"YOU SHALL NOT STAND OVER THE BLOOD OF YOUR NEIGHBOR": THE EVOLUTION OF AN IDEA AND ITS IMPACT ON ISRAELI SOCIETY

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Introduction

One of the most striking things during the demonstrations against the Supreme Court by Haredi (Ultra-Orthodox) and religious demonstrators in February 1999 and the counter demonstrations by secularists[1] was the lack of dialogue between the two camps. It seemed as if every word uttered by a Haredi carried a completely different set of connotations to that understood by the secularist who heard it, and vice versa.[2] This article attempts, first and foremost, to create a basis for renewed understanding and dialogue between the two camps. I will argue here that the possibility of dialogue is implicit in the biblical formulation of the commandment, "you shall not stand over the blood of your neighbor." In the first section of this essay I shall analyze the relation between the prohibition against standing over ones neighbor's blood and its adjacent verses, paying special attention to the literary form used by the Torah in speaking of this

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[1] The enormous mass demonstration by the Haredim took place on February 14, 1999, with the participation of 200,000 Haredim and religious people. About 30,000 secularists gathered in Gan Sachar at the same time for a counter demonstration.

[2] See P. Schiffman, "One Language and Singular Things" [Hebrew], in *Multi-Culturalism in a Democratic and Jewish State* (Tel Aviv, 1998), 715. See also the view of Prof. Michael Walzer (political philosopher from the Institute for Advanced Studies at Princeton) in an interview published in *Ha'Aretz*: "Despite its founders' hope that Israel would be a melting pot, Prof. Walzer says that assimilation within Israel did not succeed as hoped and that a multi-cultural society was created in Israel. The fact that these groups do not maintain dialogue among one another means that 'A common basis is lacking'" (*Ha'Aretz*, April 30, 1999, B4).

obligation. In the second section I shall deal with the New Testament parable of the good Samaritan, with the aim of sharpening several of the arguments I have raised. The third section will be devoted to a comparison between the principle of responsibility implied in the prohibition against standing over the blood, and the ethical philosophy of Emanuel Levinas. In chapter 4 I will deal with modern “Good Samaritan” laws imposing an obligation to save the life of others. Following a brief survey of the underlying legal theory, I shall note different understandings of the 1998 Israeli law named for the above verse in light of the discussion of the biblical law. I shall show how these different understandings, based upon varying historical and cultural approaches, essentially undermine the main purpose of the law.

As this paper draws upon arguments from different disciplines, there is need for a word about the methodology used here. In the biblical analysis, I attempted to root my arguments in traditional exegesis, as well as in examination of the broader context of the verses. In my comparison of Levinas’s thought with the biblical command, I attempted to rely upon authorities in Levinas research. In the analysis of the different approaches and understandings of the 1998 Israeli Law “You shall not stand over the blood of your neighbor“ I relied to a large extent on the protocols of the Knesset Constitution, Law and Justice Committee, which worked on preparing the law over the course of a number of a meetings. I compared the views of the religious Knesset members, including the promulgator of the law, Hanan Porat, with those of the secular Knesset members on this committee, taking as a point of departure that their approaches represent a particular public. This last assumption is perhaps debatable, but I think that one ought to let the things speak for themselves. From a formal viewpoint, this article is written in the style of papers in the realm of law, this being, for better or worse, my professional background.

A word is called for regarding the supposed absence from this paper of the attitude toward Arabs or other minority groups in the State of Israel. Even

though one may argue as to the applicability to non-Jews of the biblical command not to stand by the blood of ones neighbor, the command may also be given a universalist interpretation,[3] bringing every human being as such under the rubric of "your neighbor." However, the present paper is specifically concerned with the implications of the interpretation of the biblical law and the modern law in terms of relations between religionists and secularists. While many of the claims made in this article could also be made on the plane of

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[3] A famous example of an exegetical argument of this type is that between Rabbi Akiva and Ben Azzai: "R. Akiva says, 'You shall love your neighbor as yourself' [Lev 19:18] is a great rule of the Torah. Ben Azzai says, 'This is the book of the generations of man' [Gen 5:1] is a greater rule than that" (*Sifra, Kedoshim*, §2). Cf. *Teshuvut Hakham Zvi*, §26, s.v. *ra'iti*, that deals with the subject of theft from a non-Jew, and questions R. Shlomo Luria (Maharshal), who contends that "the Torah was only given for Israel." If this is so, asks the *Hakham Zvi*, "Why does it use the word, 'Your neighbor.' We know [that it refers to] him in any event." Cf. the Hatam Sofer's quotation from Nahmanides in *Sefer Katan Emunah u-Bitahon*, Ch. 19: "'You shall not bear false witness against your neighbor' [Exod 20:16]. And shall one bear false witness against one who is not your neighbor? Rather, 'your neighbor' refers to the Holy One, blessed be He, for whoever violates the *mitzvot* is as if he gave false witness against himself… Hence it says, 'your neighbor' rather than 'your brother'—to indicate that this refers to testimony toward heaven." (*Teshuvot Hatam Sofer*, *Kovetz Teshuvot*, §90, s.v. *va'ani navokh*). The application of Nahmanides' words to the verse "You shall not stand over the blood of your neighbor" lends an extremely interesting significance to this verse in light of the concept of "be'tzelem" - " in the image of God." Cf. Rashi on *b. Shabbat* 31a, s.v. *de-alakh sani…*: "'Your friend and your father's friend do not forsake' [Prv 27:10]—this refers to the Holy One, blessed be He. Do not violate his words, for it is hateful to you that your friend should violate your words." By contrast, there are countless examples limiting the definition of "neighbor" or "fellow" to Jews alone, excluding, not only non-Jews, but also Jews who violate the law. The most famous example of this is *tosefta Bab. Mez*. 2.13 (and in its wake Maimonides in *Hil. Rozeah ushemirat hanefesh* 4.11): "The idolators and shepherds and those who raise small

Jewish-Arab relations, I preferred to focus upon the unique problems that characterize the inter-relations between religionists and secularist and the different understandings of each one of the groups in the present context.

1. *"You Shall Not Stand over the Blood of your neighbor"—The Desperate Attempt at Objectivity*

Chapter 19 of the Book of Leviticus (*Parashat Kedoshim*) is rich in social or "intellective" [i.e., rationally comprehensible][4] commandments, whose purpose is to establish a just and ethical social order. In retrospect, one cannot ignore the ethical achievement inherent in this chapter, whether it represents a way of life that was actually followed in practice or a utopian vision. It is not for naught that exegetes noted the connection between this section and *Parashat Mishpatim* (Exodus 21-23:19), nor is it an accident that the aggadic midrashim see the first part of this chapter as a repetition, with variations, of the Ten Commandments.[5]

At the beginning of the chapter, following the famous command, "you shall be holy," there appear commandments concerning the fear due ones parents, the observance of the Sabbath, and thereafter the prohibition against idolatry and

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animals [i.e., sheep] one does not take up [out of the pit]" (i.e., one does not save their life – Y.E).

[4] See Rav Saadya Gaon, *Emunot ve-De'ot,* ed. Kapah, 117-118: "…to behave with righteousness and truth and uprightness and justice, to take care against killing a human being, and to proscribe licentiousness and theft and talebearing and cheating, and that the believer should love his brother as he loves himself."

[5] See, e.g., *Midrash Tanhuma*, on *Kedoshim*, §3, s.v. *daber el:* "In the [Ten] Commandments it is written 'Honor your father and mother' and here it is written 'Let each man fear his mother and father.' In the Commandments it is written, 'You shall not murder,' and here it is written, 'Do not stand over your neighbors blood.' In the commandments it is written, 'You shall not commit adultery' and here it is written 'You shall be holy…'"

the prohibition against leaving over the flesh of the sacrifices. The following ten verses [i.e., vv. 9-19],[6] with which we are concerned in this part of the paper, lists a series of obligations and prohibitions from the world of ethics.

> When you reap the harvest of your land, you shall not reap your field to its very border, neither shall you gather the gleanings after your harvest.

And you shall not strip your vineyard bare, neither shall you gather the fallen grapes of your vineyard; you shall leave them for the poor and for the sojourner: I am the Lord your God.

> You shall not steal, not deal falsely, nor lie to one another.
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> And you shall not swear by my name falsely, and so profane the name of your God: I am the Lord.

You shall not oppress your neighbor or rob him. The wages of a hired servant shall not remain with you all night until the morning.

You shall not curse the deaf nor put a stumbling block before the blind, but you shall fear your God: I am the Lord.

> You shall no do injustice in judgment; you shall not be partial to the poor nor defer to the great, but in righteousness shall you judge your neighbor.
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> You shall not go up and down as a slanderer among your people, and you shall not stand by against the blood of your neighbor: I am the Lord.

You shall not hate your brother in your heart, but you shall reason with [or: chastise] your neighbor, lest you bear sin because of him.

You shall not take vengeance or bear any grudge against the sins of your own people, but you shall love your neighbor as yourself: I am the Lord.

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[6] Eliyahu Ki Tov, in *Sefer ha-Parshiyot*, makes a similar distinction between the first part of the chapter and those verses that begin with the commandments pertaining to agricultural matters (*leket*, *shikha* and *peah*; i.e., v. 9 ff.) , referring to the latter as *mishpatim* ("laws")—i.e., suggesting a clear relation to the sedra of that name. See E. Ki Tov, *Sefer ha-Parshiyot* on *Sefer Vayikra*, II: 119.

