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THE BYSTANDER IN THE BIBLE

The Reverend Doctor John C. Lentz, Jr.*

*“[T]he Bystander [is] an individual who observes another in clear distress but is not the direct cause of the harm. A culpable bystander is one who has the ability to mitigate the harm but chooses not to.”*¹

I. INTRODUCTION

In his new book entitled *The Crime of Complicity: The Bystander in the Holocaust*, Professor Amos N. Guiora asks the simple, but obvious question: why didn't anyone do anything to stop the horrors perpetrated on the Jews, and others, who were murdered, imprisoned, and abused by the Nazis? How could presumably “good,” even religious, people stand by and allow this to happen? Of course, the simple question raises a myriad of complex answers.

What sets Guiora's study apart from the other works that investigate bystanders in the Holocaust are his methodology and goal. In this recent work, he shares his family's Holocaust story.² He interviews many Jewish survivors; listens to non-Jewish citizens who stood and watched the round-ups, marches, and the forced walks to the train stations where millions were transported to concentration and death camps. Guiora does not accept the excuses that people did not know what was going on or that they *wanted* to help but were fearful of retribution.³ His conclusion is that the Holocaust would not have happened if people would not have been “bystanders” but rather had helped or, at very least, raised a voice of protest.

He then takes the historical leap from the 1940s to our contemporary world where he sees increasing examples of individuals standing by and watching while others are hurt, raped, and sometimes killed. The increase of reported sexual assaults on college campuses is of particular interest to him. Guiora proposes that laws should be written and passed to hold the bystander complicit of the crime of standing by and doing nothing to alleviate the situation.⁴ He argues that assuming that people will do the “right” thing, or react from some instinctive or learned moral, religious, or ethical norm, is simply not good enough.⁵

* © 2017 The Reverend Doctor John C. Lentz, Jr. Lentz is Pastor of Forest Hill Church Presbyterian in Cleveland Heights, Ohio. Special thanks to Pat Jenkins, Peg Weissbrod and Dave Bell for their help in the critical reading of this essay.

¹ AMOS N. GUIORA, *THE CRIME OF COMPLICITY: THE BYSTANDER AND THE HOLOCAUST* 85 (2017).

² *Id.* at 11–18; 37–51.

³ *Id.* at 32–36

⁴ *See id.* at 132–39; 181–83; 190–94.

⁵ *See id.*

It is a compelling argument. It is reminiscent of Dr. Martin Luther King, Jr.'s admonition in a speech given in 1963 at Western Michigan University:

Now the other myth that gets around is the idea that legislation cannot really solve the problem and that it has no great role to play in this period of social change because you've got to change the heart and you can't change the heart through legislation. You can't legislate morals. The job must be done through education and religion. Well, there's half-truth involved here. Certainly, if the problem is to be solved then in the final sense, hearts must be changed. Religion and education must play a great role in changing the heart. But we must go on to say that while it may be true that morality cannot be legislated, behavior can be regulated. It may be true that the law cannot change the heart but it can restrain the heartless. It may be true that the law cannot make a man love me but it can keep him from lynching me and I think that is pretty important, also. So there is a need for executive orders. There is a need for judicial decrees. There is a need for civil rights legislation on the local scale within states and on the national scale from the federal government.⁶

Essentially what Guiora is arguing for is this: judicial activism to compel people to report a crime committed by another or face criminal charges for not acting.⁷

Throughout Professor Guiora's career he has honed the pedagogical methodology of including diverse voices to any conversation he is in. His new study on the bystander is no exception. In this edition of the *Utah Law Review* and the Symposium held at the University of Utah, S.J. Quinney College of Law, *The Bystander Dilemma: The Holocaust, War Crimes, and Sexual Assault*, lawyers and historians were included to give their expertise on legal issues pertaining to the holocaust and jurisprudence concerning one's duty to act to help one in need. Anyone can see the importance of the voices of these experts. Perhaps less obvious is to include the voice of a Christian pastor. However, given Guiora's critique of both religion and morality as sufficient motivators in human action for the good, perhaps an opinion of a "professional" religious person was necessary.

While in agreement that individuals should take positive action to help someone in need, I am not in agreement that religion and morality should be dismissed so easily. The Biblical imperative concerning the treatment of the neighbor, caring for the "widow and the orphan," welcoming the stranger, and being actively engaged in the support of the most vulnerable, is found in virtually every book of the Bible. I do not believe that one can have a comprehensive discussion on proposing a legal compulsion to act on behalf of another, as Guiora

⁶ Martin Luther King, Jr., Lecture at Western Michigan University (Dec. 18, 1963), <http://www.wmich.edu/sites/default/files/attachments/MLK.pdf> [<https://perma.cc/9JWQ-B2VZ>].

⁷ GUIORA, *supra* note 1, at 181–194 (laying out the elements of criminal liability for not acting).

does, without an understanding of the moral Biblical framework behind the law that is being proposed. Furthermore, I do not believe that law and religion should be, or can be, separated. The laws of any country express the cultural norms—dare I say the “religion” or “spirit”—of that society or culture.

Therefore, the task I have set for myself is this: to survey the writings of the Bible, both the Hebrew Scripture (more commonly known as the Old Testament) and the New Testament, to find verses, passages, and stories, that directly address, or indirectly explore, the issue of the “culpable” bystander (one who could help but doesn’t) and what is due the victim. As a Christian, no doubt my experience and education will influence, and indeed, limit my perspective. It is my intent, however, to be as open to Jewish scholarship and the Hebrew text as I can be, for the New Testament is inexorably shaped by the Hebrew Scripture. Everywhere in the New Testament when the writer mentions “scripture” he assumes the reader knows it is the scripture of the Jews that he is talking about. Jesus was a Jew and, as a first century Jewish peripatetic teacher, he interpreted his ancestors’ shared sacred texts. His teaching on the “Kingdom of God” and his awareness of his own mission was shaped by the vision of the prophets.

In the following section I shall comment on the institutional church’s complicity as “bystander” during the Nazi era in Germany. Part III includes a brief comment about whether helping those in need is actually a normal thing to do. Aware that this is a Biblically based article in a law review journal, it is important to explain my methodology and set the agenda before entering the ancient world of the Hebrew and Christian scriptures.

II. THE INSTITUTIONAL CHURCH AS BYSTANDER

Before beginning this survey of the Biblical texts, it is necessary for one who makes a living as a religious leader to admit that during the darkest period of the twentieth century Christians were, for the most part bystanders; and in many cases culpable bystanders. The murder of 6,000,000 Jews, along with numbing numbers of gypsies, homosexuals, socialists, and the physically and mentally impaired, during the Nazi reign of terror in the 1930s and ‘40s give grotesque and horrific testimony to the fact that, with few exceptions, non-Jewish Europeans did nothing to help their Jewish and other vulnerable fellow citizens. For the most part, people stood by and watched as Jews were marched off to the gas chambers, work camps, and death camps. As Daniel Jonah Goldhagen has detailed in *Hitler’s Willing Executioners: Ordinary Germans and the Holocaust*,⁸ ordinary German citizens were complicit in the Holocaust or Shoah—the Hebrew term for Holocaust. This reality was evidenced in countries across Europe. The exceptions that included individuals and groups that helped the persecuted, which were indeed heroic and exemplary, unfortunately “prove the rule” of non-intervention or downright complicity.

⁸ See DANIEL JONAH GOLDHAGEN, *HITLER’S WILLING EXECUTIONERS: ORDINARY GERMANS AND THE HOLOCAUST* 3–24 (1996).

As a Christian pastor, I am part of an institution that carries the shame of past inaction. Both the Protestant and Catholic Church failed as institutions to speak out forcefully against Hitler and the Nazis. Overall, the Institutional Church, both Protestant and Catholic in Germany of the 1930s and '40s, tacitly supported the Nazis by their non-intervention. Victoria J. Barnett in her work *Bystanders: Conscience and Complicity During the Holocaust* writes: "Yet the church's silence undermined the resistance of its more radical members, and it probably hindered the development of more widespread opposition to Nazism among the German population."⁹ Scholarly works on the subject of the Church's inaction during the holocaust are commonplace.¹⁰ Yes, there was Dietrich Bonhoeffer and the "Confessing Church,"¹¹ and other theologians and church folk who spoke out against Hitler who were imprisoned and killed. However, the concerns raised by church leaders were often more about theological matters—saving the institutional church and protecting the clergy—rather than concern for the Jews.¹² The church as an institution, for all practical purposes, stood by and did little or nothing to alleviate the suffering of millions.

The church's overall failure to stand with the victims in the 1940s is a continuation of its shameful pattern through the centuries. From the fourth century of the Common Era, the Church promoted violent anti-Semitism in crusade and pogrom across Europe, Russia and the Middle East.¹³

In contemporary times, the Church has been tragically slow in speaking out against the sexual abuse of clergy. While the Civil Rights Movement was led by African-American Christians who were joined by a handful of non-Black people of faith and good will, most people of faith stayed on the sidelines and allowed the injustices and the violence to play themselves out. In the last fifty years, narrow Christian interpretations of Biblical verses concerning homosexuality have, in this writer's opinion, perpetuated stereotypes that lead to violence and persecution.

It would be defensible to argue that the evidence of history suggests that the Church and Christianity, as interpreted by many, have encouraged criminally complicit inaction instead of alleviating suffering.

And yet, one reason I remain a Christian in the Church is because I believe the historical documents and testimony of those of faith offer a solution to the bystander dilemma.

⁹ VICTORIA J. BARNETT, *BYSTANDERS: CONSCIENCE AND COMPLICITY DURING THE HOLOCAUST* 39 (1999).

¹⁰ See J.S. CONWAY, *THE NAZI PERSECUTION OF THE CHURCHES 1933–45* 45–66 (1968); Shelley Baranowski, *The 1933 German Protestant Church Elections: Machtpolitik or Accommodation?*, 49 *CHURCH HISTORY*, No. 3, Sep. 1980, at 301.

¹¹ Wendy McElroy, *Dietrich Bonhoeffer and the Confessing Church* (Jan. 30, 2013), <https://lfb.org/dietrich-bonhoeffer-and-the-confessing-church/> [https://perma.cc/MWG8-9EKB].

¹² JAMES CARROLL, *CONSTANTINE'S SWORD: THE CHURCH AND THE JEWS* 507–08 (2001).

¹³ *Id.* at 475–78.

III. HELPING THOSE IN NEED AS A RELIGIOUS AND CULTURAL NORM

Persons in a civil society must first agree that helping someone in need, and possibly placing oneself in danger, is a good thing. I do not believe that helping another person who is a victim is self-evidently in the best interest of the bystander. The one who acts on behalf of another may unintentionally harm the victim, destroy material evidence, damage property, and even endanger him or herself. Hence, the civil or secular law may need to encourage such self-sacrificial moral behavior for the good of the community.

However, the general agreement that helping someone else is a good thing is an ancient religious observation based on a fundamental theological belief that human life is good because God created it.¹⁴ And human goodness, when it is shown, is an extension and reflection of divine goodness. A person shows their identity as a child of God by caring for other children of God, particularly the ones in greatest need. This theological understanding of Jews and Christians is based on the sacred tradition that God entered into a covenant agreement with the people of Israel described and interpreted in the Bible. The development of secular law in the West, over the past 2,000 years, is fundamentally based on the Biblical covenantal expectation that a person should not stand by and allow harm to occur to another person.

While the history of the formation of the Pentateuch is open to scholarly debate, the Biblical ethic of care for the neighbor reflects the ancient debate also carried on by philosophers throughout the known world. Certainly before the Age of Enlightenment's political concerns about the "social contract," there was Genesis, Exodus and Leviticus, Isaiah, Amos, and the Psalms, the parables of Jesus, and the writings of St. Paul.¹⁵

Both Judaism and Christianity developed a tradition of law (based on the Bible and its interpretations) that has directed religious communities for thousands of years. Certainly with the development of the Roman legal tradition—where the expectation of God was replaced by the expectation of the Emperor, King, and Court, and later by the people as a whole—emphasis increasingly moved away from the demands of God. I believe that this, however, is more a semantic issue than a substantive distinction; for a citizen is still guided by a "higher power," just a secular one in the modern case.

Of course there are obvious practical and legitimate concerns (as well as constitutional) when one suggests that narrowly interpreted Biblical passages should take precedence over our contemporary, secular, non-sectarian, civil society. I, for one, as a religious person, am glad for our secular courts. Yet a broader reading of the Biblical texts shows a comprehensive shared concern for protecting victims from harm. I would add, that more so than secular law, religious

¹⁴ See *Genesis* 1:28–30; *Psalms* 8:5.

¹⁵ For a fine overview of the variety of perspectives on morality, ethics, and moral philosophy see JAMES RACHELS, *THE ELEMENTS OF MORAL PHILOSOPHY* 49–58; 82–94 (7th ed. 2010).

traditions have stressed divine distress at those individuals and institutions that do little or nothing to alleviate the suffering of individuals and groups. Indeed, as we shall see, the Bible, more than secular law, demands a “duty to act” on behalf of the one in need and holds complicit those who stand idly by. It was the religious ethical norms and laws shaped by them that led the way for later civil law on these matters.

The Talmudic tradition, which is a collection of rabbinic interpretations of the Biblical narrative, stresses the duties of the bystander to those who are in danger. As Aaron Kirschenbaum, Professor of Jewish Law at Tel Aviv University writes:

The Talmudic ethico-legal duties of the innocent bystander, i.e., one who happens to find himself in the presence of a person in peril—in danger of being victimized by a crime or in distress caused by some natural threat or catastrophe—are summarized by Maimonides (1135–1204) in his *Code* as follows: If one person is able to save another and does not save him, he transgresses the commandment *Neither shalt thou stand idly by the blood of thy neighbor* (Leviticus 19:16).¹⁶

To ignore these historic texts and their interpretations, or dismiss them too quickly in the contemporary urge to react to narrow-minded religious fundamentalism, is a shortsighted mistake. In no way do I seek to dismiss or judge negatively secular civic law or those who seek to administer it evenly. St. Paul himself wrote to the community in Rome: “Let every person be subject to the governing authorities.”¹⁷ My task is to survey the Biblical text to see what it has to say about the issue of the bystander and one’s moral responsibility to the one in need.

