

The Good Samaritan as a Legal Parable

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The parable of the Good Samaritan is one of the most famous stories that Jesus told. Recounted by Luke in thirteen short verses and including a cast of seven, the parable describes how a member of a despised class rescued a beaten man after more prestigious figures walked by.¹ Jesus used the parable to answer a law professor's question: "who is my neighbor?"

The parable has much to offer today's law professors. The man could sue the robbers who attacked him for a battery. Perhaps the Jericho municipal authorities would be liable, too, for failing to safeguard a known dangerous road. If the Good Samaritan's assistance or the innkeeper's provision were somehow faulty, then they might face a tort lawsuit as well.

Predictably, therefore, the Good Samaritan repeatedly appears in American jurisprudence. The first reported case to mention it was decided in Massachusetts in 1825.² Since then, numerous other judges have reflected on the goodness of the Samaritan, his decision to help without a legal duty to do so, etc. "Good Samaritan" seems to be one of the most common names for a hospital, at least judging by how often they are sued. Every state has a Good Samaritan statute that immunizes those who voluntary help goes awry.

The Good Samaritan is at the center of two longstanding, contrasting debates in tort law. Should the law impose an affirmative duty to help those who are in need? And should the law exonerate those who do volunteer but do so, well, negligently?

¹ Luke 10:25-37. The seven characters are the injured man, the robbers (plural; there may have been more than two), the priest, the Levite, the Good Samaritan, and the innkeeper.

² *Mills v. Wyman*, 20 Mass. 207 (1825). The events in the case rival the parable itself: A man who "was twenty-five years old, and had long left his father's family. On his return from a foreign country, he fell sick among strangers, and the plaintiff acted the part of the good Samaritan, giving him shelter and comfort until he died. The defendant, his father, on being informed of this event, influenced by a transient feeling of gratitude, promises in writing to pay the plaintiff for the expenses he had incurred. But he has determined to break this promise . . ." *Id.* at **.

Those are important questions, but they are the wrong questions. The parable of the Good Samaritan teaches us something else. Even though Jesus was speaking with an “expert in the law,” lawsuits were the last thing on his mind. By contrast, lawsuits are often the first thing on our minds. We are too quick to want to sue someone when we are injured. We are too slow to help because we don't want to be sued. We are too eager to be plaintiffs and too worried about being defendants. We prioritize our avoiding suffering over relieving the suffering of others.

We need, as the most famous speech on the Parable of the Good Samaritan put it, to “develop a kind of dangerous unselfishness.”³

I. The Theological Understanding of the Parable

The Parable of the Good Samaritan appears in chapter 10 of Luke's gospel:

On one occasion an expert in the law stood up to test Jesus. “Teacher,” he asked, “what must I do to inherit eternal life?” “What is written in the Law?” he replied. “How do you read it?” He answered, “‘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, ‘Love your neighbor as yourself.’” “You have answered correctly,” Jesus replied. “Do this and you will live.” But he wanted to justify himself, so he asked Jesus, “And who is my neighbor?”

In reply Jesus said: “A man was going down from Jerusalem to Jericho, when he was attacked by robbers. They stripped him of his clothes, beat him and went away, leaving him half dead. A priest happened to be going down the same road, and when he saw the man, he passed by on the other side. So too, a Levite, when he came to the place and saw him, passed by on the other side. But a Samaritan, as he traveled, came where the man was; and when he saw him, he took pity on him. 34 He went to him and bandaged his wounds, pouring on oil and wine. Then he put the man on his own donkey, brought him to an inn and took

³ Martin Luther King, Speech to the Memphis Sanitation Workers, April 1968.

care of him. The next day he took out two denarii and gave them to the innkeeper. ‘Look after him,’ he said, ‘and when I return, I will reimburse you for any extra expense you may have.’

