

THE DUTY TO RENDER ASSISTANCE AT SEA: IS IT EFFECTIVE OR ADRIFT?

For unknown reasons, a cabin cruiser sank on the night of November 21, 1970, leaving two men adrift in the icy waters north of Ballards Reef Channel, a narrow passage between the Great Lakes. The master of the bulk cargo vessel S.S. Sylvania failed to aid the two drowning men after hearing shouts of distress. Instead of rendering assistance, the master merely radioed the Coast Guard and another ship some distance astern.

Twenty minutes after the S.S. Sylvania had passed the men, the bulk cargo vessel S.S. Gypsum arrived and attempted to assist the men but was unable to reach them before they disappeared. Coast Guard efforts also proved unsuccessful. Eventually, the body of one man was recovered but no trace remained of the other. As a result of the master's failure to assist, both men lost their lives.

Newspaper accounts of the incident noted that ships hesitate to stop in the narrow passages between the Great Lakes because those channels are potentially dangerous. It was also mentioned that many masters will not stop for people found adrift in the passages unless imminent danger is apparent.¹

Since the advent of the ship, man has relied on the sea as a primary highway for economic and military transportation. Although the sea is an environment alien to man, the saving of human life, at least until the twentieth century, was generally considered only a common duty of humanity,² and not a legal duty. Thus, a person in danger at sea has always faced the disquieting

1. San Diego Union, December 3, 1970, § A, at 14, col. 2; San Diego Evening Tribune, February 10, 1971, § C, at 13, col. 1; San Diego Union, February 19, 1971, § A, at 5, col. 1; Letter from J.L. Brewer, Officer In Charge, Marine Inspection, United States Coast Guard, Detroit, Michigan, to writer, March 4, 1971, on file at the CALIFORNIA WESTERN INTERNATIONAL LAW JOURNAL Office. Included with the letter was the hearing report of the November 21, 1970 incident.

2. The Emblem, 8 F. Cas. 611, 612 (No. 4434) (D. Me. 1840). "Now, though the court is not authorized to grant a reward directly, for the discharge of this common duty of humanity, yet when it has incidentally led to the saving of property, it will not exclude it wholly from its consideration, in determining the amount of salvage upon the property."

thought that a vessel might pass without rendering assistance.³

Historically, the law of admiralty has not imposed a legal duty on a mariner to save life or property.⁴ Awards for rendering salvage service were based solely on the value of property salvaged.⁵ The life of a slave⁶ or cow⁷ has offered more potential for reward than the life of a free person.⁸ Thus, the preservation of man's life at sea has been relegated to secondary value *vis a vis* any property which may bring a monetary salvage award.

Today in the United States under the Salvage Act of 1912, an extension of the International Salvage Convention of 1910, a master or person in charge of a vessel has the statutory duty to assist persons in danger of being lost at sea.⁹ This Comment will analyze the 1912 Act and its predecessor, the 1910 Convention, to determine whether the duty has promoted assistance or proved ineffectual. The contention is submitted that the duty has lost significance through lack of enforcement and that revitalization is necessary.

I. ORIGINS OF THE DUTY TO RENDER ASSISTANCE

The Salvage Act of 1912 was enacted to harmonize domestic legislation with the International Salvage Convention of 1910.¹⁰ The Convention made an attempt to promote uniformity

3. S. REP. NO. 477, 62d Cong., 2d Sess. (1912). "For the purpose of this discussion, the terms salvage and assistance are used interchangeably. In American and British law, assistance and salvage have the same meaning. French law makes a distinction between the two terms; Assistance is rendered to a vessel whose officers are still in charge; Salvage is rendered to vessels abandoned."

4. G. ROBINSON, HANDBOOK ON ADMIRALTY 722 (1939).

5. SANDBORN, ORIGINS OF THE EARLY ENGLISH MARITIME AND COMMERCIAL LAW 26 (1930).

6. The Mulhouse, 17 F. Cas. 962, 967 (No. 9910) (S.D. Fla. 1859). "Compensation for saving life, except the life of a slave unconnected with the saving of property, is left by the law to the voluntary bounty of individuals."

7. The Dalzella, 12 F. Supp. 179 (S.D.N.Y. 1935) involved the salvage of cattle and a cattle float by a tug.

8. The Mulhouse, 17 F. Cas. 962, 967 (No. 9910) (S.D. Fla. 1859). "Suit in personam for saving the life of a free person, would be a novelty and probably could not be maintained, unless under very special circumstances, of an express contract."

9. Act of Aug. 1, 1912, ch. 268, § 2, 37 STAT. 242; 46 U.S.C. 728 (1912).

10. International Assistance and Salvage Convention, *opened for signature*, 37 STAT. 1658 (1910).

in maritime law through standardization of the rules of assistance and salvage.¹¹ Reference to the language of the International Salvage Convention and the United States Salvage Act will provide a basic understanding of the legal duty to assist and the extensions inherent in the 1912 Act.

Shipmasters are bound to assist people in danger at sea by Article 11 of the International Salvage Convention of 1910.