I wish to focus upon the prohibition against "standing by against the blood." The problem in understanding the meaning of the biblical Hebrew "lo ta'amod al dam" appears almost immediately. It was translated to English "to stand by" or "to stand against" rejecting the literal "to stand over". The difficulty in understanding the meaning of "lo ta'amod al dam re'echa" is apparent also in the midrash. The Talmudic Sages present three[7] traditional interpretations of this verse, appearing in the halakhic midrash[8] to *Sifra, Kedoshim*, §2:

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[7] In *Midrash Tanna'im* to Deuteronomy 13:9, it says: "'do not listen to him! [to the one persuading to idolatry – Y.E.]'. From the general rule that says, 'You shall surely help him' (Exod 23:5), you might infer that you should assist one such as this? The Torah says, 'do not listen to him, nor shall your eye pity him!' From the general rule that, 'You shall not stand upon your neighbor's blood' (Lev 19:16), you might infer that you must not stand over the blood of this one? The Torah says, 'your eye shall not pity him!'"

This use of the prohibition of standing over the blood by way of negative inference reduces the importance of this midrash for understanding the prohibition of standing over the blood. However, the midrash teaches us two not-unimportant points. First, that there is an associative connection between the commandment "you shall surely help him" and the prohibition against standing over the blood. As we have seen, there are many connections between the sections of *Mishpatim* and *Kedoshim*, suggesting that they were understood as a single basis for the construction of the Israelite social order. The second point is that the author of the midrash compares standing over the blood and stoning ("you shall surely kill him, your hand shall be first against him to kill him, and afterwards the hand of all the people"). The fact that one is not to take pity upon the one persuading to idolatry, but may stand over his blood, does not add anything. The interesting point is that the author of the midrash understood the term "standing over the blood" as a metaphor rather than as a description of concrete reality. This distinction will prove useful further on.

[8] A similar wording appears in *Yalqut Shim'oni* to *Kedoshim*, § 612, s.v. *lo telekh rakhil*.

> From whence [do we learn that] if you know of testimony you are not allowed to be silent concerning it? The Torah says, "You shall not stand by against the blood of your neighbor."
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> And from whence [do we learn that] that, if I see one drowning in the river or brigands coming upon him or a wild animal coming to him, that you are obligated to save him [at the price of the other's] life? The Torah says, "You shall not stand by against the blood of your neighbor."
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> And from whence [do we learn that] if one is pursuing his neighbor to kill him, or after a male or a betrothed maiden [for purposes of rape] you are to save him [at the price of the other's] life? The Torah states, "You shall not stand by against the blood of your neighbor."[9]

As we can clearly see, the midrashim and the various translations to the phrase "la'amod al ha'dam" all try to create an approach that will fill the difficult to understand phrase - with content.[10] If we go back to the midrashim, we clearly see that the connection between a person's obligation to testify and the prohibition against "la'amod al ha'dam" derives from the proximity of the phrase, "You shall do no injustice in judgment" to the prohibition to stand over the blood.[11] On the other hand, in the case of the other two homilies, which fill

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[9] Albeit in *b. Sanhedrin* 73a the derivation of the law of the pursuer from this verse is rejected, but is learned by a logical inference (*kal vahomer*) from the betrothed maiden. But see the comments of the *Tora Temima* on this verse: "But given that this inference does exist, the one does violate this prohibition, therefore I copied it; and likewise in *Sefer ha-Hinukh* this verse is adjacent to the law of the pursuer."

[10] See the interpretation of the even shoshan dictionary: "stood over his neighbor's blood" under the entry *dam*: "He saw his neighbor subject to danger and did not come to his help; he stood aside during the travail of his neighbor." Even-Shoshan uses this midrash to fill in the contents, either because he thinks that the immediate meaning of the verse (which we shall discuss below) is inadequate, or because the exegesis penetrated to the verse to the point of identification with it.

[11] Many homilies also deal with the severity of talebearing on the basis of its being placed adjacent to the prohibition of standing over the blood. See Maimonides

what they see as an abstract concept with casuistic content, one must say that at the very least they deviate from the wording of the verse and interpret *la'amod 'al* ("to stand over") as "to stand from the side." Even if we do not go so far as to define "stand over the blood" in abstract terms, it is clear that something is missing in the verse; it is this lack that led the midrash to *expand the brief framework* appearing in the Bible, and to tell a story in which the hero becomes involved in a situation *outside his own ken* in which he identifies a person who is in mortal danger (whether due to external circumstances or because he is pursued as a result of some conflict or another). The story imposes an obligation upon the principle to become involved and to save the one drowning or being robbed from his attacker. In the second version, the story imposes an obligation to interfere in a "lethal" dispute between two people, to decide in favor of the one being attacked against his attacker, in support of the weak and against the pursuer. The success of the two stories as exegesis penetrating to the heart of the verse is in itself doubtless very great.[12]

Two problems arise regarding this point. The former is connected with the choice to present the mitzvah in a frame of a "story". Even if we take into account the clear stylistic differences between the language of the Bible and that

(below, n. 31), and the text next to it.

[12] This is indicated by the halakhic literature, the halakhic codexes and the books enumerating the mitzvot, and shall also be shown by our own understanding of the verse—viz. the intuitive connection that we draw between the verse and the midrashic situation that was attached to it. The success of the midrash may perhaps be attributed to the heroic situation described thereby, in both the narrative and ethical sense. See, e.g., the remarks of M.K. Hanan Porat in explaining his proposed law concerning "You shall not stand over your neighbor's blood": "This proposed law is intended to anchor in Israeli legislation the ethical and social value whose source is in the Torah (Lev 19:16), according to which an obligation is imposed upon a person to save the life of another person." See Proposed Laws (ha'tza'ot chok) 5755-1995, p. 456.

of the Rabbis, there is a great departure from the way in which the Torah chose to present the commandment. The biblical "You shall not stand over the blood of your neighbor" is based upon the idea that it would *not* be used as a story. The Torah chose to present the commandment in the form of a "picture," in which we see a person *standing in a pool of his neighbor's blood*. Of course, the narrative wheels of the Sages were moved by the numerous questions elicited by this picture and its metaphorical meaning, but this spare and shocking picture—of which one can truly say "one picture is worth a thousand words"—is still something other than a story. The midrashim expand the stage and show us the scenes that preceded this picture. True, a picture also tells a story, but the uniqueness of this picture lies in the remarkable silence[13] radiating from it—of a person standing over blood. This silence teaches us to concentrate upon it, and on it alone. The short story that the Rabbis impose upon this verse is more complex, and provides an opening for different points of view, or narratives,[14] of each of the participants in the event: the motivations of the pursuer, the nature of the pursued, his origin, his religion, the practical possibility that he will indeed be robbed or drown, why he went into the water altogether if he didn't know how to swim, etc. *Paradoxically, the spare biblical picture of standing over the blood, notwithstanding the numerous questions that it arouses, pushes away*

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[13] See the interpretation by *Torah Sheleimah* on the midrash: "From whence [do we infer] that if you know testimony concerning another person you are not allowed to be silent? The Torah says, 'You shall not stand over your neighbor's blood.'" On the connection between "silence" and "standing**,"** Menachem Kasher (author of the torah sheleimah) says, "we infer that the people of Israel were silent,' as it is written, 'And when he opened it all the people stood.'" This verse appears in Nehemiah 8:5 and is explained by Rashi in his interpretation of that verse: "'They stood'- this indicates silence." Rashi in turn based himself upon Job 32:16: "And shall I wait, because they do not speak, because they stand there, and answer no more," so as to connect "standing" with " silence."

[14] In the sense of emphasizing the narrative aspect, and the personal point of view."

any possibility for a different perspective on the situation: there is a person standing in a pool of blood,[15] *and there is imposed on him the ethical responsibility for an act that has already been done, for blood that has already been spilled.*

The second problem that arises here concerns the textual location of this mitzvah. We noted that the midrash draws a connection between the prohibition against standing over the blood and the obligation of righteousness in justice stated by the adjacent verse in establishing the obligation to testify.[16]

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[15] See *Gen. Rab*. 34.14: "R. Akiva expounded: Whoever spills blood is considered by Scripture as if he diminished the divine image" [based on a wordplay on *adam* and *dam*-YE]. There is no doubt that "you shall not stand over the blood" conducts a hermeneutic "dialogue" with the verses "for the life of the flesh is in the blood" (Lev 17:11) and "for the blood is the life" (Deut 12:23). This connection does not change the picture described in the verse to metaphoric, but is the source and justification for the ethical responsibility of one who stands over blood, as felt immediately by anyone looking at this picture.

[16] Rabbi David ben Zimri asserts that we are required to save the one who is in danger only if this does not place the one doing the saving in danger: "Such as one who was sleeping under a shaky wall, whom he could have awoken from his sleep, and he did not awaken him; or one who knows testimony that could save him [and didn't testify]—he violated 'You shall not stand over the blood of your neighbor'" (*Teshuvut ha-Radbaz*, Pt. V, §218). Cf. the connection between "your neighbor," "God" and the "obligation to testify" in *j. Berakhot* 3c: "Said Rav Levi: The Holy One blessed be He said, 'If you give false testimony concerning your fellow, I consider it as if you gave testimony that I did not create heaven and earth." And cf. the reservation regarding one who is exiled to a city of refuge that "He never leaves his city of refuge. Even to perform a mitzvah or for testimony, be it testimony concerning money matters, or capital testimony, or even to save a life by his testimony, or to save someone from conscription or from the river or from a fire or landslide, or even if all Israel requires deliverance through him, as in the case of Yo'av ben Zeruyah—he does not leave there forever, until the death of the high priest"—Maimonides, *MT, Rozeah ushemirat hanefesh*, 7.8

But if that is the nature of the prohibition of standing over the blood, why does the Torah use such a remote metaphor? Many other interpretations connect the prohibition with that adjacent to it in the same verse, "You shall not go up and down as a slanderer among your people"—"to teach us that the talebearer brings about the death of people."[17] Here, too, the same question arises: why make use of a metaphor or situation that is possible but so distant? True, this adds a certain additional force to the prohibition against going about as a talebearer or to the obligation of giving testimony but, on the other hand, it also diminishes the importance of the prohibition standing over the blood in its own right. If we assume that the purpose of this prohibition is to present the law of the pursuer and the obligation to save his victim, then the specific location of this obligation is not clear.

