



## **Few Are Guilty, but All Are Responsible: The Obligations to Help Survivors of Abuse**

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In the final episode of the popular television situation comedy, Jerry Seinfeld and his friends are arrested and tried for failing to come to the aid of man while he was being robbed. The charge? Violation of a Good Samaritan law that required them to come to the aid of someone in danger. In his opening statement at their trial, their defense attorney pleaded:

You know what these four people were? They were innocent bystanders. Now, you just think about that term. Innocent. Bystanders. Because that's exactly what they were. We know they were bystanders, nobody's disputing that. So how can a bystander be guilty? No such thing. Have you ever heard of a guilty bystander? No, because you cannot be a bystander and be guilty. Bystanders are by definition, innocent. That is the nature of bystanding. But no, they want to change nature here. They want to create a whole new animal—the guilty bystander. Don't you let them do it. Only you can stop them.<sup>1</sup>

The Seinfeld group is not unique. From the very dawn of our history, humans have often avoided and denied their responsibility for the welfare of others. Cain's dismissive "Am I my brother's keeper?" set a pattern for the many who remained uninterested, uninvolved and unresponsive just when their brothers and sisters needed them the most. This has unfortunately been the case, too many times, in matters of abuse, assault, and violence in the Jewish community. Rebbetzin Chana Weinberg tells of the answer of her father, Rabbi Yaakov Yitzchak Ruderman, founder of Ner Israel Yeshiva, to her question as to the response of Jewish communities in pre-war Europe to incidents of spousal abuse. "We closed the shutters," he confessed.

Does Judaism have a Good Samaritan law? Must we help those in need? Does Judaism recognize the concept of the "innocent bystander"? May we close the shutters on victims?

### **All Are Responsible**

"Few are guilty, but all are responsible" is the way Abraham Joshua Heschel formulated a Jewish response to evil. He distinguished between *guilt*, a term that applies specifically to the perpetrators of crime and sin; and *responsibility*, "the capability of being called upon to answer, or to make amends, to someone for something, without

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<sup>1</sup> <http://www.seinfeldscripts.com/TheFinale.htm>. The episode originally aired on May 14, 1998.

necessarily being directly connected with or involved in a criminal act.”<sup>2</sup> So, while a small minority of the Jewish community is actually guilty of perpetrating abuse and violence, the entire community is responsible to come to the aid of victims, to pursue justice, to demand accountability, and to protect the innocents of our community and the integrity of our faith.

Heschel’s observation is correct, as far as it goes. There are times when *all* are guilty. When the members of the community fail to live up to their responsibilities to prevent abuse and to help survivors of abuse heal and find justice, they are more than just responsible. They are guilty of enabling and perpetuating abuse. And this is more than just a homiletic exhortation. Consider: When codifying the various interpersonal laws which are found in Leviticus 19, Rambam opted to include them in the beginning of his code of law known as *Mishneh Torah*, chapters six and seven of *Hilkhot De’ot*, chapters dealing with human character and ethical behavior. The laws detailing the obligation to help someone in distress, however, do not appear there. They are found at the end of his magnum opus, in the first chapter of *Hilkhot Rotzei’ah u-Shemirat ha-Nefesh*, the Laws of Murder and Self Protection. By this placement, Rambam is teaching an important lesson: whoever does not come to the aid of someone under assault is guilty of perpetrating that assault himself.<sup>3</sup>

The Torah’s attitude in this area differs sharply from the law in most<sup>4</sup> of the United States where, unless there is a special relationship—such as parent-child, employer-employee, school-pupil, or physician-patient—there is no duty to rescue.<sup>5</sup> This lack of obligation is based on the common law priority on the protection of individual rights.<sup>6</sup> “Every individual right, in the sphere of the law, is inherently negative in

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<sup>2</sup> Abraham Joshua Heschel, “Toward a Just Society” in *Moral Grandeur and Spiritual Audacity*, Susannah Heschel, ed. (New York: Noonday Press, 1996), p. 220.

<sup>3</sup> See also *Issur ve-Heter ha-Arokh*, *kelal* 59, no. 38.

<sup>4</sup> States that have Good Samaritan laws that impose a general duty to help a crime victim or injured person, or to report a witnessed crime, are Minnesota (MINN. STAT. ANN. 604A.01 (West 1997)), Rhode Island (R.I. GEN. LAWS § 11-56-1 (1997)), Vermont (VT. STAT. ANN. tit. 12, § 519 (1997)), and Wisconsin (WIS. STAT. ANN. § 940.34 (West 1997)). Massachusetts (MASS. GEN. LAWS ANN. ch. 268, § 40 (West 1998)) and Florida (FLA. STAT. ANN. § 794.027 (West 1998)) require observers to report sexual assaults to authorities. Ohio and Washington require individuals to report felonies in certain situations.

<sup>5</sup> Ernest J. Weinrib, *The Case for a Duty to Rescue*, 90 YALE L. J. 247, 247 (1980). All 50 states have passed some form of a mandatory child abuse and neglect reporting law.

