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Tessa Meyer Santiago

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Duty to Rescue: The Case of the Good-Enough Samaritan

Tessa Meyer Santiago

I don't know if you've ever noticed this particular man. He lives among us. Moves around Provo with his sleeping bag, two carry-ons, his stereo, and a pillow. His favorite spot right now is the bus bench just south of the Missionary Training Center. He likes bus benches. I've seen him sitting on them day after day waiting for the bus that never comes. He sat all through the summer and through last winter and the winter before that. That's when I met him.

Two winters ago I looked up from ordering a plate of teriyaki chicken at Teriyaki Bowl and saw him sitting on the bus bench outside Hogi Yogi. It was 32 degrees outside, and this man was sitting quietly like he was listening to prelude music only he could hear. I watched him through the window while I ate. He didn't move during my entire meal. Just sat, almost daintily, with his feet crossed and his arms protecting his life next to him on the bench.

I went outside and asked him whether he had eaten. Could I buy dinner for him? "No, thank you. I've eaten. And I have these if I get hungry." He held up a bag of fruit.

My family and I got into the car and drove up the street. Then I made my husband flip a U-turn in Winchell's parking lot. "Do you have anywhere to stay tonight?" "Not yet." "I can't take you home with us, because our house is too small, but I can get you a hotel room." "Thank you. Motel 6 in East Bay is where I prefer to stay."

So I climbed into the backseat with the kids. He took the front with his belongings. When he signed the motel register, I couldn't help but notice he had the most beautiful handwriting—an almost elegant paradox coming from the hand of somebody who spends his days waiting for the local buses.

His name is Anthony or Andrew or Michael, I recall—something of the Episcopalian saint variety. I think he's from Atlanta or somewhere in Georgia. When he lost his job about four years ago, he gathered his things together and started traveling. He likes Provo. The people are friendly. The police don't bother him too much.

As Anthony/Andrew/Michael left to find his room at the motel, the manager turned to me. “Do you mind if I ask you a question?” “No.” “Where did you find him?” “Just sitting out in the freezing cold on a bus bench.” “You know, you’re not the first person to bring him here. He’s had people book him into the motel for a week before. He’s really just using you guys.” “I figured that. He knew exactly where he wanted to stay. As long as he’s warm. Nobody should have to sleep outside in the cold like this.”

That was two years ago—long ago enough that I can’t quite remember his name, not so long ago that I no longer recognize him. When I drive by the MTC and see him sitting quietly in the winter afternoon sun, I cannot help wondering, “Was that all I had to do? Just \$71.68 of mercy on the Discover Card and my duty to Provo’s homeless is done?” His very presence on that bench unnerves me. I want to turn my head, to pass by on the other side. You see, I don’t quite know if that was enough. I have the sense I am still that brother’s keeper.

The discussion was particularly heated the day Ms. Augustine-Adams brought in the casino case to our torts class in law school. The facts were brutal: Two young men from California went to visit the casinos in southern Nevada. On some strange, sadistic whim, one of the young men, Jeremy Strohmeyer, abducted a seven-year-old girl outside the casino. He took her into the men’s bathroom, locked the two of them in a stall, and proceeded. The other young man, the friend, walked into the middle of a nightmare, as far as he could tell from the sounds coming from the other side of the closed stall. He must have stood there for a moment—the record’s not really clear. Then he walked out of the bathroom as quietly as he had entered. He told no one, not a soul. He didn’t raise the alarm, didn’t rush to the security guard, didn’t break down the door to rescue that poor little girl, didn’t even tell the police when Strohmeyer confided in him what he had done. He just walked on by.

They tried to find some charge to hang on the friend. Not manslaughter, not murder: he took no physical part of the action. Not depraved indifference to human life: he didn’t do anything criminal. Not assault: he didn’t threaten to harm the poor girl, didn’t even have an intent to harm her. Not an accomplice: he didn’t know what the other guy was planning. Not even negligence: he had no duty that he could breach. “But, but, but, . . .” we all stammered. “Surely he had to do something once he heard and knew what was happening.” “Didn’t have to,” said the Nevada law. “Didn’t have to do a darn thing.”