A reflection of this lack of clarity may be seen in Maimonides. In *Sefer ha-Mitzvot* (The Book of Commandments), Maimonides lists this commandment (Negative Commandment # 297) next to those negative commandments concerned with murder and capital law.[18] He says there as follows:

> "The proscription we were given not to refrain from saving the life of anyone from Israel if we see him in mortal danger and loss, and we have the power to save him: such as if he is drowning in the water and we can swim well and can save him, or if a non-Jew wishes to kill him and are able to remove that which in his heart or to remove him from this danger. And this prohibition comes that we should not delay to save him, when He, may He be exalted, says: "You shall not stand over the blood of your neighbor."

In the *Mishneh Torah,* Maimonides brings the law of the pursuer and the obligation to save the pursued, which are derived from the prohibition of standing over against the blood, in the context of Laws of Murder and the

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[17] See Ralbag in his *Torah Commentary* on Lev 19:16.

[18] Rabbi Feintauch, in his *Pikkudei Yesharim* on Maimonides' *Sefer Ha-Mizvot*, cites negative commandments 289-300 as one unit, dealing with murder and capital law.

Preservation of Life. Here we need to be precise: these laws are brought at the end of Chapter 1, that deals entirely with the laws of the murderer, rather than in Chapters 11, 12, or 13, that are concerned with the preservation of life.[19] Moreover, all of those commandments that, in the biblical text, appear within the immediate environment of the prohibition against standing over against the blood—namely, the prohibition against talebearing (19:16), the commandment not to hate ones brother in ones heart but to rebuke ones neighbor (v. 17), as well as the commandment to love ones neighbor as one self and the prohibition of bearing a grudge (19:18)— appear in Maimonides' code within the context of *Hilkhot De'ot* (literally, "Laws of Opinions" or "Traits," but which may best be translated as "Laws of Proper Ethical Behavior"), from 6.3 to the end of the tractate. Each of these commandments is given specific, detailed discussion and is incorporated logically within the two last chapters of *Hilkhot De'ot*. The prohibition of not standing over by ones neighbor's blood is alluded to there in passing in connection with the prohibition of talebearing, but not as an independent mitzvah.

This distinction reinforces the question regarding the location of the prohibition against standing over the blood. On the assumption that there is an internal meaning and logic to the order of the verses, why should one isolate the

[19] It is interesting to note here that the "twin" obligation to the prohibition of standing over the blood, "you shall surely help him," as stated in *Midrash Tanna'im* to Deuteronomy on those words , appears in Maimonides among the chapters on "protection of life" (Ch. 13). This is evidently based upon the point of departure that failure to provide help can cause danger to his neighbor, as he will need to remain in his place after nightfall. Such is the view of *Torah Temima* on Lev 19:16 and Exod 23:5. On the face of it, the "natural" location for the commandment of saving life should be in the chapter on protecting life, but Maimonides preferred to bring it as part of Chapter 1, evidently because of the impossibility of separating it from the law of the pursuer which, as we have seen, is related to it as part of an ancient exegesis.

prohibition of standing over the blood? It is clear that Maimonides was unable to separate between the biblical prohibition and the authoritative interpretations given it in the Midrash and Talmud,[20] interpretations that required him to place the discussion of this prohibition within the Laws of Murder. Moreover, due to the very strong connection with the law of the pursuer, Maimonides included all aspects of this commandment[21] in Chapter 1 of the Laws of Murder rather than in those later chapters concerned with the preservation of life. The Talmudic discussion concerning the law of the pursuer makes great efforts to distinguish the law of saving life from that of the pursuer by separating the latter from the verse "You shall not stand over the blood of your neighbor." Instead, it learns it by means of a logical inference from minor to major based on the law of the betrothed maiden:

> Our rabbis taught: From whence do we learn that one who pursues his neighbor to kill him may be saved [i.e., prevented from performing this transgression even] at the cost of his own life? The Torah says: "You shall not stand over the blood of your neighbor." And did [this verse] come for this purpose? Is it not required from the following *beraita*: From whence that one who sees his neighbor drowning in the river or a wild beast dragging him or brigands attacking him, that he must save him? The Torah says: "You shall not stand over the blood of your brother." It is clearly thus. So from whence do we infer that he may be deterred even at the cost of his life? We learn it by an inference from *a minori ad majus* from the betrothed maiden. Just as in the case of a betrothed maiden, where he has only come to damage her [i.e., to violate her virginity, but not to kill her], he may be deterred at the cost of his life, so one who pursues his neighbor to kill him, how much more so...

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[20] *B. Sanhedrin* 73a.

[21] Except for the obligation of giving testimony, that appears in Maimonides' *Hilkhot Edut*, but the prohibition against standing over the blood is not mentioned there.

There seems no doubt that there is a basic intuition here that wishes to distinguish between these two matters.[22] However, the attempt to separate between these two matters failed. Maimonides' classification of the mitzvah at the beginning of the Laws of Murder and Preservation of Life is a good example of this.[23] The location of all the other mitzvot adjacent to this in the Torah in *Hilkhot De'ot* indicates the fundamental importance attached by Maimonides to each one of the commandments in Leviticus 19: 16-18. The ten verses from the middle of Chapter 19 that we brought above in full thus constitute, at least according to Maimonides, two blocs. All ten verses present a social framework[24] that is, as we said, quite impressive from the ethical viewpoint and from the perspective of time. The second bloc, incorporating vv. 16-18, contains those commandments that fashion a person's thought and outlook, from which the incorporation of these commandments in *Hilkhot De'ot* logically follows. The dominant component in these commandments is the element of outlook[25] rather

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[22] See Hanan Porat's attempt to separate between these matters, as expressed in the discussions of the Constitution, Law and Justice Committee on June 9, 1998, p. 3: "This law [the proposed "You shall not stand over your neighbor's blood" 5755-1995 – Y.E] doubtless deals with the question of the obligation to save a person. That is the subject under discussion… We are dealing here only with that aspect concerned with saving life, not with that aspect that integrates the saving of life with crime prevention."

[23] See also the comment of *Torah Temima* on the above-mentioned verse (above, n. 10).

[24] Rav Yehuda Shaviv drew a connection among these ten verses by his understanding of them as a mirror image of the last mizvot contained therein: "you shall love your neighbor as yourself." See Y. Shaviv, "Studies in the Commandment 'You Shall Love Your Neighbor as Yourself'" [Hebrew], *Niv Ha-Midrashiya* 20-21 (1987-88), 148, 150.

[25] Every mitzvah contains an underlying structure intended to shape thought by guiding behavior, but in these mitzvot one is not speaking of an element of repetition activated through the performance of the act, but that the thought itself

than that of action (whether active or passive). In this section there are enumerated the prohibitions against going about as a talebearer, against standing over the blood, the commandment not to hate ones neighbor in your heart, the obligation to rebuke ones neighbor, the prohibition against holding a grudge or taking revenge, and the commandment to love ones neighbor as oneself.

The two question that immediately arise (which we shall attempt to answer following a brief survey of the first bloc) are: what is the connection of the prohibition against standing over the blood of ones neighbor, in which action is the main thing, to the center of this list? And, what is the thread connecting these commandments? The bloc containing the first eight of these verses is concerned with social mitzvot, the main characteristic distinguishing between it and the second unit being that the element of action (commission or omission) is central to them, while that of outlook or opinion is secondary. Thus, one needs to leave certain portions of the field for the poor, it is forbidden to steal, to speak falsehood,[26] to oppress or to steal from ones neighbor, or not to pay a worker on

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is the subject of the mitzvah and the central component therein. See, for example, Rabbi Shlomo Luria (Maharshal) who, in one of his responsa, relates his own daily schedule. After reciting the blessings over the Torah "I am accustomed to reciting three verses from the Torah, namely, from 'You shall not go as a talebearer among your people' through 'Love your neighbor as yourself'—which is equivalent to the entire Torah"—*Teshuvot Maharshal*, §64, s.v. *aval mikol makom*.

[26] According to this analysis, the significance of the commandment "You shall not swear by my name falsely, and so profane the name of your God: I am the Lord" (Lev 19:12) is first and foremost social—i.e., to prevent falsehood between man and his fellow. In any event, *Parashat Kedoshim* is a good example of the difficulty involved in distinguishing between social mitzvot, which are "between man and his fellow," and religious mitzvot, which are "between man and the Omnipresent." Particularly striking is the use of the phrase, "I am the Lord" at the end of *mitzvot* which have a clearly social basis, as well as the proximity whereby mitzvot that (at

time. It is forbidden to do injustice in judgment, to prejudice a ruling in favor of one of the litigants for reasons external to the case. This unit likewise includes the prohibition against cursing the deaf and against placing a stumbling block before the blind. These prohibition are appropriate to their location: *more than they express* any tendency to shape attitudes regarding blind people, they express prohibitions *not to perform actions* against other individuals in the society whose ability to defend themselves is limited. The phrase, "but you shall fear your God," that is placed next to these mitzvot in a unique way,[27] is a warning that God will see the forbidden act even if its victim cannot do so. The prohibition against cursing the deaf is more complex. On the face of it, cursing belongs to the realm of beliefs, faiths and education, rather than to that of practical mitzvot, such as robbing or oppressing ones neighbor. We can understand it more fully if we understand the significance of the curse in Biblical times, whose meaning is different from that we attach to cursing as a means of expressing anger, ridicule, or contempt. In biblical times the curse was considered an effective means of bringing evil upon someone[28]—there was belief

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least on the face of it) belong to two different kinds are mixed together. The best known example of this is "Every one of you shall fear his mother and father, and shall keep my Sabbaths" (Lev 19:3) followed by "Do not turn toward idols or make for yourselves molten gods." It would seem that there is no clear distinction between the two kinds of mitzvot in the biblical understanding.

