptional cases, the common law has followed suit.²⁸

The second group of factors which induce feelings of responsibility are those which suggest means by which the law *could* be used to increase the incidence of succour. People feel a greater sense of responsibility when they are made accountable for the fate of another, even when accountability is informally imposed and largely unenforceable.²⁹ Typically, an air of uncertainty surrounds emergency situ-

²³ See, e.g., L. Berkowitz & L. Daniels, "Responsibility and Dependency" (1963) 66 J. Abn. & Soc. Psych. 429; L. Berkowitz, S. Klanderman, & R. Harris, "Effects of Experimenter Awareness and Sex of Subject and Experimenter on Reactions to Dependency Relationships" (1964) 27 Sociometry 327.

²⁴ See, e.g., *Teno v. Arnold* (1978), 83 D.L.R. (3d) 609, [1978] S.C.R. 287, 3 C.C.L.T. 272, affg but varying 67 D.L.R. (3d) 9, 11 O.R. (2d) 585, which affd 7 O.R. (2d) 276; *McCallion v. Dodd* [1966] N.Z.L.R. 710; *Palmer v. State* 223 Md. 341, 164 A. 2d 467 (1960) (parents and children); *Lawson v. Wellesley* (1975), 9 O.R. (2d) 677 (hospitals and patients); *Williams v. Eady* (1893), 10 T.L.R. 41; *Portelance v. Bd. of Trustees R.C. Sep. Schools of Grantham*, [1962] 2 O.R. 365, 32 D.L.R. (2d) 336; *Pirkle v. Oakdale Union Grammar School Dist.* 40 Cal. 2d 207, 213, 253 P. 2d 1,4 (1953) (schools and pupils); *Horsley v. McLaren*, [1972] S.C.R. 441, 22 D.L.R. (3d) 545, affg [1970] 2 O.R. 487, 11 D.L.R. (3d) 277, rev'g [1969] 2 O.R. 137, 4 D.L.R. (3d) 557 (ship master and passenger).

²⁵ See, e.g., S. Schwartz & A. Ben-David, "Responsibility and Helping in an Emergency: Effects of Blame, Ability and Denial of Responsibility" (1976) 39 Sociometry 406.

²⁶ See, e.g., *Haynes v. Harwood*, [1935] 1 K.B. 146, [1934] All E.R. 103; *Oke v. Weide Transport and Carra* (1963), 41 D.L.R. (2d) 53, per Freedman J.A.; *Hollinbeck v. Downey* 261 Minn. 281, 113 N.W. 2d 9 (1962).

²⁷ S. Schwartz, "Elicitation of Moral Obligation and Self-Sacrificing Behavior" (1970) 15 J. Pers. and Soc. Psych. 283.

²⁸ See, e.g., *Tarasoff v. Regents of the University of California* 551 P.2d 334 (Cal. S.C. 1972). As yet, courts outside of the United States have not followed suit.

²⁹ For example, in an experiment set in a laundry, every bystander who was simply asked, "Excuse me . . . may I leave this [suitcase] here for a minute?" intervened when a thief attempted to steal the bag in the owner's absence. When the owner stepped out without making such a request, only about 12% of bystanders intervened: T. Moriarty, "Crime, Commitment and the Unresponsive Bystander" (1975) 31 J. Pers. & Soc. Psych. 370.

ations, and it is often unclear if, or to what extent, one is accountable for the fate of another. A legal duty would help to articulate and clarify the scope of each bystander's accountability, and it would also create a compelling reason to act accordingly (i.e., the avoidance of liability). Further, as Schwartz notes, a victim can induce feelings of accountability and responsibility by directly appealing to a bystander for help. While there does not appear to be any evidence on point, it is certainly conceivable that victims would be more willing to make such appeals if the law were to recognise their merit.

(d) RECOGNIZING MODES OF INTERVENTION

The fourth necessary step requires a decision as to what specific modes of intervention are available. If a bystander does perceive some means of providing relief, it will entail either direct or indirect involvement. The former alternative is usually more obvious, but it is also more likely to entail personal risk or inconvenience. The latter is usually more easily and safely undertaken, but often presupposes grace under pressure and the presence of mind needed to recognize a circuitous means to an end.

Rescue laws, particularly a duty to rescue, could increase a bystander's likelihood of perceiving a means of providing relief. Absent such laws, he may simply pass by the scene of an accident, believing that he is incapable of helping. If, however, he could be persuaded to briefly investigate regardless of that assumed incompetence, he might recognise his ability to summon an ambulance by means of a nearby, but previously unseen, telephone. He may even realize that, despite his initial assumption, he is personally able to benefit the victim in some way. Of course, some situations are so obviously hopeless that it would be pointless to require a bystander to intervene. Such matters are not given to exact *a priori* formulations, and it would be up to a court of law to decide whether or not a bystander acted reasonably in passing by a given emergency.

(e) IMPLEMENTING THE INTERVENTION

At the final stage a bystander must implement the intervention. Good intentions are a start, but assistance will ultimately not be forthcoming if through nervousness or panic a rescue effort is mishandled, or if between thought and expression the situation changes and a bystander's plan of attack becomes outmoded. Rescue laws could provide an extra incentive for him to quickly act upon his plans.

2. Psychological Restraints I: "Bystander Effects"

As explained by Latané and Darley, the bystander effect is actually the function of three processes:

- (a) diffusion of responsibility;
- (b) informational social influence; and
- (c) evaluation apprehension.

While all three phenomena do frequently occur together, each is in fact distinct and capable of occurring in isolation.³⁰ *Diffusion of responsibility* can occur if a bystander simply believes that others are present. *Informational social influence* requires that a bystander can observe others and thereby receive definitional cues. *Evaluation apprehension*, by contrast, presupposes that a bystander is aware that others can observe and judge his actions. Each process will be fully examined in turn. By way of preface, it can be said that on the whole, whether individually or in combination, their operation is remarkably consistent.³¹

(a) DIFFUSION OF RESPONSIBILITY

Diffusion of responsibility refers to the process by which a bystander's sense of personal responsibility for a victim's well-being is lessened as a result of the presence of others.

When only one bystander is present in an emergency, if help is to come it must come from him. Although he may choose to ignore [it] . . . any pressure to intervene focuses uniquely on him. When there are several observers present, however, the pressures to intervene do not focus on anyone; instead, the responsibility for intervention is shared among all the onlookers. As a result, each may be less likely to help.³²

To the extent that responsibility is diffused, no particular bystander is as likely to feel all the guilt or bear all of the (informal) blame³³ in the event that rescue does not occur. Consequently, as numbers increase, each will find it easier to justify his own inaction to himself and to others.

³⁰ Evidence for that proposition is collected in Latané, Nida, & Wilson, *supra*, note 15 at 298-300.

³¹ The results of over five dozen experiments, conducted in disparate circumstances and among a wide variety of subjects, are almost wholly consistent: *ibid.* at 292-96.

³² Latané & Darley, *supra*, note 5 at 90.

³³ The prospect of tortious liability could render the diffusion effect illusory. One bystander out of many may find himself bearing the full cost of the failure to rescue. He may be able to claim contribution from the other tortfeasors, *if* they can be identified and tapped.

Illustrative of the strength of the inhibitory processes at work in the diffusion process is Latané and Darley's study involving bystander reactions to an epileptic seizure.³⁴ The experiment was devised in a way that led subjects to believe that they and an epileptic individual were joined by five, two, or zero others, and that each participant was isolated in a separate room to ensure confidentiality and to promote frankness in a discussion that was to take place.³⁵ In the course of that discussion, the epileptic was unambiguously heard to suffer a life-threatening seizure for 55 seconds, after which time his microphone went dead. Despite the clarity of his appeal for help and the obvious severity of the situation, the diffusion phenomenon was clearly pronounced under some conditions. Subjects who believed that they were alone in hearing the seizure responded by the end of the seizure in 85% of the cases and eventually in the remaining cases. The mean time for intervention was 52 seconds. When a third party was believed to be present, the mean time jumped to 93 seconds as only 62% acted before the end of the seizure and only 85% ever acted at all. When the ostensible group size grew to six members the mean time leapt again, to 166 seconds, a mere 31% responded by the end of the seizure, and 62% never did anything at all. Comparable figures have been obtained in other studies.³⁶

In 1970 Latané and Darley explained the results they obtained in terms of *diffusion* of responsibility,³⁷ arguing that responsibility had been broken down and shared among all of the members of the group. Piliavin *et al.* have distinguished *diffusion* of responsibility from *dissolution* of responsibility.³⁸ The latter can occur in situations in which one bystander, again in isolation, assumes that another has taken responsibility and has intervened. When that occurs, feelings of obligation can be evaded as one can rationalise that any further

³⁴ *Supra*, note 5 at 93-112.

³⁵ The purported object of the exercise was to allow its participants to engage in a discussion about the hardships they were experiencing adjusting to life as college freshmen. The seizure was preceded by the epileptic explaining his susceptibility to seizures and the problems that his condition caused. The entire set-up was, of course, a ruse. The only "live" participant was the subject of the study. The other voices were provided by tape.

³⁶ The data are collected in Piliavin *et al.*, *supra*, note 5 at 122-25.

³⁷ It is possible that the results were in part the product of the other aspects of the bystander effect as well: S. Schwartz & A. Gottlieb, "Bystander Reactions to Violent Theft: Crime in Jerusalem" (1976) 34 *J. Pers. & Soc. Psych.* 1188 at 1189.

