# Guilty Bystanders

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I was recently witness to a crime. The incident occurred in an upscale Connecticut suburb known for its safety, one of those leafy coastal towns where well-heeled surgeons and white-shoe lawyers raise their children to avoid the skulking mayhem of Manhattan. I had driven up from that isle of iniquity on a crisp Saturday morning in October to advise a gifted high school senior on her college applications – a favor to a friend of her parents. Wistfulness seemed to float in the air above the mounds of stained leaves and jack-o'-lanterns, a reminder of my own sheltered childhood in a similar hamlet across the New York State line. Luxury sedans inched their way along Main Street, past boutiques and art galleries and an interloping Laundromat. No thoroughfare in America seemed less destined for a grievous violation of the law.

My visit coincided with the town's annual window painting contest. For one weekend each autumn, local merchants yield their storefronts to an army of grade school Gaugins and pre-teen Picassos who decorate the plate glass with images of witches, skeletons, gravestones, and similar Halloween iconography. Prizes are awarded in various age groups and categories: originality, humor, technique. This tradition dates back more than half a century, predominantly in the Northeast and Far West. During my own childhood, a lovely wisp of a girl named Theresa Filardo won the competition every year. Once, I believe, I garnered an honorable mention. Whether for originality or comedy, I can no longer say. It is conceivable that the Scarsdale P.T.A. still retains a record, and had I become a celebrated visual artist or top-tier political candidate, or possibly a high-profile assassin, some assiduous biographer might have combed their archives for an answer. As I am instead a rather obscure ex-lawyer turned physician-bioethicist, no putative Plutarch is trotting out the creative accolades of my youth.

We seated ourselves at the window of a local café. I enjoyed chatting with the high school student immensely: she proved quick-witted, curious and passionate about a future career in medicine; I doubted she'd require any second-hand advice to gain admission to an exclusive university. The young woman was seated at an angle that exposed my eyes to a shaft of blinding white sun. I adjusted my own chair accordingly – and the dastardly crime unfolded before me in all of its bald audacity. On a side street, in a slight recess that rendered her invisible to pedestrians on the perpendicular avenue, a lone artist honed her craft upon an isolated window. She held a brush in one hand, scooping paint out of a can as though scraping sauce from a pot, then dabbing the glass with the bristles. Like Georges Seurat capturing a distant Sunday afternoon on La Grande Jatte. And, to my amazement, she appeared roughly the same age as the French pointillist had been then too. Maybe older. Behind her, a pudgy girl of six or seven or eight stood quiet as the angel of death, watching the adult, presumably her mother, impose a grown-up's pictorial vision on a contest designed entirely for kids.

So arrived my moment of reckoning. Years as an emergency room psychiatrist had taught me that confronting this woman directly would serve no purpose: People do not appreciate being shamed, especially in front of their own children, and I was in no mood to be assailed with indignation, of which such offenders always have an excess supply, or to find myself peppered with a fresh coat of acrylic primer. That latter scenario was far too easy to envision: My tenure in the ER had seen me lacquered with oatmeal and chocolate milk and body fluids of every scent and flavor. Or, for all I knew, Mrs. Seurat, concluding that a strong offense would serve as the most provident defense, might have shouted that I'd attempted to steal her palette – or kidnap her child. No, confrontation was the refuge of codgers and nosy parkers, the same sort of time-heavy nags who penned letters to their congressperson petitioning for more speed bumps and slower traffic signals and alterations to the design of the currency. It was also about as productive as conducting a citizen's arrest for fraud. This was not *The Handmaid's Tale*. Outside of Cromwell's England and Revolutionary Iran, "common decency" is rarely instilled by well-intentioned strangers patrolling the public streets.

I had only two options: I could report the fiend to the authorities, invoking upon her the wrath of an entire squadron of helicopter moms. Or I could turn a blind eye to injustice, like the ironically named Joseph Fink - remembered by crime buffs as the neighbor who responded to the stabbing of Kitty Genovese by taking a nap. Who could have known that my ethical Rubicon flowed through the commercial center of a tony New England village, that history would throw down its gauntlet while I nibbled on brioche and sipped espresso?

