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FORGOTTEN NAMESAKE: THE ILLINOIS GOOD SAMARITAN ACT'S INEXCUSABLE FAILURE TO PROVIDE IMMUNITY TO NON-MEDICAL RESCUERS

DAVID WELDON*

I. PUNISHMENT FOR A GOOD DEED

Danger invites rescue. The cry of distress is the summons to relief.

- Justice Cardozo¹

On Halloween night in 2004, the lives of co-workers Lisa Torti and Alexandra Van Horn tragically changed forever. The two young women departed a California bar with three friends in separate cars; Van Horn rode in the first, and Torti followed in the second.² On the ride home, the driver of Van Horn's vehicle lost control and crashed violently into a light post at forty-five miles per hour.³

Having witnessed the frightening accident, the driver of the second car quickly pulled over to assist the occupants in the first car.⁴ Torti saw smoke and liquid coming from the car and feared that it might explode at any moment, so she ran over and pulled her friend Van Horn from the wreckage.⁵ A short while later, emergency medical personnel arrived on the scene and transported Van Horn and the other injured passenger to a nearby hospital.⁶

While to most, this is a story of a courageous woman who sought to save her injured friend and co-worker from risk of further injury, Alexandra Van Horn viewed the situation in a very different light. Van Horn sued Torti for negligence, alleging that she was not in need of assistance.⁷ Van Horn believed that by pulling her from the car like a "rag doll," her co-worker severely

* Juris Doctor Candidate, May 2011. I would like to thank my beautiful wife Lauren for her contributions, edits, and encouragement. I would also like to thank my parents for their unwavering support in every task I take on.

1. *Wagner v. Int'l Ry. Co.*, 133 N.E. 437, 437 (N.Y. 1921).

2. *Van Horn v. Watson*, 197 P.3d 164, 166 (Cal. 2008).

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

aggravated an injury she sustained to her vertebrae in the crash.⁸ The trial court initially held Torti immune from suit under the California Good Samaritan law.⁹ The California Supreme Court ultimately reversed, holding that the Good Samaritan immunity applied only to persons rendering emergency medical care.¹⁰ Under this narrow interpretation of the law, Torti's act did not constitute emergency medical care because she was not a medical professional.¹¹ As a result, she received no immunity for any ordinary negligence in her actions.¹²

Part II of this Comment will discuss reactions to the California Supreme Court's narrow interpretation of the law, and how the public backlash ultimately led to change. This section will also discuss the conflict between morality and the common law no-duty rule. This section will next provide a brief history of Good Samaritan statutes in the United States and the policy reasons behind their enactment. Part III of this Comment will compare and contrast the coverage of Illinois's Good Samaritan Act with California's recently amended Good Samaritan law and will briefly recognize noteworthy approaches taken in other states. Part IV proposes that Illinois follow California's lead and provide immunity protection for ordinary citizens¹³ who courageously come to the aid of their fellow citizens. Finally, this Comment urges the Illinois General Assembly to provide some type of restorative compensation to Good Samaritans who are injured or killed when performing their heroic acts.

8. *Id.* As a result of the crash's violent impact Van Horn is now permanently paralyzed. *Id.*

9. *Id.*

10. *Id.* In his dissent, Justice Baxter argued vigorously that a statute's plain meaning should prevail. *Id.* at 172 (Baxter, J., dissenting). In his opinion, the majority had simply inserted the word "medical" into the statute where it previously did not exist, thereby distorting the plain meaning of the statute:

There is no reason why one kind of lay volunteer aid should be immune, while another is not. Yet the majority imposes an arbitrary and unreasonable limitation on the protection this statute affords to Good Samaritans. The majority rewrites [the Good Samaritan statute] to insert the word "medical" at two crucial points *where it does not appear*—once before the word "care" and again before the word "emergency." Thus, the majority concludes, the statute affords immunity only for emergency *medical* care rendered by an uncompensated layperson at the scene of a *medical* emergency.

Id. (emphasis in original).

11. *Id.* at 166.

12. *Id.*

13. This Comment uses the term "ordinary citizen" to refer to people without any type of medical training, certification, or other expertise. The term "citizen" will also be used to refer to this group of non-medical people.

II. BACKGROUND

A. Public Backlash Leads to Change

Not surprisingly, the outcome in *Van Horn v. Watson* outraged people across the country and received national press coverage.¹⁴ People were shocked to learn that a person could be forced to defend a lawsuit after heroically trying to aid a friend in need.¹⁵ Meanwhile, lawyers and other legal professionals debated the California Supreme Court's narrow reading of the Good Samaritan Law.¹⁶

14. See, e.g., Alison Stateman, *The Perils of Being a Good Samaritan in California*, TIME, Jan. 14, 2009, available at <http://www.time.com/time/nation/article/0,8599,1871331,00.html> (noting that under the court's ruling "one good deed may very well not go unpunished"). The article also provides insight into the possible repercussions of the ruling through a quote from Torti's lawyer, "Here in California, one of these days we can have another earthquake, and the question is, Do you want people to help or do you want people to be thinking about whether they're going to get sued?" *Id.*; see also Editorial, *I'll Have to Call My Lawyer*, N.Y. TIMES, Jan. 2, 2009, available at http://www.nytimes.com/2009/01/03/opinion/03sat2.html?_r=3&scp=1&sq=good%20samaritan%20california%20&st=cse (describing the implications of the case as "disturbing" because the law should not deter people from seeking to provide any help they can when witnessing an accident). The editorial concludes by encouraging other states to examine their own Good Samaritan laws to make sure they do not discourage "well-meaning bystanders from aiding people in harm's way." *Id.* This Comment seeks to do precisely that for the state of Illinois.

15. Posting of Rod Brouhard to About.com First Aid Blog, *Goodbye Good Samaritans*, <http://firstaid.about.com/b/2008/12/19/goodbye-good-samaritans.htm> (Dec. 19, 2008). Brouhard began his posting in a very direct manner by stating, "The California Supreme Court blew it big this time." *Id.* He goes on to express his disappointment in the court's failure to come to Torti's rescue, as she bravely did for her friend. *Id.* Instead, he was left "appalled by what should be a no-brainer to the courts." *Id.* As for the injury in dispute, Brouhard asserts that there is "very little evidence that moving a victim of spinal injury actually results in some sort of catastrophic secondary injury like this lawsuit suggests." *Id.* Brouhard has been a paramedic since 1988 and a volunteer firefighter since 1987 and is certified in emergency medical dispatch, advanced cardiac life support, international trauma life support, pediatric advanced life support, and CPR. Bio of Rod Brouhard, <http://firstaid.about.com/bio/Rod-Brouhard-18964.htm> (last visited Dec. 3, 2010).