³⁸ *Supra*, note 5 at 121.

actions would be unnecessary or even harmful. Because the process of dissolution involves an assumption that help is not needed, it would seem to be somewhat immune to the motivational effects of rescue laws. At most, such laws might encourage more careful assessments of ambiguous situations. The incidence of diffusion seems more amenable to reduction. A duty to rescue would clarify and heighten the initial sense of responsibility felt by bystanders. Further, it would increase the costs associated with inaction, and would thereby provide an impetus for bystanders to investigate possible emergencies and to intervene when appropriate.

A number of researchers have refined the diffusion theory by isolating and manipulating certain factors which either facilitate or inhibit intervention. Baumeister *et al.* modified the situational construct used in the epileptic study so as to ascertain what impact an assignment of leadership roles would have on intervention rates.³⁹ Subjects were told that either they or some other participant would be responsible for group decisions that were to be made in the course of an exercise. Expanding upon an earlier hypothesis to the effect that individuals are immunized from the restraining effects of the diffusion process if they are singled out as being responsible for helping,⁴⁰ the results obtained in Baumeister's experiment showed that immunization can occur even when individuals are given a role of authority in regards to unrelated matters.⁴¹ The implications for the law reformer are clear. A duty informing people that they are responsible, in a meaningful and enforceable sense, for the well-being of others could increase the incidence of rescue by counteracting one of the processes that inhibits intervention.⁴² True, it does not appear that any studies have investigated helping rates in situations in which every individual has been assigned responsibility. However, in light of the fact that everyone who failed to respond under a general duty to rescue could

³⁹ R. Baumeister *et al.*, "Who's in Charge Here: Group Leaders Do Lend Help in Emergencies" (1988) 14 *Pers. & Soc. Psych. Bull.* 17.

⁴⁰ S. Schwartz & G. Clausen, "Responsibility, Norms and Helping in an Emergency" (1970) 16 *J. Pers. & Soc. Psych.* 299.

⁴¹ Among those designated as group leaders, 80% helped; among those not so designated, only 35% helped.

⁴² In psychological terms, a duty to rescue could prevent the phenomenon of *deindividuation*, by which a bystander becomes submerged into the group. The concept is borrowed from L. Festinger, A. Pepitone, & T. Newcomb, "Some Consequences of Deindividuation in a Group" (1952) 47 *J. Abn. & Soc. Psych.* 382.

be held liable, it seems that the re-emergence of the diffusion effect would be unlikely, or at least somewhat attenuated.⁴³

Gottlieb and Carver have argued that diffusion of responsibility is facilitated by a sense of anonymity among bystanders.⁴⁴ Previous research indicating that the diffusion phenomenon is weakened if a subject has a prior relationship (however brief) with the victim⁴⁵ or other witnesses⁴⁶ led them to ask whether the mere anticipation of *future* interaction would have a similar effect. Gottlieb and Carver reasoned that the responsibility which is typically diffused is definable in terms of blame, a cost of non-intervention, and that blame is likeliest when those with knowledge of a shameful act (*e.g.*, other bystanders and the victim) are apt to be encountered. It was hypothesized that the possibility of unfavourable assessments should promote rescue. A situational construct similar to that used in the epileptic study was again used, this time with the variation that the subjects were led to believe that they either would or would not have contact with the other participants following the session. The results obtained supported Gottlieb and Carver's hypothesis. Intervention rates were higher among those subjects who anticipated future contact than among those who did not.⁴⁷ The legal implications are clear. If a person believes that he will re-encounter a victim or other bystanders in the course of legal proceedings, the costs of non-intervention will be higher. The prospect of such proceedings, therefore, could increase the probability of rescue not only through the threat of official sanctions, but also through the more subtle threat of the shame and guilt that would attend upon the process leading to those sanctions.

(b) INFORMATIONAL SOCIAL INFLUENCE

Before he can undertake a rescue, a bystander must become aware of a situation *and* he must interpret it as being an emergency. How and

⁴³ A commonly expressed concern of those opposed to a duty to rescue is that chaos would result if every one of many bystanders rushed to provide assistance. It seems unlikely, however, that such problems would occur. Often, a number of bystanders would be needed for a cooperative effort. Further, the duty could be formulated so as to relieve a bystander of his obligation if another was already providing aid.

⁴⁴ J. Gottlieb & C. Carver, "Anticipation of Future Interaction and the Bystander Effect" (1980) 16 *J. Exper. Soc. Psych.* 253.

⁴⁵ B. Latané & J. Darley, "Bystander Apathy" (1969) 57 *American Scientist* 244.

⁴⁶ *Ibid.*; B. Latané & J. Rodin, "A Lady in Distress: Inhibiting Effects of Friends and Strangers on Bystander Intervention" (1969) 5 *J. Exper. Soc. Psych.* 189.

⁴⁷ *Supra*, note 44.

why a particular interpretation is settled upon is a function of many factors, one of the most powerful of which is *informational social influence*. Situations requiring rescue invariably arise unexpectedly, usually constitute a unique experience, and frequently defy immediate comprehension. In an attempt to receive clarification, a bystander will often rely on the cues provided by others, primarily those cues that do not involve verbal communication. Most people are unwilling to expose themselves to the potential embarrassment attendant upon open inquiries, and therefore rely on more subtle clues, such as postures, gestures, and countenances. If those around him appear unconcerned, a bystander is unlikely to conclude that his neighbours are mistaken and that help is required; if surrounded by others who are visibly agitated, he is more apt to conclude that an emergency does exist.

In ambiguous circumstances, then, the potential for a "domino effect" is clear. Latané and Darley speak of a condition of "pluralistic ignorance" in which inaction begets inaction as bystanders struggle to simultaneously maintain a dignified demeanour, gather information, and formulate appropriate responses.⁴⁸ Confused, but desirous of appearing composed, they look to one another for cues, each uncertain as to whether or not the others share their muddled condition. As Schwartz and Gottlieb have suggested, however, this process can both inhibit and foster rescue.⁴⁹ The lesson for law reformers is clear: if some bystanders can be led by the law to be more attentive and responsive to the need for assistance, others will be swept along by the current of social influence to a similarly helpful frame of mind. If one cognizant bystander could be moved by the law (by any of the processes discussed) to substitute action for feigned ignorance, the confused and truly uninformed would be alerted to the victim's state. Further, it is at least possible that the introduction of rescue laws would lead victims to call out for help more often. Encouraged by legal recognition of the merit of such appeals, and of the appropriateness of rescue, some may feel less inhibited in asking for assistance. Since negative informational social influence can occur only in conditions of ambiguity, it can be precluded by an explicit plea.

The promise held out by a legal duty may, however, be limited, as shown in the findings of several studies. Experiments conducted by Schwartz and Gottlieb in an attempt to isolate the impact of each of the three strands of the bystander effect yielded some surprising

⁴⁸ *Supra*, note 5 at 4.

⁴⁹ *Supra*, note 37 at 1189, 1197.

conclusions.⁶⁰ Although it was found that informational social influence (in its negative form) occurred quickly and prior to either of the other two processes, it was also found that it significantly *delayed*, but did not conclusively *block*, intervention. By way of explanation Schwartz and Gottlieb suggested that while the phenomenon results in a decision complicated by the need to arrive at an interpretation counter to information being received, and therefore taken more slowly, the "pressures contrary to intervention [are] apparently insufficient to deter."⁶¹ If that conclusion is generally true, then the beneficial consequences of rescue laws (in relation to informational social influence) would be limited to hastening intervention, rather than increasing its frequency. That limitation seems doubtful, however. Surely, highly persuasive cues occasionally lead bystanders to conclusively benign interpretations.

The promise held out by a legal duty may also be restricted by a limitation inherent in the phenomenon of informational social influence itself. It has been found that there are floor and ceiling levels above and below which conditions of pluralistic ignorance will not obtain. Clark and Word staged a series of accidents that ranged in clarity from low through medium to high, and found that rates of intervention were manipulable by some forms of social inhibition only at the intermediate level.⁶² A bystander will not be misled by the indifference of others if the need for rescue is clearly perceivable. Other processes may restrain him, but he will not be able to plead ignorance if he does not intervene. There is also a point at which the lack of clarity drops one below the realm of ambiguity and into the realm of obliviousness. At that point, the passivity of fellow bystanders is read, if at all, to be the silence of the ordinary rather than the voice of the extraordinary, and as such dissipates uneventfully into the social environment.

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

⁶² R. Clark & L. Word, "Where is the Apathetic Bystander? Situational Characteristics of the Emergency" (1974) 29 *J. Pers. & Soc. Psych.* 279.

(c) EVALUATION APPREHENSION⁵³

However much they may deny it, most people are acutely sensitive to the way that they are socially judged.⁵⁴ If ambiguity exists they will often seek out and rely on the information provided by others rather than follow their own instincts and risk entering upon embarrassingly unnecessary efforts. The maxim "better safe than sorry" is often applied with reference to a bystander's own pride, not to a possible victim's well-being. Further, even when there is a clear and urgent call for assistance, behaviour may be influenced by vanity, insecurity, and self-interest. Because of *evaluation apprehension*, actions may be tailored to the perceived expectations of others, rather than to the needs of the victim.

