

In the air

Who is my neighbour?

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On 26th August 1928, Miss May Donoghue and a friend entered the Wellmeadow Café in the town of Paisley, in central Scotland, to refresh themselves on that hot summer's afternoon. May's friend bought her a tumbler full of ginger beer and ice cream and the thirsty young woman gulped it down eagerly.

As the friend was pouring the rest of the ginger beer into her glass, out floated the decomposed remains of a dead snail that had been in the bottle, invisible through the dark opaque glass. Horrified by this revolting spectacle and thinking of the long draught of ginger beer she had just taken, May Donoghue began to feel extremely unwell. The mental and physical distress she suffered was to degenerate into a serious illness.

Miss Donoghue was a fighter and when she recovered she took the manufacturer of the ginger beer to court. She claimed he had been negligent and in breach of the duty he owed to her as a consumer by producing the polluted drink that had made her ill. And as this Scottish shop assistant was the first person to raise the issue of manufacturers' legal liability, the case went up through the courts and eventually reached the supreme jurisdiction, the House of Lords, four years later. The judgment in the case of *Donoghue v. Stevenson* was to go down as one of the greatest in English legal history.

Donoghue (or M'Alister, since May had meanwhile got married) v. Stevenson is generally considered as the foundation stone of the modern law of negligence.

Their Lordships were not called upon to judge the case on its facts but were asked to pronounce on the legal issue involved: whether or not the manufacturer owed any „duty of care“ to Mrs McAlister and whether she therefore had a cause for action.

In his judgment – it ran to eighty pages – Lord Atkin of Aberdovey noted the difficulty of discovering in English law a general principle for defining the relations between people that give rise to such a duty. He decided to formulate one and drawing on God's injunction on Moses to „love thy neighbour as thyself“ laid down his famous „neighbour principle“, a statement of the circumstances in which one person owes a duty of care to another and the nature of that duty:

„You must take reasonable care to

avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Who, then, in law, is my neighbour? The answer seems to be persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being affected when I am directing my mind to the acts or omissions which are called into question.“

Who is my neighbour? Lord Atkin asked the question in order to define the specific rights and obligations that obtain between „neighbours“ in the legal sense. But it is a question we are always having to confront in our everyday lives. Who is my neighbour to whom I owe a duty of care? – less in the negative sense, that I should avoid doing them injury, but in the positive sense, that I should work actively for their good.

Or on the subjective level: who is my neighbour that I am I called upon, as a normal sentient human being, to care about, whose fate concerns me?

In the past – a long time ago now – before newspapers and later radio and later still television brought you news from abroad, news about strangers, your knowledge of the world was limited to the place where you lived, your family and the people in your community. It probably never occurred to anyone to ask who their neighbour was, because it was obvious: you simply cared for, and about, the people who were part of your life.

Gradually the media have broadened our horizons, filling our hearts and minds with stories from foreign places and inviting us to share the lives of people we have nothing to do with. We have learned a different kind of caring, at once easier, in that we are not directly involved, and harder, because we feel concern but cannot do anything to help.

Over time, this situation has become ever more acute – with globalisation, and as large sections of the media have abandoned their original mission to in-

form in favour of producing sensational „news“ packages designed to attract audiences (and advertisers).

We are bombarded every day with images from all over the globe of catastrophes, natural and man-made, the horror, tragedy, misery and absurdity that make up the day-to-day life of more and more people worldwide. The huge-eyed, frail-boned children lying passive in the laps of worn-out mothers, the weary refugees heading for illusory safe havens, the women and girls abused and exploited, desperate workers demonstrating to save their livelihoods, people staring mutely at the ruins of their homes, people running from tanks and guns or herded together behind illegal bars ...

Are these people
our neighbours?

We read about them or see them and we cannot remain indifferent. These strangers are turned into our neighbours because they are made to exist for us and because we care.

And yet our caring in most cases is frustrated. We are vicariously involved in situations we have no influence over, in which we cannot intervene, can do nothing to help.

We learn, we empathise, but ultimately we are left there, with all our pity and rage, feeling helpless. The knot in our stomach tightens as frustration grows. We are constantly aware of a sense of failure – failing ourselves as human beings with moral standards and failing in our duty of care to our neighbour – a duty that we cannot discharge. That way lies madness ...

May McAlister ended up mad. She spent the last years of her life in total obscurity in the Garloch Mental Hospital, ... today the site of a park dedicated to the celebrated case that brought fame to the town of Paisley.



Lord Atkin of Aberdovey: „Who is my neighbour?“