Another matter to consider before we open the Biblical texts is that there is no necessary divergence of the Biblical point of view on this subject and the point of view of Professor Guiora that focuses on the legal culpability of the bystander. In fact, Christian ethicist, Paul Ramsey has written that Christianity “is a religion seeking a social policy.”¹⁸ It may well be that the formulation of laws compelling one to act on behalf of another is just such an articulation of a Judeo-Christian emphasis of care for the neighbor. The vulnerable must be protected. The one who stands in the vicinity of the victim and does not help is complicit. If laws are needed to encourage the bystander to act, so be it. Professor Guiora has written that the “[d]uty to act is the essence of the social contract, even if the victim has been defined as ‘enemy’ or ‘the other.’”¹⁹ I would agree. It is exactly the involvement in the life of one we may not know that is the most compelling duty from a religious

¹⁶ Aaron Kirschenbaum, *The Bystander’s Duty to Rescue in Jewish Law*, 8 J. RELIGIOUS ETHICS 204, 205 (1980). This article is part of a larger study, *The ‘Good Samaritan’ and Jewish Law*, DINE ISRAEL VII, 85 (1976). *Id.*

¹⁷ *Romans* 13:1.

¹⁸ PAUL RAMSEY, *BASIC CHRISTIAN ETHICS* 326 (1978).

¹⁹ GUIORA, *supra* note 1, at 30.

perspective. There should be no obvious antipathy between Biblical morality and civil law on this point. For secular law can be interpreted as expressing what is at the foundation of religion. Both compel an individual towards self-sacrifice, empathy, and “love.”²⁰

I will leave it to the jurists to wrestle over the finer points of applying the “duty to act” law to specific instances, which will be no easy task. But the secular concern to help the victim is not new. Whether acknowledged or not, this modern concern expresses an ancient norm. Contemporary “Good Samaritan” laws are so named because over 2,000 years ago Jesus told a parable about caring for one who had been attacked and beaten and two people walked by before someone stepped in to help.²¹ And Jesus, in this parable, was only interpreting even more ancient laws about the duty to care for another person that would have been accepted as the norm.²² However, whether it be a moral or ethical norm of a religion or a law on the books of a secular civic society, the expectation that an individual will help someone else in need is only as effective as the willingness of individuals to follow the law and for the authorities to properly administer the law. In the case of Nazi Germany neither the church nor the secular courts rose to administer righteous justice or moral indignation at the plight of the most vulnerable. This remains true today.

IV. METHODOLOGY

I will limit my investigation to the Jewish and Christian Biblical narratives. I will not extensively survey the Talmud or extra-canonical texts. The addition of a survey of the Quran and other religion’s sacred texts should also be done.

In this contemporary age of religious stereotyping, it is vital to state at the beginning my methodology that I will be reading the Bible as a collection of edited and re-edited texts, written by humans that reflect over 5,000 years of community formation. Any number of good Hebrew Scripture and New Testament introductions offer a review of critical scholarship of the past 250 years on this subject.²³ The Bible offers interpretations (sometimes diametrically opposed to one another in the same book) of a historically developing faith community.²⁴ While somewhat in chronological order, the Bible should not be read as a continuous text written by one or a few authors. Rather, the Biblical narrative is multi-vocal and an

²⁰ By “love” I do not mean a warm, emotional feeling of attraction, but rather “love” as engaging action on behalf of another because the other—as a human being—is worthy of our attention whether or not we like them. Love for another is an obligation rather than a feeling, a behavior rather than an emotion, because the other is made, from a religious view, in God’s image and hence has worth as a human being.

²¹ See *Luke* 10:25–37.

²² See RAMSEY, *supra* note 18, at 52–57.

²³ See, e.g., BERNHARD W. ANDERSON, *UNDERSTANDING THE OLD TESTAMENT* (5th ed., 2007).

²⁴ BREVARD S. CHILDS, *INTRODUCTION TO THE OLD TESTAMENT AS SCRIPTURE* (1st. Amer. ed. 1979).

expression of diverse perspectives. It was continually edited and re-edited until it found its final canonical form. The Bible contains a variety of genres: mythic narrative, history, poetry, aphorisms, prophetic declaration, legal proscriptions,²⁵ gospel, parable, letter, and apocalyptic vision. Most of the narratives (e.g. Genesis) are not written by an eyewitness and are not historical documents in the way that modern historians assess critical historical writing. Every Biblical book reflects the perspective of a particular author or authors, editor or editors, written for a particular community or communities at a specific time in history usually written many generations after the action reported.

The issue of Biblical authority is a heated one among believers. This essay is not the place to engage in that debate. My perspective is shaped by the common scholarly-held opinion that the Bible is authoritative because the believing Jewish or Christian communities see it as authoritative for them. I do not use scripture in this study to suggest that “the Bible says,” meaning that it is the direct divine word of God, takes precedence over a secular view. My investigation is not to prove or even to presume that a Biblical perspective or a Biblical teaching is better, or more “true,” than any other. The Biblical texts from Genesis in the Hebrew Scripture to Revelation in the New Testament do, however, reveal notions of justice and individual and community responsibility that need to be known, understood and respected as foundational to the subject of what is expected of the bystander and whether there are civic laws compelling the individual to do it.

V. SETTING THE AGENDA

One of the first stories in Genesis sets the agenda for us. According to Genesis, the first two humans, Adam and Eve, bore two sons: Cain and Abel.²⁶ Abel was a shepherd and Cain was a farmer.²⁷ The two brothers offered sacrifices to God.²⁸ Abel’s offering was accepted while Cain’s was not.²⁹ In jealous anger, Cain murders Abel.³⁰ In the story God questions Cain: “Where is your brother Abel?”³¹ Cain responds: “I do not know; am I my brother’s keeper?”³² This unanswered question lingers over all of the Biblical literature and indeed over all of history. Are we responsible for the care of others? Is there a duty to protect and indeed intervene when someone else is in danger? Who is my brother, or sister? The writers of the Bible struggled to identify who was within the circle of concern. Certainly, the family included spouses, children, slaves, and extended relatives. The tribe identified a larger group of people who, by agreeing to follow a specific

²⁵ Halakhah (legal materials) and Haggadah (legendary materials) two types of Jewish law based on the teaching of the Torah and of the Rabbis.

²⁶ *Genesis* 4:1–2.

²⁷ *Genesis* 4:2.

²⁸ *Genesis* 4:3–4.

²⁹ *Genesis* 4:4–5.

³⁰ *Genesis* 4:8.

³¹ *Genesis* 4:9.

³² *Id.*

set of religious actions and beliefs became, in time, the focus of attention—you took care of the members of your tribe. Yet, after the Exodus from Egypt, those who compiled and edited the traditional narratives extended the definition of family and even tribe. Writing from the perspective of the Babylonian exile, in the sixth century BCE, the scribes extended the care of the family to a deeper concern for the “orphan and the widow,”³³ and stressed an ethical and legal concern for the stranger and the exiled for the Jewish identity was grounded on the memory that they too had been exiled and enslaved.³⁴ The prophets extended the vision even further. God’s care—and therefore the people of God’s care—was universal. It was this universal perspective of care for the other and the re-definition of “neighbor,” “family” and “tribe” that inspired the teaching of Jesus of Nazareth.³⁵

The author recognizes the theological “elephant in the room”: God as the ultimate culpable bystander. In many stories throughout Hebrew and Christian scripture there is a noted presence of God. God is active in helping his people in battle; protects his prophets and saints; and heals individuals through his chosen ones. God selects kings and punishes individuals and whole groups for disobeying the divine laws. Foundational to Christian faith is the belief that God became human in the life of Jesus. However, in just as many narratives in the Bible, the apparent absence of God becomes the central focus of the story. The Psalms are full of heartfelt cries asking: “Where are you God?”³⁶ The Book of Job is, essentially, about the absence of God—God as bystander—as God allows his righteous servant Job to suffer horrific calamities in order to prove his faithfulness.³⁷ The Book of Job is about a man in trouble while his bystander friends do little but blame him for his calamities.³⁸

And the central Christian story of the crucifixion of Jesus raises the question of God’s absence. According to the tradition of the gospel writers Mark and Matthew, Jesus’ last words included the Aramaic of Psalm 22:1 “Eloi, Eloi, lema sabachthani?”, which means “My God, my God, why have you forsaken me?”

It is certainly justifiable for many critics of religion to stress the question of theodicy,³⁹ that is God’s relation to evil in the world which is often asked along the general lines of: “If God is good how can God let bad things happen?” I will not attempt to answer this philosophical and theological dilemma. However, I note the peril of entering this essay about the bystander in the Bible and the duty to act on behalf of an “other,” when the main actor of the Biblical story—God—seems

³³ *Deuteronomy* 10:18.

³⁴ *Deuteronomy* 5:15.

³⁵ RAMSEY, *supra* note 18, at 38ff.

³⁶ See, e.g., *Psalms* 22:1 (asking “My God, my God, why have you forsaken me? Why are you so far from helping me . . .”).

³⁷ See *Job* 42:7–8.

³⁸ See *Job* 1:13–19; *Job* 4:1–21.

³⁹ *Theodicy*, MERRIAM-WEBSTER DICT. (last visited May 20, 2017), <https://www.merriam-webster.com/dictionary/theodicy> [https://perma.cc/T939-AHGV] (defining “theodicy” as “defense of God’s goodness and omnipotence in view of the existence of evil.”).

absent in so many stories, leaving humans alone in ethically ambiguous situations. Nevertheless, I proceed because awareness of the Biblical texts will serve the larger task of law and history as we seek to answer the question, “Am I my brother’s keeper,” in the affirmative.

VI. THE BYSTANDER IN HEBREW AND GREEK

My study will be concerned mainly with the English text of the Bible. In most cases I shall be using the New Revised Standard Version (NRSV). However, it is important to remember that the Bible was originally written in Hebrew and Greek with Aramaic influences. Identifying the word in ancient Hebrew and Greek that means the same thing as the English concept of “bystander” as “one who is present but not taking part in a situation or event”⁴⁰ is nearly impossible. There are multiple ways of describing non-intervention some without using specific technical terminology. Much of the evidence of bystanders will be in the form of stories. For example, in the story of the Good Samaritan, the word “bystander” is never used. But this story is fundamental to the showing that within the Bible there are multiple scenes in which the issue of the bystander and one’s duty to act is addressed. To the modern ear and to the critically trained scholar of history and law diving into the Biblical texts may feel awkward. But Hebrew scripture and the New Testament help reveal essential foundations to the discussion at hand.

In ancient Hebrew the word closest to our concern is perhaps *yatsab* (to stand before or afar off), *natsab* (stand here by), *amad* (to stand still by), or *qum* (stand). In the English translations of the New Testament, the word “bystander” is used for the Greek verb *paristemi*. *Histemi* is the Greek word translated “to make to stand,” or “to stand.” *Pari* is the Greek preposition translated in English “around,” “by,” or “with.” Most uses of the Greek word *paristemi* is clustered, interestingly enough, in the New Testament passages describing the “passion” of Jesus: from his entry into Jerusalem to his crucifixion outside the walls of the city. This is interesting and darkly ironic. The narrative of the Passion of Jesus and the abhorrent claim that Jews are responsible for the death of Jesus became the central justification for anti-Semitism and persecution throughout the centuries. This historical fact is one of the reasons so many people, including those in the Third Reich, chose to stand by and do nothing as innocents were deported and murdered. For centuries Jews were considered the “other,” unworthy of assistance and outside the narrowly interpreted Biblical mandate to protect and defend the vulnerable.

VII. A NOTE ON RELIGIOUS AND SECULAR LAW

I believe, particularly in light of the contemporary controversies with fundamentalists of all religions, that there is a misunderstanding of the relation between so-called “religious law” and secular or civil law. We read much about the

⁴⁰ *Bystander*, MERRIAM-WEBSTER DICT. (last visited May 20, 2017), <https://www.merriam-webster.com/dictionary/bystander> [<https://perma.cc/P4KX-U6UY>].

fear of the imposition of fundamentalist and narrowly defined “Islamic law,” or Sharia, in the Western world. But reading and interpreting sacred scripture in a narrow and sometimes violent way is not unique to fundamentalist Islam. The opposition to same-sex marriage by some conservative Christians shows the same narrow interpretive trajectory. It is common in the Abrahamic faiths (Judaism, Christianity and Islam) to read or hear that believers must follow the laws of God rather than the laws of secular society. But, it is not only narrow fundamentalists who express this as the history of progressive, socially liberal faith-activists attest.⁴¹

Actually, in all three Abrahamic faiths, there is a clear demarcation between religious laws and civil laws. In all three faiths there are long-standing traditions of respect for civil authority. While there are specific Biblical proscriptions that a believer should follow as part of their faithful practice and identity, the Biblical and Koranic rules are for those who are adherents of the religion and are not required of those who do not believe. These Biblical proscriptions are not to be imposed on the non-believer despite what contemporary fundamentalists of all religions might demand.

For example, In Islam, according to University of Wisconsin School of Law professor Asifa Quraishi-Landes:

Sharia is . . . Koran-based guidance that points Muslims towards living an Islamic life . . . Sharia is divine and philosophical. The human interpretations of sharia is called “fiqh” or Islamic rules of right action, created by individual scholars based on the Koran and hadith (stories of the prophet Muhammad’s life.) Fiqh literally means “understanding”—and its many different schools of thought illustrate that scholars knew they didn’t speak for God . . . Fiqh rules might obligate a devout Muslim to pray, but it’s not the job of a Muslim ruler to enforce the obligation.⁴²

Quraishi-Landes also describes the distinction “between the spiritual value of an action . . . and the worldly value of that action.”⁴³ “[A] Muslim ruler’s task was to put forth another type of law, called *siyasa*, based on what best serves the public good.”⁴⁴

While there is a tendency to see all Biblical law as negative in construct—“Thou Shalt NOT” do this or that—the fact is that many of the Biblical material is positive in its formulation.

⁴¹ One must remember that the Rev. Dr. Martin Luther King, Jr., Father Philip Berrigan, and many other leaders of the Civil Rights and anti-war movements expressly declared their allegiance to Biblical law rather than the secular law of the time.