This phenomenon was seen in a number of Latané and Darley's studies in which intervention was somewhat unwittingly inhibited by the presence of stooges instructed to remain uninterested throughout the emergencies that were staged. The presence of those individuals may have led to a diffusion of responsibility, and their indifferent demeanour may have suggested that there was no need for rescue. But further, as Gaertner has pointed out,⁵⁵ an impassive group can also promote norms favouring inaction. Even if a bystander does conclude that rescue is required, and even if he does feel a sense of responsibility to do something, he may be dissuaded from action by threatened social sanctions. More discomfiting than the humiliation that attends upon the attempted provision of help when none is

⁵³ The basic process has been examined under a number of different terms, each of which illustrates a slightly different focus. "Normative social influence," the term preferred by Piliavin, is reasonably descriptive, but it fails to fully capture the idea of a bystander interpreting his environment in search of indicia as to what responses would be favourably received. Further, following on the previous discussion (dealing with *informational* social influence) it would also tend to cause confusion. "Audience inhibition," the phrase coined by Latané and Darley, is inadequate because it describes only half of the total phenomenon. It is possible to perceive signals that inhibit intervention, but it is also possible to receive signals that *promote* intervention. "Evaluation apprehension," the label used by Schwartz and Gottlieb, seems to best convey the essence of the process. A bystander's concern is with the evaluations of others. Frankly, it is not altogether clear whether the word "apprehension" is intended to suggest a sense of anxiety, or whether it is used to invoke notions of perception and understanding. Fortunately, by a happy quirk of the English language, that ambiguity can be resolved in either direction without doing harm to the authors' general idea.

⁵⁴ For a discussion of the extent to which people delude themselves, see, e.g., Latané & Darley, *supra*, note 5 at 124.

⁵⁵ S. Gaertner, "The Role of Social Attitudes in Helping Behavior" (1975) 97 *J. Soc. Psych.* 95.

required is the condemnation that attends upon the provision of help that is considered inappropriate.

The inhibitory norms operating in the Latané and Darley studies, while perhaps artificially induced, unfortunately have their "real world" counterparts. Indeed, relatively recent events have provided horrific examples. Non-participants in the infamous New Bedford incident (fictionalized on film in *The Accused*), in which a Massachusetts woman was gang raped before a wildly appreciative audience, were undoubtedly deterred from intervening by a belief that such conduct would have been frowned upon and probably forcibly resisted.⁵⁶

Fortunately, the social contexts of the New Bedford attack and the experiments relied upon by Latané and Darley are anomalous. As indicated by the response rates of lone bystanders, people generally believe that it is proper to render aid.⁵⁷ Furthermore, as members of groups they tend to assume that those around them share that view.⁵⁸ Rescue laws would reinforce that assumption. To the extent that moral judgments would follow legal requirements or inducements,⁵⁹ people would be more apt to praise intervention and to condemn non-intervention. The desire to avoid negative evaluations and to garner positive evaluations could thereby result in an increase in the pressure to intervene.

Often, a bystander will be subjected to conflicting messages. Against a call for emergency assistance may shout a chorus of inhibitory norms: "mind your own business," "stay cool," "leave it to the experts." Whether or not the pressures favouring intervention become translated into behaviour depends largely on their relative strength or salience. Rescue laws could amplify the forces urging intervention. First, legal recognition of the appropriateness of rescue could add to

⁵⁶ In response to the incident, the state legislatures in Massachusetts and Rhode Island enacted criminal laws making it an offence to fail to report a rape: Mass. Gen. Laws Ann. ch. 268, § 40 (West 1985); R.I. Gen. Laws § 11-37.3.1-3.3 (1983). Given the violent nature of many rapists, direct intervention may be too much to ask of bystanders.

⁵⁷ T. Heberlein, "Social Norms and Environmental Quality" (Paper presented at the meeting of the American Association for the Advancement of Science, New York, January 1975), cited in Schwartz & Gottlieb, *supra*, note 37 at 1190.

⁵⁸ A. Beaman *et al.*, The Effects of Evaluation Apprehension and Social Comparison on Emergency Helping Behavior (University of Montana, 1973) [unpublished], cited *ibid.*

⁵⁹ See, *e.g.*, D. Kaufman, "Legality and Harmfulness of a Bystander's Failure to Intervene as Determinants of Moral Judgement" in J. Macaulay & L. Berkowitz, eds., *Altruism and Helping Behavior* (New York: Academic Press, 1970) 77 at 81.

the sense of social expectation commonly felt by those who believe that their actions are being monitored.⁶⁰ Second, the possibility of a lawsuit would lead bystanders to anticipate future interaction with the victim and with the other bystanders, thereby increasing the importance of pro-rescue norms.⁶¹ Similarly, those norms could be strengthened because the evaluation process would potentially be extended and repeated in the course of legal proceedings, and because there would potentially be more who would render judgment, both formally (*e.g.*, through the court process) and informally (*e.g.*, through the medium of newspaper headlines). So, too, the salience of those norms could be heightened through greater clarity. For example, a well-drafted statute imposing a duty to rescue might speak with less ambiguity than do spontaneously composed group expectations. Assuming knowledge of such legislation,⁶² its requirements and scope of applicability would be less open to debate than would be the case with informal social norms. Finally, the appropriateness of succour would be emphasized by the sanctions that would underlie rescue laws. Unfavourable evaluations could transcend the level of disapproving glares and discomfiting tongue-lashings, and enter the realm of monetary damages or criminal sanctions. Favourable evaluations could transcend the level of a hearty handshake and relieved "thank you's," and enter the realm of restitutionary awards.

In the preceding discussion, the term "norms" was used to refer to group expectations which arise more or less spontaneously within the context of a particular emergency. For the sake of completeness, it must be noted that psychologists also recognize the existence of a number of standing social norms. The norm of reciprocity,⁶³ the norm

⁶⁰ See, *e.g.*, Beaman *et al.*, *supra*, note 58; and S. Schwartz & A. Gottlieb, "Bystander Anonymity and Reactions to Emergencies" (1980) 39 *J. Pers. & Soc. Psych.* 428.

⁶¹ See discussion above at II(A)(2)(a).

⁶² Public awareness of such legislation may be greater than one might expect. A survey conducted in [West] Germany (which imposes a legal duty to rescue) and Austria and the United States (which do not) asked if there was a legal duty, as opposed to a moral duty, to be a Good Samaritan. Between 74% and 86% responded correctly. See H. Zeisel, "An International Experiment on the Effects of a Good Samaritan Law" in Ratcliffe, *supra*, note 10 at 209.

⁶³ The norm of reciprocity holds that a person ought to treat others as they have treated him. Kindness and callousness are to be reciprocated in kind. See, *e.g.*, A. Gouldner, "The Norm of Reciprocity: A Preliminary Statement" (1960) 25 *Amer. Soc. Rev.* 161 at 171; and Dovidio, *supra*, note 9 at 380.

of social responsibility,⁶⁴ and the norm of equity⁶⁵ are illustrative. It is possible that rescue laws could codify and even strengthen each of these norms, and thereby increase the influence that they exert on bystanders.⁶⁶ It is, however, widely accepted that social norms are far more interesting than useful.⁶⁷ For the most part they serve as standards by which past conduct is (rather unenlighteningly) explained; their status as actual causes of actions is somewhat uncertain, and their utility as predictors of behaviour is minimal. Consequently, the present discussion would benefit little from an extended examination of their role in rescue situations.

3. *Psychological Restraints II: Overjustification and Boomerangs*

Psychologists have identified two processes by which factors normally conducive to helping behaviour can paradoxically lead to a reduction in the incidence of rescue.⁶⁸ First, external pressures or incentives

⁶⁴ The norm of social responsibility holds that people ought to be helped by those upon whom they are dependent. See, e.g., L. Berkowitz & W. Conroy, "Success, Failure and Social Responsibility" (1966) 4 *J. Pers. & Soc. Psych.* 664; and L. Berkowitz & L. Daniels, "Responsibility and Dependency" (1963) 66 *J. Abn. & Soc. Psych.* 429.

⁶⁵ The norm of equity is based on the belief that people want equilibrium in their world, and holds that whether negative or positive in nature, inputs ought to be reflected in outcomes. See, e.g., E. Walster, G. Walster, & E. Berscheid, *Equity: Research and Theory* (Boston: Allyn & Bacon, 1978); D. Krebs, "Prosocial Behavior, Equity and Justice" in J. Greenberg & R. Cohen, eds., *Equity and Justice in Social Behavior* (New York: Academic Press, 1982); and M. Lerner, "The Justice Motive in Human Relations and the Economic Model of Man: A Radical Analysis of Facts and Fictions" in V. Derlega & J. Grzelak, eds., *Cooperation and Helping: Theories and Research* (New York: Academic Press, 1982).

⁶⁶ A statute that imposed (say) a duty to rescue would, of course, constitute a norm in itself. The distinction between legal and non-legal norms has been examined by H.L.A. Hart in *The Concept of Law* (Oxford: Oxford University Press, 1961).

⁶⁷ The limited utility of social norms is attributable to a number of factors: (i) individual social norms are often too broad and too vague to provide a bystander with concrete guidance; (ii) often a number of inconsistent social norms will apply to a single situation; (iii) it is difficult to prove that behaviour is caused by, not merely consistent with, a given norm; (iv) as patterns of behaviour become better understood, norms have become overlaid with provisos and qualifications; and (v) it is empirically unclear whether there exists a correlation between social norms and behaviour. See, e.g., Latané & Darley, *supra*, note 5 at 21; Dovidio, *supra*, note 9 at 378-79; D. Bar-Tal, *Prosocial Behavior: Theory and Research* (New York: Hemisphere Publishing, 1976) 45; and Piliavin *et al.*, *supra*, note 5 at 28, 95.

⁶⁸ Richard Posner has made two economic arguments against the imposition of a legal duty that closely resemble the two psychological effects: R. Posner, *Economic Analysis of Law* (Boston: Little, Brown, 1977) § 6.9; W. Landes & R. Posner, "Salvors, Finders,

applied with the aim of increasing the incidence of succour can *overjustify* intervention, and thereby deprive bystanders of an important source of motivation. Second, such pressures can also have a *boomerang effect*, a negative reaction that leads bystanders to intentionally withhold services that they would normally provide.