[27] See Rashi's interpretation (based upon *Yalkut Shi'moni*) of the verse: "You shall not curse the deaf, nor put a stumbling block before the blind, but you shall fear your God" (Lev 19:14): "Because this thing is not consigned to people, to know whether the intention of this person is for good or for ill, and he may evade by saying, 'I intended it for the good.' Therefore it says there, 'but you shall fear your God'—he who know your thoughts. Similarly, concerning every thing which is given over to man's heart, and is not known by other people, it is said, 'You shall fear your God.'" Cf., in similar vein, Rashi to Lev 19:32; 25:17; 25:36.

[28] See Y. Levi, "The Curse in Biblical Literature" [Hebrew], M.A. Dissertation, Haifa University, pp. 4-6.

in the efficacy of words. Hence, it was suitable to connect the curse with those commandments whose main component is the social act, and in which the element of thought is only of secondary importance. The curse is thus more similar to hitting a person or causing him bodily harm than it is to holding a grudge against him. As we noted earlier, the second bloc is concerned with the task of shaping thought, beliefs and opinions in a direct way. This is most clearly seen in the prohibition against hating ones neighbor in ones heart and in the commandment to love ones neighbor as oneself. Consequently, one ought to chastise ones neighbor for doing wrong, and it is forbidden to hold a grudge against him. The prohibition against vengeance, which is coupled to and precedes the prohibition against holding a grudge, is likewise first and foremost a prohibition in the realm of thought. Vengeance is composed of the act of vengeance and the thought of vengeance. The Torah makes it clear, by means of its location, that the thought of vengeance influences our lives and our relation to our neighbor far more than the act of vengeance alone, as the thought of vengeance "poisons" the life of the one who thinks of vengeance and distorts his perception of reality.[29] The rule against going about as a talebearer is likewise

[29] See Eliyahu Rabbah, §18, s.v. *shifkhi kamayim libeikh*: "Just as water flows in the river and never again returns, so each individual in Israel, when he has a dispute with his fellow, should not harbor against him jealousy and vengeance in his heart and not be arrogant towards him and not withhold words of Torah from him." The Midrash attaches greater importance to the thought of vengeance, seeing in this thought the essence of the prohibition of vengeance. The midrash draws the following distinction between vengeance and holding a grudge: "'You shall not hold vengeance.' How far is the power of vengeance? He said to him: Loan me your scythe, and he did not loan it. The next day he says: Loan me your shovel. He said to him, I will not loan it to you, just as you did not loan me your scythe. Therefore it says, 'You shall not hold vengeance.' 'Do not hold a grudge.' How far is the strength of grudge? He said to him, Loan me your shovel, and he did not loan him. The next day he said to him: Loan me your scythe. He says to him: Here it is. I am not like you, who did not loan me your shovel. Hence it says, 'Do not

one in the realm of thought. There is not necessarily any action here affecting the person against whom the talebearing is directed. True, it has been observed that talebearing can cause severe physical harm to the one gossiped about, but the prohibition of talebearing as such is rooted in certain ethical principles which the Torah wished to inculcate thereby, rather than because of any deleterious consequences. The fact that the person about whom one is telling tales may be harmed is important, but it is not the basic justification for the prohibition. Rather, the prohibition belongs to the realm of beliefs and opinions. Talebearing, like vengeance and holding a grudge, significantly influence the soul of the gossip and the one gossiped about, shaping patterns of personal and inter-personal thought. These undesirable patterns of thought are the essence of the prohibition as it appears in *Parashat Kedoshim*.[30] Thus, the thread connecting among these mitzvot is the creation of relationships among the individuals composing society. These relationships redefine, not only the relationships among the different individuals but also, and primarily, the feelings and emotions of each individual towards the other. This principle is known in Jewish culture as the principle of mutual responsibility of Jews toward one another: "All Israel are responsible for one another." The first and most important meaning of this principle is in the area of thought and apprehension;

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hold a grudge" (*Sifra, Kedoshim*, Sect. 2). This distinction is also valid regarding thoughts of vengeance or of grudging.

[30] Maimonides, in *MT*, *De'ot* 7.1, specifically emphasized the disastrous consequences likely to follow from gossip. "One who spreads tales about his fellow violates a negative commandment, as is said, 'You shall not go about as a talebearer among your people.' Even though one is not subject to corporal punishment for this thing, it is a great sin and causes the destruction of many people in Israel. Therefore it is placed next to: 'You shall not stand over the blood of your neighbor.' See what happened to Doeg the Edomite." In other words, great importance is to be attached, in my opinion, to the very location of the prohibition in *Hilkhot De'ot*. It would seem that Maimonides thought that the claim of physical danger would cause many to refrain from committing this sin.

it creates or points toward a relation that imposes an obligation not to speak gossip that are likely to harm another person, not to hate him, not to bear a grudge or to take vengeance upon him and finally, to love him. The prohibition against standing over the blood thus fits well within this framework—the silent picture created by the Torah of a person standing in a pool of his neighbor’s blood—a picture that imposes ethical responsibility upon the one who stands over the blood, a responsibility that cannot be divided into two or more points-of-view because of the sparseness of the picture and its silence—***which is itself a creation of the mutual relation***. The obligation to save a person who is in trouble is thus secondary to the change in approach demanded here—that each Jew is responsible for every other one.

This, then, is the overall picture of the ten verses with which we are concerned. First, the construction of a just social system that imposes obligations enabling all of the individuals in society to live therein—not to steal, not to delay paying wages to workers, concern for the livelihood of the poor, and protecting the vital interests of those with limitations (not placing a stumbling bloc before the blind or cursing the deaf, in the broadest sense of the word). On a second and higher level, the Torah imposes obligations whose aim is to change the perceptions and approach of the individuals who make up the people. There is mutual responsibility between one Jew and another. This responsibility is expressed in various ways, as is clearly indicated by the prohibition against standing by over the blood. The literary means chosen here by the Torah: namely, a spare and final image that allows for only one point of view, combining the viewpoint of the one killed or injured (whose blood is flowing) with that of the one standing over his blood. The thunderous silence of the picture imposes ethical responsibility upon the one standing over, and thus creates an unbreakable connection between one person and the other. As mentioned earlier, the later, casuistic exegesis of this command led Maimonides to remove it from its natural

location in *Hilkhot De'ot* and in *Sefer ha-Mizvot* and to affix it in both cases to the laws of murder.[31]

The idea of mutual responsibility appears explicitly in the *Sifra* on *Behuqotai*:

> "And they shall stumble over one another [lit., each man upon his brother]" (Lev 26:37). This does not mean "each man upon his brother" but "each man in the sin of his brother," to teach that all Israel are responsible for one another.

The Talmud in Sanhedrin[32] restricted the collective meaning of retribution to those cases in which the sin was performed under circumstances in which the observers could protest "and they did not protest." However, the midrash on the above-mentioned verse cannot be understood if one takes the verse out of context. This verse is part of the chapter of curses from *Parashat Behuqotai*, appearing in that part of the chapter indicating an escalation in the relations between God and Israel: "and if in spite if this you will not hearken to me, but walk contrary to me…" [Lev 26:27]. In such a situation, says the midrashic author, there is mutual responsibility for one another's sins. In other words, the point of the midrash is not to describe the relationship between one Jew and

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[31] See the article by Rabbi Nahum Rabinowitz, "All Israel are Responsible to One Another' [Hebrew], *Tehumin* 11 (1990), 41, 42: "One may say that this responsibility is defined in the group of commandments included by Maimonides in *Hilkhot De'ot*, and he formulated them in the enumeration of the mitzvot in the introduction to Mishneh Torah…" Rabbi Rabinowitz sees "you shall love your neighbor as yourself," the prohibition of hating ones fellow, and the obligation to chastise one neighbor, as expressions of mutual responsibility. He also included the commandment to not place a stumbling block before the blind under the rubric of this mutual responsibility. That is, in light of the distinction we drew above, the prohibition against tripping up a blind man is not to be seen as included in that group of mitzvot explicitly concerned with mutual responsibility, since mutual responsibility is secondary to the passive act of mitzvah—the prohibition against causing to stumble.

[32] *B. Sanhedrin* 27b.

another, or to comment upon the responsibility we have towards our fellows. Rather, the purpose of the midrash is to create *an instrumentality which will prompt people to fulfill mitzvot*. The third aspect of this mechanism is its being, in essence, a kind of "deterrent mechanism"—that is, you should know that if you do not take care that your neighbor not perform sins, than you too will bear the consequences. The positive aspect of this, from the viewpoint of the midrashic author, is the creation of a "sympathetic" atmosphere toward the performance of mitzvot.[33] However, this idea *does not underlie* the idea of mutual responsibility involved in the prohibition against standing over the blood or the immediately adjacent commandment of chastising ones neighbor.[34] The commandment of "you shall reason with your neighbor," as it appears in Leviticus 19, expresses an entirely different idea: this mitzvah is an inseparable part of the prohibition against hating ones neighbor in your heart. Thus, "you shall surely reason with [or: rebuke] your neighbor" conveys a psychological idea,[35] which we would express quite simply in the words "don't keep things

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[33] See in this context the discussion of the section of "non-prevention of crime" in the Israeli Penal Code, below.

[34] See on this matter Daniel Raviv, "All Israel Are Responsible for One Another [Hebrew], *Shema'atin* 60 (1980), 109. Raviv sees the commandment of chastising ones fellow as part of the same branch of the system that is meant to eliminate the criminal from its midst. Raviv sees in this the main task of the mutual responsibility of the Jewish people that is not based, in his words, on a "commercial basis"—i.e., an association on behalf of the public of each individual taken by itself—but as deriving from the unique relation of the Jewish people to its God.