⁴² Asifa Quraishi-Landes, *Sharia: Five Myths About Sharia: Washington Post Opinion*, THE OREGONIAN, (June 25, 2016), http://www.oregonlive.com/opinion/index.ssf/2016/06/5_myths_about_sharia_washingto.html [<https://perma.cc/JK7P-CXYK>].

⁴³ *Id.*

⁴⁴ *Id.* (emphasis added).

VIII. THE BYSTANDER IN THE HEBREW SCRIPTURE

While not claiming that this is an exhaustive survey, it is the intention of this section of this study to investigate passages from Genesis to Malachi that reflect a concern for the victim and encourage bystander engagement in the alleviation of suffering. In Genesis, which tells the unfolding story of God's relationship with humanity that finally focuses on God's relationship with the "chosen people" of the covenant, the figure of Abraham stands above all others.⁴⁵ Abraham's example is not always positive in light of twenty-first century Western norms. It is hard to defend Abraham's actions when he offers his wife Sarah first to the Pharaoh⁴⁶ and later to Abimelech, who was King of Gerar.⁴⁷ Both times Abraham puts his wife in harm's way in order to protect himself as he moves through the land. Furthermore, Abraham and Sarah's action of casting their servant, Hagar, and her child, Ishmael, into the wilderness⁴⁸ hardly reflect concern for the one in danger. However, in the history of the Jewish-Christian interpretation of scripture, Abraham becomes the model of hospitality. I will mention two stories where Abraham's example sets the tone of the Biblical foundation for bystander engagement and the duty owed to the "other" known or unknown.

*A. Genesis**Genesis 18:1-8 Abraham's Hospitality*

The Lord appeared to Abraham by the oaks of Mamre, as he sat at the entrance of his tent in the heat of the day. He looked up and saw three men standing near him. When he saw them he ran from the tent entrance to meet them, and bowed down to the ground. He said; "My lord, if I find favor with you, do not pass by your servant. Let a little water be brought, and wash your feet, and rest yourselves under the tree. Let me bring a little bread, that you may refresh yourselves, and after that you may pass on – since you have come to your servant." So they said: "do as you have said." And Abraham hastened into the tent to Sarah, and said: "Make ready quickly three measures of choice flour, knead it, and make cakes." Abraham ran to the herd, and took a calf, tender and good, and gave it to the servant, who hastened to prepare it. Then he took curds and milk and the calf that he had prepared, and set it before them; and he stood by them under the tree while they ate.

Abraham meets three unknown travelers as he sits by his tent in the heat of the day. Later, Abraham comes to realize that these strangers are actually divine

⁴⁵ GERHARD VON RAD, GENESIS: A COMMENTARY 24, 35 (1972).

⁴⁶ *Genesis* 12:10–20.

⁴⁷ *Genesis* 20:1–18.

⁴⁸ *Genesis* 21:1–19.

messengers. Abraham's welcome reveals the ancient and traditional custom of showing hospitality to the stranger. As sociologists Paul Ohana and David Arnow write: "[A]nyone familiar with Bedouin culture will recognize Abraham's treatment of strangers as a perfect illustration of *diyafa*, the Arabic word for hospitality A code of hospitality like this is about more than good food and good manners. It recognizes that in a hostile environment survival depends on one person helping another."⁴⁹

The fact that Abraham is alone when the visitors come may be important. Ohana and Arnow point to a study of the "bystander effect."⁵⁰ Subjects in the experiment saw someone in an emergency situation and, when they were alone, responded by attempting to help the victim 75% of the time.⁵¹ But when the subjects faced the same situation with another person who did not try to intervene, only 10% tried to help. Social situations can affect a person's choice concerning whether or not to intervene.⁵²

Returning to the Biblical text, Abraham is not indifferent to the strangers as he directs his wife Sarah to prepare for them a feast and offers shelter for an extended period of time. As the narrative continues, it is revealed to the reader that this act of hospitality presents the opportunity for Abraham and Sarah to hear again the promise that they will bear a son who will fulfill God's promise of an heir. As a contemporary Jewish commentator writes: "Abraham's 'mitzvah' of affording hospitality to the strangers is an extension of the mitzvah of 'Love your neighbor as yourself.'"⁵³ It is interesting to note that "mitzvah" means more than doing a good deed. The good deed is motivated by the commandment to do good. Hence, it arises out of prior Jewish law and is a command rather than a suggestion of a nice thing to do. This distinction is important as the Biblical texts do not merely suggest that an individual care for a stranger out of compassion alone, but because by Biblical law the individual is compelled to intervene and does have a duty to act on behalf of another person.

Genesis 18:22-33 Abraham Intervenes for Sodom And Gomorrah

So the men turned from there, and went towards Sodom, while Abraham remained standing before the Lord. Then Abraham came near and said, "Will you indeed sweep away the righteous with the wicked? Suppose

⁴⁹ PAUL OHANA AND DAVID ARNOW, LEADERSHIP IN THE BIBLE: A PRACTICAL GUIDE FOR TODAY 32 (2014).

⁵⁰ *Id.* at 33 (referring to Bibb Latane and John M. Darley's study, *Bystander Apathy*, 57 AMERICAN SCIENTIST, No. 2, Summer 1969).

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Vayeira Genesis 18:1-22:24*, LEKUTEI SICHOT: AN ANTHOLOGY OF TALKS BY THE LUBAVITCHER REBBE, RABBI MENACHEM M. SCHNEERSON (Eliyahu Touger trans.), http://www.chabad.org/therebbe/article_cdo/aid/68629/jewish/Likkutei-Sichot-Vayeira.htm [<https://perma.cc/A9CQ-933Q>].

there are fifty righteous within the city; will you then sweep away the place and not forgive it for the fifty righteous who are in it?⁵⁴

In the text immediately following the narrative of Abraham showing hospitality to stranger, Abraham attempts to intervene in God's imminent judgment on Sodom and Gomorrah. God, it seems is ready to completely destroy the towns and kill all the inhabitants. Some Christians of more narrow interpretive focus use the story of Sodom and Gomorrah to present God's judgment against homosexuality. Actually, the narrative reveals a Biblical revulsion at the inhospitality of the community and the intent of the crowd to rape the visitors. I am interested in this compelling narrative for another reason. Of more interest to me is Abraham's tenacity at negotiating with God for saving the town if "fifty righteous" can be found among the towns' inhabitants. When God agrees, Abraham negotiates for forty-five, forty, thirty, twenty and finally ten righteous persons.⁵⁵ Abraham is no passive bystander. His "chutzpah" is recognized and is a source of his stature. Abraham, in these texts, lays out a model not only of hospitality, but also of concern for inhabitants of nearby towns who may actually "deserve" the divine punishment. While not a legal proscription to be sure, Abraham's example sets the example for the faithful to follow. One does not stand idly by as the life of another hangs in the balance.

B. Exodus

As Genesis tells the story of Abraham and his offspring, Exodus tells the story of Moses and the formation of the community known as the "chosen people."⁵⁶ Exodus tells the story of the Jews enslavement and subsequent liberation from slavery in Egypt.

One day, after Moses had grown up, he went out to his people and saw their forced labor. He saw an Egyptian beating a Hebrew, one of his kinfolk. He looked this way and that, and seeing no one he killed the Egyptian and hid him in the sand. When he went out the next day, he saw two Hebrews fighting; and he said to the one who was in the wrong, "Why do you strike your fellow Hebrew?" He answered, "Who made you a ruler and judge over us? Do you mean to kill me as you killed the Egyptian?" Then Moses was afraid and thought, "Surely the thing is known." When Pharaoh heard of it, he sought to kill Moses.⁵⁷

⁵⁴ *Genesis* 18:22–24.

⁵⁵ *Genesis* 18:32.

⁵⁶ *Exodus* 1:8.

⁵⁷ *Exodus* 2:11–15.

The book of Exodus opens describing the dire straight of the Hebrew people. “Now a new king arose over Egypt who did not know Joseph.”⁵⁸ Seeing that the Israelites were prospering, having become more numerous and powerful, Pharaoh oppressed the Israelites placing them in slavery ruthlessly imposing forced labor upon them.⁵⁹ The Pharaoh even legislated the killing of male children upon their birth.⁶⁰ Often ignored is the response of the Hebrew midwives who refuse to become bystanders and comply with the order.⁶¹ Their disobedience ultimately saves the baby Moses who later is hidden in the bulrushes beside the Nile river to escape the infanticide proclamation of the Pharaoh.⁶² Moses grows to adulthood and having been adopted by Pharaoh’s daughter he assumes a position of authority overseeing the Hebrew slaves.⁶³ As the passage above relates, Moses sees an Egyptian beating a Hebrew slave and in defense of the slave kills the Egyptians.⁶⁴ Moses subsequently flees from Egypt after he discovers that his actions were witnessed and that the Pharaoh seeks retribution.⁶⁵

This story is interesting for the larger issue of bystanding for two reasons. First, someone saw Moses kill an Egyptian and reported the apparent crime. The reader does not know if the bystander witness saw the initial act of the Egyptian overseer beating the Jewish slave. Second, an indication of Moses’ status is revealed in the fact that he, like the midwives who saved him, will not stand by and see an injustice happen. Thus, he acts. He identifies himself with the slave rather than claim his status; he self-identifies as a Hebrew rather than an Egyptian. Moses’ action is subsequently discovered and he escapes into the wilderness from where he is called back to be the liberator of his people. This story of Moses’ action on behalf of one in need is played out again and again in Hebrew scripture; action on behalf of another is expected from those who are part of the covenantal community.

C. The Ten Commandments and the Law

The Ten Commandments are found in slightly different versions in Exodus 20:3–17 and Deuteronomy 5:6–21. However, both of the passages containing the Ten Commandments begin by recalling the historic memory that God brought the people of Israel out of slavery from Egypt. Hence, the Biblical legal system is a covenant between God and the people; an expression of an intimate relationship of mutuality. The people’s responsibility towards God is expressed in their responsibility to others. Furthermore, the Ten Commandments fundamentally express the perspective of the victim. Because the Jews experienced

⁵⁸ *Exodus* 1:8.

⁵⁹ *Exodus* 1:9–14.

⁶⁰ *Exodus* 1:16.

⁶¹ *Exodus* 1:17–19.

⁶² *Exodus* 2:1–3.

⁶³ *Exodus* 2:5–111.

⁶⁴ *Exodus* 2:11–12.

⁶⁵ *Exodus* 2:15.

marginalization and victimization, they understood that the oppressed and the enslaved have the primary attention and advocacy of God. While two of the commandments are worded in the positive—“Remember the Sabbath” and “Honor your father and mother”—the other eight begin negatively: “Thou shalt not.” There is no compulsion to do good, rather the laws are worded to stop or limit one from harmful or bad actions. The first four commandments are focused on honoring God, the last six are concerned with duty owed to other humans. The commands not to murder, commit adultery, steal, bear false witness, or covet your neighbor’s property, while not explicitly demanding a duty to act on behalf of the victim, certainly imply a concern for others. As we have seen above, the Talmudic tradition was intent to interpret and apply these basic laws into practical rules for living, which imposed expectations of intervention, protection for and repayment to the aggrieved.

In Exodus, God’s concern for the resident alien, the widow, the orphan, and the poor—which exists throughout the Hebrew Scriptures—is made evident:

You shall not wrong or oppress a resident alien, for you were aliens in the land of Egypt. You shall not abuse any widow or orphan. If you do abuse them, when they cry out to me, I will surely heed their cry; my wrath will burn, and I will kill you with the sword, and your wives shall become widows and your children orphans. If you lend money to my people, to the poor among you, you shall not deal with them as a creditor.⁶⁶

The text is clear that one is to do no harm to the alien or to abuse the widow or orphan. But I would argue that refraining from oppressing requires a positive step to assist those in need. How does one stop an oppressive act without acting? The requirement to help the alien, the poor, the widow and the orphan, is interpreted and intensified a few verses later when a person is commanded to alleviate even an over-burdened donkey owned by someone who hates them: “You must set it free.”⁶⁷ There is no bystanding allowed; one must intervene even for a non-human creature!

While, at times, the laws found in Exodus, Leviticus, and Deuteronomy, are harsh and reflect an entirely different culture and historical location, what is fundamental to many of the Biblical laws is a concern for the victim, the vulnerable and for those who are often passed by, forgotten and easy to oppress. What is foundational to the early Jewish community is that the covenant of God, which shapes any civil contract, reflects the justice of God and demands a social order where one is compelled to offer help to the other in need.

⁶⁶ *Exodus* 22:21–25.

⁶⁷ *Exodus* 23:5.

D. Leviticus and the “Golden Rule”

Most religions have a variation of the admonition to care for one’s neighbor, as you would want them to care for you.⁶⁸ Throughout the Hebrew Scriptures the admonition to “love the alien as yourself”⁶⁹ and “[y]ou shall not wrong or oppress the resident alien,”⁷⁰ reflects the so-called “golden rule.” “You shall not take vengeance or bear a grudge against any of your people, but you shall love your neighbor as yourself: I am the Lord.”⁷¹ The Rabbi Hillel was known to have said about the commandment to love the neighbor; “This is the whole Torah! All the rest is commentary.”⁷² In the New Testament, Jesus rephrases this well-known admonition: “In everything you do to others as you would have them do to you; for this is the law and the prophets.”⁷³ These words reflect not mere suggestion alone to do the right thing; this is a Divine injunction.

As Professor Aaron Kirschenbaum points out, the obligation of the bystander to help another person in need is expressed in the words of Leviticus:

You shall not render an unjust judgment; you shall not be partial to the poor or defer to the great: with justice you shall judge your neighbor. You shall not go around as a slanderer among your people, and you shall not profit by the blood of your neighbor: I am the Lord.⁷⁴

The words “you shall not profit by the blood of your neighbor,” are also translated “neither shalt thou stand idly by the blood of thy neighbor,” (*lo ta’amod ‘al dam re’eka*).