<sup>6</sup> See *Buch v. Amory Manufacturing Co.* 44 A. 809 (N.H. 1898):

Actionable negligence is the neglect of a legal duty. The defendants are not liable unless they owed to the plaintiff a legal duty which they neglected to perform. With purely moral obligations the law does not deal. . . . Suppose A, standing close by a railroad, sees a two-year-old babe on the track and a car approaching. He can easily rescue the child with entire safety to himself, and the instincts of humanity require him to do so. If he does not, he may, perhaps, justly be styled a

character. One does not have the right to speak, work, eat, or even live; one has the right not to have these freedoms infringed by others. Similarly, one does not have a duty to protect the rights of others to speak, work, eat or live; one only has the duty not to infringe upon these freedoms.”<sup>7</sup>

Opposed to the common law approach, Jewish law imposes a considerable number of affirmative, positive obligations on its adherents. These include such commandments as loving your neighbor, returning found property, helping load and unload the cargo from an animal in distress, giving charity, lending money to those in need, visiting the sick, comforting mourners, ensuring that wedding expenses are met, celebrating with a bride and groom, escorting the dead to burial, hospitality, and more.

Somewhat puzzling, therefore, is Hillel’s response to the potential convert who asked Hillel to convert him on the condition that he teach him the entire Torah while he, the proselyte, stood on one foot. Hillel said, “What is hateful to you, do not to your neighbor. That is the whole Torah; all the rest is the commentary. Go and learn.”<sup>8</sup> Hillel formulated his analysis in the negative—what not to do—an answer that strongly parallels the common law approach that we rejected. Why does he express himself in this way?

There are a number of answers to this question. One suggests that Hillel was addressing a potential convert, one who had no experience with Judaism and whose moral character and sensitivity were as yet undeveloped. The insightful and tactful Hillel understood that overwhelming the convert immediately with a variety of affirmative commandments might be discouraging, daunting and demoralizing. So he began by teaching him carefully and cautiously, starting with modest demands, yet adding “all the rest is the commentary; go and learn.”<sup>9</sup>

Another explanation of Hillel’s negative expression proposes that the language was deliberate and instructive—a positive formulation of the Golden Rule would have overstated the obligation. Hillel was teaching that while one is responsible for the

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ruthless savage and a moral monster; but he is not liable in damages for the child's injury, or indictable under the statute for its death.

See Francis H. Bohlen, *The Moral Duty to Aid Others as a Basis of Tort Liability*, 56 U. PA. L. REV. 217, 230-31 (1908):

There is no distinction more deeply rooted in the common law and more fundamental than that between misfeasance and non-feasance, between active misconduct working positive injury to others and passive inaction, a failure to take positive steps to benefit others, or to protect them from harm not created by any wrongful act of the defendant. This distinction is founded on that attitude of extreme individualism so typical of anglo-saxon legal thought.

<sup>7</sup> Philip W. Romohr, *A Right/Duty Perspective on The Legal And Philosophical Foundations Of The No-Duty-To-Rescue Rule*, 55 DUKE L. J., 1054 (2006)

<sup>8</sup> *Shabbat* 31a.

<sup>9</sup> Heard from Rabbi Norman Lamm.

wellbeing of others, he should not sacrifice his own wellbeing for them. Referring to the famous Talmudic account, *Baba Metzi'a* 62a, of two people lost in the wilderness with only enough water for one of them to survive, R. Akiva's position is cited in order to support this conclusion. Said R. Akiva, "That your brother may live with you' (Lev. 25:26): your life takes precedence over his life."<sup>10</sup> While this topic deserves greater analysis in terms of its scope in areas of civic duty, national security, public and family welfare and the like, that is not the focus of this chapter.<sup>11</sup> Nevertheless, there are limits to the amount of self sacrifice or danger permitted by Jewish law in situations in which one must help another which we will discuss later.

### The Obligations to Help

The Torah expresses the obligation to help those under assault or subject to abuse through both positive and negative precepts: "Thou shalt not stand by the blood of thy neighbor" (Lev. 19:16) and "And you shall restore him to himself" (Deut. 22:2).<sup>12</sup> The Talmud teaches that while the latter verse teaches that one must intervene personally, the former expands that responsibility; a person may not just stand around idly while someone is being hurt. Rather, he is required to call others to do whatever is necessary to help those who require it.<sup>13</sup>

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<sup>10</sup> Maharsha to *Shabbat* 31a. See also Ahad Ha'am, "Al She'tei ha-Se'ifim" in *Kol Kitvei 'Ahad Ha'am* (Tel Aviv: Dvir, 5706), pp. 370-377.

<sup>11</sup> See Nahum Rakover, *Mesirut Nefesh: Hakravat ha-Yahid Le-ma'an ha-Rabim* (Jerusalem: Sifriyat ha-Mishpat ha-'Ivri, 2000); and Nahum Rakover, "Hitnadvut u-Mesirat Nefesh" (*Sifriyat ha-Mishpat ha-'Ivri*, 2001) at <http://www5.domaindlx.com/mishpativri/mekorotmesirut.doc>.

<sup>12</sup> This verse which speaks in the first instance of returning lost property is extended to requiring the restoration of a person's health and life.