[35] This idea may also be seen from the remarks of *Sefer ha-Hinukh* concerning the mitzvah of "You shall surely chastise": "Among the roots of this mitzvah is that, since this brings about peace and goodness between people, that when one person sins against another and chastises him in secret, he apologizes to him, and he accepts his apology and makes peace with him. But if he does not chastise him he will hate him in his heart and cause him damage, for the present or for some

inside." Rebuke helps one to reach a stage in which there are not residual tensions among people, so that the relations that the Torah wishes to create between them can rest upon a firm and more solid basis.[36]

The binding performed by the midrash between the commandment "you shall surely rebuke" and the responsibility to assure that each Jew not transgress the commandments and fulfill the mitzvot,[37] as well as the identification of the prohibition of standing over the blood with the commandment to protect life and as the source for the law of the pursuer, misses the main point of these and the adjacent commandments. The basic message is a human one—the attempt to create a society in which individuals work to create an overlap among their differing pictures of the world, one in which each individual feels a deep, fundamental connection to every other individual and understands that the

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time…" (*Sefer ha-Hinukh*, §218).

[36] Yaakov Shapira noted the uniqueness of the verses with which we are engaged here, and likewise saw the commandment of rebuke as part of that group of verses that require one to view ones neighbor in a positive light. However, Shapira did not abstract the commandment of rebuke down to its humane basis, but preferred to "hedge his bets" and give positive meaning to rebuke as such. On the one hand, this commandment is intended "to create an atmosphere of mutual closeness, out of a feeling of natural obligation…." and to "release negative tension." On the other hand, according to Shapira these tensions are related in an inherent manner to "the feeling of sin," and rebuke must come from love. As we said, in my opinion the object of the commandment of rebuke is the one rebuking, and it is impossible to detach it from the commandment of "Do not hate your brother in your heart." Nevertheless, there is no doubt that Shapira paved the way by moving the center of gravity of the commandment from its function as door-keeper of the religious system to its original function in fostering inter-personal relations. See Y. Shapira, "From an Individual Approach to Public Leadership" [Hebrew], *Akdamot* 5 (Ellul 1998), 87, 84.

[37] See ibid., 112.

relation created imposes upon him responsibility for the destiny and life of each person.

2. "The good samaritan" – a story rather than a picture

At this point, I wish to briefly relate to the obligation to save others as it took shape in the Christian tradition, and to note certain points of similarity between the exegesis given by the midrash to this verse and the activity of the good Samaritan, and thereby refine my earlier arguments. Moreover, given that the concepts of the "Good Samaritan" or "Good Samaritan law" have found their way into the center of the modern legal and intellectual systems, we ought by rights to take note of their source.

The parable of the Good Samaritan appears in the Gospel According to Luke (10:25-37)[38] (exclusively—there is no parallel account in any of the other evangelists):

> And behold, a lawyer stood up to put him to the test, saying, "Teacher, what shall I do to inherit eternal life?" He said to him, "What is written in the law? How do you read?"[39] And he answered, "You shall love the Lord your God with all your heart, and with all your soul, and with all your strength, and with all your mind; and your neighbor as yourself." And he said to him, "You have answered right; do this, and you will live."
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> But he, desiring to justify himself, said to Jesus. "And who is my neighbor?" Jesus replied, "A man was going down from Jerusalem to Jericho, and he fell among robbers, who stripped him and beat him, and departed, leaving him half dead. Now by chance a priest was going down that road; and when he saw him he passed by on the other side. So likewise a Levite, when he came to the place and saw him, passed by on the other side. But a Samaritan, as he

[38] English Translation taken from Revised Standard Version.

[39] In the *Oxford Reader of the New Testament*: "What do you read there?"

> journeyed, came to where he was; and when he saw him, he had compassion, and went to him and bound up his wounds, pouring on oil and wine; then he set him on his own beast and brought him to an inn, and took care of him. And the next day he took out two denarii and gave them to the innkeeper, saying, ‘Take care of him; and whatever more you spend, I will repay you when I come back.’ Which of these three, do you think, proved neighbor to the man who fell among the robbers?” He said, “The one who showed mercy to him.” And Jesus said to him, “Go and do likewise.”

In two places the story makes emphatic use of the personal, specific point of view. In one place Jesus asks his interlocutor, “What is written in the law? How do *you* read?” or “What do *you* read?” He takes interest in the personal viewpoint of this man. Likewise, at the end of the story Jesus asks him: “Which of these three, do *you* think, proved neighbor to the man…” Here too, he seeks the other’s subjective opinion.

The question asked was: Who is my neighbor? Who is the person that I ought to love? The parable of the good Samaritan, that is, the story of the person who was beat up, is understood as an answer to this question—i.e., the man who was beaten up, whom the parable leads us to identify with so much, is the man that you ought to love.

At this point one should take note of Jesus’ question: “Which of these three, do you think, proved neighbor to the man who fell among the robbers?” Jesus’ question is, which of the three passersby (the priest, the Levite, the Samaritan) properly applied the maxim of love; in other words, the point of reference is the man who loves, the one who feels and acts on behalf of his neighbor. However, the story as a whole has thus far focused, as we have seen, upon the victim of the beating who fell into the hands of brigands. The literary sophistication involved in shifting the point of reference enables the reader to identify simultaneously with the one beaten and with the one who helps him, and to see his own reflection in both figures. But this shift in the point of reference also harms the

story. There is no doubt that this story contains moral criticism of the behavior of the priest and Levite, but upon further reflection this criticism is not made sufficiently clear. The figures of the priest and Levite who "passed by on the other side" are not clear to us. Until Jesus' final question, we do not identify with any of the figures except, of course, for the man that was beaten. At that point where Jesus turns things around and causes us to look at things from the viewpoint of the good Samaritan who behaved as a true neighbor to the one beaten, we not only "gain" identification with the good Samaritan, but we also "lose" the one and exclusive point of view on the event. At this point, our thought is also open to think about things from the viewpoint of the priest and Levite as well. Why didn't they help the injured man? What frightened them? Would we have helped, had we been in their place? They too are human beings… In this way, the story loses its ethical clarity, just as the later exegesis of the prohibition against standing over the blood serves, on the one hand, for its concretization and, on the other, to break down the ethical clarity of the prohibition. The prohibition against standing over the blood, as opposed to its later interpretation, expresses more than anything else the wish to create an inner connection among the individuals in society by creating one fundamental point of view on reality.

3. *"You Shall Not Stand over the Blood of Your Neighbor"—Responsibility to the Other According to Levinas*

Emmanuel Levinas's ethical philosophy is inextricably related to his ontological approach, to his understanding of the concepts of holiness and infinity, as well as to his hermeneutic approach to the Holy Scriptures.

In the thought of Levinas, ontology is subordinated to ethics.[40] God is beyond being, he is "the master of otherness that precedes all other otherness"[41]; Being is

[40] See Z. Levi, *The Other and the Responsibility* [Hebrew] (Jerusalem, 1997), 64.

[41] On the highly problematic nature of this view, see ibid., 70-71.

finite, while God, who is wholly other, is infinite—it is at this point that the jump from ontology to ethics takes place. According to Levinas approach, the good is that which is beyond being, and God is the wholly good in the sense of "an ethical ideal."[42] Hence, Levinas understood the concept of **[**man being created**]** in "the image of God" as walking in the footsteps of God, because it is impossible to speak of "resemblance to a thing that is wholly other."[43] To walk in the wake of God means, essentially, turning toward the other. The relation "with the infinite [is experienced] via the relation with the finite other."[44] The human being "is not good of his own will"[45]; rather, the other causes the self to abandon its apathy by disturbing and troubling the self. My awareness of the other and, consequentially, my responsibility to him, *derives from the other*. This responsibility is imposed upon me "without my agreement."[46] The concept of "face" is central in Levinas's thought—the face of the other, the encounter with him face to face, the "positive description" of his face,[47] *ipso facto* change me to become responsible towards him. Revelation is experienced, according to Levinas, in the face of the other. The invitation, the riddle, and the otherness in the face of the other demand the response of the self. This "non-apathy" toward the other is taken one step further by Levinas: everyone has an additional responsibility,[48] namely, that each person is also responsible for the

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[42] Ibid., 74. Cf. on p. 76 re the irrelevance of the question of God's existence to Levinas's ethics and the problematic nature of this assumption in light of the deep human need for the existence of God.

[43] Ibid., 81.

[44] See E. Meir, "The Idea of Revelation in Levinas" [Hebrew], *Da'at* 30 (1993), 41, 45.

[45] Levinas, based upon Z. Levi's translation (op cit., n. 41).

[46] See Catherine Chalier, "Jewish singularity and Philosophy" [Hebrew], *Da'at* 30 (1993), 101, 109.

[47] See E. Levinas, *Ethics and Infinity* (Conversations with Philip Nemo) [Hebrew] (Jerusalem, 1996), 73.

[48] Ibid., 75.

responsibility [towards him] of every other person. That is, there is on the one hand a penetration of the other, and on the other hand the devotion or dedication of the person. From an ontological viewpoint, there are two separate entities—the person and the other—but, as mentioned, Levinas turns from ontology to ethics, which precedes ontology. According to this definition, the other touches the person, his distress gives him no rest, the other becomes an "obsession" for the self. Levinas thought that the other does not constitute a threat to man's freedom. We don't have here any "coercion and subjugation," but rather "commandment and obedience"[49]—"making room for the other within the self." Essentially, the ability to bring the other into the self—the central characteristic of the I —is also characteristic of that which is separate.