If one person is able to save another and does not save him, he transgresses the commandment expressed in Leviticus 19.⁷⁵ Kirschbaum continues his examination of the Talmudic traditions and contends that the obligation to help includes financial responsibility of restoring lost property and hiring help to assist the victim in recovery.⁷⁶ We shall see that this ancient notion is reflected in some modern laws, as well. Jewish scholars of the medieval period, argued that the “duty to rescue is not limited to circumstances creating a clear and present danger; even if the peril is somewhat obscure and doubtful, the duty to enter into a rescue

⁶⁸ W.A. Spooner, *The Golden Rule*, ENCYCLOPEDIA OF RELIGION AND ETHICS 310–312 (James Hastings ed. 1914); SIMON BLACKBURN, ETHICS: A VERY SHORT INTRODUCTION 101 (2001).

⁶⁹ See Leviticus 19:33.

⁷⁰ Exodus 22:21.

⁷¹ See Leviticus 19:18.

⁷² JOSEPH TELUSHKIN, A CODE OF JEWISH ETHICS 8 (2009).

⁷³ Matthew 7:12.

⁷⁴ Leviticus 19:15–16.

⁷⁵ Kirschenbaum, *The Bystander’s Duty to Rescue in Jewish Law*, 8 J. RELIGIOUS ETHICS No. 2, Fall 1980, at 205.

⁷⁶ *Id.* at 207–08.

operation is not thereby diminished.”⁷⁷ In other words, the bystander is expected to help even if one puts herself or himself in harm’s way by helping. However, early Jewish scholars also would not subject the bystander to legal punishment for not intervening. The following passage shows both the ambiguity and the expectation to help one in need:

Although there is no flogging for these prohibitions [of standing idly by the blood of one’s neighbor], because breach of them involves no action, the offense is most serious, for by it one destroys the life of a single Israelite, it is regarded as though he destroyed the whole world, and if one preserves the life of a single Israelite, it is regarded as though he preserved the whole world. (Maimonides, 1949: 1:14–16).⁷⁸

Apparently, in this instance, one cannot be punished for not doing something, but Kirschbaum argues that this lack of specific punishment does not mean that the obligation to help is merely seen as a moral duty. In the minds of Rabbis, the sheer weight of religious expectation was effective in encouraging action on behalf of the one in need. Kirschbaum writes, “Jewish law views such failure [to act] as nonfeasance, a formal offense of inaction (*delictum mere omissivum*) where action is a duty required by law.”⁷⁹

It is interesting to note that the interpretations of this Leviticus passage by Rabbis in the Talmud and Mishnah, and throughout the ages, concern the complicated issues that arise out of the command to assist a victim; just what *is* the duty of the bystander? It was generally agreed by Jewish scholars that the bystander need not sacrifice his or her own life to save another.⁸⁰ However, the Rabbis posed an interesting ethical dilemma: “If two are traveling on a journey and one has a pitcher of water—if both drink they will die, but if only one drinks, he can reach civilization.”⁸¹ The Son of Patura taught: “It is better that both should drink and die rather than that one should behold his companion’s death.”⁸² “Until R. Akiba came and taught: *That thy brother may live with thee (Leviticus 25:36)*—thy life takes precedence over his life.”⁸³ Neither person is a bystander *until* one falls from weakness due to the act of the stronger withholding water from the weaker. And in this case, there is no “crime” because it is the duty of one to safely return to their village.

The Rabbis also debated whether or not the bystander should sacrifice his or her non-vital limbs in an effort to save someone else. Ultimately, a bystander was

⁷⁷ *Id.* at 206.

⁷⁸ *Id.* at 5.

⁷⁹ *Id.*; see also TELUSHKIN, *supra* note 72, at 9–13.

⁸⁰ In *John* 15:13 Jesus seems to offer another minority interpretation: “No one has greater love than this, to lay one’s life for one’s friend.”

⁸¹ Kirschenbaum, *The Bystander’s Duty to Rescue in Jewish Law*, *supra* note 75, at 210.

⁸² *Id.*

⁸³ *Id.* at 213.

not obligated to put oneself in serious jeopardy to save another's life. But "hardship, suffering and great inconvenience, it is clear, cannot serve as bases of exemption"⁸⁴ from helping someone in need. Furthermore, one's duty to help a person in need is not exempted on the Sabbath.⁸⁵

In Kirschenbaum's revealing article he reviews the implications of fourth century CE law concerning the bystander's freedom from responsibility for damaged property belonging to another in his or her pursuit of helping the one in need. He wrote: "The fourth century [T]almudic source of this provision clearly recognized that the [B]iblically ordained strict principle of near-absolute tort liability was being violated here. Thus Rabbah in the Talmud justifies this 'violation' as being in the public interest."⁸⁶ He continued: "For if you were not to rule thus [but rather make the rescuer liable], no one would put himself out to rescue a fellow man from the hands of a pursuer."⁸⁷

While the current interest in framing laws that clarify a person's duty to act is important, it is not new, as the writings of the Rabbis show. Clearly, the ancient and medieval scholars of the Jewish tradition wrestled mightily with interpreting texts that expressed a divine commandment towards help of one in need.

We have reviewed the importance that the Rabbis placed on Leviticus 19:16 "thou shalt not stand idly by the blood of thy neighbor."⁸⁸ This, and a passage from Deuteronomy, concerned with helping a neighbor whose animals have wandered away and restoring the animals to the person create the ethico-legal imperative to help one's neighbor. "Thou shalt restore him [a person who is losing his life] to himself."⁸⁹

The essential criterion, expressed in these passages, compels a bystander to help if the bystander is able to help. As Kirschenbaum summarizes: "Ability is determined by a combination of factors: geographic proximity, mental awareness, know-how and physical disposition . . . An innocent bystander is required to go to great personal effort, even to suffer hardships and to incur serious financial loss, in order to save the life of his fellow."⁹⁰ It is obvious that the early interpreters of these texts wrestled with the implications of being a bystander. Next, I will turn from the Torah to other works found in the Hebrew Scripture.

⁸⁴ *Id.*

⁸⁵ THE MISHNA: A NEW INTEGRATED TRANSLATION AND COMMENTARY 8.6 (Herbert Danby, D.D. trans.) (2008).

⁸⁶ Kirschenbaum, *supra* note 75, at 215 (citations omitted).

⁸⁷ *Id.* (quoting the Rabbah in the Talmud) (alteration in original).

⁸⁸ *Leviticus* 19:16.

⁸⁹ *Deuteronomy* 22:2.

⁹⁰ Kirschenbaum, *supra* note 75, at 218.

E. Esther

The Book of Esther is placed after the “historical” books and before the book of Job and Psalms in the Hebrew Scripture.⁹¹ It is a narrative that is not well known although for Judaism the story of Esther and Mordecai is the basis for the annual festival of Purim. Thanks to the wisdom of Mordecai and the actions of Queen Esther, both of whom were Jews, fellow Jews throughout the Achaemenid empire were saved from an anti-Jewish pogrom orchestrated by Haman who was an advisor to the King of Persia. Commentators throughout the centuries have wondered about the Book of Esther’s religious content. For example the name of the King of Persia, Ahasuerus or Xerxes I, is mentioned 190 times while God is not mentioned once. That Esther, a Jewish woman, becomes the queen to a non-Jewish King is notable.

For the purposes of this article, what is interesting is that the intervention on behalf of the Jews of the empire is instigated not by God directly (or perhaps even indirectly) but by individuals in power who actively do their part. It indicates that religious Jews from as early as the second century BCE were not simplistic in their theology awaiting the intervention of God. Rather, the people were expected to act at times even against their own selfish interest to protect and defend others. Esther was queen; she had wealth, status and power. Yet her royal position did not “save” her from her Biblical and religious legal duty to intervene and not to stand idly by while others were in danger.

F. Job

The Book of Job stands in the middle of the Hebrew scripture and serves as a difficult reminder that one’s faith is no protector from horrific events overtaking life.⁹² It is a check on the simplistic notion that God rewards the righteous and punishes the wicked. However, this simplistic notion is still at the root of most contemporary religious thinking. Job, a righteous man, was also wealthy and had a good family. This folk tale introduces Satan, who, as part of the heavenly court, challenges God to test Job’s faithfulness by inflicting him with disease, killing his wife and family, and taking away his riches. God grants Satan’s request and Job’s misfortunes begin.

While the Book of Job has been the source of theological and philosophical concern for centuries, my interest concerns Job’s “friends”: Eliphaz the Temanite, Bildad the Shuhite, and Zophar the Naamathite. Over the course of the narrative, these three men are non-participating bystanders. Instead of helping Job they blame him for his own calamity. Job, they argue, has not been as righteous as he seemed to be. At some point, the friends argue, Job must have “sinned” because

⁹¹ See generally Timothy K. Beal, *Esther*, in *BERIT OLAM: STUDIES IN HEBREW NARRATIVE & POETRY* (David W. Cotter ed., 1999) (describing the book of Esther).

⁹² See generally J. GERALD JANZEN, *JOB* (1985) (offering a commentary on the book of Job).

God would not have punished him if he had not. “Blaming the victim” is one of the most common refrains of the bystander. We have seen this most recently in contemporary cases of sexual assault where often times the woman is blamed for the sexual misconduct of the perpetrator, with bystanders believing that “she must have done something to deserve this.” These justifications of horrific natural and criminal acts have no place in the moral ethics of Bible and secular society.

After the dialogues between Job and his three friends, a fourth person, Elihu, challenges Job and then Job finally confronts God. At the conclusion of the Book of Job, God’s anger is kindled against Eliphaz, Bildad and Zophar for their false theology, their refusal to help Job and their blame of Job for his misfortune. God requires them to compensate, in part, for Job’s losses. This seems to indicate the influence of early legal and moral expectation that is later reflected, as we have noted, in the writings of the rabbis.⁹³ Finally, God restores the fortunes of Job. Job’s community is restored. He remarries and has seven new sons and three daughters.⁹⁴

G. *The Psalms*

The Psalms are a collection of poems and liturgical songs that have “influenced worship, theology, ethics, and piety for centuries.”⁹⁵ David composed some of the psalms both before and after he became king of Israel (1010–970 BCE). Several psalms are identified as the works of Solomon (970–931 BCE). However, unknown authors whose poetry reflects the changing historical context covering hundreds of years wrote many others of the Psalms. The Psalms, unlike the proscriptive legal terms of the Torah or the exhortative style of the prophetic writings, speak directly of bystanders and victims and the moral imperative to help the one in need in an often uncomfortable and painful style of personal and communal lament.⁹⁶ Many of the Psalms express the intimate, personal perspective of one who is being or has been victimized. Furthermore, while specific perpetrators of the oppression are not named, it is clear that someone or some other is the cause of the victimization;

Save me, O God, for the waters have come up to my neck. I sink in deep mire . . . More in number than the hairs of my head are those who hate me without cause; many are those who would destroy me, my enemies who accuse me falsely.⁹⁷

⁹³ See Kirschenbaum, *supra* note 75, at 206–07.

⁹⁴ Many commentators have wondered if the ending of Job beginning at 42:7 is not a later editorial addition in order to ultimately repay Job for his calamities. But for our study this issue is not important.

⁹⁵ For a general review of the literature and commentary on each of the 150 Psalms, see WALTER BRUEGGEMANN & WILLIAM H. BELLINGER, JR., *PSALMS 1* (Ben Witherington III ed., 2014).

⁹⁶ *Id.* at 7.

⁹⁷ See *Psalm* 69:1, 4.

The Psalms express the utter despair and isolation of individuals in pain. To be cut off from the community and from God, hence, to lose one's identity is the very definition of being in "Sheol," the place of the dead. In other words, to have no advocate, to be mocked, shunned and ignored by bystanders is the very definition of a "living hell."⁹⁸ It is no wonder that many Jews who suffered the horrors and inhumanities of the concentration camps during World War II turned to the psalms to express their horrific desolation. It was also to the psalms that Jews turned when the concentration camps were liberated.⁹⁹

Scholars have identified at least three types of Psalms. Many of the Psalms are expression of individuals lamenting isolation and despair; truly the expressions of victims who can find no one, including God who will help them.¹⁰⁰ Others express a confidence in the presence of God and of the community to which they identify. These psalms reflect the experience of the victim being supported and helped by others. Psalm 10, for example, identifies those ("the wicked"—apparently in power) who treat the poor with contempt.

For the wicked boast of the desires of their heart . . . they sit in ambush in the villages; in hiding places they murder the innocent . . . they lurk that they may seize the poor and drag them off in their net.¹⁰¹

The Psalmist demands of God:

Rise up, O Lord; O God, lift up your hand; do not forget the oppressed . . . you have been the helper of the orphan.¹⁰²

The psalmist closes his lament with the words of faithful confidence:

O Lord, you will hear the desire of the meek; you will strengthen their heart, you will incline your ear to do justice for the orphan and the oppressed, so that those from earth may strike terror no more.¹⁰³

The concerns expressed in Psalm 10 are found throughout the entire collection.¹⁰⁴ It is important to note that while the psalmist cries out to God ("O

⁹⁸ *Psalm* 88:1–18.

⁹⁹ See generally GEORGE LUCIUS SALTON, *THE 23RD PSALM: A HOLOCAUST MEMOIR* (2002) (describing the author's liberation during the Holocaust).

¹⁰⁰ WALTER BRUEGGEMANN, *THE MESSAGE OF THE PSALMS 15–23* (1984); WALTER BRUEGGEMANN, *FROM WHOM NO SECRETS ARE HID: INTRODUCING THE PSALMS 1–7* (Brent A. Strawn ed., 2014); ANN B. WEEMS, *PSALMS OF LAMENT xv–xvii* (1995).

¹⁰¹ *Psalm* 10:3, 8–9.

¹⁰² *Psalm* 10:12, 14.

¹⁰³ *Psalm* 10:17–18.

¹⁰⁴ See generally *Psalms* 35, 36, 37, 88 (continuing Psalm 10's theme).

Lord, do not rebuke me in your anger”¹⁰⁵ and seeks to hold God accountable to the covenant¹⁰⁶—hence God is the bystander—there is an unstated expectation that God’s actions are always expressed through the actions of humans. It is not that victims passively wait for God to act. Rather, the victim expects those in power to act more justly and both the victim and God await the actions of the just to live into the divine demand to act on behalf of the oppressed. Each individual lament assumes a community that should rise up and live into their covenantal identity of advocates for the victims.

