

Exploring Our Duties and Bad Samaritan Laws

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By **KERRY YANG**

In the time of the #MeToo era, discussion regarding the prevention of sexual crimes is extremely important, especially on college campuses. Dr. Zachary Kaufman, a Stanford University lecturer, visited Colorado College to educate the student body on sexual assault. His talk, given on March 1, discussed the dire need for a stronger approach to decreasing sexual violence.

Kaufman presented in Gates Common of Palmer Hall, which was attended by students and faculty of the political science department, along with members of the Student Organization for Sexual Safety. A highly decorated academic, he currently serves as a senior fellow at Harvard University's John F. Kennedy School of Government, as a lecturer at Stanford Law School, as a term member of the Council on Foreign Relations, and as a member of the International Institute for Strategic Studies. Additionally, he is a fellow of the Truman National Security Project, an organization that advocates for national and foreign security issues, attesting to his active role in social justice.

Before exploring the framework of a "bad Samaritan" law that criminalizes bystanders and incentivizes upstanders, Kaufman asked the audience, "In a time of crisis, what, if any duties, do we owe one another?"

Kaufman defined the law as "statutes that impose a legal duty to assist others in peril through intervening directly, also known as the duty to rescue or notifying authorities, also known as the duty to report" and said they are "distinct from good Samaritan laws, which provide legal protection for upstanders."

He differentiated between bystanders and upstanders, explaining how "bystanders are people who are aware of an incident but don't take part, and upstanders are those who intervene to help others in need." He further emphasized the importance of creating new laws that punish bystanders who passively watch as "criminalizing sexual abuse is clearly inadequate. Calling on third parties, including men and boys to combat this epidemic voluntarily, has likewise proven insufficient. We must consider new strategies that prevent and punish such heinous crimes."

Kaufman discussed the controversy bad Samaritan laws face. "They punish character rather than conduct, that they are typically vague, and thus difficult to prove, and infringe individual liberty," such as the loss of agency for victims, he said. They are also "criticized for potential negative effects such as they may prompt a constitutional self-incrimination if the witnesses are involved in a same or related crime and may even be counterproductive." But Kaufman countered that despite the controversy, "these statutes already exist all over the United States." Kaufman continued that the "situation is that there is a patchwork of bad Samaritan laws, their existence is little known," and that the issue lay within the legal scripture of the laws, not the law itself.

Furthermore, he argued that even without the active enforcement of the law, civilians have played a role in promoting upstander-ism using technology. "Recent revelations and outrage over sexual misconduct in the United States coincides with technological advances that facilitate upstanders," Kaufman said. He also commented on the widespread use of social media and noted that it "can be and has been used to increase awareness of emergencies, to decreased justification of not reporting them and strengthen evidence of witnesses."

Kaufman pointed out that "the #MeToo movement has shown not only how brave survivors of sexual abuse are, but also how often third parties disregard or even enable them." These instances demonstrate how "Americans are appalled at simultaneous revelations of numerous cases across the country including some such as [Harvey] Weinstein and [Larry] Nassar that involve many victims. As such, it places an opportune moment to revisit the question of criminalizing bystanderism." So again, as Kaufman asked, "In a time of crisis, what, if any duties, do we owe one another?"