(a) THE OVERJUSTIFICATION EFFECT

Internally, most people feel morally motivated to "do the right thing"; inaction is often the product of perceived external restraints.⁶⁹ Consequently, rescue which does occur is apt to be consistent with one's values. A coincidence of behaviour and beliefs will yield intrinsic rewards, such as feelings of self-satisfaction and heightened self-esteem, but only if the act is believed to have been morally motivated.⁷⁰ It will not be if it is *overjustified*, if it is seen to be the product of external forces. Whether positive or negative in nature, extraneous inducements can lead an intervenor to misrepresent to himself the character of his actions. Behaviour that he would correctly attribute to altruism in the absence of such inducements may be perceptually debased and attributed to, say, a desire to receive money or to avoid punishment. Eventually, lacking the motivational allure of self-rewards, rescue might become less common.

If overjustification occurred with sufficient regularity and efficacy, its lesson for the rescue debate would be clear and damning. There are, however, reasons to believe that the phenomenon would not significantly attend upon the introduction of rescue laws. First, the evidence offered in support of it provides pause for thought rather than cause for alarm. Of the few studies that have been conducted, many have produced results that are unsupportive⁷¹ or misleadingly

Good Samaritans and Other Rescuers: An Economic Analysis of Law and Altruism" (1978) 7 *J. Legal Studies* 83 at 124. A discussion of those arguments falls outside the scope of this paper. They have been examined in M. McInnes, "The Economic Analysis of Rescue Laws" (1992) 21 *Man. L.J.* (forthcoming).

⁶⁹ The high rates of intervention found among lone bystanders is telling. Free of external restraints, people are far more likely than not to help when they can do so safely and without great inconvenience. See, e.g., Latané & Darley, *supra*, note 5.

⁷⁰ See, e.g., G. Thomas, C. Batson, & J. Coke "Do Good Samaritans Discourage Helpfulness? Self-perceived Altruism After Exposure to Highly Helpful Others" (1981) 40 *J. Pers. & Soc. Psych.* 194.

⁷¹ See, e.g., M. Clevenger, *Personal Norms as a Type of Intrinsic Motivation* (Master's Thesis, University of Wisconsin-Madison, 1980), cited in Z. Kunda & S. Schwartz, "Undermining Intrinsic Moral Motivation: External Reward and Self-Presentation" (1983) 45 *J. Pers. & Soc. Psych.* 763; and Thomas, Batson, & Coke, *ibid.*

ambiguous.⁷² None have involved emergency situations. Further, there is little evidence revealing an actual decline in subsequent helping behaviour.⁷³ Second, insofar as the overjustification effect is concerned with the deterioration of morally based motivation over time, it may have little impact on rescue behaviour. A given bystander is not likely to repeatedly encounter emergency situations.⁷⁴ Third, the *positive* legal inducements made available to a rescuer could be limited to the recovery of actual expenses. If that were so, a rescuer would be less likely to question his motives than if he were able to profit from his actions (*e.g.*, if he were entitled to not only reimbursement, but reward as well).⁷⁵ Fourth, whether or not the overjustification effect would actually depress the incidence of succour would largely be a function of the strength and salience of the external inducements.⁷⁶ One could lose all sense of moral obligation and yet still undertake a rescue if the promise of reward or the threat of punishment were sufficiently persuasive. Finally, there is evidence which suggests that *others* will morally judge a refusal to intervene more harshly if they believe that the law required rescue.⁷⁷ It may be that a bystander who did intervene would morally judge *himself* more favorably because of his compliance with such laws, and that those moral self-rewards would offset the loss of the self-rewards that flow from what are perceived to be altruistically motivated acts.

A final comment about the overjustification effect. It appears that the law takes little, if any, notice of it; legal requirements often overlay moral requirements. For example, many jurisdictions have

⁷² See, *e.g.*, C. Batson *et al.*, "Buying Kindness: Effect of an Extrinsic Incentive for Helping on Perceived Altruism" (1978) 4 *Psych. Bull.* 86.

⁷³ See, *e.g.*, Kunda & Schwartz, *supra*, note 71; S. Uranowitz, "Helping and Self-Attributions: A Field Experiment" (1975) 31 *J. Pers. & Soc. Psych.* 852; M. Zuckerman, M. Lazzaro, & D. Waldeger, "Undermining the Effects of the Foot-in-the-Door Technique with Extrinsic Rewards" (1979) 9 *J. App. Soc. Psych.* 292.

⁷⁴ The same point has been made by S. LeVmore, "Waiting For Rescue: An Essay on the Evolution and Incentive Structure of the Law of Affirmative Obligations" (1986) 72 *Va. L.R.* 879 at 885.

⁷⁵ Of course, whatever the measure of compensation that might be available (be it reimbursement, remuneration, or reward), a rescuer would not be obligated to claim it.

⁷⁶ Kunda & Schwartz, *supra*, note 71 at 770.

⁷⁷ See, *e.g.*, Kaufman, *supra*, note 59.

statutes that require the reporting of child abuse.⁷⁸ Clearly, legislators have not felt that such an obligation will defeat the goal of increasing the frequency of such reports.

(b) THE BOOMERANG EFFECT

Schwartz has reviewed a number of studies⁷⁹ in which reduced rates of intervention have occurred in conditions presumed to be most conducive to helping behaviour. He has attributed those anomalous findings to what he calls the *boomerang effect*, arguing that the subjects involved in the experiments were reacting to what they perceived to be undue pressure or manipulation.⁸⁰ Most people want the freedom to choose to do as they please. Some will even refuse to yield to demands that reflect their natural inclinations.⁸¹ Whereas the overjustification effect lessens the likelihood of helping behaviour by depriving a person of a reason to become involved, the boomerang effect goes further and provides a reason to *not* become involved. In the rescue context, then, a law that attempted to compel a bystander to assist a victim might actually elicit a negative response and lead to uncharacteristic, "unnatural" inaction.

Schwartz has suggested two explanations for the boomerang effect.⁸² The first is that appeals framed in a highly pressuring or

⁷⁸ See, e.g., *Child Welfare Act*, R.S.A. 1980, c. C-81, s. 3. Such laws can be considered exceptions to the "no-duty" rule.

⁷⁹ See, e.g., S. Schwartz, "Elicitation of Moral Obligation and Self-Sacrificing Behavior" (1970) 15 *J. Pers. & Soc. Psych.* 283; S. Schwartz, "Normative Explanations for Helping Behavior: A Critique, Proposal and Empirical Test" (1973) 9 *J. Exper. & Soc. Psych.* 349; S. Schwartz, "Awareness of Interpersonal Consequences, Responsibility, Denial and Volunteering" (1974) 30 *J. Pers. & Soc. Psych.* 57; M. Kriss, E. Indenbaum, & F. Tesch, "Message Type and Status of Interactants as Determinants of Telephone Helping Behavior" (1974) 30 *J. Pers. & Soc. Psych.* 856.

⁸⁰ Schwartz, *supra*, note 19 at 263-68; S. Schwartz & J. Howard, "Helping and Cooperation: A Self-Based Motivational Model" in Derlega & Grzelak, *supra*, note 65 at 342-44.

⁸¹ While the boomerang effect remains something of an enigma, Schwartz has identified the circumstances in which it is most likely to occur. First, it is usually exhibited by individuals who are generally sensitive to the consequences of their actions, and who already feel a moral obligation to help. Second, it is most likely to occur when such individuals are subject to strong appeals emphasizing their responsibilities or the victim's need. See Kunda & Schwartz, *supra*, note 71 at 770.

⁸² A third explanation simply involves an extension of the overjustification effect. As with other types of external inducements, those that are framed in a manipulative or pressuring manner may lead an intervenor to misattribute his actions to the external

manipulative manner may be met with suspicion.⁸³ No one wants to be duped into helping someone who is not in genuine need or who is considered unworthy of assistance. Suspect appeals may therefore be met with skepticism and even denial. It seems somewhat unlikely that rescue laws would increase the incidence of such reactions. Generally, the law would merely provide a backdrop against which behaviour would occur; it is doubtful that it would often be incorporated into a victim's appeal for help.⁸⁴ It is possible, however, that the mere knowledge of a legal demand for rescue might lead some (e.g., strong individualists) to adopt a generally suspicious attitude towards cries for help. Such individuals might require very clear evidence of need before becoming involved.

Schwartz's second explanation for the boomerang effect is more interesting. Especially for individuals who already feel a moral obligation to help, external demands for rescue can engender psychological *reactance*.⁸⁵ Bystanders may combat what they perceive to be improper demands by asserting their freedom and refusing to act. Psychologically, such behaviour is explained with reference to costs and benefits. The moral self-rewards that would normally follow upon the provision of aid may be negated by the self-castigation that would follow upon capitulation to an improper order.⁸⁶ The issue is not simply one of being deprived of an opportunity to feel good about oneself; with the perceived attack on freedom, it becomes one of feeling *bad* about oneself. A positive self-appraisal in such circumstances may actually depend upon a refusal to accede to the demand for rescue.

As with the overjustification effect, the boomerang effect is far more striking in theory than in practice. First, it has not been frequently observed or well documented. Second, while it is clear that the imposition of a duty to rescue *would* limit a bystander's range of freedom, the possibility that undesirable consequences would follow upon that limitation is uncertain. It is one thing to ask if an infringement on freedom would be a bad thing *per se*; it is another to ask if it

factors, rather than to internal factors: Schwartz, *supra*, note 19 at 264.

⁸³ Schwartz & Howard, *supra*, note 80 at 343.

⁸⁴ Conceivably, it could be otherwise. It is *possible* that a victim could invoke the law as part of his appeal.

⁸⁵ For a discussion of reactance, see, e.g., J. Brehm, *A Theory of Psychological Reactance* (New York: Academic Press, 1966).