Every master is bound, so far as he can do so without serious danger to his vessel, her crew or passengers, to render assistance to everybody, even though an enemy, found at sea in danger of being lost.¹²

The duty set out by Article 11 is restricted in scope and has two basic limitations. First, it applies only to masters of vessels registered in one of the High Contracting Parties to the Convention.¹³ Second, the duty does not extend to vessels in public service or ships of war.¹⁴ While multilateral conventions are designed to regulate matters of general public importance affecting all peoples, such international conventions are usually binding only between the contracting parties. Any duty imposed upon masters of vessels registered in non-ratifying nations must come from general admiralty law. But since general admiralty law only provides a moral duty to compel masters of vessels and no impetus to save life except when property is involved, legal enforcement of a general duty to assist does not seem possible.¹⁵ Thus, it is apparent that some masters are not bound by the Convention simply because the state of their vessel's registration has not ratified the Convention.¹⁶ The only manner in which a master obligated un-

11. 4 HACKWORTH, DIGEST OF INT'L LAW 338 (1942).

12. 37 STAT. 1658, 1672 (1910).

13. 37 STAT. 1658, 1673 (1910), Art. 15 (3) states "[w]ithout prejudice to any wider provisions of any national laws, article 11 only applies as between vessels belonging to the States of the High Contracting Parties."

14. 37 STAT. 1658, 1672 (1910), Art. 14 provides "[t]his convention does not apply to ships of war or to Government ships appropriated exclusively to a public service."

15. GILMORE AND BLACK, THE LAW OF ADMIRALTY 443 (1957). "Historically, the saving of life was regarded as fulfilling a moral duty but not as entitling the salvor to a reward. Thus there was a natural temptation to save property first and look around for survivors later. Life salvors now have by statute a right to a 'fair share' of the award made to salvors who have saved property on the same occasion."

16. 37 STAT. 1658, 1673 (1910), Art. 17 allows "[s]tates which have not signed the convention are allowed to adhere to it on request. Such adhesion shall be notified through the diplomatic channel to the Belgian Government

der the duty could avoid compliance would be to demonstrate that a particular set of circumstances would seriously endanger his ship, crew, or passengers when attempting to render assistance.¹⁷ Unfortunately, the Convention did not provide a standard for determining serious danger but left the matter entirely to the personal judgment of the master.

The shipowner escapes liability for his master's refusal to render assistance.¹⁸

The owner of the vessel incurs no liability by reason of contravention of the foregoing provision.

Thus, shipowners do not have to warrant that their masters will adhere to the Convention, even though the ship in question is registered in a ratifying state. This omission of liability weakens the structure of the duty as it relates to commercial activities.

The Convention does not include penalties for failure to assist. Provisions to penalize for failure to assist depend upon legislative proposals by the parties to the Convention.¹⁹

The High Contracting Parties whose legislation does not forbid infringement of the preceding article bind themselves to take or to propose to their respective legislatures the measures necessary for the prevention of such infringements.

There is no assurance that the High Contracting Parties will enact future legislation to provide the necessary penalties for enforcement. Without enacting measures to prevent breach of the duty within a reasonable time, a nation ratifying the Convention accepts a duty that lacks the strength of enforcement provisions.

The 1912 Salvage Act²⁰ increased the scope of those owing that duty under the International Salvage Convention to include "persons in charge of a vessel . . ." and complied with the Convention by the enactment of penalties for failure to render assistance. Section 2 of the Salvage Act provides:

[t]he master or person in charge of a vessel shall, so far as he can do so without serious danger to his own vessel, crew, or passengers, render assistance to every person who is found at sea in danger of being lost; and if he fails to do so, he shall,

and by the latter to each of the other Governments. It shall become effective one month after the sending of the notification by the Belgian Government."

17. 37 STAT. 1658, 1672 (1910), Art. 11.

18. *Id.*

19. 37 STAT. 1658, 1672 (1910), Art. 12.

20. Act of Aug. 1, 1912, ch. 268, 37 STAT. 242; 46 U.S.C. 727-731 (1912).

upon conviction, be liable to a penalty of not exceeding \$1,000 or imprisonment for a term not exceeding two years or both.²¹

While increasing the potential number of persons owing the duty to assist, the problem encountered within the statutory language of the Salvage Act is the identification of those individuals belonging to the categories of master and person in charge.²² The statute can be interpreted to encompass a master or person in charge of any vessel, private or commercial, which is of course the preferred position of the person in danger at sea.²³ At present the troublesome question of who owes the duty to render assistance has not been fully determined and is open to speculation.

II. ENFORCEABILITY OF THE DUTY TO RENDER ASSISTANCE: WHAT IS THE PROBLEM?

Although Section 2 of the Salvage Act requires a master or

21. 46 U.S.C. 728 (1912).