Psalm 22 expresses the anguish of someone in utter torment. The writer laments:

But I am a worm, and not human; scorned by others, and despised by the people. All who see me mock at me; they make mouths at me, they shake their heads[.]¹⁰⁷

As the Psalm continues, the reader is led to understand that the victim has been saved and restored. While the victim’s thankfulness of his release is directed towards God, his recognition of the “great congregation”¹⁰⁸ identifies a community of support that comes to the victim’s aid as well as joins him in the confrontation with the unnamed enemy who are called by the psalmist “bull of Bashan”¹⁰⁹ and “dogs.”¹¹⁰

Even the pastoral and well-known Psalm 23 expresses the confidence of one who had “walked through the valley of the shadow of death,” but who now stands before his or her enemies. The former adversaries have become a different kind of bystander; they now stand and watch the former victim eat at a table in peace and be anointed with overflowing oil.¹¹¹

Psalm 101, allegedly a psalm of King David lays out the expectation that the king will not tolerate “[o]ne who secretly slanders a neighbor . . . [a] haughty look and an arrogant heart I will not tolerate.”¹¹² Likewise, Psalm 72 acknowledged to be a psalm of King Solomon reflects the sovereign’s awareness of the divine expectation of the King to protect the vulnerable.

Give the king your justice, O God, and your righteousness to a king’s son.
May he judge your people with righteousness, and your poor with justice.

¹⁰⁵ *Psalm* 38:1.

¹⁰⁶ *Psalm* 74:20.

¹⁰⁷ *Psalm* 22:6–7.

¹⁰⁸ *Psalm* 22:25.

¹⁰⁹ *Psalm* 22:12.

¹¹⁰ *Psalm* 22:16.

¹¹¹ See *Psalm* 23:5.

¹¹² *Psalm* 101:5.

May he defend the cause of the poor of the people, give deliverance to the needy, and crush the oppressor. . . . For he delivers the needy when they call, the poor and those who have no helper. He has pity on the weak and the needy, and saves the lives of the needy. From oppression and violence he redeems their life; and precious is their blood in his sight.¹¹³

Both King David's and King Solomon's self-identity as protector, liberator and advocate of the oppressed reflects the Jewish belief that God is also the protector, liberator and advocate.

Happy are those whose help is the God of Jacob . . . who keeps faith forever; who executes justice for the oppressed; who gives food to the hungry. The Lord sets the prisoners free; the Lord opens the eyes of the blind. The Lord lifts up those who are bowed down; the Lord loves the righteous. The Lord watches over the strangers; he upholds the orphan and the widow, but the way of the wicked he brings to ruin.¹¹⁴

While many psalms express the human impatience with God's timing, no one doubts that the very nature of God is to be on the side of the victim.¹¹⁵ It is not just God and the King who are to be actively engaged in helping the vulnerable; it is part of the identity of the chosen community:

For the righteous will never be moved; they will be remembered forever. They are not afraid of evil tidings; their hearts are firm, secure in the Lord. Their hearts are steady, they will not be afraid; in the end they will look in triumph on their foes. They have distributed freely, they have given to the poor; their righteousness endures forever.¹¹⁶

The psalms continue with complete consistency the themes expressed so far throughout Hebrew Scripture: God demands justice for the oppressed, and the victim. The bystander who does not involve herself or himself as advocate, defender, or helper of a person in need is not worthy to be part of the covenant community.

H. The Prophets

It is beyond the scope of this survey article to investigate all the prophetic literature on the issue of the bystander. Suffice it to say that the prophets, from the earliest (Amos, Isaiah and Hosea) to the latest (Joel) consistently show their

¹¹³ *Psalm* 72:1–4, 12–14.

¹¹⁴ *Psalm* 146:5–9.

¹¹⁵ See generally *Psalms* 105–106 (noting that God is on the side of the victim).

¹¹⁶ *Psalm* 112:7–9.

collective certainly that God is on the side of the oppressed, the poor, the widow, and the orphan. As Abraham Heschel writes in his magisterial work *The Prophets: An Introduction*, “[i]nstead of showing us a way through the elegant mansions of the mind, the prophets take us to the slums.”¹¹⁷ In other words, the prophets identify themselves with the victim and rail against the perpetrators and hold with particular contempt those bystanders who ignore the cries of the poor in order to serve their own needs. To the prophet, God is not standing by ignoring the plight of the poor. As Heschel points out, the prophets of Judah and Israel have a very different notion of God’s activity in the world than, for example, Greek and Roman philosophical schools. He writes: “The gods attend to great matters; they neglect small ones, Cicero maintains. According to Aristotle, the gods are not concerned at all with the dispensation of good and bad fortune or external things. To the prophet, however, no subject is as worthy of consideration as the plight of man.”¹¹⁸

History seems to be on the side of the philosophers as one considers the Holocaust and less extensive and more contemporary acts of evil in the world. But it is important to stress that to Judeo-Christian tradition the evil that befalls individuals and peoples are caused not by God, but rather by humans who stand by and do not involve themselves in the inequity, violence and oppression of the world in which they live.

To the prophets, even if humans stand by and say and do nothing against oppression and violence, inanimate objects will cry out! The prophet Habakkuk wrote: the “stone cries out from the wall,” and the “beam from the woodwork responds.”¹¹⁹

God, the prophets declare, will at last intervene and punish both the Northern Kingdom (Israel) and the Southern Kingdom (Judah) through the armies of the Assyrians and Babylonians. The prophets understood that God’s intervention would take place through the actions of human actors and kingdoms. God’s judgment is against individuals—particularly the rich and powerful—who fail to live according to the covenant between God and the chosen people, ignoring the plight of the poor, in their pursuit of wealth and power. The prophets’ concern is for justice: giving every person what they deserve; which Walter Brueggemann once defined as “finding out what belongs to whom and returning it to them.”¹²⁰ The prophetic demand to help the “other” is not a removed and passive affair. Humans must be held accountable for NOT reflecting God’s primary concern for the oppressed and overlooked. Furthermore, the prophets hold accountable those individuals who, and systems that, have allowed the gap between the rich and the poor to exist and increase. To the prophets bystanding is not permitted, for all are

¹¹⁷ ABRAHAM JOSHUA HESCHEL, *THE PROPHETS: AN INTRODUCTION* 3 (1962).

¹¹⁸ *Id.* at 5.

¹¹⁹ *Habakkuk* 2:11–12; see also *Luke* 19:40 (“I tell you, if these were silent, the stones would shout out.”).

¹²⁰ Walter Brueggeman, *Voices of the Night – Against Justice*, in Walter Brueggeman et. al., *TO ACT JUSTLY, LOVE TENDERLY, WALK HUMBLY: AN AGENDA FOR MINISTERS* 5–6 (1986).

judged as complicit for not following the commandments to care for the most vulnerable.

The prophet Amos, considered the earliest of the “classical” prophets, appeared in Israel (Northern Kingdom) during the long and peaceful reign of King Jeroboam II (786–746 BCE). This was a time of relative security and affluence. Amos denounced the Northern Kingdom for its reliance on military might, its injustice against the poor, its immorality and its shallow piety. Amos opens with judgments against Israel’s neighbors: Damascus, Gaza, Tyre, Edom, the Ammonites, Moab, and Judah. He then focuses on the transgressions of Israel: “because they sell the righteous for silver, and the needy for a pair of sandals – they who trample the head of the poor into the dust of the earth.”¹²¹

The prophet Isaiah, speaking for God, proclaimed his message to Judah and Jerusalem from 742–701 BCE. The Northern Kingdom had been annexed to the Assyrians.¹²² The prophet opens with a diatribe against the religious: “What to me is the multitude of your sacrifices? . . . I have had enough of burnt offerings of rams and the fat of fed beasts; I do not delight in the blood of bulls, or of lambs, or of goats.”¹²³ Isaiah demanded: “cease to do evil, learn to do good; seek justice, rescue the oppressed, defend the orphan, plead for the widow.”¹²⁴ This divine disgust that the most vulnerable are being overlooked while those who are wealthy and the religious are enriching themselves at the expense of the poor is found everywhere: “What do you mean by crushing my people, by grinding the face of the poor?”¹²⁵ Isaiah railed against those who failed to notice the plight of the poor and those who actively legislated against them: “Ah, you who make iniquitous decrees, who write oppressive statutes, to turn aside the needy from justice and to rob the poor of my people of their right.”¹²⁶ Isaiah, in chapter 58, comes to his most rousing proclamation that God is on the side the victim and the oppressed and that those who are faithful personify God’s concern to ameliorate the conditions of the poor:

Shout out, do not hold back! Lift up your voice like a trumpet! . . . Is this not this the fast that I choose: to loose the bonds of injustice, to undo the thongs of the yoke, to let the oppressed go free, and to break every yoke? Is it not to share your bread with the hungry, and bring the homeless poor into your house; when you see the naked, to cover them, and not to hide yourself from your own kin?¹²⁷

¹²¹ *Amos* 2:6–7.

¹²² Most critical scholars identify at least three different “voices” in the prophecies collected under the name of Isaiah. Certainly the book of Isaiah includes oracles and pronouncements that cover over 200 years of history.

¹²³ *Isaiah* 1:11.

¹²⁴ *Isaiah* 1:16–17.

¹²⁵ *Isaiah* 3:15.

¹²⁶ *Isaiah* 10:1–2.

¹²⁷ *Isaiah* 58:1, 6–7.

Micah, a younger contemporary of Isaiah, also stresses God's judgment and coming wrath against the Southern Kingdom of Judah and its leaders in Jerusalem. Like Isaiah, Micah sees that the people have not paid attention to those in need. They have turned from the Biblical laws concerning purity. The people do not share resources. They ignore the cries of the neediest and stand by while the oppressed suffer. The people have failed to comply with the Biblical covenant expectation to participate in the just society. *In not* doing what is required and expected, the people brought calamity upon themselves. Micah is famous for his words: "He has told you, O mortal, what is good; and what does the Lord require of you but to do justice, and to love kindness and to walk humbly with your God?"¹²⁸

What Amos, Isaiah, and Micah take for granted is the expectation that those who claim to be the people of God will not stand idly by, but participate in the care for others. The ethical norm of the prophetic writings, which cover a historical period from before the destruction of the Northern Kingdom (720 BCE) through the fall of Jerusalem (545 BCE) to the restoration of Jerusalem (444 BCE), consistently reflects the covenant expectation expressed at Mount Sinai during the Exodus: you shall help your neighbor and not leave anyone to be a victim of neglect.

I. Jonah

The Book of Jonah is an interesting extension of the expectation to care for the neighbor—even if the neighbor lives in a foreign city and is considered the enemy of Israel. Jonah is unique among the prophetic writings for there are no oracles. It is a story about the Jonah who is reluctant to proclaim God's ethical norms to the capital city (Nineveh) of a foreign nation and then sulks when the people actually repent. It is a legendary tale that scholars agree was written sometime in the fourth or fifth century BCE. It seems to have been written during the post-exilic period as a cautionary story against narrow sectarianism and exclusivism. The story is well known to children; Jonah is called by God to convert the heathen city of Nineveh, which was a large city in the Assyrian Empire (modern day Iraq). Jonah tries to escape his call by sailing to Tarsish, which is thought to refer to a place in Southern Spain. Jonah is swallowed by a large fish that later vomits the reluctant prophet near land. Jonah enters the city and, as the story relates, his message is successful. However, Jonah pouts after his successful mission of "saving" Nineveh from destruction.

Few consider that this story is factual. However, the meaning the narrative is clear and instructive. To the author of this tale, God cares for the outsider, even the enemy and the foreigner, in this case the citizens of Nineveh. This divine concern for the outsider is expressed in the last verse of the book, when God says to Jonah: "And should I not be concerned about Nineveh, that great city, in which there are more than a hundred and twenty thousand persons who do not know their right

¹²⁸ *Micah* 6:8.

hand from their left, and also many animals?”¹²⁹ God depends on those who live according to Jewish faith to give witness to the prophetic vision of justice. The faithful person may not stand idly by and witness (and in some cases hope for) the destruction of an entire city and the people who live in it. Hence, the Book of Jonah is yet another example of the development, in Hebrew scripture, that extends the “duty to act” to include the non-Jew.

J. Habakkuk

Habakkuk is yet another prophet of the late sixth century BCE. who championed the cause of the poor. What is interesting about Habakkuk is his opening words crying out to God about not being involved in the historic situation:

O Lord, how long shall I cry for help, and you will not listen? Or cry to you ‘Violence!’ and you will not save? Why do you make me see wrongdoing and look at trouble? Destruction and violence are before me; strife and contention arise. So the law becomes slack and justice never prevails. The wicked surround the righteous – therefore judgment comes forth perverted.¹³⁰

He challenges God to “[l]ook at the nations, and see! Be astonished! Be astounded!”¹³¹ A common theme found throughout the scriptures is that God seemingly ignores and turns away from the plight of the persecuted. It is the task of the prophet to hold God accountable to God’s own decrees AND to hold the people accountable to be and to become responsible agents of compassion and justice. As the Book of Habakkuk continues, the prophet has a vision that God does indeed see and know; reminiscent of God’s response to the cries of the enslaved Hebrews in Egypt.¹³² God will act in God’s own time and it is up to the prophet to declare to the powerful and to the rich that their attempts to protect themselves from the coming calamity are futile.

K. Summary of the Prophets

This brief survey of the prophetic literature shows one consistent affirmation: God has a particular concern for the poor, the oppressed and those suffering violence at the hands of the powerful and rich. All humans have a duty to alleviate the pain and suffering of others. Individuals and especially political and religious institutions that stand idly by and do not offer help to the victims of economic and social injustice will be punished. Furthermore, according to the prophets, humans are in no position to blame God for any misfortune because humans are the cause

¹²⁹ *Jonah* 4:11.

¹³⁰ *Habakkuk* 1:2–4.

¹³¹ *Habakkuk* 1:5.

¹³² *Exodus* 2:23–24.

of the injustice, the oppression and the violence that they complain about. The prophets unambiguously declare for human responsibility and human involvement. Not to be involved in the care of the victim after the fact and furthermore, not to be proactively involved in creating a society in which all are cared for is to be complicit in the injustice. Throughout the historic period of the prophets, which covers more than 500 years, there is no Biblical justification for non-involvement. No one, to the prophets, can use the excuses: “I didn’t see,” or “my actions couldn’t make a difference.” Being held accountable to the Covenant made at Sinai means the faithful cannot be bystanders.