<sup>13</sup> The Talmud, *Sanhedrin* 73a, states:

How do we know that if a man sees his neighbor drowning, mauled by beasts, or attacked by robbers, he is obligated to save him? (We learn this) from the verse, "You shall not stand by the blood of your neighbor" (Lev. 19:16). But is it derived from this verse? Is it not (learned) from elsewhere? "How do we know [that one must save his neighbor from] the loss of himself? (We learn this) from the verse, 'And you shall restore him to himself' (Deut. 22:2)!" (Now, the resolution:) From that verse (Deut. 22:2) I might think that it is only a personal obligation, but that he is not bound to take the trouble of hiring others [if he cannot save him personally]; therefore, this verse (Lev. 19:16) teaches that he must do so.

*Minkhat Hinuch* questions why Rambam, *Hil. Rotzei'ah u-Shemirat he-Nefesh* 1:14, cites only the "neighbor's blood prohibition" that is violated by not saving a person's life and ignores the positive commandment of "You shall return him to himself." The difficulty with Rambam's statement may be resolved, however, by understanding his reading of the Talmudic passage. The standard reading suggests that the lifesaving obligation is derived from both the positive and negative commandments, with the thrust of our passage highlighting the additional financial responsibility that the "neighbor's blood prohibition" adds to the pre-existing personal obligation prescribed by the positive commandment.

Clear from the Talmudic account is the obligation to help others whether their lives are in mortal danger or whether they are “merely” under physical, sexual or emotional assault.<sup>14</sup> The obligation obtains even if one is in doubt as to whether or not there is clear and present danger and even when one is not fully aware of the circumstances of the attack.<sup>15</sup>

These same verses are cited in the Talmud as sources for the law of a *rodef*, someone who is pursuing another with the intention of murdering him/her or sexually assaulting him/her. Those who observe this or are aware of it are obligated to intervene and save the life or well-being of the pursued. Due to the severity of the assaults, Jewish law authorizes this third party to save the pursued, even to the point of killing the pursuer if necessary.<sup>16</sup>

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Rambam, however, understands the development of the Talmud’s reasoning quite differently. According to his reading, the Talmud first posits that the lifesaving obligation is derived from the “neighbor’s blood prohibition.” When the objection is raised that the verse “You shall restore him to himself” already teaches that responsibility, Rambam maintains that the Talmud rejects that verse as a source of the obligation because it is not sufficiently inclusive; it only mandates personal involvement. The “neighbor’s blood prohibition,” being broader in its demands — requiring a person to do all that he can, both personally and financially, to save another’s life — is accepted by the Talmud, according to Rambam, as the sole source of the lifesaving mandate. Hence, Rambam’s ruling is consistent with his reading of the Talmud.

<sup>14</sup> *Hafetz Hayyim, Be’er Mayyim Hayyim, Hil. Rekhilut, kelal 9, no. 9.* While all agree that one is obligated to come to the aid of someone in distress, there is a dispute as to whether the category of *rodef* applies in non-life-threatening attacks. Most authorities agree with Rambam, *Hil. Rotzei’ah u-Shemirat ha-Nefesh 1:15*, who introduces the law of *rodef* by saying, “If one sees a person pursuing another *in order to slay him* (emphasis added) or (pursuing) after one forbidden to him sexually in order to have relations with her, and he is able to save (the victim) and he does not save him...” Rambam limits the obligation to rescue to cases of injury that may result in death. See, however, *Piskei ha-Rosh, Baba Kama*, ch. 3, no. 13: “If a person sees a Jew attack another and he cannot rescue him without hitting the attacker, *even though [the attacker’s] blow is not lethal* (emphasis added), he can strike the attacker to prevent him from committing the crime.” Similarly, see *Yam shel Shlomo, Baba Kama*, ch. 3, no. 9 and Mordekhai to *Baba Kama*, no. 38.

<sup>15</sup> *Hiddushei ha-Ran to Sanhedrin 73a.* He derives this from the additional verse, “Do not stand by the blood of your neighbor.” The lost object source applies when there is certainly of actual harm; the neighbor’s blood injunction extends the obligation even to cases of uncertain danger. See *Teshuvot ha-Radbaz V*, no. 218.

<sup>16</sup> *Hil. Rotzei’ah 1:10-13; Hoshen Mishpat 425:1.* We have followed *Yad Ramah’s* reading of the Mishneh, *Sanhedrin 73a.* Rashi understands that the focus of this obligation is not on protecting the victim but on preventing the perpetrator from sinning.

One may not ignore the cries of someone who needs help. The principle enunciated in the lost-object mandate applies here as well:<sup>17</sup> if one sees a lost object, he is commanded, “You may not ignore it” (Deut. 22:3).<sup>18</sup> One may not close his eyes or ears and pretend as if he is unaware of the loss, thus exempting himself from getting involved.<sup>19</sup> Furthermore, the very language of the neighbor’s blood verse warns us not “to stand” on another’s blood. Standing is a passive act. And we are not permitted to remain passive. In fact, contrary to the assertion of Seinfeld’s lawyer noted above, there is no such thing in Jewish law as an “innocent bystander.” Unless intervention will be hazardous to the witness—in which case the witness must call others to help—he is obligated to get involved. If he doesn’t, he is not innocent.