22. The following general definitions of maritime law are applicable: A "maritime master" is the person to whom the government, control, navigation and crew of a merchant vessel are entrusted. *Martin v. Farnsworth*, 33 N.Y.S. Ct. 246 (1871). A "vessel" is "every description of water craft or other artificial contrivance used, if capable of being used, as a means of transportation on water." *REV. STAT. United States* 3, 1 U.S.C. 3; *Maryland Casualty Co. v. Lawson*, 94 F.2d 190, 192 (5th Cir. 1938). Persons in charge of a vessel is not defined by the Salvage Act of 1912 nor was the writer able to find a definition elsewhere. Persons in charge might be construed to include individuals who do not need a master's license because of the size of their craft and its purpose. Transportation has basic commercial overtones: "removal of goods or people from one place to another by carrier." *Gloucester Ferry Co. v. Pennsylvania*, 114 U.S. 196 (1884). A commercial vessel then is involved in the exchange of goods or property of any kind, *Jeu Jo wan v. Nagle*, 9 F.2d 309, 310 (9th Cir. 1925), and the transportation of persons by water. *Brennan v. Titusville*, 153 U.S. 289 (1894). Thus, it appears that "vessel" has a commercial connotation on its face and the "person in charge" is likely to be engaged in some commercial activity. If "capable vessel" is to be defined as fit, adapted, or able to carry or transport, *U.S. v. Sischo*, 270 F. 958, 961 (9th Cir. 1921) a better interpretation of vessel would include both commercial and pleasure craft. Assuredly, any pleasure craft is capable not only of transporting persons but also some kind of goods, whether the craft be specifically intended for that purpose or not. The conclusion may be drawn that if vessel means any craft then the entire maritime community bound by the Salvage Act of 1912 would be charged with the duty to render assistance.

23. *S. REP. No. 477*, *supra* note 3. The Salvage Act applies to sea-going and inland vessels alike in rendering salvage to their own kind or each other, no matter where the occurrence. Unfortunately a detailed discussion of who owes the duty is not provided in this report, but only that "[i]t is highly desirable that there should not be a different law for salvage services rendered between vessels engaged in inland navigation and those engaged on the High Seas. . . ."

person in charge of a vessel to render assistance to everyone in danger at sea,²⁴ no prosecution for breach of this duty has been recorded.²⁵ Since 1912, a number of people in danger of being lost at sea have been recovered from their plight. In some cases, the individuals saved have accused vessels of acknowledging their danger while refusing to render assistance.²⁶ Neither the 1912 Salvage Act nor the 1910 Convention states who should be entitled to seek legal action for the breach of the duty to assist.²⁷

One example of an attempt to gain civil redress is *Warschauer v. Lloyd Sabaudo S.A.*²⁸ Plaintiff and a friend were adrift on the high seas in a disabled motorboat without gas or food. That day defendant's steamship, the *Conte Biancamana*, passed within hailing distance of the motorboat. The steamship's operating personnel recognized the plaintiff's distress signal but refused to heed it. The condition of the sea was such that the two men could have been brought aboard the steamship without danger to the vessel or her crew. Two days later both men were rescued and returned to shore for medical treatment. Plaintiff suffered permanent physical injuries, pain, and medical expense.

Plaintiff's suit against the shipowner was dismissed because the 1910 Convention precluded shipowner liability for a master's failure to assist.²⁹ Assuming *arguendo*, that the parties to the liti-

24. 46 U.S.C. 728 (1912).

25. 4 BENEDICT ON ADMIRALTY 259 n.49 (6th ed. 1940).

26. *Warschauer v. Lloyd Sabaudo S.A.*, 71 F.2d 146 (2d Cir. 1934), Italian steamship passed two men in a drifting motorboat; *New York Times*, October 26, 1938, at 19, col. 5, Japanese steamer passed a disabled schooner with 5 men aboard; *Los Angeles Times*, July 27, 1970, § I, at 5, col. 3, The New Jersey fishermen spent seven days in a life raft and were passed by 14 vessels before rescue; *Los Angeles Times*, March 23, 1971, § II, at 1, col. 2, Fishing boats and pleasure yachts refused to aid 7 persons after motorboat capsized on shake-down cruise.

27. 46 U.S.C. 727-731; 37 STAT. 1658 (1910). The 1910 Convention mentions the duty is owed to everyone and that shipowners are not liable. Redress for breach of the duty is not mentioned. The 1912 Salvage Act provides fine or imprisonment for breach of the duty but says nothing about civil redress.

28. *Warschauer v. Lloyd Sabaudo S.A.*, 71 F.2d 146, 148 (2d Cir. 1934).

29. *Id.* The Court in *Warschauer* held that "the absence of precedent and the declaration of the treaty against liability on the part of the owner stands in his way. As a declaration of the views of the great maritime nations, the treaty needs no implementation by legislation. We are not at liberty to make new law in the face of that declaration."