Ethicists are not necessarily ethical people. Our clan has been known to doctor sources, seduce students, champion prejudice. One of my colleagues, endowed with a breastplate of the field's highest honors, is nonetheless as pleasant as a swarm of Tsetse flies. Maybe we are even less ethical than others *because* we spend our days reflecting upon moral conundrums: How ought scarce cadaveric organs be allocated? When can end-of-life care be deemed futile? Should a "right to die" extend to the terminally ill with psychiatric disorders? Our job is to explore all sides of a question, to barrel past received wisdom, to parry counterarguments and rebuff counterarguments to counterarguments. Eventually, even if only in the abstract, conventional morality yields to the vast ether of relativism, unmasking the tenuous but theoretically plausible merit of every noxious notion under the sun. At this very moment, I am confident that some professor of practical philosophy somewhere is playing devil's advocate in favor of cannibalism or the sacrifice of first-born daughters.

I mention all of this at the outset because I am not a particularly upstanding character. Certainly no saint. I try not to cause any gratuitous harm in the world, of course; I don't desecrate churches or drive around in a white box truck offering lollypops to toddlers. But I also don't block logging roads in the Amazon basin or handcuff myself to nuclear silos. You might assume me more honorable than I am if you saw me parading through the hospital with my white coat and medical badge – fooled by the garb like tourists who overpay Amish quilters – so I wished to clarify my shortcomings at the outset. Faced with the cultural crime of the century, or at least the holiday weekend, I had not only to figure out the morally correct course of action, which was not at all obvious, but once I did so, I had to decide whether I personally wished to pursue it.

On my drive back through the Bronx – past the housing projects and heaps of used tires, the endless sprawl of dilapidated duplexes and row houses that separate the tycoons of Fairfield County from the moguls of Manhattan – I tried to examine the matter systematically. The arguments in favor of intervention demanded immediate action: In painting the window, this brazen malefactor had given her own offspring an unfair advantage at the expense of other innocent children. Hers was far from a victimless crime. Moreover, she had set an aberrant example for that daughter, modeling depravity, opening a gateway to future delinquency. How easily one graduated from cheating in art contests to passing ersatz Vermeers. Hadn't Konrad Kujau started with watercolors before forging the Hitler diaries? Although arguably a misdemeanor in the particulars, this woman's transgression undermined the rule of law: If one person were free to paint windows willy-nilly, another might feel empowered to shred her jury summonses or skimp on her taxes or drive solo in the carpool lane. I don't mean to sound alarmist, but life is a slippery slope: The incline runs uphill anytime you are trying to get someplace or accomplish something, but downhill where matters of morality are concerned. Letting a thug tear off a mattress tag with impunity gives license to Lizzie Borden and bands of Viking marauders. That's why the Puritans hanged pickpockets and horsewhipped men who kissed their wives on Sundays.

Nor could I fall back on the plea of collective responsibility. Social psychologists have long noted the phenomenon of "bystander apathy": Onlookers are less likely to come to the aid of a victim when others are present. What is everybody's responsibility in essence becomes nobody's responsibility. We are more likely to feel a duty to save a baby we see drowning in a pond than an infant starving in the Horn of Africa. One child's peril is the obligation of a handful of witnesses, the other is diffused across humanity. Unfortunately, I could not reassure myself that some more conscientious onlooker would rise to the occasion. Nobody else, to my knowledge, had observed the misconduct; no narc or buttinsky would come to my rescue. I stood in a unique position to reestablish justice and model righteousness.

Few sins weigh more heavily upon the modern western consciousness that acquiescence in the face of evil. We have been raised on Martin Luther King Jr.'s *Letter from Birmingham*

*Jail* ("We will have to repent in this generation not merely for the hateful words and actions of the bad people but for the appalling silence of the good people") and Anne Frank's diary ("What is done cannot be undone, but one can prevent it happening again") and Martin Niemöller's confession ("First they came for the socialists … "). The average American might believe that Edmund Burke was the fashionista who designed the burka, and certainly couldn't accurately misattribute a quotation to him, but nearly all of us – ethicists included – have swallowed his purported doctrine that "the only thing necessary for the triumph of evil is that good men do nothing." So sayeth the superego: Case closed.

