Stephen Sugarman and the World of Responsibility for Injurious Conduct

Robert L. Rabin*

I.
FOREWORD

Professor Steve Sugarman has been a man for all seasons in the world of tort law. His published work runs across the spectrum of responsibility for injurer-based harm—embracing intentional misconduct, fault-based recovery, strict liability, no-fault compensation schemes, and social insurance.[1] In addition to this wide-ranging and cogent analysis of approaches to liability and compensation, Sugarman has complemented his system-based work with perspectives from the vantage points of history, public policy formation, and jurisprudential assessment of tort and tort alternatives.

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* A. Calder Mackay Professor of Law, Stanford Law School. My thanks to Miles Unterreiner for valuable research assistance.

1. Much of Sugarman's scholarship on tort and alternative compensation systems, up to 2014, can be found in three volumes: STEPHEN D. SUGARMAN, DOING AWAY WITH PERSONAL INJURY LAW (1989) [hereinafter SUGARMAN, DOING AWAY] (his social insurance scheme for replacing the tort system), STEPHEN D. SUGARMAN, "PAY AT THE PUMP" AUTO INSURANCE (1993) [hereinafter SUGARMAN, "PAY AT THE PUMP"] (his auto no-fault compensation proposal), and STEPHEN D. SUGARMAN, TORTS – A WIDER VIEW (2014) [hereinafter SUGARMAN, TORTS] (a collection of seventeen of his essays on tort law, written over the period of some twenty-five years). The remainder of his pre-2014 scholarship, and references to his post-2014 writings, can be found on his Berkeley Law faculty website. *My Publications*, BERKELEY LAW, https://www.law.berkeley.edu/our-faculty/faculty-sites/steve-sugarman/my-publications/ [https://perma.cc/2VJG-6RQ5].

Reviewing these accomplishments within the confines of a brief essay is a daunting task. Nonetheless, in the pages that follow, I will offer a window into the storehouse of Sugarman's work, which examines virtually every aspect of the U.S. system for addressing causal responsibility on behalf of those suffering personal injury at the hands of others.[2]

My coverage will unfold as follows. I begin with Sugarman's landmark initial excursion into the world of tort law—ironically, one might say—in which he advocated the *replacement* of tort with a social insurance scheme. Next, I discuss his more focused tort-replacement studies in the world of no-fault liability. Then, I examine his critiques of tort doctrine and his interdisciplinary perspectives on the system, which include historical and jurisprudential perspectives.[3] I conclude on a personal note.

II.
SUGARMAN'S OPENING VOLLEY: DOING AWAY WITH PERSONAL INJURY LAW

By 1989, when Sugarman published *Doing Away with Personal Injury Law*, tort law had arisen from a half century of slumber. Judge Cardozo's 1916 landmark opinion in *MacPherson v. Buick Motor Co.* had opened the gateway to the possibility of a robust negligence doctrine unshackled from the no-duty constraints that had burdened nineteenth-century tort law.[4] But notwithstanding *MacPherson*, tort doctrine had largely stagnated for another half century. Then, beginning roughly in the mid-1960s, tort law came to adopt more expansive duties of due care and a mixed system of strict and risk-benefit liability for defective products.[5] In the latter part of this new era of doctrinal expansion, legal academics—ranging from scholars of a libertarian and corrective justice bent to a boldly activated law and economics movement—generated a lively ideological debate over the optimal system of principles for assessing responsibility in tort.[6]

Coming at the tail end of this surge of doctrinal expansion and academic scholarship, Sugarman's volume was a tour de force. Beginning with a frontal assault on the efficacy of tort doctrine in the modern era, Sugarman offered a

2. Sugarman's work is often complemented by a comparative perspective, as well. In *Torts*, he devotes an entire section of the volume, Part II, to what he entitles "Learning from Other Countries"—his essays from a comparative law perspective. SUGARMAN, TORTS, *supra* note 1. In the realm of no-fault, an especially insightful essay is *Why Can't We Be More Like Quebec?*, which discusses the distinctive approach to no-fault compensation taken in that Canadian province. *Id.* at 156–88.