It should be noted that the plaintiff was an American and the shipowner Italian. Both nations are parties to the 1910 Convention. TREATIES IN FORCE, January 1, 1970, at 314, 315. The major parties to the 1910 Convention are:

gation had belonged to the nation of the court taking jurisdiction, shipowner liability would be possible if that nation had laws on shipowner liability to supersede the Convention.³⁰ The *Warschauer* court, in *dicta*, would have held a master criminally liable if he failed to comply with the statutory duty to assist.³¹ If the plaintiff had brought suit against the master of the *Conte Biancamana* rather than the shipowner, civil liability might have been possible because the *Warschauer* court stated that the enactment of a criminal statute protecting a class creates a right to civil redress whenever an injury results from violation of the statute.³² Plaintiff, however, proceeded no further than to establish a cause of action against the master who allegedly violated Section 2 of the Salvage Act.³³

The master or person in charge of a vessel has an excellent chance never to be held accountable by an American court for failure to render assistance. The relative mildness of the penalties and the fact there are no prosecutions recorded to date³⁴ imply the duty can be discreetly overlooked when upon the high seas or in territorial waters. It is arguable that the person in danger at sea is faced with a hostile environment and infrequent or discretionary assistance.

A sizeable obstacle to enforcement of the duty to assist is determining what action by the master or person in charge would constitute a breach of the statutory duty. The duty to assist requires the master or person in charge to render assistance to persons found in danger of being lost. The issue becomes: at what point should the master or person in charge be aware that someone is in danger at sea? Conceivably, such an awareness should be incorporated into the vigilance that is necessary for safe navigation

Australia, Austria, Belgium, Canada, Denmark, France, West Germany, Greece, India, Italy, Japan, Netherlands, Norway, Spain, Sweden, Switzerland, U.S.S.R., Egypt (UAR) and the United States.

30. 37 STAT. 1658, 1673 (1910), Art. 15(2) states "where all the persons interested belong to the same State as the court trying the case, the provisions of the national law and not of the convention are applicable."

31. *Warschauer v. Lloyd Sabaudo S.A.*, 71 F.2d 146, 148 (2d Cir. 1934); *Lambros Seaplane Base v. The Batory*, 1954 A.M.C. 104, reversed 1954 A.M.C. 179 (1954). "A pilot occupant of a seaplane who asks an ocean liner at sea to take him on board, abandoning his plane must be so rescued, in view of 46 U.S.C. 728 which makes it a crime not to aid a person found in peril at sea."

32. *Warschauer v. Lloyd Sabaudo S.A.*, 71 F.2d 146, 148 (2d Cir. 1934); *Texas & Pac. Ry. Co. v. Rigsby*, 241 U.S. 33, 39 (1915).

33. *Id.* at 148.

34. 4 BENEDICT ON ADMIRALTY, *supra* note 25.

upon the high seas and navigable waters. However, the responsibility might be limited to the distance that could be reasonably covered by those individuals on watch. Thus, the greatest problem in regard to breach of the duty is factual proof that the person in danger at sea was, in fact, observed. This element of proof will turn on the circumstances of each case and the availability of witnesses.³⁵

The statute does not require that assistance be rendered if the vessel, crew, or passengers would be endangered. This determination rests squarely upon the shoulders of the master or person in charge.³⁶ Whether a particular decision was correct or in error must be judged in light of the existing conditions at the time of the alleged breach of duty. The statutory duty does not require heroics but indirectly elicits sound judgment that can be justified as action that would have been taken by anyone with similar nautical experience.

III. AN HISTORICAL LOOK AT ASSISTANCE

The common law promotes a distinction between action and inaction when determining the existence of duty and liability for negligence.³⁷ Action or misfeasance affects the person in danger by creating a new risk of harm while inaction or non-feasance is refusal to intervene and does not alter the dangerous situation of another.³⁸ Although liability for non-feasance has followed a

35. It should be noted at this point, however, that varying weather conditions can make it difficult, even for the most skilled mariner, to distinguish a man or small boat drifting in the ocean. Thus, to declare that the master or person in charge should be liable even though the person in danger was not seen would be asking too much. Under the language of the 1910 Convention and the 1912 Salvage Act, the master or person in charge must have found the person in danger before the duty to assist is breached.

36. ROBINSON, *supra* note 4, at 724. "He must necessarily be the sole judge, and he must make his decision on the spot and under the conditions then prevailing. Sometimes his passengers, who are safeguarded by his decision, and the newspapers ashore have undertaken to tell him what he might have done, and he may be called upon to face an official armchair review when he comes ashore. In the Gilbertian sense, his life is not a happy one."

37. Bolhen, *The Moral Duty to Aid Others as a Basis of Tort Liability*, 56 U. PA. L. REV. 217, 219 (1908). "There is no distinction more deeply rooted in the common law and more fundamental than between misfeasance and non-feasance, between active misconduct working positive injury to others and passive inaction, a failure to take steps to benefit others, or to protect them from harm not created by any wrongful act of the defendant."

38. *Id.* at 221.

slow evolutionary course, its extension greatly affected owners and occupiers of land and created an affirmative duty to act.³⁹

The moral obligation to aid another in danger has been generally denied over the years as a basis for legal duty and liability.⁴⁰ Exceptions have arisen when a specific relationship creates a duty.⁴¹ Where a refusal to become involved in the plight of another might cost that endangered individual his life, the only remedy available is found in the "higher law" and "voice of conscience."⁴² Thus, the motivation for rendering assistance has been based solely upon man's empathy for those persons found endangered and struggling.