16. Posting of Anthony J. Sebok to Findlaw's Writ, *The California Supreme Court Holds that Good Samaritans Providing Nonmedical Aid Can be Held Liable if They Act Negligently*, <http://writ.news.findlaw.com/sebok/20090113.html> (Jan. 13, 2009). Sebok, a law professor at Benjamin N. Cardozo School of Law in New York City, notes that the case produced a great deal of negative legal commentary. *Id.* Nevertheless, he defends the court's decision because he believes that only people with medical training should be granted statutory immunity. *Id.* In doing so, Sebok makes sure to point out that the plaintiff and defendant in the case had previously been at a bar and at the time of the accident may have been "high or drunk." *Id.* Sebok uses this fact to question whether or not society should "prudentially" seek to encourage untrained

As a result of this public outcry, the California Legislature moved quickly to change the law and prevent similar cases from recurring.¹⁷ In August 2009, Governor Arnold Schwarzenegger signed the amended statute into law, providing protection for all citizens who come to the aid of another in an emergency.¹⁸ Thus far, the public's response to the amended law has been positive.¹⁹

B. *Morality Versus the Common Law No-Duty Rule*

The term "Good Samaritan" traces its roots to the New Testament of the Bible.²⁰ The famous parable tells the story of a man who was beaten, robbed, and left injured by the side of the road.²¹ A Levite and a priest passed him by and offered no assistance, but a Samaritan stopped, dressed his wounds, and took him to a nearby inn.²² Once there, the Good Samaritan promised to pay for the injured man's lodging and care without expecting anything in return.²³

Although this parable teaches that we are morally obligated to come to the aid of a fellow person, American law has

people in such a state to intervene in an emergency situation. *Id.* Notably, Sebok readily admits that the events leading up to the accident should be *ignored* given the posture of the appeal. *Id.* He also fears that in many emergency situations "amateurs," such as the defendant Torti, without medical training may be "out of their league." *Id.*

17. Posting of Kim Stone to California Civil Justice Blog, *California Supreme Court Good Samaritan Case Leads to Three Bills* <http://www.cjac.org/blog/2009/01/california-supreme-court-good.php> (Jan. 14, 2009) [hereinafter Stone]. One such legislator was Republican John Benoit, who spent thirty-one years in law enforcement prior to joining the California state legislature. Stateman, *supra* note 14. Benoit said that during his time as a highway patrol officer he responded to countless accident scenes and frequently arrived to find citizens already helping the victims. *Id.* After hearing about the case, Benoit said he was "extremely concerned that it would in any way thwart people's willingness to give that aid, because in my experience that would translate into lives lost." *Id.*

18. CAL. HEALTH & SAFETY CODE § 1799.102 (West 2009); Amanda Bronstad, *Gov Schwarzenegger Signs Tort Reforms Into Law*, THE NATIONAL LAW JOURNAL, Aug. 18, 2009, available at <http://law.com/jsp/article.jsp?id=1202433125785>.

The law protects people not in the medical profession who help someone at the scene of an accident unless their actions constitute gross negligence or recklessness. *Id.* The bill was passed with the unanimous approval of every member of the large California legislature. Bob Egelko, *Good Samaritans get protection from lawsuits*, S.F. CHRON., Aug. 8, 2009, at C3.

19. See, e.g., Karen Moret, Letter to the Editor, SAN JOSE MERCURY NEWS, Aug. 17, 2009, at 9A (writing to applaud the Governor for signing the new bill); Mike McDowd, Letter to the Editor, S.F. CHRON., Aug. 23, 2009, at E11 (praising the Governor for providing protection to non-medical rescuers).

20. *Luke* 10:30-35.

21. *Id.*

22. *Id.*

23. *Id.*

consistently refused to recognize such a moral duty.²⁴ Courts have even used the parable as an example when discussing the common law's no-duty rule.²⁵ As one commentator noted, "although the duty to assist an injured or endangered person is commonplace throughout the world, our law continues to rely solely on man's unselfish spirit."²⁶

The lack of duty is partly due to the historical differentiation between liability for negligence based on misfeasance, active conduct which causes harm to another, and nonfeasance, passive inaction or a failure to take steps that could otherwise prevent harm.²⁷ In the case of nonfeasance, the party in need of aid is arguably no worse off by the potential rescuer's failure to act.²⁸ Rather, he has been left in precisely the same condition he would have been in had the rescuer never appeared.²⁹ The only true "loss" to the injured party is that he failed to obtain a benefit in the form of aid.³⁰ It is this sometimes subtle distinction and the common law's unwavering belief that individuals are capable of protecting themselves which has historically supported the no-

24. WILLIAM L. PROSSER, *HANDBOOK OF THE LAW OF TORTS* 856 at 340 (4th ed. 1971); W. PAGE KEETON ET AL., *PROSSER AND KEETON ON THE LAW OF TORTS* § 56 at 373 (5th ed. 1984). One of the most famous stories exemplifying the lack of duty is the case of Kitty Genovese, who was stalked and brutally stabbed to death in the street in 1964 while thirty neighbors allegedly all looked on in terror, yet refused to call the police for fear of getting involved. Joe Sexton, *Reviving Kitty Genovese Case, and Its Passions*, N.Y. TIMES, July 25, 1995, at B1.

25. *Buch v. Armory Mfr. Co.*, 44 A. 809, 810 (N.H. 1898). There, the court stated, "For example, the priest and Levite who passed by on the other side were not, it is supposed, liable at law for the continued suffering of the man who fell among thieves, which they might, and morally ought to have, prevented or relieved." *Id.*

26. Jay Silver, *The Duty To Rescue: A Reexamination and Proposal*, 26 WM. & MARY L. REV. 423, 424 (1985). Portugal was the first European country to adopt such a law in 1867. *Id.* at 434-35. The Netherlands, Finland, and Italy all enacted similar legislation in the nineteenth century, and most of the other countries of continental Europe did so in the early to mid-twentieth century. *Id.* The French law became a hot topic of discussion after the untimely death of Princess Diana in Paris. See, e.g., Charles Trueheart, *Diana's Guard Can't Recall Paris Crash; French Investigation Secretive, Methodical*, WASH. POST, Sept. 20, 1997, at A1 (discussing the country's investigation of a motorcycle rider and nine photographers for failing to rescue the Princess and other injured victims of the accident).

27. PROSSER, *supra* note 24 at 338. Commentators frequently give extreme examples to demonstrate nonfeasance. An expert swimmer, with a boat and a rope at hand, who sees another drowning before his eyes, is not required to do anything at all about it, but may sit on the dock, smoke his cigarette, and watch the man drown. *Id.*

28. Francis H. Bohlen, *The Moral Duty to Aid Others as a Basis of Tort Liability*, 56 U. PA. L. REV. 217, 220 (1908).

29. *Id.*

30. *Id.*

duty rule.³¹

The Restatement of Torts is in agreement with the lack of a general duty to aid.³² It provides: "The fact that the actor realizes or should realize that action on his part is necessary for another's aid or protection does not of itself impose upon him a duty to take such action."³³ Although this lack of legal duty typically receives the most attention in dramatic life-or-death rescue situations, the same principle applies with equal force in situations involving minimal risk or danger.³⁴ Similarly, the no-duty rule is not affected by whether the perilous situation is already in progress when the potential rescuer first becomes aware of it, or has yet to occur.³⁵ Displeased with the harshness of the common law rule,

31. *Id.* at 221.

32. RESTATEMENT (SECOND) OF TORTS § 314 (1965). The Restatement does recognize four commonly adopted exceptions to the general no-duty principle: (1) the potential rescuer has a special relationship with the victim; (2) the potential rescuer has caused the dangerous situation; (3) the rescuer has begun to help the victim and abandons the effort, leaving the victim in a worse situation than before intervening; and (4) where a person interferes with or prevents a rescue by others. *Id.* §§ 314A, 322-24, 326-27.

33. *Id.* § 314. Professor Epstein argues that this lack of a duty makes perfect sense based on the lack of causation. Richard A. Epstein, *A Theory of Strict Liability*, in PERSPECTIVES ON TORT LAW 275, 295 (Robert L. Rabin ed., 4th ed. Little, Brown and Co. 1995). He uses the example of *A* drowning while *B* is nearby and could come to his assistance without an injury or danger to himself. *Id.* at 294. *B* chooses not to act and *A* ultimately drowns. *Id.* Of course, under the common law position there is no cause of action against *B* because he had no duty to act under the circumstances. *Id.* Epstein points out that no matter how the facts of cases such as these are twisted, there is no argument that *B* caused *A* any harm. *Id.* at 295. When viewed in this light, ignoring the moral issues lurking in the background, the lack of a duty to assist is understandable. *Id.* But see Ernest J. Weinrib, *The Case for a Duty to Rescue*, 90 YALE L. J. 247, 250 (1980) (criticizing Epstein's focus on causation and arguing in favor of imposing a duty to rescue).