3. Just as Sugarman comes back frequently to comparative law perspectives, much of his work is attentive to the politics of tort reform. *See, e.g.*, SUGARMAN, TORTS, *supra* note 1, pt. III.

4. *See* 111 N.E. 1050 (N.Y. 1916). Judge Cardozo's opinion for the New York Court of Appeals lifted the bar of the privity doctrine to recovery for defective products. For discussion of the no-duty constraints, see generally Robert L. Rabin, *The Historical Development of the Fault Principle: A Reinterpretation*, 15 GA. L. REV. 925 (1981).

5. *See generally* Gary T. Schwartz, *The Vitality of Negligence and the Ethics of Strict Liability*, 15 GA. L. REV. 963 (1981) (discussing in detail these expansionary developments).

6. *See, e.g.*, ROBERT L. RABIN, PERSPECTIVES ON TORT LAW (4th ed. 1995) (collecting scholarly works).

compelling litany of the system's failures, including its inability to deliver effectively from the perspectives of deterrence, compensation, and fairness.[7] With regard to deterrence, he observed, "Self-preservation instincts, market forces, personal morality, and governmental regulation (criminal and administrative) combine to control unreasonably dangerous actions independently of tort law."[8] To these competing considerations, he added ignorance of the law, incompetence, and the fact that individuals frequently discount the threat of tort sanctions.[9]

Turning to the compensation goal, Sugarman offered withering criticism marshaling the long-standing data on uncompensated and undercompensated victims.[10] And then Sugarman challenged the academic scholarship—on the foundation of his foregoing observations of the system in action—in a chapter on the "illusionary" justice goals found in much of the literature.[11]

But his assessment of the unstable foundations of tort law served as the underpinning for the most innovative feature of his enterprise: advocacy for a singular social welfare scheme beyond bounded categorical no-fault programs such as workers' compensation and motor vehicle accident reparation. Sugarman's comprehensive strategy envisioned wholesale replacement of tort law, extending employment-based income replacement and health benefits to covered beneficiaries—irrespective of the source of their disability—in cases involving short-term needs (six months or less). Correspondingly, in cases involving longer-term income replacement, as well as most cases of disability experienced by the various categories of non-employed persons, coverage would be provided by an expanded Social Security system.

While Sugarman would abandon the use of the tort system for recovery of economic loss and most cases of pain and suffering, he expressed some ambivalence about ignoring intangible loss claims in serious injury cases—suggesting, in the end, the possibility of scheduled awards in the latter cases.[12] Importantly, accident prevention strategies would be left to the regulatory system.[13] Anticipating the argument that his comprehensive plan could be regarded as politically infeasible, Sugarman also outlined a more modest alternative proposal that would concentrate on replacing the tort system in short-term injury cases and on limiting its applicability in longer-term cases through

7. SUGARMAN, DOING AWAY, *supra* note 1, at 4. His critique correspondingly undermined the foundations on which the then-recent wave of academic scholarship rested.

8. *Id.*

9. *Id.* at 6–18.

10. *Id.* at 35–54.

11. *Id.* at 55–68.

12. *Id.* at 134, 180.

13. In view of a long history of regulatory capture, inefficacy, and underfunding, this prospect might give one pause.

the elimination of the collateral source rule and restrictions on pain and suffering recovery.[14]

III.
PIECEMEAL REFORM: NO-FAULT COMPENSATION

In 1993, when Sugarman published his volume *"Pay at the Pump" Auto Insurance*,[15] motor vehicle no-fault plans had been enacted in roughly half the states—following the highly influential model proposed in 1965 by Professors Robert Keeton and Jeffrey O'Connell in their volume, *Basic Protection for the Traffic Victim*. Keeton and O'Connell's proposal utilized a first-party structure building on the medical payments provision in conventional auto insurance policies that would cover medical expenses and 85 percent of wage loss up to a total of $10,000.[16] A deductible of $100 or 10 percent of the work loss, whichever was larger, would keep small claims from burdening the system and reduce the prospect of moral hazard. Insureds who wanted greater no-fault protection would be able to buy it. In any tort action against another driver, a judgment would exclude the first $10,000 of economic loss and the first $5,000 of pain and suffering.[17]