The legal concept’s a difficult one to stomach. It’s called “duty to rescue.” It should really be called “no duty to rescue.” Essentially, the law says: If you had no part in creating the circumstances in which people needing to be rescued find themselves, you have no duty to rescue them. So, if you see a woman in the middle of a rainstorm stranded on I-15 with three children in

her car, drive on by. If you see a man caught in the middle of a raging torrent, obviously going to drown, stay right there on the bank. You could even wave as he drifts away. If you walk into a bathroom and hear your friend doing unthinkable acts in a stall, walk out. The law is on your side.

However, if you choose to intervene or attempt a rescue, you have a duty to continue that rescue until your life is threatened. Then you can pull out, and nobody will hold you liable. In fact, you can pull out at any time, as long as you don't leave the person in a worse position than the one you found him in. So, say you jump into that raging torrent to save that man. After battling to get to him, you hold him up and strike for shore. You fight uprooted trees, swirling currents, and floating cats, and 10 feet from the shore you can't hold on any longer. It's either you or him. In an agonizing decision you see your family, your husband, your children, the mortgage on the house, and your very small insurance policy, and you let the man go. He drowns a little while later. No one in his right mind or heart would find you liable for the man's death. Certainly not the law.

Say you jump into that river to save the same drowning man. You battle out to him, fighting uprooted trees, swirling currents, and floating cows. You grab hold of his collar and strike for shore. Just then you remember, "Hey, the 49ers' game is on in a couple of minutes!" You couldn't possibly effect the rescue and be home in time for the kickoff. So you let go of the collar, swim for shore, load up the fishing gear, and head for home. You make the kickoff. The man drowns five minutes into the first quarter. Are you liable for his death? No. He would have drowned anyway. What's the harm in a little false hope?

What actual, quantifiable harm did the friend do to the little girl who heard the door swing open and thought she was about to be saved? What harm more than the harm she was already suffering did the friend inflict on her little soul? Not enough harm to hold him liable, says the American law. Our friend had no duty toward this girl, nothing that could bind him to act toward her in a certain way. Therefore, in the quintessential equation of tort law, if there is no duty to act, then whatever harm comes about cannot be attributed to our friend's failure to do his duty. Thus there is no liability (the civil law's counterpart to guilt). My mind raced to find a duty I could pin on that friend: a special relationship like that of a doctor/patient or a teacher/student or guardianship, because she was so young. I couldn't find one. He didn't even know her. She was a stranger to him. He didn't have to take her in.

When I was 12 years old, I learned the meaning of despair. It was the Christmas holidays in South Africa—a six-week stretch of summer days we filled with beaches, movies, and selecting two-dollar Christmas gifts for the nine members of my family. The closest shopping center was two suburbs away, about two miles along Main Road in Claremont. We walked there and

back. It took about half an hour at a brisk pace, weaving in and out of the oak trees planted in a soldierly row along the sidewalk.

One afternoon I set off for home from Claremont. I'm not sure why I was alone. Normally Kim was with me wherever I went. But no matter. I actually enjoyed walking alone. I conjured up the lives of the people who lived in the houses I walked by. I wondered who put up the shawl in the window, who drank all the beer in the bottles piled outside a gate, and why in the world anybody would own a Pekingese.

The walk that day took me over the bridge and past Newlands Cricket Club, where I caught a glimpse of the wicket as I went by the turnstile. Suddenly, just as I started running my hands against the bars of the wrought-iron fence that encircled Kelvin Country Club, I stopped dead in my tracks. I couldn't move. I felt like somebody had tied my insides to a stick and was slowly turning them—like I had seen Indian dyers doing to sheets of cotton streaked with indigo—twisting, turning, wrapping my intestines round and round until it was all I could do to breathe. I sank to the ground, leaning against and gripping the bars with my hands and squatting there under the trees. (I would later become familiar with, although not in the least accustomed to, menstrual cramps, but this was my first severe attack. Perhaps my young body couldn't quite figure out the genteel way to slough the womb. After all, it was only my fifth or sixth time.)

Hindsight was scant comfort to me as I crouched there and waited for the pain to pass. It didn't. I made myself walk 10 steps. I crossed the road, reached the traffic island, and sank to the ground. I started to pray, to plead, to beg anybody who would listen or could hear—my mother, who I knew was at home; the people driving by in the street not 20 feet away; or God, who could pluck me up and transport me home if He really wanted to. I'm not sure what I looked like to the people driving by in those cars. Did they see the curly-headed young girl, fists doubled into her abdomen, rocking as she lay curled on the grass in the middle of a traffic island?