An interesting question arises in the context of professionals and whether they should have an obligation to come to the aid of someone who is in need of their services. The American Medical Association's code of ethics states that despite the lack of a tort duty, doctors should nevertheless render services to the best of their ability when faced with such a situation. VICTOR E. SCHWARTZ, KATHRYN KELLY, AND DAVID F. PARTLETT, PROSSER, WADE AND SCHWARTZ'S TORTS 419 n.4 (Foundation Press New York 11th ed. 2005). Common carriers, innkeepers, and public utilities generally are liable for failure to render service due to their engagement in "public callings," which is equated with undertaking an obligation to serve the public. *Id.*; see, e.g., *Nevin v. Pullman Palace-Car Co.*, 106 Ill. 222 (1883) (holding the defendant train company liable for failing to provide a passenger with a spot in a sleeper car as previously promised and paid for, resulting in great humiliation and exhaustion to the plaintiff).

34. RESTATEMENT (SECOND) OF TORTS § 314 (1965).

35. *Id.* Some noteworthy commentators in favor of the no-duty rule have expressed a fear that imposing a duty to rescue would lead to the perverse outcome of people intentionally seeking to avoid dangerous situations and settings out of concern that they may be faced with substantial liabilities for

five states have enacted criminal statutes imposing a duty to assist or contact the authorities under certain circumstances.³⁶

C. Potential Liability for Rescuers

While providing no general duty to aid, the Restatement of Torts also allows a person who voluntarily comes to the rescue of another to be held liable for any negligence in doing so:

One who, being under no duty to do so, takes charge of another who is helpless adequately to aid or protect himself is subject to liability to the other for any bodily harm caused to him by (a) the failure of the actor to exercise reasonable care to secure the safety of the other while within the actor's charge, or (b) the actor's discontinuing his aid or protection, if by so doing he leaves the other in a worse position than when the actor took charge of him.³⁷

Thus, the rule actually creates an incentive for people *not* to come to the aid of someone in need because absent a rescue attempt there is no risk of liability.³⁸ As Professor William Prosser

failure to meet the obligations placed on them. WILLIAM M. LANDES & RICHARD A. POSNER, *THE ECONOMIC STRUCTURE OF TORT LAW* 143-145 (1987).

36. Damien Schiff, *Samaritans: Good, Bad and Ugly: A Comparative Law Analysis*, 11 *ROGER WILLIAMS U. L. REV.* 77, 92-94 (2005). The states are Hawaii, Minnesota, Rhode Island, Vermont, and Wisconsin. *Id.* The punishments imposed for violation are typically minimal. *E.g.*, WIS. STAT. ANN. § 940.34 (West 2005); HAW. REV. STAT. ANN. § 663-1.6 (LexisNexis 2002); R.I. GEN. LAWS § 11-56-1 (2002); VT. STAT. ANN. Tit. 12, § 519 (2002); MINN. STAT. ANN. § 604A.01(1) (West 2000). While prosecutions under these statutes seem to be relatively rare, cases in some of the states can be found. *See, e.g.*, *State v. La Plante*, 521 N.W.2d 448 (Wis. Ct. App. 1994) (upholding a conviction under the Wisconsin duty to aid statute where the defendant was aware of one person's intentions to assault another, and failed to warn or assist the potential victim, or call the police after the assault occurred).

An argument can be made that imposing a duty to act fails to remedy the underlying moral issue because action will then be taken only involuntarily. *See Epstein, supra* note 33, at 298 (stating that "no act can be moral unless it is performed free from external compulsion."). As noted, several European countries also have criminal laws imposing a duty to rescue. SCHWARTZ ET AL., *supra* note 33, at 419 n.5.

Confusingly, the term "Good Samaritan statute" is rarely used to refer to a single type of law. For example, it is sometimes used to refer strictly to laws such as these that *impose* a duty on people. *See, e.g.*, BLACK'S LAW DICTIONARY POCKET EDITION 279 (1st ed. 1996) (defining Good Samaritan statutes as "A law that requires a person to come to the aid of another who is exposed to grave physical harm, if there is no danger of risk of injury to the rescuer."). This Comment uses the term "Good Samaritan statute" to refer to laws which seek to *protect* those who come to the aid of another by providing some form of immunity to the rescuer.

37. RESTATEMENT (SECOND) OF TORTS § 324 (1965).

38. *Buch*, 44 A. at 810. The nineteenth century New Hampshire Supreme Court case is often cited for its straightforward explanation of the no-duty rule and countervailing moral considerations. The court said:

succinctly described using the original parable as an example, “the Good Samaritan who tries to help may find himself mulcted in damages, while the priest and the Levite who pass by on the other side go on their cheerful way rejoicing.”³⁹

D. Enactment of Good Samaritan Statutes

Given the lack of a duty to aid in conjunction with potential liability for those who seek to provide aid in good faith, many states enacted statutes to protect rescuers.⁴⁰ California passed the first Good Samaritan statute in 1959,⁴¹ and every state has since followed suit and enacted a Good Samaritan statute of some type.⁴²

Importantly, not all Good Samaritan statutes are the same.⁴³ Some states have statutes that provide broad protection to all rescuers, while others only provide narrow protection to specific types of rescuers, such as those that have some type of medical

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

Id.

39. KEETON ET AL., *supra* note 24, at 378.

40. See, e.g., *Beasley v. MacDonald Eng'g Co.*, 249 So. 2d 844, 847 (Ala. 1971) (stating “[i]t was in recognition of this commonlaw [sic] theory of liability-i.e., that one who volunteers to act though under no duty to do so, is thereafter charged with the duty of acting carefully-that legislatures have passed the so-called Good Samaritan statutes abrogating the common law in certain circumstances.”); *Jackson v. Mercy Health Ctr., Inc.*, 864 P.2d 839, 843 (Okla. 1993) (noting that “Oklahoma adopted the Good Samaritan Act . . . [to abrogate] the common-law rescue doctrine for medical providers in an effort to encourage them to risk helping strangers in need of succor, even when they have no duty to render aid.”).

41. See Danny R. Veilleux, Annotation, *Construction and Application of “Good Samaritan” Statutes*, 68 A.L.R. 4th 294 (1989) (analyzing state and federal case law construing “Good Samaritan” statutes). This fact is somewhat ironic when viewed in conjunction with the California Supreme Court's narrow interpretation of their ground-breaking law in *Van Horn*. 197 P.3d at 166. Prior to the decision in that case, many people may have very well thought of California as the progressive pioneer in this area, which in part may explain the significant backlash that resulted shortly after the court's ruling was made public.

42. Melody J. Stewart, *How Making the Failure to Assist Illegal Fails to Assist: Observation of Expanding Criminal Omission Liability*, 25 AM. J. CRIM. L. 385, 388 n.9 (1998); *I'll Have to Call My Lawyer*, *supra* note 14.

43. See generally Veilleux, *supra* note 41 (comparing and contrasting the scope of various statutes in terms of the categories of people they protect as well as the range of situations they cover).

training or certification.⁴⁴ In the latter situation, many jurisdictions have enacted several statutes, and each grants immunity to a particular category of people.⁴⁵ Similarly, some statutes cover only emergencies or accidents, while others apply more generally to all situations.⁴⁶ In sum, Good Samaritan statutes come in a wide variety of shapes and sizes. This Comment focuses specifically on the Good Samaritan statutes in Illinois and California.