“Which of these three do you think was a neighbor to the man who fell into the hands of robbers?” The expert in the law replied, “The one who had mercy on him.” Jesus told him, “Go and do likewise.”⁴

The parable teaches several lessons. We are to help those who are in need. The biblical duty to love our neighbor extends to those in need whom we don’t even know. And Jesus praises the unlikely and unloved Samaritan while criticizing the lawyer and the priest who didn’t help.⁵

Countless ministers have preached about, and countless theologians have written about, the parable of the Good Samaritan during the past two millennia. Consider the commentary written by Englishman Matthew Henry during the eighteenth century. Henry gleans abundant insights from the parable:

- We are concerned to know what that good is which we should do in this life, in order to our attaining eternal life
- He came to catechize Christ, and to know him; but Christ will catechize him, and make him know himself
- He talks to him as a lawyer, as one conversant in the law: the studies of his profession would inform him; let him practise according to his knowledge, and he should not come short of eternal life
- We must love our neighbours as ourselves, which we shall easily do, if we, as we ought to do, love God better than ourselves. We must wish well to all and ill to none; must do all the good we can in the world and no hurt, and must fix it as a rule to ourselves to do to others as we would they should do to us; and this is to love our neighbour as ourselves

⁴ Luke 10:25-37.

⁵ Cite Samaritan book.

- The parable itself, which represents to us a poor Jew in distressed circumstances, succoured and relieved by a good Samaritan
- The mentioning of those places intimates that it was matter of fact, and not a parable; probably it happened lately, just as it is here related. of passing and re-passing of priests that way, and Levites their attendant
- It is probable that they heard his groans, and could not but perceive that if he were not helped he must quickly perish
- How he was succoured and relieved by a stranger, a certain Samaritan, of that nation which of all others the Jews most despised and detested and would have no dealings with
- See how friendly this good Samaritan was
 - First, He went to the poor man, whom the priest and Levite kept at a distance from
 - Secondly, He did the surgeon's part, for want of a better. He bound up his wounds, making use of his own linen, it is likely, for that purpose; and poured in oil and wine, which perhaps he had with him; wine to wash the wound, and oil to mollify it, and close it up. He did all he could to ease the pain, and prevent the peril, of his wounds, as one whose heart bled with him
 - Thirdly, He set him on his own beast, and went on foot himself, and brought him to an inn.
 - Fourthly, He took care of him in the inn, got him to bed, had food for him that was proper, and due attendance, and, it may be, prayed with him
 - Fifthly, As if he had been his own child, or one he was obliged to look after, when he left him next morning, he left money with the landlord, to be laid out for his use, and passed his word for what he should spend more.

- It is the duty of every one of us, in our places, and according to our ability, to succour, help, and relieve all that are in distress and necessity, and of lawyers particularly; and herein we must study to excel many that are proud of their being priests and Levites.⁶

II. The Role of the Good Samaritan in Tort Law

Besides theology, the parable of the Good Samaritan has received significant attention in the law. Two legal issues in particular are raised by the parable. First, should there be a legal duty to act as a Good Samaritan? Second, should someone who attempts to be a Good Samaritan be held liable for a failed rescue attempt? American law has generally answered both questions “no.”

a. The legal duty to be a Good Samaritan

American tort law declines to impose a legal duty to be a Good Samaritan except in certain limited circumstances.⁷ Indeed, courts have distinguished between the voluntary undertaking of the Good Samaritan and the duties that the law establishes. “The Priest and Levite violated no rule of law when they passed by on the other side of the wounded man,” one court explained. “The Good Samaritan was not acting in obedience to a legal duty when he took compassion upon him, took care of him and removed him to the inn.”⁸ In another case, a judge referred to the efforts “to alleviate pain, suffering and death appeals to the feelings of humanity, for which the good Samaritan has always been revered and extolled to the shame and condemnation of the Priest and Levite who looked on and passed by without rendering succor to the sufferer.”⁹ But, the judge continued, “history fails to show that a breach of the Levitical law could have been claimed; nor do I find it to be a cause of action existing under our jurisprudence.”¹⁰

⁶ Matthew Henry’s commentary on the whole Bible (1706).

⁷ See Selected Essays on the Law of Torts at 16 (stating that “[t]he law does not compel active benevolence between man and man. It is left to one’s conscience whether he shall be the good Samaritan or not”).

⁸ Tucker v. Burt (Mich. 1908).