The Keeton/O'Connell model only modestly proposed replacement of tort in motor vehicle cases, albeit offering coverage for a substantial proportion of accidents involving relatively low-level injuries.[18] By contrast, Sugarman's "pay at the pump" proposal would eliminate virtually *all* tort litigation involving accidents arising out of the use of motor vehicles.[19] Recourse to tort would remain open only to those injured by egregious driver misconduct, and access to no-fault benefits would similarly be denied only to those engaged in egregious driving misbehavior.[20] Otherwise, in contrast to Keeton/O'Connell, there would be no cap above which tort would be available in serious injury cases.[21]

A singular feature of the Sugarman model is the financing provision, which relies on two funding sources: primarily, a tax based on fuel consumption (the

14. SUGARMAN, DOING AWAY, *supra* note 1, at 167–90. For a similarly comprehensive alternative system to tort, see P. S. ATIYAH, THE DAMAGES LOTTERY (1997).

15. SUGARMAN, "PAY AT THE PUMP", *supra* note 1.

16. ROBERT E. KEETON & JEFFREY O'CONNELL, BASIC PROTECTION FOR THE TRAFFIC VICTIM 273 (1965) (noting that the "new form of compulsory auto insurance" would cover "all out-of-pocket loss up to a limit of $10,000"); *id.* at 278 (noting that "a person losing $100 gross wages is presumed to suffer an $85 loss of take-home pay"). Under a complementary ceiling, lost wage payments would be limited to $750 per month. *Id.* at 8 (noting that the plan "prevents liability for more than $750 for work loss in any one month").

17. In suits against other defendants, such as railroads or car manufacturers, no deductions or exclusions would be made but the no-fault insurer would be reimbursed to prevent double recovery.

18. For comprehensive discussion of the limited success of the auto no-fault movement, see Nora Freeman Engstrom, *An Alternative Explanation for No-Fault's Demise*, 61 DEPAUL L. REV. 303 (2012).

19. SUGARMAN, "PAY AT THE PUMP", *supra* note 1, at 5–6.

20. *Id.*

21. *See id.*

"pay at the pump" provision) and, secondarily, charges based on driving and vehicle safety records.[22] In this distinctive approach, the Sugarman model seeks to incorporate fairness concerns (those who drive more would pay more), and deterrence considerations (taking into account driving and vehicle safety information).[23]

"Pay at the Pump" was hardly a one-shot venture for Sugarman. No-fault compensation is, in fact, a broader and continuing theme in his inventory of redress for manmade injury.[24] He would turn to the topic again in a paper that he and I coauthored on the September 11th Victim Compensation Fund.[25] In this essay, we probed the limits of no-fault disaster relief, suggesting that categorical benefits for victims of terrorist activity, as per the 9/11 model, represent an inherently unstable designation of the compensable event.[26]

We argued that "terrorist activity" is itself an elusive concept.[27] Would the long and varied list of contemporaneous mass shootings fall convincingly under the umbrella of terrorism? And what of mass disasters, such as inadequate precautions taken against flooding, hurricane, and wildfire devastation assignable to human activity? Clearly, these are scenarios apart from terrorism, and yet from a fairness perspective, arguably the injured victims are just as deserving of recompense on a no-fault basis when tort is unavailing as a source of recovery.

Sugarman explores these issues from a still wider perspective in an essay examining the multiple roles of governmental involvement when a catastrophic loss occurs. In *Roles of Government in Compensating Disaster Victims*, he observes that no-fault relief (as in 9/11) and tort are but two stratagems in an array of systemic approaches that include in-kind relief (such as FEMA relief)[28] and back-up governmental insurance (such as the Terrorism Risk Insurance

22. *Id.* at 15–22.