E. Rationales behind Good Samaritan Statutes

The purpose of Good Samaritan statutes is to encourage people to aid others in need by granting statutory immunity from civil damages and removing the fear of liability.⁴⁷ More simply, these statutes seek to inspire people without any duty to aid their fellow citizens to do so anyway. They aim to achieve this goal by providing immunity to rescuers for any negligent acts or omissions committed while providing emergency care.⁴⁸

In providing immunity to rescuers, Good Samaritan statutes attempt to eliminate the perceived inadequacies of the common law rule under which a volunteer, assisting an injured person in good faith with no prior duty to do so, is nevertheless liable for

44. Veilleux, *supra* note 41, § 2[a]. A common requirement under Good Samaritan statutes is that the rescuer must have acted in “good faith” without expectation of any compensation in order to qualify for the statutory immunity. *Id.* Another common limitation is that the actions cannot rise to the level of gross negligence, recklessness, or any other heightened states of culpability. *Id.* § 4. Specific language commonly employed in Good Samaritan statutes such as “emergency,” “peril,” etc. have often proved difficult for courts faced with the need to determine the scope of a statute’s coverage. *Id.* § 6. In *Van Horn*, the determination of what constituted “emergency care” was the key to whether or not the defendant was protected by immunity under the California statute. 197 P.3d at 167. There, the California Supreme Court looked primarily at the placement of the Good Samaritan statute in the health and safety code amongst a large number of medical provisions in ultimately deciding that “emergency care” actually meant “emergency medical care.” *Id.* With this definition in place, the defendant was ineligible for statutory immunity because she was an ordinary citizen, and thus had not provided any form of “medical” care in pulling her friend from the car. *Id.*

45. Veilleux, *supra* note 41, § 6. Courts have generally held that Good Samaritan immunity does not apply to public officials who have a pre-existing duty to aid others such as policemen and firemen. *Id.* § 12. This makes sense because these types of rescuers do not need any inducement to help others, which the statutes are generally designed to create. *Id.*

46. *Id.* § 6. For example, Utah’s statute applies to “emergencies.” UTAH CODE ANN. § 78-11-22(1) (West 2003). Conversely, Idaho’s statute uses the term “accident.” IDAHO CODE ANN. § 5-330 (2003). Understandably, one might question the difference between these two terms and the ultimate effect they have on who is and is not granted immunity under the statute. The answer to that question is beyond the scope of this Comment.

47. Veilleux, *supra* note 41, § 2.

48. *Id.* § 12.

failing to exercise “reasonable care” in providing the assistance.⁴⁹ Because these statutes stand in direct opposition with the centuries old no-duty rule, they are necessarily driven by public policy concerns.

Given the wide variety of statutes found nationwide, it is apparent that state legislatures have crafted their own statutes to further the policies important to their own constituents.⁵⁰

III. ANALYSIS

This section will first discuss California’s recently enacted Good Samaritan statute. Illinois’s Good Samaritan Act is then compared and contrasted with its California counterpart to illustrate its shortcomings.

A. California’s Good Samaritan Statute

On August 6, 2009, California Governor Arnold Schwarzenegger approved an amendment to the California Good Samaritan statute.⁵¹ The legislature drafted the amendment in response to the California Supreme Court’s ruling in *Van Horn v. Watson*.⁵² The legislature marked the bill as urgent because the court’s decision in that case had “thrown into question” California’s longstanding policy of encouraging citizens to aid others in emergency situations without fear of being sued; as a result, the new law immediately went into effect.⁵³

49. *Id.*; see also Schiff, *supra* note 36, at 110-14 (noting the various social and psychological theories behind Good Samaritan laws and their ultimate effect on citizens). The term “reasonable care” is placed in quotes here due to its amorphous standard. First year law students quickly learn that what is deemed “reasonable” in one situation may not be “reasonable” in the next based on what otherwise appears to be a trivial difference. Sometimes, the end result is arguably nothing more legally sound or predictable than one court’s take on a particular day. Given this hazy and vague standard, rescuers have placed themselves in a risky situation by seeking to help others in good faith. Even noted legal scholars may rightfully disagree after the fact as to whether the rescuer’s conduct was reasonable or not.

50. See, e.g., *McDowell v. Gillie*, 626 N.W.2d 666, 671-74 (N.D. 2001) (discussing the policy reasons behind North Dakota’s Good Samaritan statute and looking to several other jurisdictions’ statutes). In *McDowell*, the North Dakota Supreme Court ultimately chose to interpret its own statute broadly because it felt this best achieved the legislature’s purpose in enacting the law. *Id.* Although it discussed cases from other jurisdictions, the court was frank in noting the problem created as a result of the varied statutory terminology and policy rationales, finding “[c]ases from other jurisdictions are not particularly helpful in resolving the issue before us because those decisions are necessarily dependent upon the terminology of a specific statute.” *Id.* at 672.

51. Posting of Cynthia Lambert to California Civil Justice Blog, *Governor Signs Bills to Protect Good Samaritans*, <http://www.cjac.org/blog/2009/08/governor-signs-bills-to-protect/>.

52. *Id.*

53. 2009 CAL. LEGIS. SERV. Ch. 77 § 1 (West).

The statute now makes clear the California Legislature's desire to provide immunity to all Good Samaritan rescuers, not just those with some type of medical training or expertise.⁵⁴ The new section states:

No person who in good faith, and not for compensation, renders emergency medical or nonmedical care at the scene of an emergency shall be liable for civil damages resulting from any act or omission.⁵⁵

Though this statutory language is short and to the point, it contains numerous important words and phrases.

First, the statute preserves the broad "no person" language; it does not limit its coverage to any subset of people with specialized training or expertise.⁵⁶ Second, it maintains language commonly seen in Good Samaritan statutes that the aid must be rendered in "good faith" and "not for compensation."⁵⁷ Third, immunity is expressly limited to aid provided at the scene of an emergency.⁵⁸ Fourth, the statute only protects Good Samaritan rescuers from being sued for ordinary negligence.⁵⁹ Rescuers may be held liable if their conduct rises to the level of gross negligence or willful or wanton misconduct.⁶⁰ Last, the statute effectively employs three new words, "or nonmedical care," to overturn the California Supreme Court's holding in *Van Horn*.⁶¹

Much of the language just discussed in the new statute was also present in the prior version.⁶² The key portion of the old statute, on which the *Van Horn* majority focused, was "[n]o person who . . . renders emergency care at the scene of an emergency."⁶³ The parties had different interpretations of this seemingly straightforward language.⁶⁴ Torti argued that the statute applied to all emergency care rendered at the scene of an emergency,⁶⁵ but *Van Horn* argued that its application was limited to emergency medical care rendered at the scene of a medical emergency.⁶⁶ The majority ultimately agreed with *Van Horn*'s interpretation.⁶⁷

With this interpretation in mind, we return to the language of

54. CAL. HEALTH & SAFETY CODE § 1799.102 (West 2009).

55. *Id.*

56. *Id.*

57. *Id.*

58. *Id.* §1799.102(a).

59. *See id.* §1799.102(b)(2) (asserting that the actor will not be liable unless the conduct constitutes willful and wanton misconduct).

60. *Id.*

61. *Id.* §1799.102(a).

62. *See id.* §1799.102(a) (stating "[N]o person who in good faith . . ."); compare with §1799.102 ch. 9, §7 (using the same language quoted above).

63. *Van Horn v. Watson*, 197 P.3d 164, 167 (Cal. 2008).