### **Coercion to Assist**

How far does Jewish law go in requiring someone to provide assistance? May that assistance be coerced?

This Talmudic citation concerning the water and the wilderness, despite what it reveals about the limitations of responsibility, teaches us an important insight into the scope of fraternal responsibility. The Talmud states:

Two are traveling on a journey [far from civilization], and one has a pitcher of water; if both drink, they will [both] die, but if one drinks, he can reach civilization—ben Peturah taught: It is better that both should drink and die, rather than that one should behold his companion's death. Until R. Akiba came and taught: “That your brother may live with you”—your life takes precedence over his life.

Consider: While R. Akiva maintains that a person may not sacrifice his own life in order to save that of another, he does agree with ben Peturah, in the case when his life was not in danger, that he must share his water with his friend. Not only must he involve himself personally, but the one in need of assistance has a legal claim to his financial resources as well. Elaborating upon R. Akiva’s position, Rashba posits that since the water-owner is obligated to save his thirsty friend, the needy party may take the water by force—“stealing” it is merely helping the owner fulfill his fraternal lifesaving obligation.<sup>20</sup> Similarly, Hatam Sofer suggests that the Torah actually assigned another’s

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<sup>17</sup> *Rabbeinu Bahye* to Deut. 22:3 applies this principle to all interpersonal obligations.

<sup>18</sup> *Minhat Hinukh*, *Kometz la-Minhah*, *Mitzvah* 237; *Maharsha* to *Sanhedrin* 73a; *Ha’amek Se’eilah* to *She’iltot* 38:1.

<sup>19</sup> Rashi.

<sup>20</sup> Rashba, however, requires compensation. *Teshuvot ha-Rashba* 4:17. See also Gloss of Rashba to *Baba Kama* 81b. *Piskei ha-Rosh* to *Sanhedrin*, chap. 8, no. 2, maintains that the financial obligation on the lifesaver holds only when the endangered himself lacks the financial resources to hire others to save his own life. See also *Teshuvot ha-Rosh*, *kelal* 85, no. 2 and *Hoshen Mishpat* 426. A similar obligation is codified in the case of hostages by Rema, *Yoreh De’ah* 252, no. 12. See *Shah* to *Hoshen Mishpat* 426, no. 1 and *Teshuvot Bet Ya’akov*, no. 148. *Teshuvot ha-Rashba* III, no. 426, however, maintains that compensation by hostages is unnecessary since their redeemer’s expended money in the

money to an endangered individual. Again, he is not stealing — he is taking money to which has legal title.<sup>21</sup>

Further analysis draws our attention to the two Torah obligations that require a person to save another who is in danger; they are both positive and negative commandments.

In general, Jewish law provides coercive means for enforcing the dictates of the Torah.<sup>22</sup> These forms of punishment and coercion, lashes and death, were carried out in ancient times under limited circumstances, and cannot be meted out today. Nevertheless, understanding these aspects of Jewish law is helpful in defining the natures of the obligations under discussion. The Talmud records:

It has been taught: [The limit of thirty-nine lashes as punishment] applies to negative precepts, but in the case of positive precepts as, for instance, when a person is told, “Make a *sukkah*,” and he does not make it, or “Perform the commandment of the *lulav*,” and he does not perform, he is flogged until his soul departs!<sup>23</sup>

It is clear from this source that the Sages are empowered to assure the fulfillment of positive obligations. However, their role in the enforcement of prohibitions is subject to dispute. According to Rashi’s understanding of the Talmudic text just cited, while lashes may be used to force the fulfillment of positive commandments, coercion is not applicable to prevent the violation of negative ones. In the latter case, lashes are limited to thirty-nine and are purely punitive in nature.<sup>24</sup> Others maintain, however, that coercion is applicable to negative precepts as well and that lashes were used to prevent their

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fulfillment of a religious obligation. See Mark Dratch, “His Money or Her Life? Heinz’s Dilemma in Jewish Law,” *Journal of Halacha and Contemporary Society*, XX:3, Fall, 1990, pp. 111-129.

<sup>21</sup> *Teshuvot Hatam Sofer, Yoreh De’ah*, no. 319. See also *Teshuvot ‘Ahi’ezer, Yoreh De’ah* 16; *Minhat Hinukh, mitzvah* 296.

<sup>22</sup> See *Arakchin* 26a and *Kiddushin* 50a.

<sup>23</sup> *Hullin* 132b.