Levinas hermeneutic approach draws a connection between the concept of revelation and exegetical freedom, because the study of the text leads to God and, as we have seen, the knowledge of God is in Levinas's eyes - love of the other. It therefore follows that "The Biblical revelation… is a word that comes from the face of the other and demands to be heard through a rational and ethical approach."[50] According to Levinas, the biblical text may make heard "the same truth in different times,"[51] and includes an infinity of meanings. It therefore invites the reader to participate in its interpretation in his own unique way; these are, according to Levinas, the seventy faces of the Torah. Levinas sees exegesis as a kind of revelation, as it requires the self to be opened to the other.

In light of all this, the question posed at the beginning of this section is, on the face of it, easily answered; namely, that within the three verses under discussion (Lev 19:16-18) one may discover the principle of responsibility and mutual involvement of the school of Levinas. Indeed, there were those who thought that

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[49] This distinction is made by E. Meir (op. cit., n. 45), 43.

[50] See Meir, ibid., 51.

[51] Ibid.

these verses and other Jewish sources "speak" the ethics of Levinas.[52] Levinas himself saw the verse "you shall love your neighbor as yourself" (one of the three verses adjacent to that concerning standing over the blood) as central to his own philosophy.[53]

I would like to question this simplistic statement. First of all, there is a problem that arises when we connect the hermeneutic approach, and the ethical approach that imposes responsibility for the other, to our specific context. We have noted how, in the prohibition against standing over the blood, the biblical text acts in a literary manner to impose a relationship and responsibility between one Jew and another. The literary text "closes" its exegetical range so as to draw attention to the principle of mutual responsibility that derives from it. In Levinas, this principle and the assumption that there are seventy

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[52] See Catherine Chalier (op. cit., n. 47), 110, who cites the midrash on the verse "and each man stumbles in the sin of his fellow" as a source for the Jewish conception of responsibility that precedes free choice, that rests upon the conscience of man.

[53] One must nevertheless emphasize that Levinas himself did not see any importance to the question as to whether one can find support for his ethical approach in the Bible, or whether his approach expresses some sort of Jewish principle. See his comment in the interview given in 1986. In connection with the philosophic concept of "face" in his teaching, he said: "I didn't find that in a verse. You see, my terminology does not come from the Bible. Otherwise it would be the Bible to the very end." Regarding his ethical approach, he says: "The Bible, including the Old Testament, is for me a human fact, of the human order and entirely universal. What I have said about ethics, about the universality of the commandment in the face… is valid independently of any religion." See T. Wright, P. Hughes, A. Ainley, "The Paradox of Morality: An Interview with Emmanuel Levinas," in *The Provocation of Levinas,* ed. R. Bernasconi & D. Wood (Routledge, 1988), 168.

aspects to Torah, and that a text does not have only one significance but embodies within itself a whole range of meanings, are two sides of the same coin. In our view the biblical text operates in a different way. It “closes” the range of textual exegesis so as to “clear room” for the principle of mutual responsibility. ***The prohibition against “standing over the blood” is indeed interpreted in various different ways, but the point is that the biblical text demands that one not open it to exegeses beyond the picture presented therein, and this demand itself is what leads to the applying to it of responsibility between the self and the other.*** In the same way, the literary form of the biblical text serves for objectification of the situation as having one meaning, as telling one story. Nevertheless, there is no penetration here of the other into the self in ontological or ethical terms; rather, there is penetration to a single point of view, to a common basis.

The final and most dramatic stage of Levinas’s ethics—the responsibility of the self to the responsibility of the other as well—is also problematic in light of the biblical text. Offhand, Levinas’s philosophy regarding this subject seems to be the ethical facet of the religious exegesis of the verses concerning the principle of mutual responsibility, as expressed in the midrash on the verse “and each man stumbles upon his fellow”—that is, that each person is responsible for the acts of his neighbor and must also bear the results of those actions. As I tried to demonstrate above, what underlies this religious idea is *not* an approach of relationship to the other, but rather the wish to built a supportive (or deterrent) religious atmosphere. A similar criticism may also be directed toward Levinas—namely, that the lack of balance and mutuality in the responsibility to the other may be a disguise for a total demand of the self, even when the “other” is

exchanged for the "family," the "tribe," "people" or "state." Such an approach, integrated with Levinas's understanding of freedom (that comes after responsibility activated without choice) may lead to catastrophic results.[54]

Moreover, whereas in Levinas responsibility moves from the self to the other rather than the opposite, the biblical text thinks that the responsibility imposed upon a person towards his neighbor stems from that person and not from his neighbor. The Bible commands, "You shall not hate your brother in your heart, but you shall reason with [or: rebuke] your neighbor, lest you bear sin because of him": that is to say, speak to your neighbor, address him so that *you* will not hate him. Even though one is speaking here of speaking to and addressing the other, the subject and goal of the activity is the self. The Torah focuses the idea of reciprocal responsibility upon the fashioning of the thought of the self and on the self as such. Reciprocal responsibility is concerned with a situation of at least two subjects, but the Bible does not identify the source of responsibility in the other and in the infinite demands that he imposes upon the self. *The construction of a just social system by the Bible is done by imposing an obligation upon every subject. The fulfillment of the obligation by a number of subjects can lead to a connection and penetration of the subject to another subject. Hence, the success of the biblical social system is based first and foremost upon mutuality.*

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[54] See Isaiah Berlin, "Two Concepts of Liberty" in *Four Essays on Liberty (*Oxford, 1969) 118, 134**: "**Where the self that should not be interfered with is no longer the individual with his actual wishes and needs as they are normally conceived, but the 'real' man within, identified with the pursuit of some ideal purpose not dreamed of by his empirical self. And, as in the case of the 'positively' free self, this entity may be inflated into some super-personal entity – a state, a class, a nation, or the march of history itself...". Cf. Maimonides, *MT*, *Hilkhot Rotzeah ushemirat hanefesh* 7.8, cited above (n. 18). Levinas was of course aware of this danger and claimed that "the masses live on images… To be within the masses is not to be *for*, it is to *be with*, or not even that: it is simply *to be in*…" See Levi, above, n. 41, 99-100 [emphases in Levi's book].

Responsibility to the other is imposed upon the self, so that the proper operation of the system requires, according to the Bible, the fulfillment of the obligation by all the subjects. The Torah commands, "You shall love your neighbor as yourself; I am the Lord"—love your neighbor as you love yourself, a movement from the self to the self. The addition of "I am the Lord" at the end of the verse indicates the reason for this approach of the Torah. This phrase appears sixteen times in Chapter 19. It is intended, on the external level, "to lend force to the commands, that are given over, in their decisive majority, to the conscience of the individual."[55] Indeed, it first and foremost points out to us a certain sociological (as opposed to ethical) approach. There is a certain sensitivity to the limitations of the person and to the construction of structures that will be suitable to these limits. In fact, only few are truly able to turn to the face of the other, to identify their responsibility to the other, and to be devoted to him in a total manner. The reasons for this are, first and foremost, economic, but to these must be added psychological, social, and cultural reasons—all of which together make Levinas's ethical approach seem utopian. The Torah preferred to use the mechanism of egoism found in man[56]—you shall love your neighbor as yourself—as you love yourself: that is, a movement from the self to the self, for ethical purposes, rather

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[55] See *Encyclopedia World of the Bible* [Hebrew] (Tel-Aviv, 1993), introduction to Leviticus 19 by M. Pharan.

[56] See the Malbim's commentary on the verse: "You shall love your neighbor as yourself": "The commentators have already noted that it is impossible to love his neighbor as he loves himself, for this is a thing that is not within the power of the soul. Nor can one command love or hatred, for these are not within a person's control.... But rather that he should wish for his neighbor that which he wishes for himself." See the approach of Yehudah Nahshoni, in *Hagut le-Parshiyot ha-Torah* on *Kedoshim,* concerning Malbim's analysis of R. Akiva's above-cited view, n. 4. Levinas explicitly disagrees with this line of interpretation and prefers to translate the verse "you shall love your neighbor as yourself" as: "'And you shall love your neighbor '—for he is exactly like yourself." That is, the word "as yourself" refers not to the neighbor, but to "you shall love." See Levi, above, n. 41, 110.

than to present man with a demand that is generally speaking, over and above his abilities.

4. "You shall not stand over the blood of your neighbor Law", 5758 - 1998[57] — A Controversial Declaration

An extensive, rich and interesting literature has been written during the past century concerning the obligation to save others, its ethical aspects, limitations, and compass, as well as its transformation into a legal obligation whose neglect entails criminal responsibility.[58] The legal obligation to save others has already existed for more than 130 years among the countries of continental Europe as well as in several South American states, but barely exists in a consistent fashion in the Anglo-Saxon countries.[59] Whether the reason for these different

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[57] Sefer hachukim, 245.

[58] J. Feinberg, *Harm to Others: The Moral Limits of the Law* (Oxford, 1984); A. M. Honore, "Law, Morals and Rescue," in *Philosophical Issues of Law* (1977); Thomas Nagel, *The Possibility of Altruism* (Oxford, 1970); G. Geis, "Sanctioning the Selfish," *International Review of Victimology* 1 (1991), 297ff.; J. Burgess, "Bad Samaritanism and the Pedagogical Function of Law," *Criminal Justice Journal* 8 (1985), 1; J. Feinberg, "The Moral and Legal Responsibility of the Bad Samaritan," *Criminal Justice Ethics* 3 (1984), 56ff.; M. Osbeck, "Bad Samaritanism and the Duty to Render Aid: A Proposal," *University of Michigan Law Review* 19 (1986), 315ff.; J. Wenik, "Forcing the Bystander to Get Involved," *Yale Law Journal* 94 (1985), 1787ff.; A. D. Woozley, "A Duty to Rescue: Some Thoughts on Criminal Liability," *Virginia Law Review* 69 (1983), 1273ff.; cf. A. Parush, "Law, Morality and the Good Samaritan" [Hebrew], *'Iyyun* 27 (1977), 295ff..