⁸⁶ Schwartz & Howard, *supra*, note 80 at 343.

would be a bad thing because it would reduce the willingness of bystanders to intervene. As Schwartz has noted, it is only those who would normally respond to an emergency who would be candidates for reactance.⁸⁷ Further, not all would be offended by a duty's infringement on freedom. And even when the conditions necessary for reactance were met, they might not become translated into inaction. Given a victim's dire need and his own sense of morality, a bystander may still respond out of conscience. If not, his fear of liability might prove more powerful than his desire to assert his independence.

4. Summary

Two concepts found in Latané and Darley's work are particularly important. The first, the *decision tree*, at once portrays the process leading up to intervention in terms of distinct stages and a coherently structured whole. In the context of the present discussion, the decision tree serves two functions. First, it provides a framework within which the subject matter for the rescue debate can be understood. Second, it offers explanations for some instances of nonintervention (e.g., a bystander may not notice an emergency, or he may not interpret it properly).

Even more important is Latané and Darley's concept of the *bystander effect*. While its authors emphasized its inhibiting influence, a consideration of its three processes also reveals means by which the law could promote intervention. *Diffusion of responsibility* often inhibits intervention by reducing the sense of responsibility felt by bystanders. That phenomenon, however, could be checked by laws that: (i) prevented deindividuation by declaring that those who are able to provide relief occupy a position akin to one of "leadership", and (ii) increased the likelihood of future interaction, thereby reducing the possibility of anonymity and increasing a bystander's risk of being blamed for a dereliction of his responsibilities. *Informational social influence*, Latané and Darley argued, can lead to "pluralistic ignorance" as bystanders interpret one another's inaction as indicating that assistance is not required. The opposite, however, can also occur; active bystanders can inform others of the need for assistance. The possibility that rescue laws could set off a "domino effect" logically follows. By motivating the percipient to intervene, the law could indirectly affect the impercipient as well. Finally, like informational social influence, *evaluation apprehension* can both inhibit and promote the provision of aid. A bystander's behaviour is often shaped by what

⁸⁷ Schwartz, *supra*, note 19 at 268.

he believes is considered appropriate by others. Laws that promote rescue could establish or strengthen the social forces that appeal to a bystander's natural inclination to render assistance.

Psychologists have also discovered two processes by which the incidence of intervention could paradoxically be reduced by the introduction of rescue laws: the *overjustification* and *boomerang effects*. In theory, rescue laws could deprive bystanders of an important source of motivation (*i.e.*, the self-rewards associated with what are perceived to be moral acts), and could even provide a positive reason to not intervene (*i.e.*, the desirability of asserting one's freedom in the face of what are perceived to be improper demands). It is unclear, however, what impact those phenomena would have in practice. As yet, empirical evidence for both phenomena is sparse. Further, any potentially detrimental effects might well be eclipsed by other legally created forces that urge intervention. Finally, while such matters are admittedly not readily given to documentation, it does not appear that lowered rates of intervention have attended upon those rescue laws that have already been enacted.

B. Piliavin *et al.*: The Arousal/ Cost-Reward Model

As suggested by the rather unenlightening attribution of authorship in this section's title, the second model to be analyzed is the product of many minds. Initially formulated in 1969,⁸⁸ it has since undergone considerable refinement and revision, and today is most thoroughly discussed in *Emergency Intervention*.⁸⁹

The model is based on five propositions:

- (i) Observation of an emergency arouses a bystander, and the degree of that arousal is a function of:
 - (a) the perceived severity of the emergency,
 - (b) the clarity of the emergency,
 - (c) the physical distance between the bystander and the victim,
 - (d) the bystander's similarity to and emotional involvement with the victim, and
 - (e) the length of the bystander's exposure to the emergency if no intervention occurs.

⁸⁸ I.M. Piliavin, J. Rodin, & J. Piliavin, "Good Samaritanism: An Underground Phenomenon?" (1969) 13 *J. Pers. & Soc. Psych.* 289.

⁸⁹ J. Piliavin *et al.* (New York: Academic Press, 1981).

(ii) Generally, arousal occasioned by and attributable to an emergency becomes more unpleasant as it increases, and a bystander is therefore motivated to reduce it.

(iii) A bystander will choose the means of reducing arousal that most rapidly and completely achieves the goal, incurring in the process as few net costs (costs minus rewards) as possible.

(iv) There are special circumstances that give rise to, and specific personality types who engage in, rapid, impulsive, noncalculative, irrational helping or escape behaviour.

(v) A bystander's arousal will decrease monotonically with time upon termination of contact with an emergency, whether or not the victim received help.⁹⁰

From those five propositions come the model's two major components. The first concerns *arousal*, the essentially emotional response to the perception of another's need, that motivates and mobilizes a bystander. The second component concerns a *cost-reward calculation*, a largely cognitive process in which the pros and cons of alternative courses of action are evaluated and compared. Once aroused, a bystander will for the most part act in accordance with the results of such a calculation. Conceptually distinct, the two components are often operationally confounded. Not only may factors that affect one also affect the other, but each component may itself impact upon the other. Thus, an assessment of the costs and rewards may increase or decrease a bystander's level of arousal, and arousal may color his evaluations and calculations.

1. Arousal

The Piliavin model asserts three propositions concerning arousal: (i) exposure to an emergency will give rise to a state of arousal, (ii) the condition produced will be unpleasant, and (iii) a bystander experiencing such a condition will be egoistically motivated to bring about more appealing conditions for himself.⁹¹ All three propositions are sup-

⁹⁰ J. Piliavin *et al.*, "Responsive Bystanders: The Process of Intervention" in Derlega & Grzelak, *supra*, note 65, 279 at 281.

⁹¹ In Piliavin's view, altruistic motivation, which can lead to selfless acts, is operable only in non-emergency situations: *Emergency Intervention, supra*, note 89 at 235-36. That view is by no means uncontroversial. Some contend that altruistic actions are never possible: see, *e.g.*, R. Cialdini *et al.*, "Empathy Based Helping: Is It Selflessly or Selfishly Motivated" (1987) 52 *J. Pers. & Soc. Psych.* 749. Others insist that altruism is possible, even in emergency conditions: see, *e.g.*, C. Batson *et al.*, "Five Studies Testing Two Egoistic Alternatives to the Altruism-Empathy Hypothesis" (1988) 55 *J. Pers. & Soc. Psych.* 52. The debate, while interesting, does not significantly affect the issue

ported by evidence.⁹² The arousal generated takes the form of a *defence reaction*⁹³ that is similar to, though less intense than, the unpleasant sense of arousal that the bystander would feel if *he* were in danger. In either case, arousal facilitates action.

An emergency is more apt to arouse a bystander as it is perceived with greater clarity and as it is interpreted to be of greater severity,⁹⁴ and probably also as exposure to it lengthens⁹⁵ and as it is brought into closer physical proximity.⁹⁶ As previously discussed, those same conditions could be fostered by rescue laws.⁹⁷

2. Cost-Reward Calculations

The impact of rescue laws would not be entirely dependent upon the direct operation of legal sanctions. As has been shown, much of their potential stems from their capacity to remove impediments for those already inclined to action. Nevertheless, the law *could* also increase the incidence of succour by appealing to the "economic" side of its subjects' minds. Insofar as bystanders would seek to avoid sticks and

as to whether or not rescue laws ought to be introduced, or what effect they would have.

⁹² The evidence is considerable, but little would be gained by examining it here. It is collected together in J. Piliavin *et al.*, *supra*, note 89 at 60-82. See also S. Gaertner & J. Dovidio, "The Subtlety of White Racism, Arousal and Bystander Intervention" (1977) 35 *J. Pers. & Soc. Psych.* 691.

⁹³ Under relatively less intense circumstances, Piliavin believes that a bystander will experience an orienting reaction. Such responses facilitate the intake of information, but do not motivate action. See, *e.g.*, R. Lynn, *Attention, Arousal and the Orienting Reaction* (Oxford: Pergamon Press, 1966).

They may use different terminologies in describing their views, but most psychologists accept that arousal comes in two varieties. See, *e.g.*, A. Routtenberg, "The Two-Arousal Hypothesis: Reticular Formation and Limbic System" in M. Appleby & R. Trumbull, eds., *Psychological Stress: Issues in Research* (New York: Appleton-Century-Crofts, 1966); and J. Lacey & B. Lacey, "Some Autonomic-Central Nervous System Relationships" in P. Black, ed., *Physiological Correlates of Emotion* (New York: Academic Press, 1970).

⁹⁴ Piliavin *et al.*, *supra*, note 89 at 60-62.

⁹⁵ Dovidio, *supra*, note 9 at 368; Gaertner & Dovidio, *supra*, note 92; S. Gaertner, J. Dovidio, & G. Johnson, "Race of Victim, Nonresponsive Bystanders and Helping Behavior" (1982) 117 *J. Soc. Psych.* 69.

⁹⁶ Piliavin *et al.*, *supra*, note 89 at 62.

⁹⁷ To cite but one example, it will be recalled that through the process of *informational social influence*, a legal duty could increase the degree of clarity with which an emergency is perceived as one bystander's positive actions define the nature of the situation for others who are less perceptive.

receive carrots, rescue could be brought about through the threat of criminal or tortious liability and through the promise of restitutionary awards. It is that element of hedonism that the cost-reward component of the Piliavin model addresses. Once aroused, a bystander is said to order his affairs on the basis of the consequences that he believes would attend upon the alternative courses of action open to him. Specifically, it is held that a bystander will "choose the response to an emergency that will most rapidly and most completely reduce his or her arousal, incurring in the process as few net costs as possible."⁹⁸

Clearly, it is only the perceived costs and rewards that are relevant. That is not to say, however, that a factor will be operable only if a bystander ponders upon it. The process involved is not one of sober and meticulous consideration. Nor, however, except in relatively rare circumstances, is it rash and impulsive.⁹⁹ Rather, most instances of emergency intervention are products of "rational, though not necessarily conscious and deliberate decision making."¹⁰⁰

The Piliavin model classifies potential costs¹⁰¹ into two broad categories. The first, costs for helping, includes those externally mediated consequences imposed directly on a bystander who helps (e.g., physical danger, inconvenience, rewards). The second, costs that arise if a victim does not receive help, is subdivided into: (a) personal costs externally imposed directly on a bystander (e.g., public censure, legal liability), and (b) empathy costs internally suffered by a bystander who is aware that a victim's need was not met.