23. *See id.* Note the potentially regressive impact on low-income minorities here, since they are disproportionately likely to be reliant on long-distance driving to work and likely to have lower-safety vehicles. *See* Gillian B. White, *Long Commutes are Awful, Especially for the Poor*, ATLANTIC (June 10, 2015), https://www.theatlantic.com/business/archive/2015/06/long-commutes-are-awful-especially-for-the-poor/395519/ [https://perma.cc/WE7L-JKT4]; Emily Badger & Christopher Ingraham, *The Hidden Inequality of Who Dies in Car Crashes*, WASH. POST (Oct. 1, 2015), https://www.washingtonpost.com/news/wonk/wp/2015/10/01/the-hidden-inequality-of-who-dies-in-car-crashes/ [https://perma.cc/SF4Q-4CXE].

24. *See, e.g.*, Stephen D. Sugarman, *Compensation for Accidental Personal Injury: What Nations Might Learn from Each Other*, 38 PEPP. L. REV. 597 (2011) (discussing no-fault compensation in the context of other injuries, including airline, work, and home injuries).

25. Robert L. Rabin & Stephen D. Sugarman, *The Case for Specially Compensating the Victims of Terrorist Acts: An Assessment*, 35 HOFSTRA L. REV. 901 (2007).

26. *Id.* at 910.

27. *See id.* at 901–02, 912–13.

28. *See* Disaster Relief and Emergency Assistance Amendments of 1988, Pub. L. No. 100-707, 102 Stat. 4689.

Program),[29] along with private sources of self-insurance and charitable giving.[30] But Sugarman provides far more than a laundry list of possibilities; characteristic of his work, the essay carefully probes the limits of each source alongside the benefits provided.

IV.
CRITICAL ANALYSIS OF TORT DOCTRINE

From Sugarman's early sweeping indictment of the tort system, and from his corresponding explorations of the realms of social insurance and no-fault schemes as replacement systems for compensating injury victims, one might think that homing in on the particulars of tort doctrine would be far removed from Sugarman's intellectual agenda. Nothing could be further from the case. He has turned a watchful, critical eye to new installments of the Restatement of Torts.[31] And more broadly, he has published a series of commentaries on doctrinal analysis that pursue, in particular, three lines of thinking: (1) consolidating tort doctrinal categories, (2) articulating the policy reasons for circumscribing the duty of due care, and (3) clarifying the distinction between judicial determinations of no-duty and no negligence as a matter of law.

Let me say a few words about each. The first theme—consolidating doctrinal categories—is best illustrated by Sugarman's Restatement critiques. To take the most recent as illustrative, Sugarman's essay on the law of battery boldly proposes eliminating this long-standing traditional category of intentional harm by consolidating it with negligence law in a more general principle of wrongfully caused physical harm to persons.[32] Characteristically, he surveys every dimension of the fault principle in concluding that "the new tort [would be] intellectually more insightful as it anchors acts that now count as batteries more in their wrongfulness than in their intentionality as battery law does today."[33] Replete with detailed factual scenarios addressing the doctrinal elements necessary to establish a fault-based claim, Sugarman leaves no stone unturned: procedural requirements, liability insurance coverage, workers' compensation claims—all such collateral considerations fall within the confines of the essay.

In a second distinctive thematic turn, Sugarman explores the policy reasons for circumscribing the duty of due care. In the mine-run of accidental-injury

29. *See* Terrorism Risk Insurance Act of 2002, Pub. L. No. 107-297, 116 Stat. 2322.

30. Stephen D. Sugarman, *Roles of Government in Compensating Disaster Victims*, 6 ISSUES LEGAL SCHOLARSHIP, no. 3, 2007, at 13–16, 32, at i.

31. *See, e.g.*, Stephen D. Sugarman, *Restating the Tort of Battery*, 10 J. TORT L. 197 (2017) [hereinafter Sugarman, *Restating Battery*] (proposing that the Restatement should eliminate the physical harm battery as a separate tort, and instead embrace a tort of wrongful physical harm to persons); Stephen D. Sugarman, *Land-Possessor Liability in the Restatement (Third) of Torts: Too Much and Too Little*, 44 WAKE FOREST L. REV. 1079 (2009) (arguing that land-possessor liability should not be treated as a discrete subject but rather should be integrated into other sections of the Restatement).