L. Summary of the Hebrew Scripture

This cursory review of the Hebrew scripture indicates a very clear consensus that there is a duty to act on behalf of one in need. The patriarchal narrative stresses hospitality to the stranger. Those who collected and edited the traditions of the Exodus and the entrance into the Promised Land remind the reader to pay attention to the wanderer and the stranger because the Jews were once wanderers and strangers. Many of the legal admonitions that are described and discussed in Leviticus and Deuteronomy speak specifically to the concern of what is owed to a person in distress. We have noted that the Talmudic tradition is deeply concerned to explain in detail the duty that is owed to a victim or one in distress. The prophets again and again stress that God requires people to give justice to the oppressed and not to stand idly by while others suffer. Many of the Psalms are expressions of persons who are victims of oppression calling out to God and to the faith community to rise up and live according to the divine will to help those in need.

According to the Hebrew scripture, God has revealed this divine command to the believing community. God holds his chosen people accountable for not engaging in relief of victims whether by sickness, political or cultural oppression. The Biblical mandate requires both king and subject to live according to these demands. Hence, the scriptural demand to care for the neighbor is not just moral platitude or philosophical musings. God, according to the Hebrew Scriptures, holds those in authority accountable to these laws and at least some of the kings of Judah and Israel claimed their duty to be advocates for the poor and those in need. Not to show preferential treatment to those in need is a dereliction of the covenant given by God, according to the tradition, on Mount Sinai. There was no place for the bystander in the Hebrew texts that, again quoting Guiora, “had the ability to mitigate the harm but chooses not to.”¹³³

¹³³ GUIORA, *supra* note 1, at 85.

XI. THE BYSTANDER IN THE NEW TESTAMENT

As we move to the writings of the Christian New Testament we come to the gospels and the letters of Paul of Tarsus and other authors who wrote in the second half of the first century CE and in the first decades of the second century CE. At first, those who called themselves “Christians” saw their movement as an extension of Judaism. However, by the beginning of the second century CE, Judaism and Christianity were separate and distinct religions.

The gospels (Matthew, Mark, Luke and John) are collections of the teachings and actions of Jesus set forth in an interpreted chronological narrative format. The gospels are not meant to be read, primarily, as historic or biographical works. Their primary focus is evangelistic. The gospels were written to promote the beliefs of a new community of faith that grew out of Judaism. This new belief was based on the experience of some that Jesus had come back to life after being dead. So while not histories, *per se*, nevertheless, the gospels reveal the cultural and historical context of first century Roman occupied Palestine and the surrounding area of modern day Syria, Turkey, Jordan, and Lebanon.

The earliest of the gospels, Mark, was written sometime in the 60s while John’s gospel, arguably the latest was written sometime between 90–110 CE. All of the gospels, and particularly the Gospel of Luke, (written in the mid-70s) reveal that both the author and audience were familiar with the language and mores of the Greco-Roman world outside of Palestine.¹³⁴

Luke, of all the gospels, is shaped by a “leitmotif” that God has revealed once again through Jesus, the prophetic concern for the poor. For Luke, Jesus becomes the messenger and revealer of this divine priority for the victims of injustice. In Luke there is a call for a social inversion where the victim is now powerful and the perpetrator is sent away empty.¹³⁵

Paul became a follower of the Jesus movement in its earliest stage. He claimed to have been a member both of the Jewish sect of Pharisees and a Roman citizen.¹³⁶ Paul organized communities and wrote letters to early churches spread out across the Mediterranean basin from Antioch (Eastern Turkey) to Rome (Central Italy). Hence, in the writings of the Christian scriptures, we have primary evidence of the cultural norms and expectations of those who lived in the Greco-Roman world.

Like Judaism from which it arose, Christianity maintained that every person was born with worth and dignity because they were created by God. Every person had the ability to choose between doing good and doing wrong and every person, therefore, had the responsibility to help others in need. God had revealed this concern for those in need through pronouncements that were interpreted and written down in the Hebrew scripture. Christianity claimed the Hebrew scripture as

¹³⁴ For a good introductory discussion about the dating of the Gospels, see LUKE TIMOTHY JOHNSON, *THE NEW TESTAMENT: A VERY SHORT INTRODUCTION* 36–59 (2010).

¹³⁵ See *Luke* 1:53.

¹³⁶ See *Acts* 22:28; *Philippians* 3:5.

normative for their churches and then interpreted it and added to it to form their own sacred texts. The belief that God revealed the divine intentions for humanity to a chosen people, and held humanity accountable to these revelations, set Jews and Christians apart from Greco-Roman philosophy and law, which did not place as much concern for the social welfare of the poor, the sick and the powerless.¹³⁷ Anecdotally, the early Christian writer Tertullian describes a scene from the second century where a Greek non-Christian sees how the Christian community cares for the sick during an epidemic. “‘Look,’ they say, ‘how they love one another,’” was the reported reply.¹³⁸ At their best both Christians and Jews reached out in care for others because their tradition mandated that they do this as an expression of the will of God.

According to the tradition of the church, Jesus began his ministry after being baptized by John the Baptist in the Jordan River. His mission was to offer a contemporary re-interpretation of the prophetic vision of God’s “kingdom” being revealed in history. As the Gospel writer Luke describes it, Jesus’ mission statement was shaped directly by Isaiah. At a gathering of the synagogue in Nazareth, Jesus arose and declared:

The Spirit of the Lord is upon me, because he has anointed me to bring good news to the poor. He has sent me to proclaim release to the captives and recovery of sight to the blind, and to let the oppressed go free, to proclaim the year of the Lord’s favor.¹³⁹

From its inception, the message of Christianity was founded upon the ethic of care of the vulnerable; which included the poor, imprisoned and oppressed. Throughout his ministry Jesus returned to this fundamental understanding of his mission in his teachings, preaching, healings and acts of civil disobedience.

Jesus was known for intensifying the religious commands and proscriptions of Judaism: “You have heard that it was said to those of ancient times . . . But I say to you.”¹⁴⁰ Jesus interpreted the laws concerning the duty to help another in need on the Sabbath more broadly than most of the rabbis of his day. To help someone in an emergency situation, whether or not this help was performed on the Sabbath, was always expected. Jesus raised concerns among the lawyers of his day when he healed individuals who had chronic afflictions but were in no immediate danger and who, according to the contemporary interpretations of the Torah, could have waited for a non-Sabbath day.

For example, Jesus healed a woman who, for 18 years, had been bent over and could not straighten herself. The ruler of the synagogue said: “There are six days

¹³⁷ See generally WAYNE A. MEEKS, *THE FIRST URBAN CHRISTIANS: THE SOCIAL WORLD OF THE APOSTLE PAUL* (1983) (describing Pauline Christians).

¹³⁸ TERTULLIAN, *APOLOGIA* 177 (G.P. Goold ed., trans. T.R. Glover trans., Loeb Classical Library, 1977) (1931).

¹³⁹ *Luke* 4:18–19.

¹⁴⁰ *Matthew* 5:21–22.

on which work ought to be done; come on those days and be cured and not on the sabbath day.”¹⁴¹ Apparently Jesus was guided by an understanding that doing good on behalf of another person was equivalent to saving life¹⁴² and there were no days when the “duty to act” to help one in need was not applicable. Jesus responds to the Synagogue ruler by appealing to the interpretation of Biblical laws of the day concerning the rescue of animals on the Sabbath: “Suppose one of you has only one sheep and it falls into a pit on the sabbath; will you not lay hold of it and lift it out? How much more valuable is a human being than a sheep!”¹⁴³ If one could not be a bystander when an animal was in peril, then by extension, one could not stand idly by while a person in need might be helped in some way. Jesus consistently taught and showed by example, that the expectation to care for one in need took precedence over any limiting factor in the law. Primary to Jesus’ concern was human need not legal precedence or legal interpretation. He extended the legal norms of his age. As Paul Ramsey writes: “Jesus’ actions and teaching may be described as flowing from an orientation which valued the needs of the neighbor infinitely above all else.”¹⁴⁴

Essential to Jesus’ ethical understanding is his emphasis on two of the various rules codified in Deuteronomy and Leviticus: the love for God and love for neighbor. Jesus was not alone in this emphasis. As the story goes, a disciple of Rabbi Hillel once came to the master and promised that he would obey all the laws he could be taught while standing on one foot.¹⁴⁵ Hillel replied; “What is hateful to thyself do not do to thy neighbor; this is the whole law.”¹⁴⁶

In one of his parables Jesus describes a wedding feast where the usual suspects of wealth and power give excuses why they cannot attend the feast.¹⁴⁷ The command is then given to go forth and bring in the “poor, the crippled, the blind, and the lame.”¹⁴⁸ Jesus even dismisses one’s primary responsibility for the family over the one in need: “whoever comes to me and does not hate father and mother, wife and children, brothers and sisters, yes, and even life itself, cannot be my disciple.”¹⁴⁹ No doubt a profoundly disturbing demand. Nevertheless, central to Jesus’ message was that a duty to act on behalf of others and care for the victim took precedence over even care of family. This far extended the legal expectation of the rabbis of his day. I would contend that Jesus and his followers would agree with Professor Guiora that the “[d]uty to act is the essence of the social contract even if the victim has been defined as the ‘enemy’ or ‘the other.’”¹⁵⁰ It is precisely to this issue that the parable of the Good Samaritan and other parables point.

¹⁴¹ *Luke* 13:14.

¹⁴² RAMSEY, *supra* note 18, at 55.

¹⁴³ *Matthew* 12:11–12.

¹⁴⁴ RAMSEY, *supra* note 18, at 55.

¹⁴⁵ *Id.* at 61.

¹⁴⁶ *Id.*

¹⁴⁷ *See Luke* 14:15–24.

¹⁴⁸ *Luke* 14:21.

¹⁴⁹ *Luke* 14:26.

¹⁵⁰ GUIORA, *supra* note 1, at 30.

A. The Good Samaritan

Just then a lawyer stood up to test Jesus. ‘Teacher,’ he said, ‘what must I do to inherit eternal life?’ He said to him, ‘What is written in the law? What do you read there?’ He answered, ‘You shall love the Lord your God with all your heart, and with all your soul, and with all your strength, and with all your mind; and your neighbor as yourself.’ And he said to him, ‘You have given the right answer; do this, and you will live.’ But wanting to justify himself, he asked Jesus, ‘And who is my neighbor?’ Jesus replied, ‘A man was going down from Jerusalem to Jericho, and fell into the hands of robbers, who stripped him, beat him, and went away, leaving him half dead.’ Now by chance a priest was going down that road; and when he saw him, he passed by on the other side. So likewise a Levite, when he came to the place and saw him, passed by on the other side. But a Samaritan while traveling came near him; and when he saw him he was moved with pity. He went to him and bandaged his wounds, having poured oil and wine on them. Then he put him on his own animal, brought him to an inn, and took care of him. The next day he took out two denarii, gave them to the innkeeper, and said, ‘Take care of him; and when I come back, I will repay you whatever more you spend.’¹⁵¹

This parable is the defining teaching of Jesus about care for one in need. The parable of the Good Samaritan has become, even for those who do not know its Biblical setting, the prime example of how individuals should treat one another. In the story, the Priest who would bear the pastoral responsibility of compassion and care sees the victim and walks by. The Levite, who would know the law pertaining to care for the neighbor¹⁵² also notices the man in distress and walks by.¹⁵³ The Samaritan, considered a non-Jewish foreigner, sees the victim and not only stops to help; he furthermore treats the wounds and takes the victim to the local inn for care.¹⁵⁴ He offers two denarii (two days wages) and promises more if the Innkeeper requires it.¹⁵⁵ There is nothing in the text that indicates that the Samaritan required or expected any reimbursement for his costs. Clearly the Samaritan reflects the rabbinic tradition of care for the victim. He was in proximity to the victim, was

¹⁵¹ See Luke 10:25–35.

¹⁵² See *Leviticus* 19:13–17 (commanding the Levites to act with common decency toward their neighbors).

¹⁵³ See Luke 10:31

¹⁵⁴ See Luke 10:33–35.

¹⁵⁵ See Luke 10:35.

aware of the needs of the man, and he possessed the means and disposition to help.¹⁵⁶

Jesus tells this parable for many reasons. He is particularly critical of the institutionally religious and the religious lawyers and scholars who should know better but choose to remain uninvolved. They clearly see the man in distress and are in proximity to him. They choose to cross over to the other side of the path. Since the perpetrators of the crime are no longer in the area, there is no apparent danger to the Levite and Priest. Hence, according to the law proposed by Professor Guiora, these two would be liable to prosecution.

Jesus was also making a point about judging the outsider. Samaritans and Jews in the first century held each other in contempt based on historical antipathy about location of worship and religious traditions. Implicit in the words of Jesus was that if the outsider knew what to do, then those who should know the law and the prophets have no excuse to do less than the Samaritan. Furthermore, Jesus broadened the definition of “neighbor” to include any person in need. Finally, Jesus’ main concern was not to identify definitively who is the neighbor but to hold all accountable to acting neighborly regardless of who is helped. This extended designation of the “neighbor” and how one should always act neighborly to one in need contrasts sharply to the reactions and non-actions of the residents in the Hungarian villages 2000 years later, as their “neighbors” who *were* known were paraded to the train station to be transported to Auschwitz and other extermination and concentration camps.

It is important to note that the Samaritan did not arrive on the scene until *after* the crime had been committed. While the Samaritan did the right thing, and followed the Biblical expectation for care for the neighbor, he did not imperil himself by doing so. Once again perhaps, behind this text is the awareness of the rabbinic interpretation that while one is compelled to act on behalf of a victim one is not pressed to do so at the danger to self.