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.* at 167-71.

the recently amended Good Samaritan statute and the three powerful words now present: “or nonmedical care.”⁶⁸ The legislature unquestionably agreed with Torti’s argument that statutory immunity applies broadly to all types of care rendered at the scene of an emergency. The California Supreme Court erred in its conclusion that the legislature only intended to provide protection for people with some type of medical training.⁶⁹

California’s recently amended Good Samaritan statute accomplishes the legislature’s stated goal of encouraging “individuals to volunteer, without compensation, to assist others in need during an emergency, while ensuring that those volunteers who provide care or assistance act responsibly.”⁷⁰ While this goal may have understandably been questioned after the court’s holding in *Van Horn*, the legislature moved quickly to reverse the court’s decision and ensure that its goal would not be thwarted. With this backdrop in mind, we now examine the Illinois Good Samaritan Act.

B. The Illinois Good [Insert Medical or Other Trained Professional Here] Samaritan Act

The Illinois Good Samaritan Act (“the Act”) is, at best, a misnomer. At worst, it is a fraud aimed at deceiving members of the general public who either have no reason to read the actual text of the Act, or lack the expertise to truly understand who it does and, more importantly, does not protect. California’s Good Samaritan statute and Illinois’s Good Samaritan Act have the term “Good Samaritan” in common. But Illinois’s definition of the term is a far cry from that of California.⁷¹

68. CAL. HEALTH & SAFETY CODE § 1799.102 (b)(2).

69. The legislature’s decision to amend the Good Samaritan statute also means that Justice Baxter was correct in his dissent when he argued in favor of the broader interpretation of the law. *See Van Horn*, 197 P.2d at 172 (Baxter, J. *dissenting*) (arguing that the majority’s interpretation was not in accordance with the legislature’s intent).

70. *Id.* (quoting §1799.102(b)(1))

71. A quick entry of “Good Samaritan” into Dictionary.com’s definition engine produced similar results: “a person who gratuitously gives help or sympathy to those in distress (Dictionary.com Unabridged); a compassionate person who unselfishly helps others (American Heritage Dictionary of the English Language, 4th ed.); persons who go out of their way to perform acts of kindness to others, especially strangers (American Heritage New Dictionary of Cultural Literacy, 4th ed.); one who voluntarily renders aid to another in distress although under no duty to do so (Merriam Webster’s Dictionary of Law); a compassionate person who unselfishly helps others (American Heritage Dictionary of Idioms).” DICTIONARY.COM, <http://dictionary.reference.com/browse/good+samaritan> (last visited Dec. 3, 2010).

These definitions are in line with the coverage of California’s Good Samaritan statute. Nowhere in any of the definitions does the term “medical” or “professional” appear. This demonstrates why Illinois’s Good Samaritan Act

The Good Samaritan Act is a collection of statutes.⁷² Unlike the single statute providing broad coverage to all persons employed in California, Illinois has instead adopted a number of individual statutory sections.⁷³ As of this writing, there are twenty-four sections, and each grants immunity to a distinct category of people.⁷⁴ All but one section applies to some type of trained professional.⁷⁵ There are provisions for physicians,⁷⁶ nurses,⁷⁷ dentists,⁷⁸ police officers,⁷⁹ and EMTs,⁸⁰ just to name a few.⁸¹ But notably and inexplicably absent from any of the Good

is not in tune with the real world and what a Good Samaritan means to the public. The Illinois definition is far too narrow in its scope to be anything resembling common sense and reality. Recall also the Biblical parable from which the phrase is derived, and specifically the fact that the Good Samaritan possessed no medical training or expertise. *Supra* notes 20-23 and accompanying text.

72. 745 ILL. COMP. STAT. §49/1-49/120 (West 2009).

73. *Id.*

74. *Id.*

75. *Id.* The lone section that does not apply to trained professionals covers choking situations. *Id.* § 49/65. It provides immunity to “any person who in good faith removes or attempts to remove food in an emergency occurring at a food-service establishment as defined in the Choke-Saving Methods Act.” *Id.* This is the only section that does not require the rescuer to fall within a specific category of persons.

76. *Id.* §§ 49/25, 49/42, 49/50. One court provides a recent example of how the physician provision is interpreted and applied by courts. *See Rodas v. SwedishAmerican Health System Corp.*, 594 F. Supp. 2d 1033 (N.D. Ill. 2009) (granting summary judgment in favor of the defendant physicians because they were immune from suit for any ordinary negligence under the Good Samaritan Act). In interpreting the statute, the district court noted the lack of any decisions on point issued by the Illinois Supreme Court. *Id.* at 1038. The court also stated that a flexible standard is employed to determine whether the aid was rendered in an emergency: “based on the unforeseen, unexpected combination of circumstances presented which require the need for immediate action, assistance, or relief.” *Id.* at 1038 (quoting *Rivera v. Arana*, 749 N.E.2d 434, 442 (Ill.App.Ct. 2001)). One author discusses the concept physicians as Good Samaritans in Illinois. *See generally* Theodore R. LeBlang, *The Physician as Good Samaritan: Evolving Legal Protections Under Illinois Law*, 90 ILL. B.J. 522 (2002) (tracing the gradual expansion of protection afforded to physicians in the emergency rescue context by analyzing a number of statutes and important cases). Professor LeBlang states that the first physician Good Samaritan statute in Illinois was passed in 1965. *Id.* at 522.

77. 745 ILL. COMP. STAT. 49/34, 49/35, 49/40 (West 2009).

78. *Id.* § 49/15.

79. *Id.* § 49/70.

80. *Id.*

81. There is even a section which grants immunity to licensed veterinarians who provide emergency care to humans at the scene of an accident. *Id.* § 49/60. But this is by no means the most bizarre of the Act’s provisions. Podiatrists, or foot doctors, are protected for emergency care provided in case of “nuclear attack.” *Id.* § 49/50. Similarly, respiratory care practitioners are safe in the event of nuclear attacks as well as hurricanes, earthquakes, and tornados. *Id.* § 49/55. Curiously, the section applicable to physicians makes no mention of

Samaritan Act's twenty-four separate sections is any protection for lay persons not trained in a particular field.

The lack of a section providing protection for untrained citizens becomes even more bewildering upon examination of the Good Samaritan Act's stated legislative purpose. The first section of the Act states that the legislature "has established numerous protections for the generous and compassionate acts of its citizens who volunteer their time and talents to help others . . . the provisions of this Act shall be liberally construed to encourage persons to volunteer their time and talents."⁸² The legislative purpose sounds acceptable when viewed in isolation, but the Act that follows fails to live up to the introduction. Nowhere in the legislative purpose is there any reference to physicians, EMTs, nurses, or any other type of trained citizen.⁸³ The purpose statement simply refers to "citizens" and "persons," categories that are far broader than the Act actually covers.⁸⁴ If the goal of the Good Samaritan Act truly is to encourage rescuers who voluntarily come to the aid of others by providing them immunity, then the Act must protect non-medical rescuers.

But there is a more problematic commonality among all of the existing statutory categories. Most are in the "business" of helping those in need in one form or another. An entire legislative Act that protects people doing what they are trained to do or otherwise performing the very same tasks they do each and every day as part of their paid employment is insufficient.

It is true that when involved in off-duty volunteer situations, these individuals are not being paid, but is it really necessary to encourage physicians, for example, to come to the rescue of those in need? Absent the Good Samaritan Act, would an off-duty physician not choose to help anyway? At least from a moral or ethical viewpoint we would hope that in such a situation a physician would be willing to assist even without the Act.⁸⁵ Some may disagree about whether physicians, police officers, and the Act's other categories of people truly need encouragement in rescue situations.⁸⁶ But the group of people who are most in need

any of these unique events. *Id.* § 49/25. Upon full examination, the random categories that make up the Good Samaritan Act appear to be piecemeal and sometimes arbitrary in who is and is not protected. California's simplistic approach, which eliminates the need for such a laundry list of categories, is preferable.