32. Sugarman, *Restating Battery*, *supra* note 31, at 197.

33. *Id.*

cases, the duty to take reasonable precautions is simply assumed. Thus, liability in motor vehicle accident cases overwhelmingly turns on whether the driver has exercised due care; the threshold obligation to drive reasonably goes unquestioned. Similarly, medical malpractice claims turn on whether the physician has exercised due care under the circumstances, not on whether reasonable precautions were necessary. Sugarman would not question this broad-based duty obligation. Instead, he articulates categorical policy reasons that in some specific circumstances lead courts to curtail the legal obligation to engage in reasonable conduct: reservations based on moral norms, apprehensiveness about administrative infeasibility, concerns about crushing liability, and availability of an alternative remedy to tort.[34]

Closely related is a third theme in Sugarman's doctrinal explorations: the distinction between no-duty and no-negligence determinations. This point is somewhat more subtle but critically important. An example he offers in his discussion of the issue nicely illustrates the point. In *Harper v. Herman*, the court utilized no-duty analysis to determine that a sailboat owner owed no obligation of due care to a guest on his boat when, without warning, the visitor was seriously injured when diving in an area where rocks were present below the surface—an area with which the defendant was familiar.[35] In finding that the defendant boat owner owed no duty to the plaintiff diver, the court relied on the fact that there was no special relationship between the boat owner and the guest, a conventional requirement in such cases.[36] But, as Sugarman points out, the critical fact in the case is that there was no warning from the guest that he was about to dive into the water—a factor that should have led the court to conceptualize the case as no negligence on the part of defendant as a matter of law rather than no duty.[37] Confusions of this sort have consequences because the no-duty threshold is a question of law for the court to determine, whereas a finding of no negligence as a matter of law displaces a jury determination of due care, which would ordinarily be for the trier of fact.

An especially compelling illustration or clarification of conceptual analysis in Sugarman's work on doctrinal reform is his essay deconstructing the concept of assumed risk.[38] In cogent terms, he argues that the doctrine is, in fact, superfluous—devoid of independent utility. Putting aside express assumed risk (those cases involving exculpatory agreements), which test the border between contract and tort, implied assumed risk is traditionally categorized as either primary or secondary. Primary assumed risk is exemplified by the long-standing dismissal of claims by fans injured by batted balls at baseball games. These cases—indeed this category of cases—can be better viewed as no-duty

34. *See* Stephen D. Sugarman, *Why No Duty?*, 61 DEPAUL L. REV. 669, 671–88 (2012).
35. 499 N.W.2d 472 (Minn. 1993).
36. *Id.* at 474.
37. Sugarman, *supra* note 34, at 688–94.
38. Stephen D. Sugarman, *Assumption of Risk*, 31 VAL. U. L. REV. 833 (1997).

dismissals based on policy grounds supporting open-air viewing of the game, or alternatively, as no-negligence claims for corresponding risk-benefit reasons. Beyond baseball, conceptualizing this category of cases as an assumed-risk defense obfuscates the threshold determination of duty of due care through reliance on a superfluous, conclusory label.[39]

In contrast, secondary assumed-risk cases do involve breach of a duty of due care. But in these cases, a plaintiff is barred from recovery (or, in the modern era of comparative fault, partially barred) because of contributory fault. *Davenport v. Cotton Hope Plantation Horizontal Property Regime*[40] was decided after Sugarman's essay but still nicely tracks his approach. There, defendant landlord was negligent in failing to replace lighting over the middle of three outside stairways leading down to the ground level in an apartment complex.[41] But the plaintiff, an apartment resident who slipped and fell while descending the darkened middle stairway, was partially at fault because he failed to take one of the two well-lit side stairways.[42] Once again, assumed risk as a categorical defense adds nothing conceptually because it is redundant of contributory fault as a counter to a defendant's negligence.