<sup>24</sup> Rambam joins Rashi in this distinction between positive and negative commandments. In describing the guidelines he used to codify his list of the 613 commandments, Rambam writes, *Sefer ha-Mitzvot, shores* 14:

When I shall mention a commandment, positive or negative, which entails some punishment [for violation], I shall mention that punishment by saying, “He who violates it is liable to death [by the hands of Heaven], or extinction, or a certain sacrifice, or flogging, or one of the death penalties inflicted by the Court, or payment.” And wherever no punishment is mentioned... it is not for us to punish them. But as regards all positive commandments, if the time of the performance is still applicable, we are to flog him who refuses to do it until he dies or performs [the commandment], or until such time as the obligation passes, for he who violates the [positive] commandment of dwelling in a Tabernacle is not to be flogged for his sin after [the passing of the holiday of] Tabernacles.

violation. According to this analysis, the Talmud here contrasts the extent to which lashes are meted out in each case.<sup>25</sup>

This discussion of the coercive element in positive and negative commandments is useful in our analysis. As we have seen, the life-saving obligation is defined by both positive and negative precepts. The positive commandment of restoration, a verse which speaks in the first instance of returning lost property and which is extended to requiring the restoration of a person's health and life, necessitates only personal involvement. It is the negative precept, "You shall not stand by the blood of your neighbor," which dictates financial involvement as well. Can a person be coerced to fulfill these obligations?

According to the authorities who permit enforcement only with regard to positive commandments, coercion is relevant only to the affirmative obligation of "You shall restore him to himself," and not to the prohibition, "You shall not stand by the blood of thy neighbor." Hence, a person can be compelled to fulfill the positive commandment of participating personally in a life-saving operation. He cannot, however, be forced to spend any money, an obligation which falls under the purview of the prohibition. His property is not subject to any claim entailed by an endangered's right of self preservation. According to the more expansive position which permits coercion even with regard to preventing the violation of negative precepts, one can be coerced not only to participate personally, but to contribute financially as well towards helping others in need.<sup>26</sup>

### **That Your Brother May Live With You**

Ramban explains that the verse, "And if your brother has become poor, and his means fail with you; then you shall assist him; though he may be a stranger, or a sojourner; that he may live with you" (Lev. 25: 35) is another source for the obligation

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<sup>25</sup> *Hiddushei ha-Ran to Hullin 132b; Hafla'ah to Ketubot 49b; Peri Megadim, Sefer Shoshanat ha-Amakim, kelal 9; Minhat Hinukh, mitzvah 9.*

<sup>26</sup> One of the consequences of this disagreement is whether one who appropriates another's property in order to save his own life must compensate the original owner. See Mark Dratch, "His Money or Her Life? Heinz's Dilemma in Jewish Law," *Journal of Halacha and Contemporary Society*, XX:3, Fall, 1990, pp. 111-129.

It is important to emphasize that this financial obligation generated by the neighbor's blood precept is not the *mitzvah* of charity; it is funds expended in the performance of one's life-saving obligation. Nevertheless, a person in need of assistance might also be considered a worthy recipient of one's charitable dollars and the community (through the *Bet Din*) has the authority to force a person to contribute to charity, see *Hil. Matnot 'Aniyim* 7:10 and *Yoreh De'ah* 248:1. *Kesef Mishneh, Hil. Nahalot* 11:11 explains that there is a *she'ibud*, monetary attachment, to all of one's resources for the purpose of charity. *Ketzot ha-Hoshen* ch. 290, no. 3, adds that the money donated to the poor is actually the fulfillment of a personal debt to them. See also Ritva to *Rosh ha-Shanah* 6a; *Teshuvot Hatam Sofer, Yoreh De'ah*, no. 316; and *Teshuvot 'Ahi'ezer, Yoreh De'ah* no. 16.



not only to give charity if another is in need, but to save his life and come to his assistance when necessary.<sup>27</sup>

### **Cruelty to Animals**

There are two verses that in this context seem to be irrelevant, but that serve as yet other sources that obligate us to help others in need: “If you see the donkey of one who hates you lying under its burden, you shall refrain from leaving it with him, you shall help him to lift it up” (Ex. 23:5) and “You shall not watch your brother’s donkey or his ox fall down by the way, and hide yourself from them; you shall surely help him to lift them up again” (Deut. 22:4). These verses require passersby to help load and unload goods from animal that have fallen under the weight of their burdens. They are the sources for the more general concern of *tza’ar ba’alei hayyim*, the interdiction against causing cruelty to animals.<sup>28</sup>

Many authorities maintain that these verses are not limited to concerns for the wellbeing of animals, but include the welfare of humans as well.<sup>29</sup> Rabbeinu Yonah argues that human beings who are created in the divine image certainly deserve at least the same level of protection as animals.<sup>30</sup>

As a striking historical note, the first case of child abuse in the United States was brought to court under legislation banning cruelty to animals—there were no similar laws protecting children at that time. In 1874, a case was filed in a New York State court on behalf of Mary Ellen Wilson, a nine year old who had been severely beaten and neglected by her foster parents. With the police lacking any legal means to intervene, a neighbor, Etta Wheeler, approached Henry Bergh, the founder of the American Society for the Prevention of Cruelty to Animals, seeking his help. According to some accounts, Bergh filed a petition on behalf of Mary Ellen, making a case that being human, Mary Ellen was part of the animal kingdom and entitled to “at least the same justice as the common cur.” Due to the public outrage over Mary Ellen's case, the New York State Legislature passed laws chartering Societies for the Protection of Children. In 1875, The New York Society for the Prevention of Cruelty to Children, the first child protection agency in the world, was created. It investigated 300 cases of child abuse in its first year.<sup>31</sup>

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<sup>27</sup> Commentary to Lev. 25:35.