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Only, as an ethicist, I assumed license to reopen it. Missing from my initial calculus was the impact of exposure upon this woman's child. Why should the mother's guilt be answered for with the daughter's shame? I thought of the ordeal endured by the unknowing teenage beneficiaries of last year's college admissions bribery scandal – humiliated and expelled for the sins of their parents. Of twelve-year-old Charles Dickens imprisoned for his father's debts. I don't want to overdramatize: Being forced to return a bronze-plated metal is not exactly on par with the three generations of punishment imposed by North Korea's Kim Il-Sung or the *Éraic* that murderers' kin paid under traditional Irish law. But it is certainly bound to hurt.

Mrs. Seurat had committed a crime with only invisible victims: The losers would know that they had lost but not that there were casualties of fraud. By reporting this miscreant to the authorities, I'd be transforming her offense into one with a visible victim, her own daughter. Yet human nature favors protecting visible victims over invisible ones – even when doing so proves irrational. Our society spends extraordinary sums on a handful of intensive medical interventions (such as heart-lung transplants or a $2.125 million drug for spinal muscular atrophy) when those same funds could save far more individuals through research and/or preventive care. Visible victims vs. invisible victims. If you do not receive a free smoking cessation class, you don't later consider that to be your cause of death.

Of course, this girl was acquiescing to a crime that furthered her own interests – and cynical readers might even suspect her of masterminding it – but I am not hardened enough yet to mount my campaign for law-and-order on the back of an eight-year-old child. Besides, one could never be certain how much the girl bought into the mother's plan. Wasn't it preferable to let hundreds of guilty parties go free than to imprison one innocent soul? On the other hand, such reasoning increased this girl's chances of "winning" the next year's contest and the following ones too. I found myself wondering whether Theresa Filardo's mother had been handy with a paint brush.

And then, needless to say, there were the practicalities. Reporting this woman was bound to require effort and might even demand a formal statement. Two dollars shelled out to a public notary; testimony in municipal court. Who could say? So this woman was a sociopath. *She* was the felon! I hadn't *asked* for a courtside seat at the crime scene. Why did I owe it to her or to anybody else to embroil myself in a potential legal quagmire? If the town wanted to catch scofflaws, let it invest in video surveillance. I had troubles enough of my own.

Okay, not many troubles. Not in the grander scheme of things. For a long time resident of New York City – I was working my first job while a pack of goons murdered Utah tourist Brian Watkins near Rockefeller Center, in grad school when Abu Ali Kamal opened fire on the observation deck of the Empire State Building – I have largely avoided becoming a visible victim of Gotham's netherworld. The windows of my Honda have been shattered several times; once, thieves made off with the side view mirrors. Checks have been forged in my name and my account later re-credited. Over the years, I have been unlawfully deprived of a laptop computer, a bicycle, and several UPS deliveries. And, in a bizarre incident, a stranger reached into my car as I was opening the door and grabbed the stuffed lizard that I kept pinned to the sun visor for good luck. But only once have I truly been subject to the threat of genuine violence; as a lifelong New Yorker, I am pleased to report that episode occurred the year that I lived in Boston.

I was in law school at the time. It was a biting November evening in Cambridge, one of those days after the clocks fall back to standard time and the universe turns the color of ash. I was returning from class, trolling down a side street parallel to Massachusetts Avenue. A law professor had been stabbed to death ten blocks or so to the west, but that had been six years earlier, and I could not have felt safer behind the White House gates. Or, to be more precise, safety was most distant from my mind, because to feel truly safe is to not be conscious of safety at all. That was when a battle-scarred vehicle – a seventies era rust-bucket, maybe a Lincoln or a Buick – rounded the corner onto Prentiss Street and juddered to an angry halt. It was the sort of car that might once have been called a jalopy, and immaculately

maintained by a pack of would-be Fonzarellis or a Sha Na Na cover band, but dismissed today as junk. Two young men emerged from this rattletrap, and with disquieting speed, one had demanded my cash.