⁹⁸ Piliavin *et al.*, *supra*, note 89 at 83.

⁹⁹ The fourth proposition in the Piliavin model states that there are certain circumstances involving certain types of people that can result in help that is provided irrationally, without regard to the costs. In situations marked by extreme clarity and reality, prior knowledge of (or opportunity to pre-assess) the victim, and a posture facilitating action, a bystander may respond to an emergency with impulsive helping. Occurring simultaneously with an emotional reaction is an immediate, holistic, intuitive appraisal of the situation. Compelled towards a victim, a bystander may attempt to provide relief unless another stimulus captures his attention or a third party intervenes. See Piliavin *et al.*, *ibid.* at c.7.

Because such behaviour is impulsive, it is not readily (if at all) amenable to legal influence, and therefore does not warrant further discussion.

¹⁰⁰ *Ibid.* at 84 (parentheses in original omitted).

¹⁰¹ Costs are taken to refer to *net costs* — i.e., costs minus rewards.

(a) PERSONAL COSTS FOR HELPING

Piliavin identifies five types of costs that a bystander may incur by entering upon a rescue effort. Some are the inevitable products of intervention; others depend upon the circumstances of each emergency.

(i) Psychological Aversion

Often through no fault of his own, an individual will have less of a chance of being helped because he or his condition (whether or not that condition is related to his need for assistance) disgusts others. Becoming involved with a victim who, for example, is bleeding,¹⁰² or who suffers from a birth defect,¹⁰³ or who is drunk,¹⁰⁴ is considered by many to be an unpleasant task that ought to be avoided. While the law can do little to make its subjects more tolerant of "distasteful" characteristics or conditions, it would obviously be undesirable to have a duty that applied only in regard to completely inoffensive, aesthetically pleasing victims.

(ii) Possible Physical Harm¹⁰⁵

Bystanders often refuse to intervene when intervention would entail a risk of physical injury.¹⁰⁶ If it is to require rescue, the law should respect the fact that most people are ineluctably governed by a desire to remain healthy and alive. It should also appreciate that bystanders often find themselves in unenviable positions, forced to quickly grasp and assess the nature of unsettling situations. With hindsight, it is all

¹⁰² See, e.g., J. Piliavin & I. Piliavin, "The Effects of Blood on Reactions to Victims" (1972) 13 J. Pers. & Soc. Psych. 289.

¹⁰³ See, e.g., J. Piliavin & J. Rodin, "Costs, Diffusion and the Stigmatized Victim" (1975) 32 J. Pers. & Soc. Psych. 429; and S. Ungar, "The Effects of Stigma and Effort on Helping" (1979) 107 J. Soc. Psych. 54.

¹⁰⁴ See, e.g., Piliavin, Rodin, & Piliavin, *supra*, note 88. When an unpleasant condition connected with a source of peril is perceived to be self-induced, such as drunkenness, bystanders may be even less inclined to help because they will consider the victim to be undeserving of their efforts. Further, a person who is drunk may also seem violent or dangerous, which again will work against him in his efforts to enlist the help of a bystander.

¹⁰⁵ The comments in this section will be addressed to the fear of physical harm itself. As will be seen, the *financial consequences* of physical harm can, in some cases, be negated by a tort claim against a rescuer or third party who negligently creates the need for rescue.

¹⁰⁶ The evidence is collected in Piliavin *et al.*, *supra*, note 89 at 91-93.

too easy to dismiss as trivial or fanciful that which may have appeared threatening in the heat of the moment. Therefore, allowances must be made for those dangers that might reasonably have been perceived to have existed. Nevertheless, when a situation is grave, should the law insist on some measure of self-sacrifice on the part of bystanders? Some lawyers have argued in the affirmative. For example, it has been suggested that an arithmetic analysis should be employed and that inaction should lead to liability when the risk or cost of acting is disproportionately less than the preventable harm threatening the victim.¹⁰⁷ Such an approach is inadvisable for two reasons. Aside from requiring bystanders to make unrealistically sophisticated diagnoses of emergency situations, it would also demand physical self-sacrifice in some cases. It may, for example, obligate a bystander to knowingly accept a significant risk of losing a finger in order to save a person whose necktie has become entangled in a running motor. Heroism is laudable, but it seems unlikely that the law, using reasonable sanctions for non-compliance, could compel bystanders to undergo such perils. Those legislators that have enacted rescue laws have almost universally resigned themselves to requiring intervention only when the obligation can be satisfied without personal risk.¹⁰⁸

(iii) Effort and Time

Piliavin states that the time and effort that one must expend in undertaking a rescue are also factors that may be taken into account during the decision-making process.¹⁰⁹ Though the body of evidence relied upon is admittedly sparse,¹¹⁰ the conclusion drawn from the data is that time constraints deter intervention only when they arise out of a desire to be on time for an important engagement.¹¹¹ There

¹⁰⁷ W. Rudolph, "The Duty to Act: A Proposed Rule" (1965) 44 Neb. L.R. 499 at 509.

¹⁰⁸ See, e.g., *Charter of Human Rights And Freedoms*, *supra*, note 6 (Quebec); Vt. Stat. Ann. tit. 12, § 519 (1973) (Vermont); Minn. Stat. Ann. § 604.05 (West 1984) (Minnesota); German Criminal Code Art. 330c; French Penal Code Art. 63 § 2.

¹⁰⁹ Piliavin *et al.*, *supra*, note 89 at 94.

¹¹⁰ C. Batson *et al.*, "Failure to Help When in a Hurry: Callousness or Conflict" (1978) 4 Pers. & Soc. Psych. Bull. 97; J. Darley & C. Batson, "From Jerusalem to Jericho: A Study of Situational & Dispositional Variables in Helping Behavior" (1973) 27 J. Pers. & Soc. Psych. 100; and R. Feldman & V. Rezmovic, "A Field Study on the Relationship Environmental Factors to Helping Behavior" (1979) 108 J. Soc. Psych. 283.

¹¹¹ It is, of course, possible to be in such a hurry as to be oblivious to the very fact that an emergency exists.

is a hierarchy of the "good things" in life, however, and the preservation of a fellow citizen's life or physical well-being ought to take precedence over keeping to one's schedule.

Some lawyers have argued against a duty to rescue on the basis that it would entail intolerable inconvenience. For example, in the course of devising a penal code for India, Lord Macaulay reflected upon, and ultimately rejected, the imposition of an obligation on such grounds:¹¹²

It is true that none but a very depraved man might suffer another to be drowned when he might prevent it by a word. But if we punish such a man where do we stop? . . . Is a person to be a murderer if he does not go fifty yards through the sun in Bengal at noon in May in order to caution a traveller against a swollen river? Is he to be a murderer if he does not go a hundred yards? — if he does not go a mile? — if he does not go ten? What is the precise amount of trouble and inconvenience he must endure?

The argument is rather specious. Members of the legislatures and judiciary are well-versed in the art of drawing admittedly arbitrary, but nevertheless acceptable distinctions. A well drafted statute in the hands of a capable, sensible judge could serve to separate those who spuriously invoke a defence of inconvenience from those who justifiably seek to excuse their inaction on the grounds that intervention would have required an unreasonable amount of time and effort. And though such matters are not given to exact, *a priori* formulations, it is clear that a law that allowed a bystander to evade its reach because of the inconvenience that attends upon every rescue would involve not so much a duty as a request.

(iv) Money Expended or Foregone

While again acknowledging a paucity of data, Piliavin contends that a bystander's decision can be influenced by a consideration of the money that he might have to spend or forego if he intervenes.¹¹³ Anyone familiar with human nature would find it difficult to disagree.

If a duty to rescue is to be adopted, to what extent should the law accept its subjects' proclivity to place materialistic concerns above humanitarian concerns? Three points can be made. The first is that fears of lost wealth could largely be allayed by the availability of

¹¹² Lord Macaulay, "Introductory Report: Notes on an Indian Penal Code" in *Complete Writings* (London: Sedgewick, 1900) 18 at 309.

¹¹³ Piliavin *et al.*, *supra*, note 89 at 95.

compensatory relief.¹¹⁴ Money *expended* during a rescue attempt could be recovered by a law allowing a rescuer to claim reimbursement, while money *foregone* (or "opportunity costs") could be compensated for by way of a claim for remuneration. The second point is that in some cases, the law already allows those injured in the course of an attempted rescue to claim compensation for their injuries.¹¹⁵ The third point is that the commonly expressed fear that a duty to rescue would logically entail a general obligation to donate money to alleviate hardship¹¹⁶ is unfounded. The notion of charity, as typically understood, is conceptually distinguishable from the notion of rescue. For example, the latter is characterized by elements of spontaneity, chance, opportunity and urgency not present in the former. It may be that people ought to be charitable; it does not follow that they must be forced to be simply because they are compelled to provide emergency assistance.¹¹⁷

(v) Potential Social Sanctions or Loss of Rewards

Noting that many of life's most cherished rewards and most feared punishments come in the form of social judgements, Piliavin asserts that potential social sanctions can have a significant impact on a bystander's decision concerning intervention. The matter can be divided into two issues. The first is essentially the *evaluation apprehension* phenomenon discussed earlier. Responsiveness to need is partly a function of the perceived desirability of action.¹¹⁸ Insofar

¹¹⁴ Of course, restitution would not, in any event, make every rescuer whole again. For example, some victims are judgment proof.