When the duty to aid every person in danger of being lost at sea becomes statutory, fear of prosecution encourages men to comply with the statute. However, the individual contemplating assistance may be unwilling to act when the circumstances surrounding a particular situation present potential inconvenience or financial expense. Once the statutory duty to render assistance is breached, i.e., no justifiable excuse,⁴³ it is worthwhile to consider suggestions that would encourage persons to comply with the duty.

IV. SUGGESTIONS TO MAKE THE DUTY TO ASSIST EFFECTIVE

A. *Within the United States*

1. *Prosecution.*—One suggestion to improve the present situation is the prosecution of masters and persons in charge who fail to render assistance. To date, prosecution has been non-existent within the United States under the 1912 Salvage Act.⁴⁴ The dif-

39. W. PROSSER, *LAW OF TORTS* 335 (3d ed. 1964).

40. Mr. Justice Field in *U.S. v. Knowles*, 26 F. Cas. 800, 801 (No. 15,540) (C.C.N.D. Cal. 1864) "[I]t is undoubtedly the moral duty of every person to extend to others assistance when in danger. . . ." However, "if such efforts should be omitted by any one when they can be made, without imperiling his own life, he would by his conduct draw upon himself the just censure and reproach of good men; but this is the only punishment to which he would be subjected by society." Carpenter, C.J. in *Buch v. Amorg Co.*, 69 N.H. 257 says: "With purely moral obligations, the law does not deal."

41. 52 COLUM. L. REV. 631 n.18 (1952).

42. *Union Pac. R. Co. v. Cappier*, 66 Kan. 649, 72 P. 281 (1903).

43. 46 U.S.C. 728 (1912). The language of the statute states when a master or person in charge has a justifiable excuse from rendering assistance once a person is found in danger at sea. The pertinent language is "so far as he can do so without serious danger to his own vessel, crew, or passengers. . . ."

44. 4 BENEICT ON ADMIRALTY, *supra* note 25.

ficulty of measuring the utility and effectiveness of the present statute would be alleviated within the United States if prosecution were to take place whenever an incident occurred.⁴⁵ Outside the United States, prosecution of an offender by a foreign government may be difficult due to the injured party's travel costs, the time involved, or the potential obstacle in persuading the foreign government to take action. Under present circumstances, the measure of effectiveness attached to the duty of assistance is indicated by the lack of prosecution and the discretionary willingness of the Coast Guard to suspend or revoke a commercial master's license in lieu of prosecution.⁴⁶

2. *Increase the Existing Penalties.*—Practically, the existing penalties accompanying the duty are not severe enough to stimulate masters into action without the threat of prosecution. A \$1,000 fine or a maximum of two years in prison or both⁴⁷ are paltry when equated with human life. The argument that evaluation of any penalty is speculative prior to enforcement has lost significance after nearly sixty years without criminal prosecution for failure to render assistance. Thus, an increase in the amount of fine and/or term of sentence might stimulate the maritime community to comply with the duty to assist and take notice of those failing to render assistance.

3. *Judicial Interpretation.*—The language of the statute⁴⁸ should be tested to determine whether the duty to assist applies to anyone in control of a vessel. Judicial interpretation that the duty applies to all persons in control of any type of vessel would provide a larger and more meaningful scope to the duty. However, if the duty is interpreted only to apply to those vessels engaged in commercial ventures, many individuals owning pleasure craft will not only escape owing the duty to their fellow sailors but will be placed in jeopardy themselves.⁴⁹ It is difficult to perceive how the maritime

45. Letter from J.L. Brewer, *supra* note 1. "The prosecution of anyone under 46 U.S.C. 728 is initiated by the U.S. Attorney."

46. Letter from J.L. Brewer, *supra* note 1. "The Coast Guard can recommend prosecution, but did not in this case since Captain Wolters did request assistance from the U.S. Coast Guard." It is the opinion of the writer that "did request assistance from the Coast Guard" is not rendering assistance under 46 U.S.C. 728.

47. Letter from J.L. Brewer, *supra* note 1. "In fact, the statutory limitation of the fine under 46 U.S.C.A. 728 is light compared to the monthly salary of most masters sailing today."

48. 46 U.S.C. 728 (1912).

49. Los Angeles Times, March 23, 1971, § II, at 1, col. 2.

community and the public at large would benefit from the determination that only those individuals engaged in commercial activities are bound by the duty of assistance.

4. *Minimum License Requirements for Pleasure Craft.*—The rapid growth of pleasure boating within the United States has unfortunately increased the number of accidents.⁵⁰ At present only commercial masters are required to have a license to sail a vessel.⁵¹ If an individual is just as potentially dangerous to himself and those around him whether at the wheel of an automobile, airplane, or pleasure boat, it does not make sense to license two of the activities and not the third. Safety on navigable water or on the high seas begins with the qualification of those persons operating all vessels, commercial and pleasure. Integrated in this licensing program should be the notification of license applicants that the duty to render assistance exists and requires compliance. The existence of a minimum license requirement for operating pleasure craft would be beneficial to the entire maritime community from the aspect of safety and assistance.