My assailant could not have been more than thirteen or fourteen. A kid. Raised in a different community, with better resources, he'd have been studying for his bar mitzvah. Instead, in a hand half-shielded by a jacket sleeve, he brandished what might have been a knife. At least, I believe I saw metal. Whether it was a stiletto or a penknife, I couldn't say. Or, in hindsight, it might have been a screwdriver. Or a pastry fork. Or even a latchkey cleverly wielded. Who could say? What I can report, with confidence, is that this object wasn't something I wanted surgeons at Mass General removing from my abdomen. The kid stood about two yards in front of me, easily within lunging distance of several vital organs.

"Give me your money," he repeated.

And then my worst instincts kicked it. Maybe it was something in my would-be robber's voice – a hesitation, a peevish frustration – or maybe I just lack any sense. Rather than yield my wallet, I became one of those upper-middle class professionals who sacrifice themselves for fifteen dollars and a vast estate of pride. I took a large step directly toward my aspiring mugger and hollered, "Give me yours!"

Behind me, I heard the second delinquent yell something. *Hurry up? Run?* His precise words didn't register. But the target of his plea – much to my amazement – bolted as though he had just seen the Ghost of Christmas Past. Back up Prentiss Street, in reverse, went the jalopy, nearly taking out several parked sedans as it backed onto Frost. I darted away scathed with only a burst of adrenaline and an incriminating license plate number.

My actions were neither wise nor courageous. I demonstrated that I am *not* the fellow you want beside you in the foxhole. Sure, the remote possibility exists that Cambridge wasn't a one-off, that I might shield you from a grenade and win a Congressional Medal. But far more likely, I'd act rashly under pressure and get us both shot. And if that isn't enough to convince you, I chose not to report the incident to the authorities. This episode occurred long before I'd become a professional ethicist – back when I could still discern right from wrong. Yet I didn't reflect upon the upbringing of my attackers, how had circumstances been reversed, I might have been one of the hooligans in the clunker and they fortified by an ivory tower. Never once did I think: There but for the grace of God go I. No, my reasoning ran much more direct: Exams were approaching – far better to study criminal law than to engage with it. My concern wasn't mercy, but convenience. Some jurors, I am told, acquit because the prosecution hasn't proven its case. Others are worried that their parking meters might expire.

Only now, half a lifetime later, do I wonder: Did these precocious punks strike again? Are they now still pillaging and butchering below the radar screen? Or did they transcend their circumstances and go on to earn law degrees of their own? Can they stand before the bar today because fate gave them a reprieve, because one lazy victim could not be bothered to care?

Yet human nature favors protecting visible victims over invinsible ones – even when doing so proves irrational.

I am bystander to a different variety on injustice on a nightly basis. Three evenings each week, I provide psychiatric care in one of New York City's busiest emergency rooms. Many of our patients suffer from severe mental illnesses: schizophrenia, brittle bipolar disorder, suicidal depression. However, nearly one in three patients whom I encounter do not have a pressing medical need at all. Rather, they are failures of the social service system: homeless, hungry, alone. On quiet shifts, I may be able to offer these men – and they are nearly all men – a sympathetic ear, a transitory dose of compassion. Busier hours see them dismissed with a sandwich and directions to the nearest public shelter. Never do I offer to foot their motel bill for the night or invite them home to dinner with my family. And yet they are suffering – far more, I imagine, than any third grader who does or does not win a window painting contest. I could do more for these men, of course. Or at least for a few: before my funds ran out, before my family refused to share our dinner table. But so could you. Every time you walk past one of these men on the public street, destitute, disheveled, you make a choice not to invite them home.