82. *Id.* § 49/2.

83. *Id.*

84. *Id.*

85. The American Medical Association's code of ethics agrees. SCHWARTZ, *supra* note 33, at 419 n.4. The code states the doctors should render services to the best of their ability when confronted with emergency situations where help is needed. *Id.*

86. In fact, many courts confronted with broad Good Samaritan statutes

of encouragement and protection in rescue situations are everyday citizens, who are not involved daily in the business of rescue or life saving.⁸⁷

On a purely theoretical basis, it might be argued that it is for that very reason that states should not encourage untrained lay persons to get involved in these dangerous situations.⁸⁸ But in actuality, this large segment of the population, who possess no medical training of any sort, is frequently the only available group near the scene of an emergency.⁸⁹ This was certainly the case in *Van Horn*, where EMTs did not arrive on the scene until after Van

have held that immunity should not apply to public officials such as these who have some form of pre-existing duty to aid others. Veilleux, *supra* note 41, § 12. The logic behind this conclusion is that these categories of rescuers need no inducement to help others. *Id.*

87. In 2008, ABC Primetime conducted an interesting experiment of Good Samaritan behavior as part of its "What Would You Do?" series. Thomas Berman, *Are You a Good Samaritan?*, ABC NEWS (Mar. 11, 2008), <http://abcnews.go.com/Primetime/WhatWouldYouDo/Story?id=4420829&page=1>. The network placed ads in the newspaper and online seeking people who were interested in appearing on television. *Id.* A group of twenty-two people was selected to meet with a network producer. *Id.* During this appointment, each person was asked to select a topic to discuss on camera by choosing one of several cards. *Id.* Unbeknownst to the volunteers, all the cards contained the topic of the Good Samaritan story from the Bible. *Id.* They were then told that they would be required to speak about this topic at a nearby studio. *Id.* Each was given precise instructions on how to walk to the studio, which took them directly through a small park where actors had been placed and instructed to appear in need of help by moaning and crying. *Id.* Some were given time limitations that required them to hurry, while others were not. *Id.* Even with the Good Samaritan freshly imprinted on their mind, many in the group did not stop to help. *Id.* Only thirty-five percent of those in a hurry stopped; eighty percent of those not in a hurry stopped. *Id.* Also, there were two actors, one black and one white. *Id.* The white actor was three times more likely than the black actor to receive help. *Id.* This experiment paints a sad picture of the effects of race and pressure on people's willingness to come to the aid of others as a Good Samaritan.

88. See Sebok, *supra* note 16 (articulating this argument and stating that in emergency situations nonmedical rescuers should actually be discouraged from involvement because the situations are "over their head").

89. Heroic stories of Good Samaritans coming to the rescue of those in need are commonplace. *E.g.*, *Bystander Saves Boy From Burning Building*, ABC NEWS VIDEO (Sept. 30, 2009), <http://abcnews.go.com/video/playerIndex?id=8717040>; *Stranger Saves Dog Attack Victim*, ABC NEWS VIDEO (Feb. 3, 2009), <http://abcnews.go.com/video/playerIndex?id=6796422>; Vikki Ortiz, *Good Samaritan in rescue saw car lights glowing in pond*, CHICAGO BREAKING NEWS (Oct. 1, 2009), <http://www.chicagobreakingnews.com/2009/10/car-drives-into-pond-in-wheaton.html>; *Boy Scouts Rescued From Grand Canyon*, ABC NEWS (Aug. 19, 2008), <http://i.abcnews.com/US/Weather/story?id=5606937&page=1>; Mike Celizic, *Good Samaritan felt mother's 'pain and panic'*, TODAYSHOW.COM (Aug. 27, 2007), <http://www.msnbc.msn.com/id/20462424/>. These stories indicate the need for Good Samaritan laws to protect good faith rescuers who courageously put their life on the line to help their fellow citizens and should not face lawsuits as a result of their bravery.

Horn had already been pulled from the wreckage.⁹⁰ Recall that one of the co-authors of the California amendment was a former highway patrolman of more than twenty years.⁹¹ He candidly acknowledged that he frequently arrived at emergency scenes to find citizens already assisting; it was his corresponding fear that such non-medical rescuers who aided in good faith may be liable to suit that led him to act quickly in amending the statute.⁹²

The Illinois General Assembly apparently sees no reason to provide immunity for non-medical rescuers who voluntarily come to the aid of their fellow citizens. If it did, another section could easily be added to the Good Samaritan Act. As recently as 2006, the General Assembly added a provision to the Act covering first aid providers.⁹³ The author of that bill stated that “people who are certified in first aid should be able to act without reservation in an emergency situation, and the law the Governor signed today will make that possible.”⁹⁴

The implied corollary is that people without first aid or other training should act with reservation in the very same emergency situation.⁹⁵ In failing to provide coverage for non-medical rescuers, the legislature has effectively decided on behalf of all Illinois citizens that those in need of rescue do not want untrained people aiding them.⁹⁶

90. *Van Horn*, 197 P.3d at 166.

91. Stateman, *supra* note 14; *see also supra* note 17 (detailing Representative Benoit’s initial reaction to the California Supreme Court’s ruling in *Van Horn*).

92. Stateman, *supra* note 14.

93. Press Release, Governor’s Office, Governor Blagojevich signs new laws to protect “Good Samaritans” who help injured people, Illinois Government News Network, Governor’s Office Press Release (June 2, 2006), <http://www.illinois.gov/PressReleases/ShowPressRelease.cfm?SubjectID=3&ReNum=4949>.

94. *Id.*

95. Of course, it is highly unlikely that any member of the Illinois General Assembly would ever make such a candid admission, but the text of the Good Samaritan Act makes this conclusion inescapable.

96. Perhaps this decision is evidence of our society’s obsession with autonomy and accomplishing everything on our own, without the need for anyone else’s help. But as Professor Gregory pointed out, even while acknowledging this questionable obsession we should still create laws to protect those who *do* admirably choose to help others of their own volition:

I suppose there is much to be said for the old Anglo-American attitude of minding your own business—except that as the world changes, other peoples’ business in more and more ways becomes yours. But I do not see how we can legislate charity, altruism, and courage—both physical and moral. Some things we can do. We can widen the area of immunity of rescuers from tort liability—and even criminal liability. We may even compensate them for harm they incur themselves.

Charles O. Gregory, *The Good Samaritan and the Bad: The Anglo-American Law*, in *THE GOOD SAMARITAN AND THE LAW* 38-39, (James M. Ratcliffe, ed., Doubleday & Company 1981).

C. *Analyzing Van Horn v. Watson under the Illinois Good Samaritan Act*

To bring this analysis full circle we return briefly to the *Van Horn* case.⁹⁷ The public was unhappy with the California Supreme Court's ruling, which employed a questionable and narrow interpretation of the state's Good Samaritan statute.⁹⁸ Result: good faith rescuers may be held liable.⁹⁹

Now move this entire story to Illinois. Had the same case reached the Illinois Supreme Court, it would undoubtedly reach the same result without the need for any narrow or questionable interpretation of Illinois law.¹⁰⁰ The Illinois Good Samaritan Act is exceedingly clear in providing no protection whatsoever for non-medical rescuers such as Torti. Consequently, the Illinois Good Samaritan Act fails to live up to its name.¹⁰¹

97. See *supra* notes 14-16 (detailing the negative reactions from citizens in California and the rest of the country to the California Supreme Court's ruling in the case).

98. *Id.*; *Van Horn*, 197 P.3d at 171.