5. *Civil Liability for Masters and Persons in Charge.*—Extensive research by the author has failed to disclose any recorded cases of a plaintiff seeking a civil remedy against a master or person in charge for breach of the duty. Although dismissal in *Warschauer* was based on a lack of shipowner liability,⁵² the court in *dicta* suggested that the plaintiff had established “a cause of action against the violator of the criminal statute . . .” but had not pursued that remedy.⁵³

Violation of a criminal statute creates a right of civil action if the injured person is a member of the class for whose benefit the statute was designed⁵⁴ and the resulting injury was the type which the statute was intended to prevent.⁵⁵ Also, the violation of a

50. *The Boating Boom: Admiralty Jurisdiction Inland*, 23 WASH. & LEE L. REV. 169 (1966).

51. 46 U.S.C. 224 (1908).

52. *Warschauer v. Lloyd Sabaudo S.A.*, 71 F.2d 146, 148 (2d Cir. 1934).

53. *Id.*

54. *Gorris v. Scott*, L.R. 9 Exch. 125 (1874); *Wright v. Carter Products*, 244 F.2d 53, 61 (2d Cir. 1957); *Fitzgerald v. Pan American World Airways*, 229 F.2d 499, 501 (2d Cir. 1956); cf. *Morris, The Relation of Criminal Statutes to Tort Liability*, 46 HARV. L. REV. 453, 473 (1933).

55. *Marshall v. Isthmian Lines, Inc.*, 334 F.2d 131, 134 (5th Cir. 1964); *In re Petition of American Dredging Co.*, 141 F. Supp. 582, 585 (E.D. Pa. 1956), reversed 355 U.S. 426, 442 dissenting opinion (1958); *Peigh v. Baltimore & O. R. Co.*, 204 F.2d 391 (D.C. Cir. 1953).

statute specifically designed for safety of life, limb, or property is negligence *per se*.⁵⁶ It would appear that the statute on assistance provides criminal sanctions and is designed for the safety of life or limb.

Some authorities urge that failure to mention civil remedy within a statute containing criminal sanctions is a deliberate omission and therefore failure to comply with the statute should not be considered as negligence.⁵⁷ Nevertheless, federal courts have inferred a private right of action from the violation of a criminal statute, although the only express sanctions are criminal.⁵⁸ Under these circumstances, it may not be unreasonable to conclude that maritime law is capable of imputing a civil right of action from the failure to comply with a criminal statute.

Once proof is offered to establish that a master in fact saw the person in danger, the issue becomes whether breach of the duty caused the injury. Assuming that the total amount of injuries resulted from remaining adrift at sea or on navigable water, analysis of the incident must determine: (1) when the failure to assist took place; (2) what was the survivor's situation when he was disregarded; and, (3) how much injury occurred between the breach of the duty and final assistance? It is arguable that regardless of what happened after the failure to assist occurred, any subsequent injury to the plaintiff was a foreseeable result of the environment in which the survivor was left. Thus, the failure to assist a person found in danger at sea would be the cause of some, if not all, of the plaintiff's injury.

6. *Shipowner Liability*.—The duty of assistance is imposed upon the master because of his position. Although the argument has been made that a commercial master should be able to transfer the burden of civil liability, if it exists, onto his employer, *respon-*

56. *Lester v. Atchison, Topeka and Santa Fe Railway Co.*, 275 F.2d 42, 45 (5th Cir. 1960); *Hamblin v. Mountain States Tele. & Tele. Co.*, 271 F.2d 562, 563 (C.C.A. 10th Cir. 1959); cf. Lowndes, *Civil Liability Created by Criminal Legislation*, 16 MINN. L. REV. 361 (1932).

57. See Thayer, *Public Wrong and Private Action*, 27 HARV. L. REV. 317, 320 (1914); see also Lowndes, *supra* note 56.

58. *Warschauer v. Lloyd Sabauda S.A.*, 71 F.2d 146, 148 (2d Cir. 1934); *Wheeldin v. Wheeler*, 373 U.S. 647, 662 (1963); *Wills v. Trans World Airlines, Inc.*, 200 F. Supp. 360, 364 (S.D. Cal. 1961); *Roosevelt Field v. Town of North Hempstead*, 84 F. Supp. 456, 459 (E.D.N.Y. 1949); *Neiswonger v. Goodyear Tire & Rubber Co.*, 35 F.2d 761 (N.D. Ohio 1929); but cf. *Odell v. Humble Oil & Refining Co.*, 201 F.2d 123 (10th Cir. 1953); 12 N.Y.U. L. REV. 301, 303 (1934).

deat superior is precluded due to the terms of the 1910 Convention.⁵⁹ There is reason for abolishing this protection in that the shipowner is responsible for hiring the master. Since the shipowner and his vessel can be held liable for a master's navigational mistake in a collision,⁶⁰ it does not seem unreasonable to make the commercial shipowner liable for the master's failure to assist.⁶¹

Since the recent decision in *Moragne v. States Marine Lines*⁶² made wrongful death a cause of action under general maritime law, the shipowner's chances for potential liability have increased.⁶³ Another approach might suggest that with every available master or person in charge rendering assistance when another shipowner's vessel sinks, the shipowner of the sunken vessel might be able to avoid some liability for wrongful death if those on board his ship are saved.