<sup>28</sup> *Baba Metzi’a* 32a-b.

<sup>29</sup> *Teshuvot ha-Rashba* I, nos. 252, 256 and 257; Rambam, *Sefer ha-Mitzvot*, prohibition 270; *Birkei Yosef, Yoreh De’ah* 372:2; *Rabbeinu Yonah, Sefer ha-Yirah* no. 266; *Sefer ha-Hinukh* no. 540. *Sema* to *Hoshen Mishpat* 272, no. 13; *Birkei Yosef* to *Yoreh De’ah* 372 citing *Teshuvot ha-Rashba*, I, 252 and 257; *Teshuvot Keren L’David* no. 18; *Teshuvot Mishneh Halakhot* IV:239 and 285; *Teshuvot Minhat Elazar* IV:61. See “*Sefer Tza’ar Ba’alei Hayyim*,” chapter 8 and *Sefer “Nefesh Kol Chai,” siman* 4. See, however, *Teshuvot Havot Ya’ir*, no. 191 who according to some understandings of his responsa excludes humans as the subject of this obligation. See *Tza’ar Ba’alei Hayyim ba-Halakhah u-ba-‘Aggadah*, Yitzhak Nahman ‘Eshkoli, 5762, pp. 243-280.

<sup>30</sup> *Sefer ha-Yirah*, no. 266.

<sup>31</sup> <http://www.bbc.co.uk/dna/h2g2/A640810>

What does this prohibition of “cruelty to animals” add to other biblical commandments concerned with human welfare? It has been suggested that the concern about the general well-being of animals and humans expands our involvement in relieving their pain—both physical and emotional.<sup>32</sup> In addition, the other bans on assault and battery focus on the act or threat of violence and are concerned with the perpetrator; the “cruelty to animals” injunction creates an obligation to get involved to prevent or relieve the suffering of the victim. The Torah here expresses its concern for victims—no one should ever be subjected to an attack by another no matter how “trivial” that attack may seem.

Others do not extend *tza'ar ba'alei hayyim* to humans, maintaining that the Torah's focus here is solely on the welfare of animals.<sup>33</sup> They argue that it is not necessary to prohibit the causing of harm or pain to a fellow human because other verses in the Torah already address those concerns. Furthermore, they reason, these verses are concerned with the welfare and protection of ignorant beasts which have no control over the weight or volume of cargo placed upon them. They need to be protected. Humans, however, are sentient, intelligent beings who can limit their burdens themselves and, if they take upon themselves loads that are too difficult for them to bear, they have no claim on others to help them.<sup>34</sup>

A contemporary expression of these commandments is the requirement to help drivers whose cars have broken down on the road and to help them replace flat tires.<sup>35</sup>

Rambam summarizes the intent of this obligation: The Torah is deeply concerned about the welfare of all Jews and thus the owner of a distressed animal should not be abandoned on the road, left alone with his animals and his possessions. In such a situation he is vulnerable; he may find himself in dangerous circumstances and come to harm.<sup>36</sup> Clearly, the Torah's interest is not limited to the needs of distressed travelers but includes all those who find themselves in dangerous circumstances and may come to harm.

## Preventing and Removing Danger

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<sup>32</sup> Yo'el Schwartz, *Ve-rahmav 'al Kol Ma'asav*, (Jerusalem: Hotsa'at Devar Yerushalayim, 5744, p. 44.

<sup>33</sup> *Teshuvot ha-Radbaz*, II, no. 728; *Keneset ha-Gedolah, Hoshen Mishpat*, no. 272; *Teshuvot be-Tzel ha-Hokhmah*, IV, no. 125; *Pit'hei Hoshen, Nezikin*, ch. 2, note 6. Others maintain that there is a rabbinic obligation, see *Shitah Mekubetzet* to *Baba Kama* 54b.

<sup>34</sup> See *Teshuvot Havot Ya'ir*, no. 191. There is a debate as to whether he extends the *tza'ar ba'alei hayyim* concept to humans or not. See Yitzhak Nahman 'Eshkoli, *Tza'ar Ba'alei Hayyim ba-Halakhah u-ba- 'Aggadah*, pp.250-253.

<sup>35</sup> Nineteenth century authorities *Arokh ha-Shulhan, Hoshen Mishpat* 272:8 and *Ha'amek Davar* to Deut. 22:4 speak of this in the context of a wagon.

<sup>36</sup> *Hil. Rotzei'ah u-Shemirat ha-Nefesh* 13:14.

The Torah, in commanding us “Take utmost care and guard yourself scrupulously” (Deut. 4:9), requires that we avoid dangerous situations, and in commanding us to enclose the roofs of our houses with fences (Deut. 22:8) requires us also to remove existing hazards from our homes and protect against potentially hazardous conditions.<sup>37</sup> These requirements apply in both life-threatening and non-life-threatening situations.<sup>38</sup> Contemporary authorities cite these sources in order to support an employer's responsibility for occupational safety at work<sup>39</sup> and in order to restrict reckless driving.<sup>40</sup> To say the least, the physical, emotional and spiritual dangers that result from perpetrators of abuse and violence are at least as dangerous as those with which these sources are concerned, and obligate each of us to protect potential victims from them.