¹¹⁵ An injured rescuer who acted reasonably (*Baker v. Hopkins*, [1958] 3 All E.R. 147, aff'd [1959] 3 All E.R. 225; and *Nelson v. Pendleton* (1973) 214 Va. 139, 198 S.E.2d 593) can claim from a third party who negligently created the need for a rescue (see, e.g., *Haynes v. Harwood*, [1935] 1 K.B. 146; *Seymour v. Winnipeg Elec. Ry.* (1910), 13 W.L.R. 566; *Horsley v. McLaren* (1972), 22 D.L.R. (3d) 545 at 558; and *Roanoke Hosp. Ass. v. Hayes* 204 Va. 703, 133 S.E. 2d 559 (1963)), and from a rescuee who negligently put himself in peril (see e.g., *Harrison v. British Ry. Bd.*, [1981] 3 All E.R. 679; *Lynch v. Fisher* 34 So. 2d 513 (1947)).

¹¹⁶ See, e.g., R. Epstein, "A Theory of Strict Liability" (1973) 2 J. Leg. Stud. 151 at 203.

¹¹⁷ In many ways the public is already forced to be charitable. Foreign and domestic aid, for example, are financed from funds collected through taxation.

¹¹⁸ See, e.g., E. Staub, "Helping a Distressed Person: Social, Personality and Stimulus Determinants" in L. Berkowitz, ed., *Advances in Experimental Social Psychology*, vol. 7 (New York: Academic Press, 1979).

as bystanders could be led by rescue laws to believe that intervention was appropriate, rescue might become more prevalent.

The second issue identified by Piliavin involves the question of competence.¹¹⁹ The prospect of a botched rescue raises not only the fear of embarrassment, but also the fear of causing harm and hence of incurring legal liability.¹²⁰ The latter concern is certainly valid, but it ought not to be allowed to stand in the way of reform if an obligation to rescue is otherwise considered desirable. The fear of liability could be offset by a reduced standard of care, as is currently found in the "Good Samaritan" statutes enacted in many jurisdictions.¹²¹ If bystanders are to be expected to intervene, they must also be expected to occasionally err, and liability for botched efforts should perhaps be confined to cases of "gross negligence."¹²² Further, one can speculate that the publicity that would attend upon the introduction of rescue laws would lead some individuals to reflect upon their incompetence, and to enroll in training programs.

¹¹⁹ For a discussion of some of the relevant studies, see E. Staub & R. Baer, "Stimulus Characteristics of a Sufferer and Difficulty of Escape as Determinants of Help" (1974) 30 *J. Pers. & Soc. Psych* 279; and Piliavin & Piliavin, *supra*, note 102.

¹²⁰ Indeed, it is not uncommon, especially for those in the medical profession, to withhold services in order to avoid the risk of being held liable for well-intentioned, but mishandled efforts. A number of surveys have revealed the extent to which the fear of legal liability inhibits intervention by physicians: see, e.g., (1964) 189 *J.A.M.A.* 863; N. Chayet, *The Legal Implications of Emergency Care* (New York: A.C.C., 1969); R. Gray & G. Sharpe, "Doctors, Samaritans and the Accident Victim" (1973) 11 *Osgoode Hall L.J.* 1.

¹²¹ See, e.g., *Emergency Medical Aid Act*, R.S.A. 1980, c. E-9; *Good Samaritan Act*, R.S.B.C. 1979 c. 155; *Emergency Medical Aid Act*, S.N. 1971 No. 15; *Emergency Medical Aid Act*, R.S.N.W.T. 1988 c. E-4; *Volunteer Services Act*, R.S.N.S. 1989 c. 497; *Medical Aid Act*, R.S.P.E.I. 1988 c. M-5, s. 50; *Emergency Medical Aid Act* R.S.S. 1978 c. E-8; *Emergency Medical Aid Act*, R.S.Y. 1986 c. 52.

All fifty U.S. States, plus the District of Columbia, have enacted some form of legislation. Citations to all are given in "Good Samaritan Statutes: Time for Uniformity" (1980) 27 *Wayne State L.R.* 217.

It has been held in a number of U.S. decisions that the protection afforded by such legislation is not available to one who is under a *duty* to rescue. It is reasoned that it is unnecessary to provide such individuals with another inducement to action. See, e.g., *Tiedeman v. Tiedeman* 435 N.W. 2d 86 (Minn. 1979). Canadian courts have yet to follow suit. The possibility of such a limitation could, of course, be legislatively removed.

¹²² Some statutes even exempt rescuers from liability for ordinary negligence: see, e.g., *Wash. Rev. Code Ann.* § 4.24.300 (Supp. 1983).

(vi) Potential Rewards for Helping

The Piliavin model holds that an aroused bystander will be motivated to reduce his unpleasant condition in the manner that incurs the fewest *net* costs. He will therefore be influenced not only by costs, but by rewards as well. Surprisingly, there appears to be little evidence as to the effect that rewards have in emergency situations. Piliavin's conclusion that the provision of rewards will increase helping¹²³ is drawn on the basis of only five studies (only one of which involved an emergency type of situation), and has consequently been questioned.¹²⁴ Of course, the lack of empirical support does not necessarily disprove the proposition. Piliavin's position certainly has an intuitive appeal, and it is altogether possible that further investigation would provide additional evidence for it. It might be expected, however, that the effects of rewards would be less pronounced than the effects of costs.¹²⁵ Positive consequences are typically assigned less weight than negative consequences by individuals engaged in social decision making.¹²⁶

It is important at this point to distinguish between the legal concepts of *restitution* and *reward*. Earlier, it was suggested that the availability of restitutionary relief could lower the personal costs for helping by allowing rescuers to claim reimbursement or remuneration. It is a much different matter to allow a rescuer to collect more than he has incurred as a cost or has foregone as an opportunity cost — *i.e.*, to claim a reward. Certainly, rewards would increase the allure of rescue. It must be noted, however, that the law will currently order a reward to be made in only one class of cases: successful maritime salvage. While it is not possible to examine the issue in detail at this point, it is clear that such relief is extraordinary, and may be properly confined to the law of admiralty where it is supported by considerations not found elsewhere.¹²⁷

¹²³ *Supra*, note 89 at 99.

¹²⁴ R. Shotland & C. Stebbins, "Emergency and Cost as Determinants of Helping Behavior and the Slow Accumulation of Social Knowledge" (1983) 46 *Soc. Psych. Q.* 36 at 42-43.

¹²⁵ Dovidio, *supra*, note 9 at 385.

¹²⁶ See, *e.g.*, J. Lynch Jr., "Why Additive Utility Models Fail as Descriptors of Choice Behavior" (1979) 15 *J. Exper. Soc. Psych.* 397.

¹²⁷ See, *e.g.*, Lord Goff & G. Jones, *The Law of Restitution*, 3d ed. (London: Sweet & Maxwell, 1986) at 351-66.

(b) COSTS OF NOT HELPING

Confronted by an emergency, a bystander will consider not only the potential costs for helping, but also the costs that might be incurred if the victim is not rescued. Two classes of such costs can be identified: *empathy costs* and *personal costs*.

(i) Empathy Costs

Empathy costs arise from a bystander's knowledge of a victim's suffering, and include the empathic internalization of that suffering, as well as the continuation of the bystander's unpleasant state of arousal.¹²⁸ The extent to which a bystander is affected is largely a function of those factors that determine the initial degree of arousal. The manner in which clarity, severity, and proximity affect arousal has already been examined.¹²⁹ It will be sufficient to recall at this point that rescue laws could influence the arousal process. One factor that has not yet been examined, however, concerns the effect of a victim's perceived deservingness of aid. It has been found that a victim is more apt to receive assistance if he is considered blameless with respect to his condition, partly because innocence engenders arousal.¹³⁰ It can be speculatively suggested that increased legal recognition of the merit and desirability of intervention might in time foster more charitable attitudes generally, and that the scope of empathic concern might be broadened to include individuals who earlier would have been deemed unworthy.

(ii) Personal Costs

A bystander who fails to render assistance may also be subject to a variety of personal costs. Significantly, if a general duty to rescue was introduced, a bystander would have to take account of the prospect of liability. Clearly, even assuming that the legal requirement was known to all, compliance would not be perfect. First, a given set of circumstances may be believed to fall outside the duty's scope. Second, some bystanders may prefer the *risk* of liability to intervention. Punishment presupposes detection, identification, and successful

¹²⁸ Piliavin *et al.*, *supra*, note 89 at 99.

¹²⁹ See above at section II(B)(1).