Privation, of course, is not the planet's only injustice. Nor is paying for an undomeciled stranger to crash at a Holiday Inn a particularly costly sacrifice for most middle-class people. Princeton-based utilitarian philosopher Peter Singer argues in his "Solution to World Poverty" that there is no meaningful distinction between visible and invisible victims of economic injustice: "What is the ethical distinction," he asks, "between a Brazilian who sells a homeless child to organ peddlers and an American who already has a TV and upgrades to a better one – knowing that the money could be donated to an organization that would use it to save the lives of kids in need?" Alas, our society remains far away from grappling with such abstract questions. We cannot even agree that there is an ethical or legal duty to assist a nearby stranger in acute need, such as the victim of an auto wreck or stabbing, at no cost to ourselves. France and Germany both impose duties on bystanders to assist in such circumstances and impose stiff civil and criminal penalties for those passersby who do not render aid. Israel enacted a

similar statute, based on an exhortation in Leviticus, in 1998. In contrast, the majority of American states allow indifferent third parties to stroll past drowning infants with impunity. God Bless America – and walk quickly!

One of the most challenging questions in contemporary ethics is to what degree "bystanders" are morally responsible for atrocities? And how proximal to the evil must one stand to shoulder some blame? This discussion often arises in the context of Nazi Germany or American chattel slavery: Do Eva Braun and Magda Goebbels share the guilt of their husbands? To what degree is Martha Jefferson culpable for the later suffering of Sally Hemmings? But if the wives of offenders are culpable, what of their friends and neighbors? Or the citizens of the Third Reich and the Confederacy who never embraced the ideology of their leaders, but also failed to emigrate or engage in underground resistance? Must we all be John Brown at the Harper's Ferry arsenal or Sophie Scholl distributing handbills for the White Rose?

These are not historic questions. If one believes elective abortion to be an ongoing Holocaust, which is the stated doctrine of several leading "pro-life" activists, failure to bump off progressive obstetricians is no different than whistling past Treblinka. Or should one view America's global military adventurism as akin to that of Stalin and Mussolini, then assassination of our own fearless leader seems in order. I should emphasize – in case the Secret Service stumbles upon this essay – that I do not endorse either of those positions. Have no fear, Mr. Trump: I feel crippling guilt over jeopardizing a schoolgirl's Halloween prize; I won't be turning Lee Harvey Oswald or John Hinckley any time soon. Rather, my point is that the planet teems with victims, both visible and invisible, and those who are visible to some may not appear so to others. If we cannot even agree what we are witnessing, how can we ever assess our duty to respond?

And yet we are all guilty bystanders. That's the very nature of the human condition, the original sin that cannot be baptized away. Maybe the question is not whether we are guilty, but how guilty we choose to be. Which crimes are too minor to report? Which are too stark to ignore? When should we champion the rule of law and when take justice into our own hands? Chaos theory tells us that the flapping of a butterfly's wings can shape the path of a tornado several weeks later, that a pebble's ripple may topple the walls of Sumer, that the loss of a leaf leads to the decline and fall of Rome. It tells us nothing of whether to capture a particular butterfly or the wisdom of tossing a specific stone into a pond. In his oft-quoted Meditation XVII, Elizabethan poet John Donne warns: "Never send to know for whom the bell tolls; It tolls for thee." But a bell that tolls nonstop may prove of no more value than a bell that never peals at all.

In the days following "Windowgate," as I have come to term my moral crisis on Main Street, I shared the dilemmas with friends and colleagues. Some were mildly appalled. Others equally amused. Many more dismissed the matter entirely: *These things happen. It will catch up with her eventually. White people's problems.* The overarching consensus that emerged was that, in the grander moral scheme of the universe, it mattered little if I did or did not report her. Over time, much to my own surprise, I have grudgingly come to agree.

Where, I find myself wondering, does the offense lie? In an adult painting a window to win a child's tournament? In relaxing at a café, sipping espresso and nibbling brioche, while my fellow human beings go without food and shelter? In a professor driving to Connecticut to coach a well-heeled friend's child on how to game the Ivy League admissions process? We prefer to think of ourselves as merely bystanders, guilty to some lesser degree, so we may shoulder a fleeting moment of self-doubt and then go about our daily business. It is far harder to accept that we are all active participants, each painting somebody else's window. That we leave behind us a trail of invisible victims and moral crises, myriads of unseen onlookers continuously deciding and undeciding whether or not to intervene or to turn us in.

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