National legislation making the shipowner liable for his master's breach of the duty to assist would encourage the shipowner to be very cautious in the selection of masters. Increased caution in shipowner hiring practices might provide masters who would make very effort to comply with the duty. As noted previously,⁶⁴ the *Warschauer* decision does not promote this position. In advocating liability for the shipowner, this argument should apply to the owner of a non-commercial vessel as well. Liability should be based solely upon the fact of ownership, not the nature of the owner's business.

7. *Pure Life Salvage Award*.—Another suggestion to promote the duty to render assistance at sea contemplates the legislation of an award for pure life salvage. Historically, such an award has been opposed by the general maritime law on salvage.⁶⁵ The theory of a salvage award in Admiralty is founded upon the absence of a legal duty to aid a person or thing in distress.⁶⁶ Imbedded in

59. 37 STAT. 1658, 1672 (1910), Art. 11.

60. See GILMORE AND BLACK, *THE LAW OF ADMIRALTY*, *supra* note 15, at 152, 408 (1957).

61. *Id.* at 158, 162. Certainly, a deviation from course would not prejudice the shipowner's contract of carriage in that deviation to save life or property is not a breach of contract.

62. *Moragne v. State Marine Lines*, 398 U.S. 375 (1970).

63. See Note, *Setting Sail with Wrongful Death*, 1 CALIF. WEST. INT'L L.J. 151 (1970).

64. *Warschauer v. Lloyd Sabaudo S.A.*, 71 F.2d 146, 148 (2d Cir. 1934).

65. Jarett, *The Life Salvor Problem in Admiralty*, 63 YALE L.J. 779 (1954). This article presents an excellent discussion of pure life salvage and the problems inherent in the creation of such an award.

66. Robinson, *supra* note 4, at 710-711.

the concept of salvage is the idea that an award is made for saving property in peril at sea.⁶⁷ When a separate award is made for saving life concurrently with property, it must come out of the general award for property salvage.⁶⁸ The injustice in salvage law is thus the lack of an award for saving life alone.⁶⁹ A ship's crew that fails to save another vessel or its cargo receives nothing for saving the stricken vessel's crew.⁷⁰ The rationale for the absence of an award for pure life salvage rests on the courts' "hesitation to reward a man for doing what they consider his moral duty, the saving of life."⁷¹ Today, a master or person in charge of a vessel is threatened with criminal sanctions for failure to render assistance, yet his performance of this duty does not bring a material reward.⁷² In many situations, the risk to life salvors is greater than the risk in salvaging a vessel.⁷³ Ironically, there is no provision in the law of salvage for "repayment of any loss the master, shipowner or crew may suffer in saving lives."⁷⁴

Many sailors in need of assistance at sea, especially ones in small craft, are in danger because of their own negligence, foolhardiness or acceptance of excessive risks. Thus, it is unjust to burden commercial and private interests with the expenditures of money and time required to assist the negligent and foolish without some chance of reimbursement. The purpose of a pure life salvage award is to encourage those persons owing the duty to render assistance. The statement has been made that the creation of this award will "encourage the saving of life at sea and a reward is a well known means of stimulating to moral duty when human nature is halting and recreant."⁷⁵

There are several methods in which a pure life salvage award might be created. One method would be to develop the award around a national fund designed to pay out awards when life alone

67. *The Blackwall*, 77 U.S. (10 Wall) 1 (1869).

68. Robinson, *supra* note 4, at 717.

69. 23 CORNELL L. REV. 199, 235 (1938); 15 SCOTT L. REV. 44 (1899).

70. *The Emblem*, 8 F. Cas. 611, 612 (No. 4434) (D. Me. 1840); *The Mulhouse*, 17 F. Cas. 962, 967 (No. 9910) (S.D. Fla. 1859); *The Plymouth Rock*, 9 F. 413 (S.D.N.Y. 1881).

71. 17 *The Green Bag* 708 (1905).

72. Jarett, *supra* note 65, at 780.

73. 23 CORNELL L. REV., *supra* note 69.

74. Robinson, *supra* note 36; Jarett, *supra* note 65.

75. 17 *The Green Bag*, *supra* note 71, at 709.

was saved.⁷⁶ If all persons were required to have a license to operate a vessel, such a fund could be successfully endowed by diverting a portion of the license fee into the fund. Another method would be to require the person assisted to pay a reasonable sum for the cost of services rendered to him as long as he was able to pay. Since "the maritime nations of the world have always rendered assistance to seamen in distress without demanding a pure life salvage award",⁷⁷ such reimbursement would be arguably inconsistent with the humanitarian principles of life salvage.

While the 1910 Convention does not require remuneration from persons whose lives are saved, it does not preclude such a provision in the laws of the ratifying states.⁷⁸ The present law of the United States could be amended so as to provide for such an award.⁷⁹ Although the creation of a pure life salvage award has been proposed by some members of the legal community, to date it has not been acted upon.⁸⁰ It is long past time to do so.

B. *Within the International Maritime Community*

As a means to enhance the effectiveness of the duty to render assistance, the international maritime community might consider the following suggestions.