¹³⁰ Thus, the sight of a blind man who has stumbled over a step and fallen heavily is much more likely to prove emotionally disturbing than is the sight of a drunken man who has suffered the same fate. See, *e.g.*, Piliavin, Rodin, & Piliavin, *supra*, note 88. See also J. Schopler & M. Matthews, "The Influence of Perceived Causal Locus of Partner's Dependence on the Use of Interspousal Power" (1965) 2 *J. Pers. & Soc. Psych.* 610.

prosecution; the odds of escaping with impunity may appear favourable to those who do not wish to become involved. Third, while desirous of fulfilling their duty, some may still be dissuaded by one of the inhibitory processes that often affect bystanders (*e.g.*, diffusion of responsibility). Nevertheless, insofar as a duty would have a direct effect, that effect would almost certainly be positive.¹³¹

It is possible that the imposition of a duty to rescue would also intensify those pressures to intervene brought to bear by the threat of the less formal costs that can attend upon a refusal to assist (*e.g.*, personal guilt, public criticism). Piliavin notes that the magnitude of such costs is a function of a number of variables.¹³² First, as an emergency is perceived with greater clarity and is perceived to be of greater severity, the strength of self-criticism and social condemnation are apt to be greater. Insofar as it would help to elucidate, define, and intensify emergency situations,¹³³ a legal duty would aggravate the costs of non-intervention. Second, informal personal costs for not helping are apt to be correlated to a victim's blamelessness. Again, it is suggested (somewhat speculatively) that law reform may eventually lead bystanders to judge victims more charitably. Third, Piliavin argues that surveillance increases the likelihood of intervention.¹³⁴ The suggestion appears to be that a bystander may be more helpful if he simply believes he is being watched. Against a backdrop of legal liability, actions and inactions would become more compelling objects of observation. Further, while it would be difficult to divorce the mere fact of increased observation from its legal implications, it may be that personal guilt and public shame are more likely to find their targets among those who not only fail to act, but whose failure constitutes a dereliction of legal responsibility. It would be much easier to point a condemnatory finger once the law — a respected institution — said that action ought to have been taken.

3. Behavioural Outputs

Taken in isolation, the effect of the various factors involved in an emergency situation seem relatively clear. Those that tend to increase the cost of helping lessen the likelihood of intervention, while those

¹³¹ Recall, however, that some feel a duty would lead to overjustification or boomerang effects: see above, section II(A)(3).

¹³² *Supra*, note 89 at 99.

¹³³ Discussed above at section II(A)(2)(b).

¹³⁴ *Supra*, note 89 at 101-03.

that tend to increase the costs of not helping have a contrary effect. Most emergencies, however, are not given to simple resolution. An opportunity for rescue is apt to carry with it a number of conflicting pressures, as a bystander perceives benefits and detriments to both action and inaction. The effect of rescue laws would be to increase the forces urging intervention, in the appropriate circumstances. Nevertheless, the matter would remain complicated. It is necessary, then, to consider the results obtained in studies that have combined costs for both helping and not helping.

Before passing on to a discussion of the effect of combined costs, however, a *caveat* is in order. While recognizing that both categories of costs do influence behaviour, it has been suggested that costs for helping generally carry more weight than do costs for not providing help to the victim.¹³⁵ It must be noted, however, that psychologists have yet to test the effect of the threat of legal liability.¹³⁶ Invariably, their studies have involved the imposition of informal and rather trivial costs on subjects who do not help a victim. An award of tort damages or the imposition of criminal sanctions would often be neither.¹³⁷

Piliavin notes that helping behaviour is relatively common when the costs for not helping are moderate to high and the costs for helping are low.¹³⁸ Significantly, that very combination would often occur if rescue laws (as usually formulated¹³⁹) were introduced. Direct intervention would be required on pain of liability, but only if it could be provided in safety and without great inconvenience. Further, costs for helping would be lowered by the compensation available to rescuers.

As costs for helping increase, Piliavin admits to an inability to accurately predict behaviour, pleading a lack of data in defence.¹⁴⁰ It is simply held that costs for helping will be reliably correlated to intervention only if the costs for not helping are at least significant, for there comes a point below which forces urging action are so

¹³⁵ Dovidio, *supra*, note 9 at 386. A number of studies are cited in support.

¹³⁶ The reason is obvious: the law currently does not generally require rescue, and it would be impossible to realistically simulate a legal requirement in the laboratory.

¹³⁷ As always, insurance could dampen the impact of tort liability.

¹³⁸ *Supra*, note 89 at 107-08.

¹³⁹ See, *e.g.*, statutes cited *supra*, note 108.

¹⁴⁰ *Supra*, note 89 at 108.

attenuated as to be wholly ineffectual. In such circumstances, help is rarely provided. The imposition of a duty would, of course, often boost costs for nonintervention to a significant level.

Most complex are those situations in which both the costs for helping and the costs for not helping are high. While Piliavin initially predicted that increasing costs for helping would result in a corresponding increase in the incidence of *indirect* intervention (e.g., calling an ambulance), unsupportive data necessitated a revision to the theory. Most instances of indirect intervention do occur under such circumstances, but on the whole they are uncommon. Piliavin now speculatively offers a different hierarchy of responses.¹⁴¹

Piliavin holds that the most salient response involves the direct provision of assistance,¹⁴² but that, of course, is inhibited by high costs for intervention. Consequently, inaction becomes most likely in the type of situation under consideration. Though admitting that it is most difficult to know when such reactions will occur, it is held that a bystander may attempt to reduce his unpleasant sense of arousal through reinterpretations or reevaluations.¹⁴³ Initially, an attempt will be made to lower the costs for not helping by redefining the situation as one in which rescue is not required ("The situation isn't *really* serious"), by diffusing or denying responsibility¹⁴⁴ ("Somebody else will help or should help"), by claiming personal incompetence ("There's nothing *I* can do"), or by disparaging the victim ("He deserved what he got").¹⁴⁵ The law could inhibit the use of cognitive reinterpretations and reevaluations. As discussed above, rescue laws would increase the clarity with which emergencies are perceived, and would therefore serve as a check on convenient self-deception as to the nature of the situations.¹⁴⁶ So, too, they would clearly assign respon-

¹⁴¹ The proposed sequence of steps is offered "tentatively" and is recognized as being subject to variation by personal or situational factors. Further, the process is said to be cyclical and iterative in that earlier steps may be re-taken upon the failure to remove the conflict with later ones: *ibid.* at 118.

¹⁴² *Ibid.* at 113.

¹⁴³ *Ibid.* at 114.

¹⁴⁴ Schwartz & Howard, *supra*, note 80 at 342.

¹⁴⁵ Piliavin *et al.*, *supra*, note 89 at 116.

¹⁴⁶ For example, bystanders might be keener to investigate suspect circumstances in light of their legal obligations and possible liabilities: see above, section II(A)(1)(a). So, too, the actions of others would alert a bystander to the existence of an emergency: see above, section II(A)(2)(b).

sibility, thereby immunizing it from diffusion or denial. Further, while a duty would be sensitive to the realities of what should and should not be expected of those confronted with an emergency, it would still be based on an objective standard. Groundless self-deprecation would therefore not be an effective means of avoiding liability. Finally, a general duty to rescue could negate the utility of derogating a victim.¹⁴⁷ It would not be open to a bystander to choose which victims deserved his assistance.

If unable to convincingly lower the costs for not helping, a bystander will attempt to reevaluate the costs for helping. While the facts may not be manipulable in a way that facilitates inaction, they may be manipulable in a way that facilitates *action*. For example, a course of conduct that was originally thought too dangerous may upon further reflection be considered safe.¹⁴⁸

If an emergency is not given to any type of reinterpretation or reevaluation, a bystander is likely to provide aid indirectly *if* he perceives a means of doing so. Of course, given the disturbing character of many emergencies, a bystander will often overlook possibilities that he would recognize under normal conditions. By encouraging bystanders to investigate possible emergencies, rescue laws could enhance the likelihood that they would perceive a range of ways of providing assistance.¹⁴⁹ To help meet the problem of impercipient, legislators could also publicize ways of indirectly providing succour, as part of the process of introducing the new laws.

4. Summary

The importance of the Piliavin model lies in its exploration of the ways in which a bystander's behaviour is influenced by his perception of the costs and benefits associated with the different courses of action open to him.

Two broad classes of costs are said to affect a bystander. The first is personal costs for helping. The influence of some costs could be legally reduced. For example, the availability of restitutionary relief could allay concerns about money expended or foregone, and a "Good Samaritan" statute could assuage a bystander's fear of being held

¹⁴⁷ The statement assumes that the duty would apply whether or not a victim's condition was self-inflicted. While generally uncontroversial, that assumption can be contested in regards to victims who are (say) suicidal.

¹⁴⁸ Piliavin *et al.*, *supra*, note 89 at 117.

¹⁴⁹ The point is discussed above at section II(A)(1)(d).

liable for well-intentioned but mishandled efforts. Other types of costs should receive different types of treatment from legislators. In some situations, law reformers should defer to a bystander's reasons for not wanting to intervene. For example, a duty to rescue should not require a bystander to choose between liability and physical danger. Unrealistic demands would invariably fail to modify behaviour, and the imposition of sanctions could offend commonly held notions of justice, and thereby bring the law into disrepute.

Bystanders will also consider the costs that may accrue if the victim does not receive help. First, a legal duty could indirectly increase empathy costs by fostering a greater initial sense of arousal. Second, formal personal costs could be introduced in the form of criminal or tortious liability. Finally, to the extent that rescue laws would bring the facts of crisis situations into sharper focus, existing informal personal costs (*e.g.*, personal guilt, social censure) could be made more probable and intense.

III. CONCLUSION

IT WILL BE RECALLED that this paper opened with a statement of three goals. All, it is hoped, have been achieved. First, the rescue debate has been put into its proper context. In the past, both proponents and opponents of reform have argued from speculative positions. While the more basic aspects of bystander intervention can, admittedly, be understood on the basis of simple life experiences, many important intricacies involved in the process defy immediate or intuitive comprehension.

Second, the behavioural consequences likely to follow upon the introduction of rescue laws have been explored. It has been found that they would very likely improve the fortunes of victims. Further, the analysis of those factors that inhibit and foster intervention has revealed what form such laws might best take. By accounting for the psychological processes involved, legislators could act in a principled manner and tailor the law to both reflect the human condition and to shape behaviour.

Finally, this article has illuminated a 'co-incidence' of psychological fact and traditional legal doctrine. Perhaps unconsciously, the law has already been shaped to mirror some aspects of the processes underlying intervention.