### **Limitations on the Duty to Assist**

Must a person place his own well-being at potential risk in order to save his neighbor, even from certain danger? Bet Yosef answers affirmatively, arguing that the victim will certainly die, whereas there is only a doubt regarding the outcome for the lifesaver. Certainty trumps doubt.<sup>41</sup> Others disagree, considering it to be an act of false piety to endanger one's own life for the sake of another, “for who says that the other person's life is more valuable than yours?”<sup>42</sup>

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<sup>37</sup> *Baba Kama* 15b:

R. Natan says: From what source is it derived that no one should breed a bad dog in his house, or keep a rickety ladder in his house? [We learn it] from the text, “You shall not bring blood upon your house” (Deut. 22:8).

*Hil. Rotzei'ah u-Shemirat ha-Nefesh* 11:4:

It is a positive commandment to remove, guard against, and warn against any life-threatening obstacle, as it says: “Take utmost care and guard yourself scrupulously.” If he did not remove the item but rather left dangerous obstacles in place, he has violated a positive commandment and transgressed a negative commandment, “Do not bring blood-guilt on your house.”

<sup>38</sup> *Sefer ha-Hinukh, mitzvah* 547. See *Teshuvot Devar Avraham*, I, 36:25, and *Hazon Ish, Likutim*, ch. 18 and 19.

<sup>39</sup> *Piskei Uziel*, no. 47.

<sup>40</sup> *Teshuvot Minhag Yitzhak*, VIII, no. 148.

<sup>41</sup> *Tur, Shulhan Arukh* 462:2. This is based on a passage in *Talmud Yerushalmi, Terumot* 8:4, which recounts the story of the capture of R. Imi. R. Yonatan decided to take no action whereas Reish Lakish volunteered to save him, saying, “I will either kill or be killed.”

<sup>42</sup> *Teshuvot ha-Radbaz*, no. 1582. *Bah, Tur, Shulhan Arukh* 462, cites Rambam's formulation that the obligation is functional only when the lifesaver is *able* to save the victim, not when he is not. Therefore, he is not to place himself at physical risk in order to rescue someone else. See *Ha'amek She'eilah* 147:4; *Mesheh Hokhmah* to Ex. 4:19; *Teshuvot Havot Ya'ir*, 146; *Teshuvot Iggerot Moshe, Yoreh De'ah*, II, no. 174, *anaf* 4; *Teshuvot Tzitz Eli'ezer*, IX, no. 45; *Encyclopedia Talmudit*, X, s.v. *Hatzalat Nefashot*, col. 342-351.

*Arokh Ha-Shulhan* summarizes:

The authorities cite the Jerusalem Talmud which obligates a person to enter into a state of possible endangerment in order to save his fellow from almost certain danger; the *Rishonim*, however, omit this ruling, because the Babylonian Talmud does not obligate a person to jeopardize his own life to save the life of another. However, everything depends on the particular circumstances, and the facts must be weighed extremely carefully. And a person should not overly worry about the possibility that something might happen to him...<sup>43</sup>

However, this exemption from responsibility is not absolute. In addition to the financial loss that a person must bear in order to assist another in need, he must also risk personal pain and discomfort, and even personal distress, in order to help another in crisis.<sup>44</sup>

Thus, to list some individual responsibilities:

- Read. Learn about the issues and the resources available. Be open to helping those who need your help.
- Do not dismiss or minimize the stories and complaints that victims may share with you.
- Reach out to someone you think is being abused and offer a listening ear and support. Make sure she is not being isolated from family and friends.
- Don't give up or become frustrated with her or with the situation.
- Parents and schools should make sure that their children know about abuse and with whom it is safe to speak and get help.
- Call the police if you have reasonable suspicions of abuse.
- Support organizations that advocate for survivors of abuse and assault.
- Advocate for policies and accountability at your schools, synagogues, camps, JCCs, etc.

### **Communal Obligation**

But not only individuals are charged with helping others. It is clear that the community, *qua* community, has obligations to protect the welfare of its members. The biblical commandments to establish courts, enforce laws, and pursue justice define these obligations. “Justice, justice you shall pursue” (Deut. 16:20) is complemented by the commandment “judges and officers shall you appoint in all your gates, which the Lord your God gives you, throughout your tribes; and they shall judge the people with just judgment” (16:18). Even in the Diaspora, the Jewish community is obligated to establish these institutions in order to protect the welfare of its members.<sup>45</sup>

The *Bet Din* (rabbinic tribunal) is the mechanism through which communities organize themselves and promulgate Jewish law. The *Bet Din*, as the central communal

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<sup>43</sup> *Hoshen Mishpat* 426:4

<sup>44</sup> *Encyclopedia Talmudit*, vol. 10, “*Hatzalot Nefashot*”, col 349-350, note 83.