Sugarman disentangles policy and doctrine in these scenarios with customary rigor and clarity. But he doesn't stop there. The essay proceeds to provide illuminating discourse on informed consent, assumed risk by contract, and duty to warn, as well—the Sugarman trademark of tackling a conceptual concern and then framing it in the broadest possible terms.[43]

V.
HISTORICAL PERSPECTIVES

History reveals itself as a prominent strand in the weave of Sugarman's engagement with the tort system and welfare-based alternatives. In view of his persistent commitment to critiquing and transforming traditional modes of thinking about injury law, it comes as no surprise that a historical perspective at times should emerge front and center in his work. A prominent example is his essay *A Century of Change in Personal Injury Law*, fittingly published at the turn of the new century.[44]

The essay canvasses the grand scheme of accident law as it evolved over the twentieth century. This exercise in interdisciplinary thinking reflects attentiveness to changes in legal culture, sociology of the profession, and institutional analysis. How has tort law evolved over these hundred years? It has

39. Sugarman's discussion is framed in the context of the well-known "Flopper" case, *Murphy v. Steeplechase Amusement Co.*, 166 N.E. 173 (N.Y. 1929). *See id.* at 833–36.

40. 508 S.E.2d 565 (S.C. 1998).

41. *Id.* at 567, 574–75.

42. *Id.*

43. Sugarman, *supra* note 38, at 857–76.

44. Stephen D. Sugarman, *A Century of Change in Personal Injury Law*, 88 CALIF. L. REV. 2403 (2000).

expanded, Sugarman recounts, through normative transformation of rights-based cultural attitudes, through the corresponding emergence of a specialized plaintiffs' bar, through the easing of restrictions on attorney advertising and promotion; through easier access to expert witnesses, and through the wider availability of liability insurance—to identify the most salient developments.[45] At the same time, limits that have been established on the tort system counter a century of growth. Most prominently, workers' compensation for employment-based injuries and, to a lesser extent, auto no-fault compensation for motor vehicle accidents replaced tort.[46]

To enrich the scope of his analysis, Sugarman draws on empirical data on the changing patterns of tort-claiming and critiques the growth (and influence) of ideological movements in torts scholarship, ranging from the law and economics movement to corrective justice and libertarian thought. Once again, he offers a map of a landscape with attention to all of its prominent features.

VI.
JURISPRUDENTIAL REFLECTIONS

Sugarman's principal contribution in this area grew out of the volume of essays he and I published, *Torts Stories*, which features in-depth treatment of leading cases in tort law.[47] He opted to contribute an essay on *Vincent v. Lake Erie Transportation Co.*,[48] a case of enduring interest to torts scholars.[49] But to Sugarman, the chapter on *Vincent* was simply a prelude to broad-gauged thinking about an individual's responsibilities to another in need of assistance.

Vincent is a staple of torts casebooks for good reason: a straightforward set of factual circumstances serves as a springboard to exploring intellectual perspectives on moral philosophy and economic theorizing. Defendant moored its ship at plaintiff's dock for purposes of unloading its cargo.[50] A violent storm arose, and defendant's ship captain was pressed to decide between navigating in hazardous waters or keeping the vessel moored to plaintiff's dock.[51] Choosing the latter option, the boat weathered the storm, but only after causing property damage to plaintiff's dock by keeping the lines fast.[52] Not surprisingly, plaintiff sought compensation.[53]

Strict liability? Fault? Intentional harm? Necessity as a qualifying circumstance? All are at play from a doctrinal perspective. And Sugarman deftly

45. *Id.* at 2409–13.
46. *Id.* at 2414–17.
47. TORTS STORIES (Robert L. Rabin & Stephen D. Sugarman eds., 2003).
48. 124 N.W. 221 (Minn. 1910).
49. Stephen D. Sugarman, Vincent v. Lake Erie Transportation Co.*: Liability for Harm Caused by Necessity*, *in* TORTS STORIES, *supra* note 47, at 259.
50. *Vincent*, 124 N.W. at 221.
51. *Id.*
52. *Id.*
53. *Id.*

discusses these competing themes in the context of a lucid treatment of the trial and appellate processes in the Minnesota state courts.[54] Then, in a brief concluding section, he turns to the scholarship on *Vincent*, and sketches out the moral and economic perspectives in the literature.[55]