⁹ Whiteside v. Southern R. Co. (N.C. 1901) (Cook, J., dissenting).

¹⁰ Id.

Nor does acting as a Good Samaritan imply that one was legally obligated to do so. As one court explained, “the fact that a defendant procured a doctor or took an injured person to a hospital and paid the hospital bill is not an implied admission or circumstance tending to impose liability.” Quite the contrary. “Such acts in themselves, the law deems to be a part of neighborliness and an incident of that commendable impulse of benevolence, dramatically portrayed in the parable of the Good Samaritan. It has never been suggested that the fact that the Good Samaritan placed an injured and unfortunate man upon his own beast, pouring wine and oil into his wounds, paying his maintenance charges at the inn, and promising even to give more, if necessary, upon his return, was an implied admission that the agents of the Good Samaritan, in the course of their employment, actually inflicted the injury upon the wounded man found on the Jericho Highway.”¹¹

Judges occasionally chastise defendants for not acting like the Good Samaritan. In a 1872 case involving two Pennsylvania townships that sought to relieve themselves of a burdensome pauper, the court remarked that a township “acted like anything but the good Samaritan, in surreptitiously removing this poor lame woman in the wet and cold from the place of her injury, and in the nighttime, to the house of a very indigent brother, for the evident purpose of getting rid of the maintenance the township owed her until her true place of settlement could be ascertained. It was uncharitable, and I might add, unchristian conduct, to say the least of it.”¹²

General duty-to-rescue statutes are more frequently found outside the United States, particularly in civil law countries such as France, although there is little evidence of enforcement on either side of the Atlantic. A Vermont statute creates such a duty,¹³ as does one in Minnesota. But legal duties to act as a Good Samaritan are rare in American law.

¹¹ *Brown v. Wood* (N.C. 1931).

¹² *Moreland v. Davidson*, 71 Pa. 371 (1872).

¹³ See Vermont’s Duty to Aid the Endangered Act, Vt. Stat. Ann. Tit. 12, §519(a) (imposing a duty of reasonable assistance on any person who knows that another faces grave physical danger, if assistance can be rendered without peril to the rescuer).

b. Immunity for Good Samaritans

American tort law has also reached a consensus about the second question raised by the example of the Good Samaritan. One who acts as a Good Samaritan should not be held liable for any harm that the volunteer negligently causes. That is the import of the statutes enacted by nearly every state. California passed the first such Good Samaritan statute in 195* Since then, ** states have passed different versions of a Good Samaritan immunity law. These statutes generally fall into three categories—those that specifically include by reference only medically trained persons; those that apply to the rendition of medical aid by any person; and those that more broadly apply to any person rendering emergency care, treatment, or other kinds of assistance without expressly requiring that such actions be medical in nature." ¹⁴

The rationale for such immunity was to encourage physicians to provide emergency treatment to injured persons in emergency situations without fear of liability for malpractice.¹⁵ Or, as one court later observed, “[w]e do not know from the parable whether the fear of civil liability discouraged the first two passers-by from intervening.”¹⁶

Good Samaritan laws are frequently litigated. Most of the cases involve the scope of the differing statutory provisions. In *Buck v. Greyhound Lines*,¹⁷ for example a car carrying two woman and two three-year-old twins stalled in the middle of a state highway. A former highway patrol officer stopped to help them. Shortly thereafter, a Greyhound bus began to approach them, so the erstwhile Good Samaritan began to flash his pickup truck’s lights in an effort to get the bus driver’s attention. Instead, “the lights from the pickup truck temporarily blinded the bus driver,” and the bus driver failed in his last minute effort to stop. The bus crashed into the stalled car and severely injured all of its occupants, rendering one of the women a paraplegic.

¹⁴ Carter v. Reese, --- N.E.3d ---- (2016) 2016 WL 4549025 Supreme Court of Ohio

¹⁵ Carter v. Reese, --- N.E.3d ---- (2016) 2016 WL 4549025 Supreme Court of Ohio

¹⁶ TransCare Maryland, Inc. v. Murray, 431 Md. 225 (2013) 64 A.3d 887

¹⁷ (Nev. 1989).