99. *Van Horn*, 197 P.3d at 171. In other words, Torti was not entitled to the statutory grant of immunity. The result in the case stands in sharp contrast with the story of Mark Barnard, Michael David Landry, and Andrew Douglas Hilderman, three recipients of the 2009 Carnegie Medal for Extraordinary Heroism. *Carnegie Hero Fund Commission: Latest Carnegie Medal Awardees*, CARNEGIE HERO FUND COMMISSION, (Sept. 29, 2009), http://www.carnegiehero.org/awardees_recent.php. (click "September 29" in "2009" row for PDF). The three young Canadians were passing motorists who came upon the scene of a car accident by chance one evening. *Id.* A twenty-five year old woman had just lost control of her vehicle and driven off the highway and down an embankment. *Id.* The men worked together to cut the woman's seat belt and pulled her to safety away from the flames which had begun to engulf the car. *Id.*

Like Torti, none of the men were medical professionals or possessed any expertise in rescue situations: a carpenter, an electrician, and a landscape manager. *Id.* They were ordinary people who acted courageously to aid a fellow citizen in an emergency situation. *Id.* Yet they received a prestigious award for heroism and Torti is left to defend a lawsuit filed by her former friend. Fair? Certainly not in the eyes of Andrew Carnegie, the famed Pittsburgh steelmaker who set up the Carnegie Foundation in 1904 to honor civilian heroes and to provide financial assistance when these heroes are injured or killed as a result of their bravery. *The History of the Carnegie Hero Fund*, CARNEGIE HERO FUND COMMISSION, http://www.carnegiehero.org/fund_history (last visited Dec. 3, 2010). The Fund has awarded more than nine thousand medals and thirty million dollars in accompanying grants since its inception. *Id.*

100. For this reason it is highly unlikely that such a case will ever reach the Illinois Supreme Court under the existing state of the law. A good faith rescuer with no training or expertise would simply be unable to point to any section of the Act that comes anywhere close to providing immunity.

101. It bears repeating that this conclusion is based on the fact that the Bible's Good Samaritan possessed no medical training or expertise. LUKE, *supra* note 20. Thus, the Good Samaritan Act does not protect Good Samaritans in the original meaning of the term.

IV. PROPOSAL

For the Illinois Good Samaritan Act to be accurately titled, it must live up to its namesake and provide immunity to non-medical rescuers. The Illinois General Assembly should draft a new statute that provides broad protection for mere negligence to all rescuers who volunteer in good faith.

Protecting any person who comes to the aid of another in an emergency situation will bring the Good Samaritan Act more closely in line with its stated purpose of encouraging the “generous and compassionate acts” of citizens who courageously seek to help others in emergencies.¹⁰² At present, the Act more accurately encourages such action only by the limited groups of people expressly named in the various provisions. Additionally, the legislature should take the initiative to establish a restorative compensation fund for rescuers who are injured or killed as a result of their courageous actions.

A. Drafting a New Good Samaritan Statute

Drafting and implementing a new Good Samaritan law would be relatively simple and straightforward, as demonstrated by California’s swift and effective action. The California Legislature has provided a recent blueprint which can be copied in whole or in part. But California is by no means the only state which has a statute providing broad protection. For example, Minnesota and Wisconsin have similar statutes.¹⁰³ Between these three statutes

102. 745 ILL. COMP. STAT. ANN. 49/2 (West 2009).

103. The Wisconsin statute provides:

Any person who renders emergency care at the scene of any emergency or accident in good faith shall be immune from civil liability for his or her acts or omissions in rendering such emergency care. This immunity does not extend when employees trained in health care or health care professionals render emergency care for compensation and within the scope of their usual and customary employment or practice at a hospital or other institution equipped with hospital facilities, at the scene of any emergency or accident, en route to a hospital or other institution equipped with hospital facilities or at a physician’s office.

WIS. STAT. ANN. § 895.48(1) (West 2010). The Wisconsin Supreme Court most recently discussed the statute in 2006. *Mueller v. McMillian Warner Ins. Co.*, 714 N.W.2d 183, 186 (Wis. 2006). Interestingly, Wisconsin’s original Good Samaritan statute, which was passed in 1963, provided immunity only to medical professionals who rendered emergency care. Barry W. Szymanski, *The Good Samaritan Statute: Civil Liability Exemptions for Emergency Care*, 80-JUL WIS. LAWYER 10, 13 (2007). However, the state chose to extend the statutory protection to laypersons in 1977. *Id.* Over thirty years later, Illinois has yet to catch up with its northern neighbor. The Minnesota statute is similar:

A person who, without compensation or the expectation of compensation, renders emergency care, advice, or assistance at the scene of an emergency or during transit to a location where professional

there is ample room for the Illinois General Assembly to pick and choose as it sees fit in drafting its own piece of legislation.

Additionally, providing broad protection will bring much-needed simplicity to the Good Samaritan Act's current list of twenty-four provisions which each address a different category of people. The implementation of a new statute will necessarily eliminate the need for many of the current sections by subsuming their coverage. Thus, the end result will not only be simpler for citizens to understand, but it will also be easier for courts and lawyers to analyze without the need to examine multiple provisions currently totaling almost nine pages of text. Instead, Illinois courts will be able to focus on the new statute in cases other than those involving exceptional circumstances not covered under the provision's broad protection. In turn, this will better enable courts to develop uniform principles in interpreting the new statute, which can then be referred to by future courts faced with similar issues.

Drafting a new, broader Good Samaritan statute is a crucial step in furthering the legislature's desirable policy of encouraging people to come to the aid of their fellow citizens in emergency situations. It provides protection for those who would choose to help regardless of this encouragement.¹⁰⁴ But, implementing a new

medical care can be rendered, is not liable for any civil damages as a result of acts or omissions by that person in rendering the emergency care, advice, or assistance, unless the person acts in a willful and wanton or reckless manner in providing the care, advice, or assistance. This subdivision does not apply to a person rendering emergency care, advice, or assistance during the course of regular employment, and receiving compensation or expecting to receive compensation for rendering the care, advice, or assistance.

MINN. STAT. ANN. § 604A.01(2) (West 2010). The Minnesota statute is likely broader in the protection it provides because it covers the typical "care" as well as "advice or assistance" rendered at the scene of an emergency. *Id.* The statute was examined in detail in *Swenson v. Waseca Mut. Ins. Co.*, 653 N.W.2d 794, 796-800 (Minn. Ct. App. 2002).

Also recall that Wisconsin and Minnesota are two of the states that have chosen to impose limited duties on citizens in certain situations. WIS. STAT. ANN. § 940.34 (West 2010); MINN. STAT. ANN. § 604A.01(1) (West 2010); see also *supra* note 36 (noting the five states which have imposed similar duties and the typical penalty for violation of the statutes).

104. Although an enormous amount of scholarly debate has historically focused on the theoretical pros and cons of imposing a duty to rescue, recent empirical research suggests that this focus may be misplaced. David Hyman, *Rescue Without Law: An Empirical Perspective on the Duty to Rescue*, 84 TEX. L. REV. 653, 656-57 (2006). Professor Hyman conducted the first empirical study assessing the realities of the no-duty rule in society. *Id.* This stands in stark contrast with the amount of literature on the no-duty rule: every major treatise and textbook on torts contains a section on the topic, and over 100 law review articles have been written about the subject. *Id.* at 661-64. The ultimate conclusion of Professor Hyman's study was that despite the lack of a legal duty, morality invariably wins out in rescue situations: "rescue is the

statute need not be the end of the remedial progression. Additionally, the Illinois General Assembly should establish a fund to compensate good faith rescuers who are injured while aiding others.