But his brief engagement with the scholarship in the concluding section of his *Torts Stories* chapter set the stage two years later for a remarkable 150-page essay, which exhaustively engages with philosophical and economic views representing every conceivable viewpoint on the circumstances when exercising self-help in the course of an emergency causes damage to an involuntary rescuer.[56] Virtually all of this scholarship supports the majority view of the Minnesota Supreme Court, holding the defendant to an obligation to compensate the plaintiff for the damage to the dock.

Strikingly, Sugarman takes a contrary position, offering a line of reasoning that raises the stakes in *Vincent* to the most salient considerations of moral obligation. In his own words:

> My position rests on these values. First, I believe that people should be under, and should feel themselves under, a moral obligation to help others in relatively easy rescue situations . . . . In the society in which I would like to live, ordinary people would readily act upon that obligation without expecting to be paid for what they do . . . . Indeed, when fate picks you out to be the one to rescue a fellow ordinary citizen, I believe that this provides you with what should be a welcome (but rare) opportunity to demonstrate your commitment to this important social norm.
>
> . . . .
>
> Second, if you (whose property is consumed or harmed) decide afterwards to make a claim for compensation against the self-help rescuer, you are, in my view, saying that you do not want, and implicitly, would not have wanted, simply to make a gift of what was necessary for the person in need. Unwilling simply to share what was initially yours, you seek recovery so as to force your loss on the self-help rescuer.[57]

The subtlety of Sugarman's argument cannot be conveyed in this brief Article. Nonetheless, it is a fitting note on which to conclude this commentary on his scholarship. Never content exclusively to take a first cut at addressing accident law policy or doctrine, he consistently plumbs the depths of any problem that engages his intellectual curiosity.

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54. Sugarman, *supra* note 49, at 262–78.

55. *Id.* at 283–90.

56. Stephen D. Sugarman, *The "Necessity" Defense and the Failure of Tort Theory: The Case Against Strict Liability for Damages Caused While Exercising Self-Help in an Emergency*, 5 ISSUES LEGAL SCHOLARSHIP, no. 2, 2005, at i.

57. *Id.* at 2.

VII.
CONCLUDING THOUGHTS: A PERSONAL NOTE

Beginning with a volume of essays on tobacco regulation we edited collaboratively in 1993, Steve Sugarman and I embarked on a scholarly enterprise that would span the succeeding years, publishing three volumes of collected work and stand-alone essays.[58] The intellectual rewards to me have been invaluable. In addition to Steve's wide-ranging, creative attributes—which I have attempted to note in this essay—his passion for intellectual engagement, leavened by a disarming modesty and openness to contrary ideas, has been matchless in my experience.

The Sugarman scholarship speaks for itself. Beyond this, he and I formed a personal relationship that has endured through the many years that we have worked together. It has been a rewarding journey.

58. SMOKING POLICY (Robert L. Rabin & Stephen D. Sugarman eds.,1993); REGULATING TOBACCO (Robert L. Rabin & Stephen D. Sugarman eds., 2001); TORTS STORIES, *supra* 47.

Steve and I first met in our student years, more than a half century ago, when we were both participants in the law and social sciences program at Northwestern University. But our contacts back then were casual: Steve was a student at the law school and I was doing graduate work in the political science department, having earned my J.D. from the law school one year earlier. After our academic studies concluded, we went our separate ways, meeting only occasionally as our professional paths brought us back together geographically (Berkeley and Stanford) and professionally (mutual interest in tort law and alternative systems for compensating and regulating issues of public health and safety). And then, a focused engagement in the public health concerns related to tobacco use initiated the collaborative pathway noted above.