The Nevada Supreme Court held that the state's Good Samaritan law did not apply to the case. There was no "emergency" requiring aid. That explanation failed to persuade Justice Mowbray. As he saw the case:

The Legislature in its wisdom passed into law the Good Samaritan Statute. This law encourages passers-by, as its title implies, to give aid to fellow travelers in emergency situations. . . . Nevada has many miles of long lonely highways. If one wishes to stop to give aid to those in emergency situations that person should feel secure in knowing that he or she is shielded by the Good Samaritan Rule. Otherwise, such a person may elect to ignore those in distress with a "wave of the hand" as they proceed down the highway. Such conduct hardly seems to be in the spirit of the West, particularly Nevada.¹⁸

III. Good Samaritans Without the Law

Parables offer many lessons, so it is not surprising that such a vivid story as the Good Samaritan has influenced the development of tort law. But that does not appear to be the point that Jesus was trying to make. Rather, the story of the Good Samaritan aims to ask the opposite question. The "experts in the law" were preoccupied with their legal duties and were only ready to act once they knew what the law required. Jesus taught them something else. He advised that one's actions should be determined what the needs of our neighbors, regardless of what the law said.

So we should act if our neighbor needs our help. And we should act even if we have good excuses not to.

A. The suffering defendant

Martin Luther King, Jr.'s last speech considered the lessons of the Parable of the Good Samaritan's. Speaking in Memphis in April 1968, King . . . He encouraged his listeners to "use our imagination a great deal to try to determine why the priest and the Levite didn't stop."

¹⁸ Buck v. Greyhound Lines (Nev. 1989).

One possibility is that they were too busy: “At times we say they were busy going to a church meeting, an ecclesiastical gathering, and they had to get on down to Jerusalem so they wouldn't be late for their meeting. (*Yeah*).”

Another explanation is that they were focused on their understanding not of civil law, but of religious law: “At other times we would speculate that there was a religious law that one who was engaged in religious ceremonials was not to touch a human body twenty-four hours before the ceremony. (*All right*).”

King also concluded that we cannot delay assistance until the underlying structural problems are solved. As he put it:

And every now and then we begin to wonder whether maybe they were not going down to Jerusalem, or down to Jericho, rather, to organize a Jericho Road Improvement Association. [*Laughter*] That's a possibility. Maybe they felt it was better to deal with the problem from the causal root, rather than to get bogged down with an individual effect. [*Laughter*]

King was not opposed to a Jericho Road Improvement Association. He did, however, object to relying on such an organization rendering immediate assistance ourselves.

Still, King believed that there was a better explanation for why the priest and the Levite did not stop to help the man who had been beaten by the robbers: they were afraid. In King's words:

I'm going to tell you what my imagination tells me. It's possible that those men were afraid. You see, the Jericho Road is a dangerous road. (*That's right*) I remember when Mrs. King and I were first in Jerusalem. We rented a car and drove from Jerusalem down to Jericho. (*Yeah*) And as soon as we got on that road I said to my wife, "I can see why Jesus used this as the setting for his parable." It's a winding, meandering road. (*Yes*) It's really conducive for ambushing. You start out in Jerusalem, which is about twelve hundred miles, or rather, twelve hundred feet above sea level. And by the time you get down to Jericho fifteen or twenty minutes later, you're about twenty-two feet

below sea level. That's a dangerous road. (Yes) In the days of Jesus it came to be known as the "Bloody Pass." And you know, it's possible that the priest and the Levite looked over that man on the ground and wondered if the robbers were still around. (Go ahead) Or it's possible that they felt that the man on the ground was merely faking (Yeah), and he was acting like he had been robbed and hurt in order to seize them over there, lure them there for quick and easy seizure. (Oh yeah) And so the first question that the priest asked, the first question that the Levite asked was, "If I stop to help this man, what will happen to me?" (All right)

But then the Good Samaritan came by, and he reversed the question: "If I do not stop to help this man, what will happen to him?" That's the question before you tonight. (Yes)¹⁹

The Parable of the Good Samaritan, according to King, teaches us not to worry about being hurt or to rely on someone else. We should be willing to suffer in our efforts to help our neighbors. Just like the Good Samaritan, and just like Jesus.