1. *Strengthen the 1910 Convention's Duty.*—A survey of the international maritime community on the subject of expanding the international duty so as to include a person in charge of a vessel would be worthwhile. The beneficial effect of the present duty is minimized by the fact that it applies only to masters of vessels. Publication and dissemination of the fact that the duty exists would be a means to remind everyone obligated under the 1910 Convention that the duty is still in effect. Also, the development of a uniform standard for enforcing the duty would eliminate the un-

76. Jarett, *supra* note 65.

77. Letter from Allan J. Weiss, Admiralty and Shipping Section, West Coast Office, United States Justice Department, to writer, March 10, 1971, on file at the CALIFORNIA WESTERN INTERNATIONAL LAW JOURNAL Office.

78. 37 STAT. 1658, 1671, Art. 9. "No remuneration is due from the persons whose lives are saved but nothing in this article shall affect the provisions of the national laws on the subject."

79. 46 U.S.C. 729 (1912). "Salvors of human life, who have taken part in the services rendered on the occasion of the accident giving rise to salvage, are entitled to a fair share of the remuneration awarded to the salvors of the vessel, her cargo, and accessories."

80. Jarett, *supra* note 65.

certainty engendered by the language of the Convention.⁸¹ An analysis of present legislative enactments of the Convention by the ratifying parties would disclose whether the duty is being complied with, if it is enforced, and what sanctions, if any, can be invoked against a breach of the duty. Also, civil liability for the master and shipowner should definitely be reconsidered.

2. *Pure Life Salvage Award.*—Development of a pure life salvage award on an international or national basis among the parties to the 1910 Convention would help stimulate and encourage the international maritime community to comply with the duty. It has been said that “payment of money for the saving of lives at sea would again revert the world to a situation of equating life with dollars. . . .”⁸² Such a position lacks appeal once life is lost as the result of a failure to render assistance. Furthermore, since salvors of human life are entitled to remuneration for their services under certain circumstances,⁸³ the value of life is equated with money to some degree. People in danger of being lost at sea need affirmative action and the development of such an award may stimulate affirmative action.

3. *Uniform Licensing Standards.*—The development of uniform and international licensing standards applicable to both commercial and pleasure vessels could eliminate irregularities among nations in their commercial licensing of masters as well as establish qualifications for persons in control of pleasure craft. Such uniform standards would help in the prevention of potential accidents and in the promotion of the duty to render assistance by reminding those applying for licenses that assistance must be rendered whenever possible.

V. CONCLUSION

The creation of a duty to render assistance should provide persons in danger at sea with a better chance for receiving assistance. However, the lack of recorded prosecution in the United States federal courts for failure to render assistance raises the question of whether the duty to assist has been meaningful since its inception.

81. 37 STAT. 1658, 1672 (1910), Art. 12.

82. Letter from Allan J. Weiss, *supra* note 77.

83. 37 STAT. 1658, 1672 (1910), Art. 9, second paragraph states, “[s]alvors of human life who have taken part in the services rendered on the occasion of the accident, giving rise to salvage or assistance, are entitled to a fair share

Although the duty promotes assistance of persons in danger, the motivating force behind the duty is negative. Life saving cannot be promoted merely by threat of fine or imprisonment. With the vastness of the sea, it is all too easy to turn one's head and proceed on course rather than go to the assistance of someone in danger of being lost. A look at past incidence of failure to assist suggests that negative motivation is not enough.

Since the duty promotes benevolent conduct, a positive stimulus might effectively counterbalance the negative aspect of the duty's sanctions. Of the suggestions to make the duty more effective, the creation of a pure life salvage award would probably be the most efficient method. A pure life salvage award could give those mariners owing the duty a beneficial reason to deviate from their course. With the rush of modern commercial activity, shipping schedules, and personal commitments, such encouragement is needed. A positive approach would gain vitality when based upon a monetary award. The funds for a pure life salvage award could be derived from the institution of licenses for all persons upon the seas or navigable waters. The obvious benefit from licensing, besides financing the award, would be that the qualifications of the average pleasure craft enthusiast would rise, thus decreasing the potential for negligence and accident.

As late as 1958, the signatories to the Convention on the High Seas when formulating Article 12, Section 1(a) borrowed some of the terms from Article 11 of the 1910 Convention. Article 12, Section 1(a) provides:

every state shall require the master of a ship sailing under its flag, in so far as he can do so without serious danger to the ship, crew or the passengers:

To render assistance to any persons found at sea in danger of being lost. . . .⁸⁴

The reiteration of the duty to render assistance in another international convention without providing a means of enforcing the duty is repetitious and lacks hindsight as well as foresight.

At present, the effectiveness of the duty to render assistance at sea is questionable. It is time for a reappraisal of this duty on an international and national level, so as to promote recognition

of the remuneration awarded to the salvors of the vessel, her cargo, and accessories."

84. 13 U.S.T. 2312, 2316; U.S. T.I.A.S. 5200; 450 U.N.T.S. 82 (1958).

and enforcement of a duty that is paramount to the life of any person in danger of being lost at sea.

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