[59] In the United States, only four states adopted Good Samaritan laws—Vermont, Minnesota, Rhode Island, and Massachusetts. See the wording of the Vermont law, adopted in 1967: "A person who knows that another is exposed to grave physical harm shall, to the extent that it can be rendered without danger or peril to himself or without interference with important duties owed to others, give reasonable

approaches is historical or cultural,[60] it indicates to us something about the complexity of the problem. Let us state from the outset, that our purpose here is not to conduct a theoretical legal and ethical discussion concerning the obligation to save others, but rather to set forth the boundaries of the controversy regarding this matter. We will not present here detailed arguments nor the answers given to those same arguments. Our purpose here is to note those lines of thought that oppose the existence of a legal or moral obligation to save. We shall suffice here with the statement that to each of these arguments there is a well-based response. The criticism of the obligation to save came from several directions. First, there were those who argued that the imposition of such an obligation impinges upon the human right to freedom.[61] This argument was formulated in two ways. The former: that the right to freedom implies my right to live in a world which imposes upon me as few restrictions as possible.[62] Whereas obligations *not* to do any particular thing restrict one to a certain degree, "positive" obligations are seen as far more serious limitations, and hence are considered improper. In the second form, the argument made is that the principle of freedom as such, the right to be master of your own body,

assistance to the exposed person, unless that assistance or care is being provided by others" (*Vermont Statutes Ann.*, title 12, §519). The fine imposed for violation of this law is $100. For the legislative history of this law, see R. L. Evans, "The Case for Good Samaritan Laws" (Dissertation, University of Virginia, 1987), 8.

60 See A. M. Smith, "The Duty to Rescue and the Common Law," and cf. A. Cadoppi, "The Failure to Rescue and the Continental Criminal Law." Both papers appear in *The Duty to Rescue (The Jurisprudence of Aid),* eds. M. A. Menlowe & A. M. Smith (England, 1993) p. 55 and 93.

61 For a good comparison between Judaism's attitude toward "freedom" and that of the liberal tradition, see A. C. Besser & K. J. Kaplan, "The Good Samaritan: Jewish and American Legal Perspectives," *Journal of Law and Religion* 10 (1993/94), 193, 194.

62 In the language of Isaiah Berlin, "The negative freedom"; see Berlin (above, n. 55), 122.

contravenes the possibility of any positive obligations being imposed upon one whatsoever. As for the transformation of the ethical obligation to save into a legal obligation, bringing in its wake criminal sanctions, various different arguments have been put forward. One line of thought draws a distinction between acts of commission and acts of omission. This argument involves two stages. In the case of sins of omission it is difficult to identify causality: "He drowned because you didn't throw him a rope" is a statement that is difficult to prove.[63] The second stage is: if there is no causality between the act of omission and the realization of the danger, than it is impossible to impose liability because of it. Another line of argument notes that the law as it currently stands presents a clear border line, without which we might be required to acknowledge a total unlimited obligation to save—the argument of the slippery slope. Thus, if we see the act of saving as conveying a certain benefit to the endangered party, it is indeed difficult to define the boundaries of this obligation—we always need to make tireless efforts in order to help other people.[64] The current law in Anglo-Saxon countries only imposes the obligation to save when there is a relationship between the one endangered and the one saving. This obligation may be based upon family connections, contractual obligations (the captain of a ship to his

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[63] On this problem of causality, see H. L. A. Hart & A. M. Honore, *Causation in the Law* (Oxford, 1985); R. Epstein, "A Theory of Strict Liability," *Journal of Legal Studies* 2 (1973), 151.

[64] See on this matter the question submitted to the Maharsham, concerning a poor man who wondered whether he was required to save his neighbor from mortal danger at his own expense. Maharsham discussed this issue from the perspective of "you shall love your neighbor as yourself." His argument was that if one is required to love his neighbor as yourself, then one is required to spend the same sum you would spend in order to save yourself so as to save him. Since you would spend all your money to save your own life, you are required to do likewise for your neighbor, and even to expose yourself to possible danger in order to save him. Cf. the proofs he brought there. *Teshuvot Maharsham*, Pt. V, §54, s.v. *kidevar mah.*

passengers, for example), a professional relationship (a lifeguard at a beach or pool), or a connection between one causing damage and the one damaged. In the absence of such a relationship, the law does not impose any obligation to save. Israeli law imposes a general obligation to save in one case: a driver who encounters an injured person while driving is obligated to stop and to offer help to the injured party.[65] But this obligation is only incumbent upon the one driving on the road, and not to every passerby. In any event, apart from this general obligation to save, the obligation to save is only imposed in the case of a clear relationship between the person who endangered and the one offering help. Finally, there are those who argue that such a law will not deter people from being apathetic towards those in trouble. This last argument also bears a certain relation to a broader controversy concerning the legitimacy of imposing ethics by legal means, whose parameters were to a large extent set by Lord Devlin and Prof. Hart.[66] The relevant questions in this controversy are whether the

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[65] See Article 146 of the Transport Regulations, 5721-1961. The heading of the article is, "Obligation to Help on the Part of Drivers of Vehicles," and reads as follows: "(a) The driver of vehicle who passes a place where there has been a traffic accident in which there is an injured person, must halt and not continue on his journey until he has done everything within his ability to provide whatever help is necessary to the one injured or to come to his help, as in accordance with Regulation 144 (a) (2)."

[66] In 1954 the Wolfanden Commission was appointed in England in order to examine the legal situation regarding crimes involving prostitution and homosexuality. In 1957 it advised abolishing the criminal law against private homosexual relations between consenting adults. Lord Devlin strongly opposed this statement, arguing that society always has the right to limit the freedom of its citizens in order to impose widespread moral views and prevent the disintegration of society from within, when its moral framework falls apart. Prof. Hart opposed each of Devlin's claims. He agreed that there may be a situation in which morality can be justly enforced by society, but he argued that the principle of liberty of the individual justifies that such restrictions only be imposed with good cause. Only when harm

existence of a criminal sanction exerts any influence upon the views within society concerning that particular act; whether human freedom takes priority, offhand, over the right of society to protect itself from ethical disintegration, or whether the latter option is always available to society and allows it to interfere in the life of the individual. Finally, should society interfere in the life of the individual only when there is demonstrable damage to the public, what is the definition of such damage, and does offense to the sensibilities of the public fall under this definition?

As opposed to a legal obligation to save, which is rare in the Anglo-Saxon countries, laws imposing an obligation to report crimes are far more widespread. In Israel, Section 262 of the Penal Code imposes such an obligation. This section, whose heading is "Non Prevention of Crime," states that:

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is caused to society can it limit the freedom of its citizens, and harm to the feelings of the public is not, in Hart's opinion, true harm. See H. L. A. Hart, *Law, Liberty, and Morality* (Stanford, 1963). Cf. R. Gavizon, "The Enforcement of Morals and the Status of the Principle of Liberty" [Hebrew], *'Iyyun* 27 (1977), 274, and the extensive bibliography there.

"One who knows that a certain person intends to commit a felony,[67] and did not take all the reasonable measures to prevent its commission or completion, shall be subject to two years imprisonment."

This section has hardly ever been used to bring an indictment against any person, and has become, in effect, a dead letter. In terms of the lines of thought described in the first chapter of this paper, Section 262 bears greater similarity to the principle of mutual responsibility embodied in the midrash on the verse, "and each man stumbles against his fellow," than it is to the principle of mutual responsibility implied by the prohibition against standing by over the blood. It creates a supportive framework for the non-commission of crimes, but does not inculcate any moral principle.[68]

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[67] The obligation to report only applies to those crimes that are classified in the Penal Code as felonies, rather than as misdemeanors or contraventions. This classification is based upon the punishment that may be imposed because of the crime. See Section 24 of the Penal Code 5737 -1977: "(1) Felony—a violation for which there is a statutory punishment of more than three years imprisonment. (2) Misdemeanor— a violation for which there has been fixed a statutory punishment of more than three months imprisonment but not of more than three years. If the punishment is one of a fine alone—the fine must be greater than the amount that may be imposed for a violation whose punishment is a fine amount is not fixed. (3) Contravention—a violation for which there is statutory imprisonment of no more than three months or, if the punishment is fine only— a fine no greater than that fine that may be imposed for a crime for which there is no fixed amount."

[68] Section 262 has been invoked in practice very rarely. Generally speaking, the indictment for not preventing crime has only been invoked against minority members. Margalit Har-Shefi was the first Jewish citizen to be indicted and convicted for not preventing a crime as an independent charge. The explanation for this difference between Jews and Arabs with regard to non-preventing felonies, and the indictment of Har-Shefi is connected, in my opinion, to a combination of three factors. First, the number of people who do not report crimes prior to their commission and who are not connected to the crime as planners, accomplices or

In 1995 M. K. Hanan Porat tabled a private draft bill entitled, "Proposal for the Penal Code (Amendment No. 47) (`You shall not stand over the blood of your neighbor']), 5755-1995."[69] This bill contained only one section which, according to the proposed bill, would be appended to the Penal Code following Section 344 (as Section 344a). It was worded as follows:

> 344a. (a) One who refrains from giving help to a person, who is in his presence, who is in distress in wake of a sudden event that placed his life, bodily integrity, or health, in severe and immediate danger, while having the ability to offer the necessary help without endangering either himself or others, or to inform the authorities, or to call another person to give help, shall be subject to six months imprisonment. For purposes of this clause, the term "authorities" refers to the Police, the Red Magen David, or the Fire Brigade, as may be the case.
>
> (b) No indictment shall be brought under this clause save with the approval of the regional prosecutor.