<sup>45</sup> *Hil. Sanhedrin* 1:2.

authority, has the responsibility to ensure public welfare. It is its duty, for example, to warn property owners of the unstable conditions of their landscaping or walls in order to prevent possible damage to the public.<sup>46</sup> Should the owner not comply with their order, the Bet Din can force the owner to remove the hazards immediately.<sup>47</sup> In addition, community councils composed of lay people are also responsible for the welfare of the community. In talmudic times there were seven-man councils (*sheva tovei ha-ir*) that administered the public affairs of Jewish communities<sup>48</sup> and could set and inspect weights and measures, establish reasonable prices for merchandise, and enact regulations as required.<sup>49</sup>

Thus, to list some community responsibilities:

- Schools, synagogues, camps and youth groups must develop and enact policies that regulate the activities of those who work for them which can work towards preventing abuse of professional boundaries and can prevent circumstances in which students and members might be vulnerable.
- The community must establish efficient protocols to receive and adjudicate complaints about rabbis,<sup>50</sup> teachers, counselors and youth leaders.
- The community must develop ways to protect its members and institutions from perpetrators who are known to pose risk—this includes background checks, registries, and effective hiring and reporting practices.
- All community institutions must train their employees in the area of abuse: recognizing signs of abuse, responding appropriately to revelations of abuse, and protocols for fulfilling their mandated reporting of child abuse responsibilities.
- Rabbis must be trained in the unique nuances of counseling abuse victims and perpetrators. Judges of *batei din* must be trained in these areas in order to be able to understand appropriately situations which may present themselves for adjudication.
- It is necessary to institute systemic change which makes it safe and acceptable to report abuse.

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<sup>46</sup> *Hoshen Mishpat* 416. The *Bet Din* establishes the fact that the trees or walls are dangerous, otherwise the owner can claim ignorance of its status. See Michael Wygoda, *Ahrayut la-siluk mifga ba-etz she-anafav notim la-shetah tzibori, Misrad ha-Mishpatim, ha-Mahlakah le-Mishpat Ivri*, Jerusalem, 2004, <http://www.justice.gov.il/NR/rdonlyres/EE04EB08-259B-4CF2-BA6B-700AD8078F74/0/etznotelersshutharabim.doc>.

<sup>47</sup> Rema, *Hoshen Mishpat* 416.

<sup>48</sup> *Megillah* 26a; *Baba Batra* 8b.

<sup>49</sup> *Yevamot* 89b

<sup>50</sup> Many of the major rabbinical organizations have such protocols.

- The community must establish educational programs for children of all ages, from understanding “good touch/bad touch” to appreciating the dynamics of abuse in relationships.
- Make issues of abuse a subject of public conversation, lectures, and programs. It removes one of the elements of suppression that victims have to overcome and it sends an important message to all that abuse exists in the Jewish community and that the community will respond appropriately to those who need help.
- Develop local resources to help those who need help: counseling, shelters, and other means of support.

### Priorities

There are many who remain uninvolved, not because of indifference, but because of arguments that stem from their understanding of Jewish law. The prohibition of *lashon ha-ra*, libel or slander, they say, prohibits talking about such matters, despite clear rulings that obligate speaking out against abuse.<sup>51</sup> *Mesirah* (informing civil authorities) they say, prohibits making reports to the police, despite clear rulings that obligate them to do so.<sup>52</sup> *Hillul Hashem*, they say, prohibits them from making these matters public as they cast aspersions of the Jewish community, despite the fact that the greater shame is caused by systemic cover-up.<sup>53</sup> These principles, and others, are valid, essential principles of Jewish life and law and should be carefully observed by committed Jews. But all too often misplaced priorities and misconceived interpretations of Jewish law have trumped equally valid *halakhic* concerns for the safety and security of Jewish bodies and souls. This phenomenon is not new. Already in Talmudic times the rabbis warned us about pious fools who miss the forest for the trees due to their claims of religiosity and devoutness. These fools, we are told, are represented by those who would refuse to save a woman in distress for fear that they may have to look at her or touch her,<sup>54</sup> or would allow a baby to drown in the river because they needed time to remove their *tefillin* before jumping in the water.<sup>55</sup>

The time for foolishness is over. All are responsible. And no, Mr. Seinfeld, there are no innocent bystanders.

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<sup>51</sup> See Mark Dratch, “*Let Them Talk: The Mitzvah to Speak Lashon Hara*” at <http://jsafe.org/pdfs/Lashon%20Hara%20and%20Abuse.pdf>.

<sup>52</sup> See Mark Dratch, “The 411 on 911: Reporting Jewish Abusers to the Civil Authorities” at <http://jsafe.org/pdfs/mesirah.pdf>.

<sup>53</sup> See Mark Dratch, “The Shame of It All: The Real *Shonda* in Revealing Abuse” at [http://jsafe.org/pdfs/Hillul\\_Hashem.pdf](http://jsafe.org/pdfs/Hillul_Hashem.pdf).

<sup>54</sup> *Sotah* 21b

<sup>55</sup> *Tosafot*, *Sotah* 21b, s,v, *heikhi dami hasid shoteh*.