B. Establishing a Compensation Fund for Good Samaritan Rescuers

Approximately seventy-eight Americans are killed every year as a result of their heroic actions when attempting to rescue someone else.¹⁰⁵ There is a lack of financial protection for these and other good faith rescuers who are injured in performing their courageous acts.¹⁰⁶ In these situations immunity from suit is certainly helpful, but as a society we should do more than merely provide legal shelter. There is often a need for funds to compensate good faith rescuers and their families who face financial burdens as a result of their actions.¹⁰⁷

All fifty states provide some type of financial assistance for crime victims.¹⁰⁸ Some states, such as Illinois, even extend eligibility for these funds to rescuers injured in seeking to protect victims of criminal acts.¹⁰⁹ Unfortunately, this concept has

rule—even if it is not the law.” *Id.* at 657. Thus, while the policy of encouraging rescue remains desirable even if minimal in its real-world effect, the high number of attempted rescues still suggests the strong need for protection of good faith rescuers.

105. *Id.* at 668.

106. Norval Morris, *Compensation and the Good Samaritan*, in *THE GOOD SAMARITAN AND THE LAW* 138-39, (James M. Ratcliffe, ed., Doubleday & Company 1981). Professor Morris stated:

It is so easy to talk about the failure of others; of how Good Samaritanship seems to be a dying art among others. There is another parable, something about a mote and an eye, which seems to me to have some relevance. Perhaps we should first talk about ourselves, and our failure to provide even minimum conditions financially to protect those amongst us who are willing to act the Good Samaritan.

Id. The results presented in this Comment suggest that this problem is a serious one, deserving of immediate attention. *Id.* This issue may lack the glamour of taking yet another run at reversing the no-duty rule, but it is a much more serious problem than the one that has preoccupied scholars who have written on the subject of the duty to rescue for the past two centuries. *Id.*

107. *Id.*

108. National Association of Crime Victim Compensation Boards Fact Sheet, <http://nacvcb.org> (follow the “Click here basic information on Crime Victim Compensation” hyperlink). These programs are administered separately by each state and assist approximately 200,000 victims and their families every year, paying out close to \$450 million annually. *Id.* Each state determines who is eligible, and what is eligible for reimbursement. *Id.* “The vast majority of the money to fund these programs comes from offender fees and fines, rather than taxpayer dollars, with about a third coming from the federal [Victims of Crime Act of 1984].” *Id.*; 42 U.S.C. 10601 (2010).

109. Crime Victims Compensation Act, 740 ILL. COMP. STAT. ANN. 45/1-45/20 (West 2010). Under the Act, eligible victims of violent crimes can apply to

frequently been ignored by state legislatures and commentators outside of the criminal setting.¹¹⁰ Not surprisingly, one noteworthy exception is California, which extends its victim compensation fund to Good Samaritans injured or killed in emergencies, not merely criminal situations.¹¹¹

The concept of creating a fund to assist injured Good Samaritans and their families and loved ones makes perfect sense. California has again provided a worthy model in this context.¹¹² Funding could be pooled from a number of resources such as civil fines, criminal fines, portions of punitive damage awards, or from a specially created portion of the state's budget. Alternatively, Illinois's current victim compensation fund could simply be extended to also compensate Good Samaritans, as California has chosen to do. The detailed financial nuances are beyond the scope of this Comment.

The concept is addressed here in hopes that the topic will receive deserved attention and discussion not only from the Illinois General Assembly, but also from other states nationwide. The ultimate goal should be to bring the state of the law in this area

receive up to \$27,000 for various unreimbursed expenses such as medical and hospital care, dental care, mental health counseling, lost earnings, replacement costs, and funeral or burial expenses. *Crime Victim Compensation: Frequently Asked Questions*, ILLINOIS ATTORNEY GENERAL WEBSITE, 1, http://www.ag.state.il.us/victims/CV_FAQ_0908.pdf. The term "victim" under the Act includes "a person who is killed or injured while attempting to assist a crime victim." *Id.*; 740 ILL. COMP. STAT. ANN. 45/2(d)(3) (West 2010). As a result, Good Samaritan rescuers who voluntarily come to the aid of crime victims are eligible for the Act's compensation.

110. This concept has not been overlooked outside of the legal sphere, however. See discussion *supra* note 100 (referring to the Carnegie Foundation's annual award of medals and accompanying grants for heroic rescuers who are injured or killed while risking their lives to help others).

111. The California Victim Compensation and Government Claims Board administers the state's more traditional Victims Compensation Program as well as the novel Good Samaritan Program. *Victim Compensation and Government Claims Board*, STATE OF CALIFORNIA WEBSITE, <http://www.boc.ca.gov/about.aspx> (last updated 2007). The Good Samaritan Program exists "[f]or the courageous person who selflessly responds to the needs of others" in challenging and unexpected situations. *Good Samaritan Program*, CALIFORNIA VICTIM COMPENSATION & GOVERNMENT CLAIMS BOARD, <http://www.boc.ca.gov/docs/brochures/GoodSamaritanProgram.pdf>.

Private citizens who have voluntarily come to the rescue of someone in "immediate danger of injury or death as presented by a crime, a civil or natural disaster or catastrophe, or other incident such as an auto accident or drowning" are eligible to receive up to \$10,000 in compensation for their resulting unreimbursed expenses. *Id.* The expenses covered include medical treatment, mental health treatment, lost wages, funeral and burial, and property loss. *Id.* The Good Samaritan simply must fill out an application, along with a corroborating statement from a public safety or law enforcement agency. *Id.*

112. *Id.*

more closely in line with basic notions of morality and fairness which are inextricably connected to the term Good Samaritan. The legal system should not turn a blind eye to these foundational non-legal concepts which undeniably underlie this area of the law.¹¹³

C. *Potential Ramifications*

If the Illinois General Assembly does not take action, it will soon find itself in the same unenviable position as its Californian counterpart. Now is a perfect opportunity to be proactive in making a change, rather than waiting to be forced to react to court action. If the legislature stubbornly chooses to stand fast it will almost certainly face heightened criticism and scrutiny when the public discovers the Good Samaritan Act's current lack of protection for citizens with no specialized training or expertise.

V. CONCLUSION

The recent case of *Van Horn v. Watson* has brought much-needed attention to the Good Samaritan topic nationwide. The California Supreme Court's analysis and conclusion was contrary to the most basic sense of morality and justice, thereby necessitating the need for expedient change. Fortunately, the citizens of California expressed their unhappiness and the Legislature moved quickly to remedy the problem. Unfortunately, the same potential problem currently exists in Illinois.

Illinois should take this opportunity to follow the lead of California and other states that currently provide broad protection to good faith rescuers under their Good Samaritan statutes. A new law providing broader protection to anyone who comes to the aid of their fellow citizen in an emergency situation would more accurately reflect the Good Samaritan Act's current stated purpose while also preserving the common law's historical adherence to individualistic autonomy evidenced by the no-duty rule. Finally, Illinois should either extend the state's victim compensation program to cover Good Samaritan rescuers who are injured or killed as a result of their courageous acts, or establish a new fund to achieve the same purpose.

113. In choosing to provide encouragement and assistance to Good Samaritans rather than continuing to ignore their plight, the law's approach will mirror that of the Good Samaritan. As Dr. Martin Luther King, Jr. said, "[T]he first question which the priest and the Levite asked was, '[i]f I stop to help this man, what will happen to me?' But . . . the Good Samaritan reversed the question: '[i]f I do not stop to help this man, what will happen to him?'" *I've Been to the Mountaintop*, Speech at the Mason Temple (Church of God in Christ Headquarters), Memphis, Tennessee (April 3, 1968). Video and transcript available at <http://www.americanrhetoric.com/speeches/mlkivebeentothemountaintop.htm>.