I must not have looked desperate enough. Nobody stopped. I must not have sounded desperate enough either. My mother never came. She didn't hear my cries, as I was certain she would. Every moment of those two hours it took me to creep my way home, I expected the red-and-white VW bus to pull up to the curb and my mother to rush out, saying, "My darling, I heard you. I knew you needed me. I'm here." Even God didn't seem to see me, bent over double, hanging on to fences and walls as I tried so very hard not to cry out loud. All I wanted was the pain to subside so that I could run home. That didn't seem so very much to ask.

I have often wondered why I had to crawl home when I was 12. Why couldn't God have made the pain subside? Why couldn't my mother have heard my urgent pleas sent on those otherworldly mind waves I thought existed between mother and child? Why couldn't somebody have stopped

and taken me home? Was the sight of a young girl doubled over on the grass in the middle of a traffic island so common a sight that they thought nothing of it? Or were they so intent on going and getting that they didn't notice me?

I have a mother-in-law with a gift for noticing. I don't believe she has ever passed by on the other side. Ella always knows "a dear, little family" who needs, or a "sweet young couple" who have nothing, or one of her many "young friends" who have been parented by people with no interest in the vocation. Her garage is the cosmic opposite of a black hole. Furniture, clothing, and last-minute birthday and baby-shower gifts pour out of the double doors and take up lodging elsewhere. The supply never seems to diminish. Her neighbors know she knows. They come to her with bags full of clothes, pickups full of furniture. "Where do you find these people?" they ask my mother-in-law. Ella just smiles and makes up a sweet reply that won't hurt their feelings. Later she will take their food and their furniture to her dear little families and to her poor young friends who live only about a mile away on the other side of town.

I don't think Ella's neighbors are cruel or unkind. I know them. They're generous, compassionate, kind people who live very busy lives and who, if you asked, would drop what they were doing to help you. But if you didn't ask, if you were just hungry, needy, naked, sick, or afflicted, they wouldn't know where to find you.

I, on the other hand, was lying the middle of a traffic island. That's about the equivalent of sitting in the middle of the traffic circle at the entrance to Utah Valley State College, or waiting outside the MTC for buses that never come. It's about the equivalent of a man, stripped naked, lying on the side of the road.

In Luke 10:30–35 we read that when a "certain priest" came down that way and saw that half-naked man, "he passed by on the other side." Likewise, a Levite, a minister in the sacred temple sanctuary, came and looked on that naked man. And seeing him where and how he lay injured, the Levite "passed by on the other side." But a Samaritan, a foreigner and a heathen, came where this naked man was, saw him, and did not look away. He looked straight at this man, this naked stranger, and took "compassion on him."

Gathering him in his arms, this heathen "bound up [the stranger's] wounds, . . . set him on his own beast," and, steadying him while they walked, "brought him to an inn, and took care of him." This foreign heathen told the innkeeper when he left the next morning, "Take care of him. When I return I will repay you whatever you have spent to heal my friend."

I recently heard an enlightening interpretation of this parable of the good Samaritan. Most religions teach the parable as the ideal of neighborliness. After all, Christ does ask the question at the end of the parable "Which

now of these three, thinkest thou, was neighbour unto him that fell among thieves?” (Luke 10:36). But, gazing up at a stained-glass window in a European cathedral, Jack Welch realized that the parable has not always been taught this way. He saw, in perfect jewel-toned symmetry, a depiction of the Savior’s life and the parable of the good Samaritan in an arched window. Wondering about the significance, he asked the curate who worked in the cathedral.

The curate replied that in the early days of the Christian church, the parable of the good Samaritan was taught as an allegory of the Savior’s mission: The man Adam went down into the world, where he fell among thieves, who stripped him naked and left him lying there. Two religious men ignored his pitiful state and “passed by on the other side.” But Jesus the Christ, who had nowhere to lay His head, saw the man Adam as he lay injured and had compassion for him. This Jesus gathered the man Adam and all his posterity in His arms, bound his wounds with the balm of Gethsemane, and took him to the church. He told the innkeeper of the church to watch over Adam’s soul, to take good care of this man. When Jesus came this way again, He would repay the debt he owed for the man Adam’s soul.¹

The day we learned the (no-)duty-to-rescue rule, we also learned about the good Samaritan laws. In some states the legislatures have enacted laws that require passersby to intervene if they see a crime being committed. The same laws also protect from liability those people who decide to help an injured person, should the injured person decide to sue them for making things worse. I suppose these are good laws. They force people to do good things, to help those in their community. I can’t help thinking that whoever named the law missed the point completely.