Saul Schwartz, Professor of Law at the University of Ottawa, uses the parable of the Good Samaritan to reflect upon Canada law.¹⁵⁷ He asks:

The biblical parable of the good Samaritan is used to teach the virtue of helping someone in need. Does this virtue carry over to our legal system? How would the priest and the Levite be treated in our courts for their unwillingness to assist a fellow traveler [sic] on the road to Jericho?¹⁵⁸

Professor Schwartz identifies three main issues involved in this story: 1) the legal duty of a citizen to assist someone in need; 2) the compensation for loss or injury,

¹⁵⁶ See Aaron Kirschenbaum, *The “Good Samaritan” and Jewish Law*, 7 DINE ISRAEL 7, 15–17 (1976) (discussing the obligation to rescue in the context of the Good Samaritan story).

¹⁵⁷ Saul Schwartz, “*The Good Samaritan*,” EMERGENCY PLANNING DIGEST, April–June 1988, 1, at 1–4.

¹⁵⁸ *Id.* at 1.

or the rights of the good Samaritan; 3) the liability or risk assumed by a good Samaritan.¹⁵⁹ Schwartz begins by describing the legal systems of Canada. Quebec follows “civil law” while “common law” is observed in the rest of the provinces throughout Canada.¹⁶⁰ According to Schwartz, common law does not require a bystander to help someone in peril unless the person is a trained professional (firefighter, police, doctor) whose job it is to intervene.¹⁶¹ Schwartz concludes that, in Canada, neither the priest nor Levite would be liable for failing to assist the Samaritan. Schwartz states that, “in legal theory, the bystander is safe as long as he or she does absolutely nothing.”¹⁶² However, as soon as an individual steps in to help, the immunity for failing to act is removed. Perhaps the Priest and Levite could defend their actions by claiming that their help might have increased the suffering of the Samaritan. Furthermore, they might have hurt themselves in trying to help.

In contemporary Canada, it is up to the courts to consider compensation for the loss or injury of the “Good Samaritan.” However there is little legal uniformity in the federal or provincial laws in Canada that exists to protect the one who helps another in need.¹⁶³

In Quebec, however, the laws pertaining to the Good Samaritan are different. Quebec imposes a duty to act on everyone to help a person in peril. “Violators can also be liable to pay damages to the person who suffers.”¹⁶⁴ In regard to the parable, if the Priest and Levite were in Quebec in the twenty-first century rather than in first century Palestine, they could be fined for their inaction.

*B. The Sermon on the Mount*¹⁶⁵

The collection of Jesus’ teachings known, as “The Sermon on the Mount” is a gathering of his pronouncements made throughout his ministry grouped together in one location in Matthew. It is apparent from the start that Jesus identified with the most vulnerable persons in society: the poor in spirit, those who mourn, the meek, those who hunger and thirst for righteousness, the peacemakers, the persecuted, the reviled. It is these people who are the “salt of the earth,” and the “light of the world.” It is widely held that the first Christians, while not exclusively of the lower ranks of social status and wealth in the Greco-Roman world, were of those at the bottom rung of the social order. So, it is not surprising that the ones most likely to be the victims of oppression and ignored were the first to respond favorably to the words of Jesus.

Jesus claimed that his teaching was not a departure from traditional Jewish teaching of that time, but a re-interpretation, re-articulation and intensification of

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Id.* at 2.

¹⁶⁴ *Id.* at 3.

¹⁶⁵ See *Matthew* 5:1–12; *Luke* 6:17–49.

the central message of Judaism concerning care for the neighbor and advocacy for the most vulnerable usually identified by but not exclusive to “the widow and the orphan.” Jesus re-emphasized the commandment “you shall not murder” and added that anger and insult are likewise punishable.¹⁶⁶ The “love of neighbor” is extended to a “love for your enemies.”¹⁶⁷ He demanded: “Give to everyone who begs from you, and do not refuse anyone who wants to borrow from you.”¹⁶⁸ He reiterated: “In everything do to others as you would have them do to you; for this is the law and the prophets.”¹⁶⁹

Clearly, Jesus expected his followers to live these moral demands. That throughout history these demands have not been followed is not testimony against Christianity per se but against those who claim the faith but do not follow it.

C. *The Woman Caught in Adultery*

The scribes and the Pharisees brought a woman who had been caught in adultery; and making her stand before all of them, they said to him, ‘Teacher this woman was caught in the very act of committing adultery. Now in the law Moses commanded us to stone such women. Now what do you say?’ . . . [Jesus] said to them, ‘Let anyone among you who is without sin be the first to throw a stone at her.’ . . . When they heard it, they went away . . .¹⁷⁰

Jesus was known for becoming involved in situations where one was being ridiculed or in danger. The story in John’s gospel of Jesus’ intervention on behalf of a woman caught in adultery is exemplary.¹⁷¹

According to Leviticus 20:10 and Deuteronomy 20:23–24 the sentence for adultery is death by stoning. Here is a case where, apparently, the law was clear about the punishment for the crime.¹⁷² Nevertheless, Jesus, by his words, challenges those in authority to re-consider their actions, and the law that justified such actions. The woman, while breaking the law, is seen in this scene as the victim at the mercy of men (religious notwithstanding) who seem to have nothing better to do than try to catch people in compromising positions. In this story Jesus, even at the risk of breaking the law and increasing the hostility towards himself, intervenes and saves the life of a woman.

¹⁶⁶ *Matthew* 5:21–22.

¹⁶⁷ *Matthew* 5:43–44.

¹⁶⁸ *Matthew* 5:42.

¹⁶⁹ *Matthew* 7:12.

¹⁷⁰ *John* 8:3–11.

¹⁷¹ While this scene appears to be an authentic incident in the ministry of Jesus, it does not appear in many of the earliest collections of the gospel of John.

¹⁷² The passages in Leviticus and Deuteronomy also state that the man caught in adultery should also be likewise punished. See *Leviticus* 20; *Deuteronomy* 20.

*D. The Rich Man and Lazarus*¹⁷³

There was a rich man who was dressed in purple and fine linen and who feasted sumptuously every day. And at his gate lay a poor man named Lazarus, covered with sores, who longed to satisfy his hunger with what fell from the rich man's table; even the dogs would come and lick his sores. The poor man died and was carried away by the angels to be with Abraham. The rich man also died and was buried.¹⁷⁴

In this parable, the comparison of the rich man, who is nameless, with the poor man, who is named Lazarus, is starkly contrasted. Lazarus is left to beg at the gates of the rich man's house. The only ones who even pay attention to Lazarus are the dogs that only come to lick his sores. The dogs seem less interested in Lazarus' meager scraps because they are probably better fed by their master. The lesson of this parable is clear: while God may not intervene, at least in this life, on behalf of the one in need, in the afterlife, Lazarus is the one who is "carried away by the angels to be with Abraham," while the rich man, the "bystander" who did not help the victim, is buried and ends up in Hades where he then begs for water but is left thirsty. This is a clear Biblical injunction to help your neighbor. Jesus clearly taught that there can be no justification for not giving aid to one in need.

*E. The Crucifixion*¹⁷⁵

There is painful irony that the most obvious example of bystanders in the Biblical narratives is woven into the texts describing the trial, torture and crucifixion of Jesus of Nazareth. This narrative has been wrongly interpreted and grotesquely used for 2,000 years as the justifying text for blaming the crucifixion of Jesus on the Jews. For centuries, these texts have caused individuals to turn away and fail to render aid to Jews being persecuted in pogrom and crusade. These texts have also been used to justify active state violence against Jews. Adolf Hitler, in *Mein Kampf*, misused the New Testament texts to blame the Jews for the hardships in Germany and throughout Europe after World War I.¹⁷⁶

It is important, however, to look at the Biblical narrative again with the theological and subsequent religious/historical baggage removed. Bystanders abound in the scenes. Foreshadowing later instances of citizen inaction throughout history, these Biblical narratives reveal ordinary citizens who have opportunities to protect, hide, defend and save Jesus but do nothing. In fact, the bystanders join in

¹⁷³ See *Luke* 16:19–31.

¹⁷⁴ *Luke* 16:19–22.

¹⁷⁵ *Matthew* 26:47–27:56; *Mark* 14:32–15:47; *Luke* 22:39–23:56; *John* 18:1–19:42.

¹⁷⁶ ADOLF HITLER, *MEIN KAMPF* 307 (Ralph Manheim trans., First Mariner Books ed. 1999) (“[Jesus] made no secret of his attitude toward the Jewish people, and when necessary he even took the whip to drive from the temple of the Lord this adversary of all humanity, who then as always saw in religion nothing but an instrument for his business existence. In return, Christ was nailed to the cross . . .”).

the abuse of Jesus calling for his crucifixion,¹⁷⁷ mocking him and yelling: “he saved others; let him save himself if he is the Christ of God, the chosen one!”¹⁷⁸

The reaction of the bystander is not without possible justification. Even though the crowd would have vastly outnumbered the Roman soldiers assigned to the task, the perceived or, most likely, real and violent response of the Roman occupying forces to any show of defiance or help would have been enough to keep the bystander from giving aid. Even Jesus’ own disciples fail to come to his help and most run away.

The events of Jesus’ last days in Jerusalem did not occur in a political vacuum. In some ways the situation in first century Palestine was not unlike the situation in Europe during the Third Reich. Since the fall of the Maccabean Dynasty (160 BCE–37 BCE), all of Palestine had been under the occupation of the Roman Empire either directly by Roman governor (Pontius Pilate, Governor of Judea, Samaria, and Idumaea, 26–36 CE) or Roman approved King (Herod Antipas, Tetrarch of Galilee and Perea 4 BCE–40 CE).

This was a time of unrest and potential revolution. Jewish wonder workers, political rabble-rousers and religious sectarian communities arose throughout this period.¹⁷⁹ The Roman response to this unrest was violent. Josephus, the Jewish historian who lived in the first century, reports that Varus, the Roman legate of Syria “pacified” Galilee by crucifying 2,000 persons.¹⁸⁰ Crucifixion was the common punishment for those who were considered low status criminals. A crucifixion was a binding of a person to a cross, typically, made of wood. The condemned would hang and ultimately die by suffocation as gravity pulled his body downward while the arms and legs would remain tied.

Jesus, according to tradition, was born in Bethlehem but raised in Nazareth in Galilee during a period of political agitation. Nazareth was a hotbed of political unrest. Little to nothing is known of Jesus’ life before he appeared in the crowd of John the Baptist at around the age of 30. Scholars generally agree that Jesus taught and performed miracles during a three-year period making his way ultimately to Jerusalem at the time of the Passover.

After entering the city from the Mount of Olives, at least implicitly revealing his messianic credentials, Jesus and his disciples spend several days in Jerusalem. Jesus reportedly caused a mini-riot in the temple courtyard by overturning the tables of the money-changers and sacrificial animal sellers.¹⁸¹ Jesus is also said to

¹⁷⁷ *Luke* 23:21.

¹⁷⁸ *Luke* 23:35.

¹⁷⁹ See REZA ASLAN, *ZEALOT: THE LIFE AND TIMES OF JESUS OF NAZARETH* xxiii–xxxii (2013); JOHN DOMINIC CROSSAN, *THE HISTORICAL JESUS: THE LIFE OF A MEDITERRANEAN JEWISH PEASANT* xxvii–xxxiv (1991).

¹⁸⁰ See JOSEPHUS, *ANTIQUITIES* 33 (“Upon this, Varus sent a part of his army into the country, to seek out those that had been the authors of the revolt; and when they were discovered, he punished some of them that were most guilty, and some he dismissed: now the number of those that were crucified on this account were two thousand.”).

¹⁸¹ *Mark* 11:15–17.

have predicted the destruction of the temple.¹⁸² Especially concerned about any possible political unrest during the time of Passover, when Jerusalem swelled to many times its normal population size, the Roman authorities aided by some leaders of the Jerusalem Temple arrest Jesus. After his arrest, Jesus is taken to the Roman authorities Pilate and Herod. Upon the conclusion of the hearings, Jesus is taken to be crucified.

During Jesus' appearance before Pilate and Herod, one of Jesus' closest disciples, Peter, is standing in the courtyard with the other bystanders.¹⁸³ Under questioning from some in the crowd, Peter denies ever having known Jesus. For Peter to speak in support of Jesus would have most likely caused Peter to have been arrested, tortured and crucified as well. In fact, the disciples of Jesus, those one would assume stay with their master, all fled and sought to hide from perceived retribution.

In the poignant and horrifying scene Jesus takes his own "death march" to Golgotha where he will be crucified. In the scenes described by the gospels, bystanders are present unwilling and/or unable to do anything. Jesus, physically weakened, cannot carry his cross, as such, the Roman soldiers compel a bystander Simon of Cyrene to carry it for him.

By investigating this story one can see the parallels between the bystanders' refusal to act on behalf of one in need in the first century and certainly during the middle decades of the twentieth century in Germany and even into our own day.

Having looked at the evidence of the gospels we turn now to the letters of Paul.

F. Paul and the Letters of the New Testament

The spread of Christianity and its development as a distinct new religion differentiating itself and being differentiated from Judaism is certainly in large part due to Paul of Tarsus' influence at the end of the first century. As tradition has it, Paul was a Jew who was raised in the religious schools of the Pharisees. He also was a Greek citizen of the city of Tarsus located in S.E. Turkey and a Roman Citizen.¹⁸⁴ Before his conversion to the Jesus movement, he was a zealous persecutor of the first Jesus followers. He was a willing bystander at the stoning of Stephen who was one of the early Christian leaders.¹⁸⁵ Paul was pursuing Christians in Damascus to arrest them when he had his life-changing experience.

Paul's letters, collected in the New Testament, give witness to the diversity and richness of the Greco-Roman world of the first century. In most of Paul's letters, he is writing to a Christian community offering them advice on how to maintain order, and offering guidelines on how a Christian community should live

¹⁸² *Mark* 13:20.

¹⁸³ *Mark* 14:66. The Greek here for bystander is "paristemi."

¹⁸⁴ For a study of the controversy of St. Paul's biographical information presented in the Bible, see JOHN C. LENTZ JR., *LUKE'S PORTRAIT OF PAUL* 1-6 (1993).

¹⁸⁵ *Acts* 7:548-8:1.

its distinct lifestyle and beliefs within the larger Greco-Roman culture. Paul's letters offer insights into the social, cultural and legal norms of the age. While Paul founded several of the Christian communities to which he wrote letters (e.g. Corinthians), he also offered guidance to communities that he did not found, for example in his letter to the church in Rome.