One of the costs of acting as a Good Samaritan in twenty-first century America is that we may get sued. To be sure, our Good Samaritan statutes minimize our litigation risk. But the uneven coverage and application of such laws makes it difficult to know ahead of time whether or not one's assistance could result in liability. Tort law plays an important role in defining clear boundaries between liability and non-liability. There is no indication, though, that the Good Samaritan gave a moment's thought to the possibility that he could be found liable if something went wrong in his efforts to help the beaten man. Nor does Jesus suggest that we should love our neighbors – "neighbors" as broadly defined in the

¹⁹ Id. King then extended the lesson to the plight of the striking Memphis sanitation workers: "[The question is not] "If I stop to help the sanitation workers, what will happen to my job?" Not, "If I stop to help the sanitation workers, what will happen to all of the hours that I usually spend in my office every day and every week as a pastor?" (Yes) The question is not, "If I stop to help this man in need, what will happen to me?" The question is, "If I do *not* stop to help the sanitation workers, what will happen to them?" That's the question. [Applause]." Id.

parable itself – only if we will not be held liable for doing so. Nor does King counsel attention toward how the law will judge our assistance. Rather, King urges us to “develop a kind of dangerous unselfishness,” a perspective that asks what our neighbor needs, not what might happen to us.

Most of the discussions of the parable focus on the Good Samaritan. The beaten man, by contrast, plays an entirely passive role in the story. Let’s imagine, though, what the man thought as he recovered at the inn. Could the robbers be identified? Would they be prosecuted? Could he sue them? Or suppose something had gone with his rescue. What if he had fallen off of the Good Samaritan’s donkey,²⁰ or what if the medical ministrations of the innkeeper made the man’s condition worse?²¹

B. The suffering plaintiff

Today the beaten man would be fully within his rights to bring a lawsuit against the robbers, the innkeeper, or the Good Samaritan if they acted intentionally or negligently to hurt him. Indeed, our society relies on civil litigation to remedy those types of harms. There are other possibilities – insurance, a targeted compensation scheme, or charitable assistance – but tort litigation is often the primary means by which

And yet tort litigation is famously unsatisfying. A “successful” case results in the injured party being compensated for about two-thirds of the losses that they suffered – minus the one-third in contingency fees to their attorney. Or a successful case may provide adequate compensation, but at the added cost of rupturing longstanding relationships or reliving painful experiences. Litigation produces a winner and a loser, and if the plaintiff is the loser, not only do they receive no compensation, but they bear additional costs. They have sacrificed the time and money to bring the lawsuit, and they must accept that their suffering has been judged – literally – as unworthy of the law’s remedy. Suing may harm us more than it helps us.

²⁰ Cf. ambulance crashed and the patient fell; truck fell and leg amputated.

²¹ Cf. medical malpractice case involving a Good Samaritan statute.

These may be some of the reasons why Paul advised the Corinthian church against resorting to civil litigation.

It becomes national news when the victims of a tragic accident decide not to bring a lawsuit. In June 2016, two-year-old Lane Thomas was killed by an alligator while his family was visiting a Disney World resort. The gruesome death was reported around the country. So was what happened next. His family explained, “We know that we can never have Lane back, and therefore, we intend to keep his spirit alive through the Lane Thomas Foundation. . . . In addition to the foundation, we will solely be focused on the future health of our family and will not be pursuing a lawsuit against Disney.” As one report described it, the family “decided to ‘focus on their family’ instead of getting even.”²²

My point – and the point of the Parable of the Good Samaritan – is not that it is always wrong to rely on the tort law system to secure the compensation to which one is legally entitled. The parable doesn’t say anything about that; we don’t have any idea what the beaten man did once he recovered.

²² Kathleen Harper, Boy, 2, Killed By Alligator: Family Won’t Sue Disney — Here’s Why, Hollywood Life, July 20, 2016, <http://hollywoodlife.com/2016/07/20/alligator-attack-family-not-suing-disneyland-lane-graves-why/>.