The Good Samaritan did not act because he feared punishment. He acted because he had kindness in his soul, because his bowels were filled with compassion, and his whole soul was bent on mercy. He literally could not have acted another way. To call a law that forces people to be good after the title of the original being whose goodness needed no compulsion is ironic and only serves to perpetuate the myth of the austere Christ, the God of justice, the One who watched to see me fall.

I have learned, though, that there is another Savior, the other Jesus whom I seldom encountered in my Protestant Bible-study classes—the Christ of mercy, of compassion; the Christ who, though not bound by any eternal duty, chose to come to my rescue.

After class the day we read the casino case and studied the good Samaritan laws, I exited the Law School and sat down on the ledge that runs around the building. My gaze was filled with the rise of Squaw Peak and Y Mountain, not a half mile away. Above them the sky was that brilliant, brittle blue of late fall. I don’t think I was thinking coherently; I was thinking

a feeling. All I could feel was a profound sense of awe, of inexpressible, bone-deep gratitude that He descended below all things to rescue me in my fallen state that I had brought upon myself “because of [my] own disobedience” (Alma 42:12) and that He stayed, despite His own suffering, to complete the act.

Paradoxically, after learning that one young man turned his back on a seven-year-old girl struggling for her life, my thoughts were lifted to the Savior (perhaps in despair, perhaps in hope that the angels came to be with her when no earthly being would volunteer), to His unspeakable sacrifice, His indescribable bravery.

You see, according to American law, He didn’t have to do a thing to help me—or you, for that matter. We’ve brought upon ourselves our own misery. We’ve lied, coveted, rationalized, committed, and omitted ourselves into our current state: cut off from the presence of God, subject to the demands of justice. According to tort law, the Savior has no duty to rescue us. He had nothing to do with putting us where we are.

“But He volunteered,” the first-year law student objects. Yes, He did. And knowing what I know now about volunteers and rescues, I am even more moved by Christ’s simple statement: “Here am I, send me” (Abraham 3:27). I don’t know whether He knew just exactly what Gethsemane would be. I don’t know whether one ever really is prepared for the nails and the crown of thorns. I don’t know whether Christ knew He, legally, could turn back. If He had shrunk to drink the bitter cup that lonely night, we could not have held Him liable. Justice would still have been served. If, despite the fervent prayer, despite the angel to strengthen Him, the Redeemer had decided to abandon His eternal rescue mission, no law in this land would have held Him liable. Those whom He intended to rescue are in no worse state than when He started: we are still severed by sin from the presence of God. We’d be no worse off because He tried and failed or even tried and got tired.

But, thanks be to God, our Rescuer “has kindnesses in [His] nature.”² Thanks be to God that “mercy claimeth all which is her own” (Alma 42:24), which “mercy cometh because of the atonement” (Alma 42:23). Thanks be to God, the Rescuer drank the bitter cup. Thanks be to God, our Good Samaritan looked upon us and looked not away. From the very first council, He noticed us and our predicament. He never passed by on the other side. He traveled from on high to find those who needed rescuing. He saw me on the side of the road, lying injured, unable to save myself. He picked me up, bound my wounds with the balm of Gethsemane, and took me to His church, where he gave the bishop strict instructions to take care of me and my wounded soul until He could return to claim me and take me home. And return He will, because He always was, and is forever willing to be, my Keeper.

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Tessa Meyer Santiago is an award-winning writer who received her M.A. in English in 1992 and her J.D. in 2001 from Brigham Young University.

Notes

1. See John W. Welch, “The Good Samaritan: A Type and Shadow of the Plan of Salvation,” *BYU Studies* 38, no. 2 (1999): 50–115.

2. Jeremy Glastein, “Evil Actions Compel Us to Respond with Good,” *San Francisco Chronicle*, 22 September 1998, A21.