In Romans, Paul shows the tendency of early Christianity to intensify moral expectation of care for one another as well as for those outside the community of faith. In this example, Paul encourages his readers to care even for the "enemy," whoever that might be. "No, if your enemies are hungry, feed them; if they are thirsty, give them something to drink; for by doing this you will heap burning coals on their heads. Do not be overcome by evil, but overcome evil with good."¹⁸⁶

The defining characteristic of the early church is hospitality to all. According to Paul, all persons are "children of God" and hence all are due welcome, respect and care. Paul famously declares: "There is no longer Jew or Greek, there is no longer slave or free, there is no longer male or female; for all of you are one in Christ Jesus."¹⁸⁷ Hence, the early Christian ethic is one of non-distinction. No one is better than anyone else. Paul's use of the body metaphor in Corinthians 12 shows his celebration of all people and there is absolutely no distinction of worth between women and men of differing social strata and wealth. Hence, there is a duty to care for the other. Paul is very clear in his letter to the Romans:

Owe no one anything, except to love one another; for the one who loves another has fulfilled the law. The commandments, "You shall not commit adultery; You shall not murder; You shall not steal; You shall not covet"; and any other commandment, are summed up in this word, "Love your neighbor as yourself." Love does no wrong to a neighbor; therefore love is the fulfilling of the law.¹⁸⁸

In a passage in Paul's letter to the Ephesians he reveals the standard for interpersonal relationships based on care for the other and self-sacrifice:

Put away from you all bitterness and wrath and anger and wrangling and slander, together with all malice, and be kind to one another, tenderhearted, forgiving one another as God in Christ has forgiven you. Therefore be imitators of God as beloved children, and live in love, as Christ loved us and gave himself up for us, a fragrant offering and sacrifice to God.¹⁸⁹

According to Paul, Christians are to treat one another and live in civil society as an expression of God's intention for humanity. He picks this theme up in

¹⁸⁶ *Romans* 12:20–21.

¹⁸⁷ *Galatians* 3:28 (emphasis added).

¹⁸⁸ *Romans* 13:8–10.

¹⁸⁹ *Ephesians* 4:31–5:2.

Philippians as well: “Do nothing from selfish ambition or conceit, but in humility regard others as better than yourselves. Let each of you look not to your own interests, but to the interests of others.”¹⁹⁰ Again in 1 Thessalonians, Paul writes: “See that none of you repays evil for evil, but always seek to do good to one another and to all.”¹⁹¹ Paul believes that a Christian “seeks not his own good, but the good of his neighbor.”¹⁹²

Other early Christian writers echo this interpretation of Jesus’ teaching about the duty to act. In Hebrews, the author concludes his work with an exhortation to empathy: to act as if you were in the place of the victim. After reminding his readers of the common scriptural requirement to “show hospitality to strangers,” he continues: “Remember those who are in prison, as though you were in prison, with them; those who are being tortured as though you yourselves were being tortured.”¹⁹³ This awareness of the importance of placing oneself in the situation of the victim is fundamental to the Judeo-Christian understanding of care for the neighbor. Harkening back to the Hebrew Scriptures, the ethic of care for the stranger is based on the exhortation to remember that the Jew was once a stranger and wanderer.

The letter of James also stresses the ethical demand to care for others. At the very heart of religion is “care for orphans and widows in their distress.”¹⁹⁴ James exhorts believers to live their faith rather than speak about it;

What good is it, my brothers and sisters, if you say you have faith but do not have works? Can faith save you? If a brother or sister is naked and lacks daily food, and one of you says to them “Go in peace; keep warm and eat your fill,” and yet you do not supply their bodily needs, what is the good of that?¹⁹⁵

There is often a misconception, even among Christians, that when the authors of the Biblical books speak of “love” they speak of a passive feeling of general affirmation for all things or a non-active concern. Reminiscent of this is the character Linus in Charles Shultz’s “Peanuts” cartoon where he says: “I love mankind its people I can’t stand.”¹⁹⁶ However, the “love” expressed in the New Testament is nothing like Linus’ impersonal generalization. “Love” by definition is active and engaging particularly expressed by support and advocacy for the most vulnerable. The author of the 1st John plainly states this active engaging and sacrificial love: “We know love by this, that he [Jesus] laid down his life for us – and we ought to lay down our lives for one another.”¹⁹⁷ The author continues;

¹⁹⁰ *Philippians* 2:3–4.

¹⁹¹ *1 Thessalonians* 5:15.

¹⁹² *1 Corinthians* 10:24.

¹⁹³ *Hebrews* 13:3.

¹⁹⁴ *James* 1:27.

¹⁹⁵ *James* 2:14–16.

¹⁹⁶ CHARLES SCHULTZ, *AROUND THE WORLD IN 45 YEARS* 7 (1994).

¹⁹⁷ *1 John* 3:16.

“How does God’s love abide in anyone who has the world’s goods and sees a brother or sister in need and yet refuses help?”¹⁹⁸ To John, one cannot claim to be a Christian without active engagement in the care for others:

Those who say, “I love God” and hate their brothers or sisters, are liars; for those who do not love a brother or sister whom they have seen, cannot love God whom they have not seen. The commandment we have from him is this: those who love God must love their brother and sister also.¹⁹⁹

G. Summary of the New Testament

From this review of the New Testament the ethics of care for the neighbor and duty to act on behalf of a victim is amply revealed. In fact, what identified the early Christians, within the larger Greco-Roman world of the first century, was particularly this ethic of care and compassion, love and hospitality of the stranger and the self-sacrificial duty to serve the other in distress. The fact that far too often throughout history this defining attribute of those who profess this faith has been horrifically lacking is more than discouraging. When most needed the Biblical demand to sacrifice your own safety for another person has been often neglected as amply testified by many church folk during the Third Reich. Perhaps we can expect that only some will have the depth of faith, courage and conviction to follow the Biblical commands to care for one in need and not stand idly by. However, perhaps the failure of the institutional church and the diminishing impact of religious communities in general leave a moral vacuum in these days that must be filled by the civil authorities through the writing of laws that compel individuals to do the right thing and make bystanding a criminal act.

X. SUMMARY AND CONCLUSION

Ethicist William F. May was fond of quoting these words of the author Flannery O’Connor: “you know a people by the stories they tell.”²⁰⁰ In this study I have set out to investigate the stories that Jews and Christians have told for over two thousand years. Surveying the Biblical literature, I have looked for verses, passages and stories related to the issue of the bystander’s duty to act on behalf of the victim. The issue of a person’s duty to help someone in need and to be proactively engaged on behalf of the most vulnerable is everywhere present in both the Hebrew and Christian scriptures. The Biblical proscriptions are not just

¹⁹⁸ *1 John* 3:17.

¹⁹⁹ *1 John* 4:20–21.

²⁰⁰ See WILLIAM F. MAY, BELEAGUERED RULERS: THE PUBLIC OBLIGATION OF THE PROFESSIONAL 208 (2001); Paul Lauritzen, *Covenant Keeper: William F. May & the Crisis of Bioethics*, COMMONWEAL (Jan. 28, 2013), <https://www.commonwealmagazine.org/covenant-keeper> [https://perma.cc/265Z-4NAQ].

suggestions to “do the right thing” but divine ethical demands to action on behalf on the one in need. A failure to act on behalf of one in need will lead to either exclusion from the community in this age or to judgment in the next. Both Jews and Christians are identified fundamentally by their actions towards others.

This essay does not argue that only Jews and Christians know how to act or that Biblical expectation should be imposed on a secular world. However, the ancient religious texts still have a positive normative power to shape non-religious legal discussion. The Biblical texts speak of the duty of a person to act on behalf of another because of the covenantal relationship that God has with humans which structures “human-to-human interaction in important ways.”²⁰¹ God’s covenant with the chosen people, which Christianity then appropriated and re-interpreted through its understanding of Jesus, expected one to care for all persons and not stand by while someone was victimized. People of faith believe that God cares. Therefore people, reflecting the divine intention, should care too. The duty to act is an expression of relational and communal responsibility.

With the rise of individualism and the breakdown of communal associations and religious institutions, society has, I believe, lost touch with these ancient covenantal community traditions. As Professor Paul Lauritzen of John Carroll University writes in his review of the works of William May: “Covenants are responsive; they emphasize exchange and reciprocity. They are personal in that those who are covenanted do not meet entirely as strangers. And while contracts are minimalist, encouraging a quid pro quo between parties who meet as self-interested strangers, covenants stress mutual giving and receiving, emphasizing relationship, rather than choice, as the basis of exchange.”²⁰² Lauritzen describes W.F. May as “drawing out this distinction between covenant and contract” as May seeks to show how this shift from covenant to contract “has impoverished our sense of public responsibility.”²⁰³ I would agree.

Whether modern scholarship accepts or even acknowledges the influence of the historic religious ethical teaching, the moral and legal implications of Biblical expectations upon contemporary society are unarguable. Furthermore, the notion that humans “do not meet entirely as strangers,” offers a hopeful model for future conversations about human interaction and law. Above all we must move towards rebuilding public responsibility. One can certainly have this discussion without including religion, but at least religion and more specifically Jewish-Christian tradition provide a vocabulary and narrative which helps set the agenda.

There are more people in the world who claim a faith tradition than who do not. And even many who are critical of religious institutions and narrow religious interpretations acknowledge that many of the religious proscriptions are positive and should be followed. Hence, stressing the differences and the distance between secular law and religious expectation is not helpful. Religion is not the enemy of secular society. Morality and ethics are not in opposition to legislation. Even if one

²⁰¹ Lauritzen, *supra* note 200.

²⁰² *Id.*

²⁰³ *Id.*

law or another would cover every possible situation, an individual is still faced with the moral, ethical choice of either following or not following the law. Knowledge of the Biblical material not only challenges but also supports the laws of the state by holding legislators accountable to the creation of a more just and equitable society. Hence, the divine commands expressed in the Bible are foundational and aspirational.

While I support, in theory, the addition of laws that criminalize inaction and compel the bystander to act on behalf of the victim or at least to report to authorities the actions that are beheld, I wonder how effective they would be. The secular laws proposed will have so many extenuating details describing who, in fact, is a culpable bystander, that I wonder if the proposed legislation will be as successful as intended. Who reports the bystander? Isn't that person by definition a bystander too? Will the second person in the chain of bystanding be culpable as well? Will a person who claims he was "frozen in fear," be acquitted?

Will the law cover only those private citizens who witness an act or will it include, for example, individual police officers that stand by and watch fellow officers mistreat those in custody? Will lawyers and accountants be complicit in breaking the law for not reporting illegal action even if they are not personally active in the breaking of the law? Furthermore, just because a law is on the books does not mean that it is followed or interpreted consistently across jurisdictions. I would argue that the re-introduction of covenantal religious ethical norms moves us closer to a just and civil society.

Maryville College Professor of Religion, Ethics and Philosophy William J. Meyer, in a personal letter to me discussing Guiora's thesis writes:

[Professor Guiora's] thesis appears to turn the Good Samaritan laws on its head. Whereas those laws seek to protect individuals who voluntarily/charitably seek to assist those in need – the laws protect them from failure and/or error (e.g. performing CPR incorrectly and inadvertently harming the person rather than genuinely helping them) – Guiora argues for a law that coercively demands/requires them to help and coercively punishes them for failing to act.²⁰⁴

Meyer goes on to say: "If one has a legal duty to assist, does one also have a legal duty to assist effectively or helpfully?"²⁰⁵ While Guiora argues that moral duty alone will not succeed in helping more than few, I am not sure that a new law will either; it may, in fact make matters worse. It is interesting to note that the students who witnessed, chased, caught and turned over to the police Brock Turner after his sexual assault of a student at Stanford University were not compelled because of a law, but because they knew the right thing to do.²⁰⁶

²⁰⁴ Letter from William J. Meyer to author (June, 2016) (on file with author).

²⁰⁵ *Id.*

²⁰⁶ Sam Levin, *Brock Turner Laughed After Bystanders Stopped Stanford Sex Assault, Files Show*, THE GUARDIAN (Aug. 26, 2016), <https://www.theguardian.com/society/2016/>

The current plethora of individuals using phone camera to capture evidence of a misdeed suggest that individuals and groups are actually becoming more active and involved in making sure that injustice, particularly at the hands of civic authority, is not ignored. Usually the citizens who act on behalf of another in these contemporary actions are part of a community of people who know each other or who identify themselves with the victim because of shared race, gender or ethnicity. Hence, they are not strangers. Perhaps the ideal of the covenantal community where people involve themselves in care for the other is re-establishing itself. One wonders if the citizens are ahead of the proposed law that seeks to encourage engagement.

Yet another issue that needs to be addressed is this: new laws can be written but who will make sure they are fairly administered? For example, if America, to suggest the absurd, were ever to become a fascist state like Nazi Germany, would laws that compel the bystander to act save any of the identified minorities that are selected for repression? One would doubt that. Laws are only as good as those who follow them and administer them fairly.

Ultimately our “faith” in secular laws is not that different from our faith in divine injunction to care for the neighbor, help the victim, and lay down one’s life for one’s friend defined broadly. Would bystander laws have been effective in Nazi Germany and saved those whom Hitler identified as enemies of the state? The answer is a simple and clear “no!” Just as history is replete with instances where people did not follow the Golden Rule, it is also replete with examples where secular authorities did not follow the laws that were on the books or who wrote oppressive laws. So, writing laws alone will never solve the problem of bystander inaction.

Whether one is discussing secular, civil law, or Biblical proscription, it all comes down to faith and action. Do those who make the laws, administer them, and seek to follow them, have faith (trust) that they have affective power to change or control behavior? Will they be used fairly across all gender, race, and social status lines?

It still comes down to a moral choice that each individual has to make to identify with the plight of another person, in an often ambiguous and stressful situation. Rising up and pro-actively engaging on behalf of one in need is more a “religious” act than a legally motivated one. Sometimes the act of engagement requires courage beyond one’s normal capacity or even the law’s urging.

One does not need to be a person of faith to know what to do, but it would be good for all to recognize the essential worth of the faith perspective and the Biblical mandate to rise up and act and not to stand idly by when a person is in need.