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part of the group executing it, is small. Second, as we have seen, there is a certain problem involved in imposing a positive obligation upon people in a liberal state. Third, the indictment of minorities for the violation of not preventing crime is easier for the law enforcement authorities, the police and the legal system, as one is speaking of a person who is not seen as part of the social network of Israel. The perception of Arabs who are involved in crimes, particularly of Arabs involved in security crimes against the state, is of people who are not "part" of the system, making their indictment for not preventing crime easier. Margalit Har-Shefi was indicted for not preventing crime (over and beyond the general "hysteria" of the legal system after the assassination) because those who were involved in the murder of the Prime Minister were not perceived as part of the social network. They were a law unto themselves, and drew their strength from an alternative value system—this fact made it much easier for the law enforcement agencies to bring an indictment according to that forgotten clause.

[69] See Hatzaot Chok (*Proposed Laws)*, 5755-1995, no. 2398, p. 456.

This proposed law was sent down to the Committee on Constitution, Law and Justice on March 20, 1995.

The section in the Penal Code in which Porat wished to incorporate this law was *section 4: Danger to Life and Health*, one of eight sections in Chapter 10, whose subject is *"Bodily Harm."* It is interesting that section 3, *"Responsibility for a Person's Wellbeing,"* was not Porat's first choice. There thus occurred a process similar to that created by Maimonides when he included the prohibition against standing over the blood in the section concerned with murder rather than in that concerned with the protection of life. Section 344, to which Porat attached his amendment, speaks of "Danger of Roads and Boating Lanes." Presumably Porat connected things in an associative way, moving from the dangers of the road to those involving one who found himself in danger and the obligation to save the one in danger.

The law, as it was accepted in 1998 (June 22), is not an amendment to the Penal Code, but an independent law. It was adopted in the presence of 22 Knesset members, 17 of whom voted for it and also accepted the name of "You shall not stand over your neighbor's blood," while five Knesset members were opposed to accepting the law. The law contains six sections. Section 1 of the law is the main body of the law, and it states that:

> a) A person is obligated to offer a help a person in his physical presence whom, due to a sudden event, in is in a state of severe and immediate danger to his life, bodily integrity, or health, when he is capable of giving him help without endangering himself or others.
>
> (b) One who informs the authorities or summons another person who is able to offer the needed help, shall be considered as having offered help for purposes of this law. In this clause, the term "authorities" refers to the Israeli Police, Magen David Adom, or the Fire Brigade.

Section 4, headed "sanctions," states that:

> "One who violates the stipulations of Section 1 of this law shall be subject to a monetary fine."

Three main differences may be seen between the proposed bill and the law as passed by the Knesset:

1) The bill was an amendment to the Penal Code, while this was an independent law;

2) The punishment by imprisonment was exchanged for a monetary fine, whose size is not fixed by the law;

3) The law as passed refers to compensation of the one doing the saving. Let us first refer to this latter change. Section 5 of the "Law of Unjust Enrichment, 5739-1979,"[70] states that:

> a) One who acted in good faith and in a reasonable manner to protect the life, bodily integrity, heath, dignity or property of another person, without being obligated to do so towards him, and spent or committed himself to expenditures in connection therewith, the one enjoying this benefit is required to reimburse his reasonable expenses…

The legislator was concerned that the law would remove the one saving others from the category defined by the Law of Unjust Enrichment since, by dint of this new law, he was "obligated to do so towards him." Hence, the law stipulates, in Section 2, that the instructions in the above-mentioned law are applicable even when the action was performed by virtue of the "You shall not stand over your neighbor's blood Law". The change of the proposed bill from an amendment to the Penal Code to an independent law, as well as the change from prison sentence to an

[70] *Sefer Hachukim,* 924.

undefined monetary penalty, all fit in, as we shall see below, to the tendency of the promulgator of the law, Hanan Porat, to make it essentially a declarative document, rather than a legal stipulation altering the existing legal situation.

Let us first note the goals of the law as they were seen by Hanan Porat, the initiator of the law:

> “… The point of departure is that the obligation does not only derive from something that I am obligated toward some particular [anonymous] person, but it is an obligation that flows from the very fact of my being a human being. I would say this in a religious sense—in the sense that I live and I cannot stand in a situation in which I see my fellow man drowning in the river and I do not offer him assistance. This obligation is not a consequence of the fact that I am obligated towards him under the laws of torts or that I caused him some damage, but is a natural consequence of a certain elementary human ethical principle that finds expression in the verse, “You shall not stand over the blood of your neighbor… you observe an event, and you see a person who confronts mortal danger, [if] you ignore it, it is as if you become non-human…”. (Session of the Committee of Constitution, Law and Justice, December 10, 1997, Protocol No. 129 of the Committee from the 14th Knesset, p. 16).

And in the Meeting of Committee of Constitution, Law and Justice, on May 6, 1998, Hanan Porat said:

> “This law, as formulated, in its terminology, is based upon a verse of the weekly portion of the Torah that was read just this Shabbat: “You shall not go up and down as a slanderer among your people, and you shall not stand over the blood of your neighbor: I am the Lord. You shall not hate your

> brother in your heart, but you shall reason with your neighbor, lest you bear sin because of him. You shall not take vengeance or bear any grudge against the sins of your own people, but you shall love your neighbor as yourself: I am the Lord."
>
> The *exception* [my emphasis – Y.E] among these moral imperatives, that are generally speaking not a matter for legislation but a matter of moral imperative, is "you shall not stand over your neighbor's blood." Beyond the general need to offer help, which is a voluntary matter, one is speaking here of a case which the person sees, and the midrash and talmud translates this into some very concrete things." (Meeting of Committee of Constitution, Law and Justice, May 6, 1998, Protocol No. 181 of the Committee from the 14th Knesset, p. 2).

There is no doubt that, according to Porat, at the basis of this law there stands the value of human life and human dignity.[71] The obligation to save does not in his opinion stem from any relationship between the person endangered and the passerby, but from a basic feeling that it is impossible to stand by when human life is threatened. This feeling, that carries with it an obligation, upon which Porat finds it difficult to place his finger, is in his opinion exceptional in the biblical venue within which it appears. Porat also noted that the obligation here is personal, stemming from within the person rather than from the other. But

[71] See also the opinion of Benny Elon concerning this matter: "I want to strengthen the principle, raised here by MK Porat. I think that the contribution of this law is that we are establishing here a certain category: the State of Israel—as you said earlier in your introductory remarks about human dignity—has its values as a Jewish and democratic state. As a Jewish state, there is a certain significance to the concept of human dignity, that the concept is categorical and I would perhaps say absolute… I think it is important that it be fixed on the declarative level, but not only on the declarative level, that just as a man has basic rights by virtue of the matter of human dignity being important to us, he also has certain basic obligations by virtue of this matter" (Protocol of Knesset Constitution, Law and Justice Committee, December 10, 1997, p. 18).

not only does Porat not identify behind the group of verses chosen the principle of responsibility and mutual reciprocity; one can also find in his remarks and in those of Nahum Rakover, the Deputy Legal Advisor to the government in matters of Jewish Law, the impress of the halakha that connects these matters to the laws of the murderer and to the law of the pursuer. To the suggestion made by the Legal Advisor to the Committee, Shlomo Shoham, that there be added to the law the reservation that the help to the one endangered be given “without endangering the other,” Prof. Rakover responded:

> Here there is a problem, because when there is some person who on the face of it is the attacker, then this restriction does not need to be written. If a person is the aggressor, then I, in order to save the person who is endangered, have no choice but to attack the aggressor….

And Hanan Porat continued:

> This is what is called: “When one comes to kill you, rise up and kill him first”…. This is a very interesting issue, both in penal law and in Jewish halakha. This law clearly deals with the obligation to save someone. That is the nature of the subject at hand. From the point of view of danger to the other, which you are speaking about, when you see someone running after his fellow to kill him, or even after a girl in order to rape her, the justification involves the aspect that the attacker is performing a bad act… We are dealing here, only with that aspect that is connected with saving the other, and not with that aspect that incorporates within the act of saving also the prevention of crime. Hence the expression, ”without endangering himself or others” in this context is perfectly in place.

Prof. Rakover responds:

> “We need to be aware that in this case it removes the obligation to save… if there is a person pursuing the other, and I in order to save the one being pursued need to do something.”

These passages reveal the conceptual problematics involved in the separation of the obligation to save others from those laws that were related to it in Jewish law. Hanan Porat, the promulgator of the law, and Benny Elon, a member of the committee, both of whom are religious people, saw this law first and foremost as a declaration.[72] Porat has consistently pointed out that the punitive aspect and the issue of compensation of the one saving are secondary to the ethical and declarative value embodied in the law. The problem is that, once we come to understand the nature of that same declaration, from a religious perspective, we only discover its concrete embodiment—the saving of the life of a human being who is in our presence. This is an important moral statement, but its concrete formulation is problematic in a situation in which there are competing ethical perspectives. The inseparable connection of the prohibition against standing over the blood with the laws of the murderer and the law of the pursuer makes things much more complex. The law of the pursuer is the best example in our day of differing and conflicting perceptions of reality. The rabbis who issued the ruling that Yitzhak Rabin was a "pursuer" indeed believed that there was an existential danger to the Jewish people as a result of his activities. This was also, to one degree or another, with or without the law of "pursuer," the thought of the majority of the religious public in the State of Israel, even if the majority of them did not identify with the actions of the assassin. On the other hand, there is an entire other public whose perception of reality was different. According to that public, Rabin strengthened the state's security. Hanan Porat attempted to escape this "pitfall" by directing the law towards cases of saving alone. Our

[72] It is worth noting the remarks of Yehudit Karpf, Deputy Legal advisor to the government, in relation to the changing of the law into an independent one, and not as part of the Penal Code: "If we accept this in the Penal Code, this emphasizes the punitive aspect of the thing, and I don't think that is the intention. The intention is to establish in the law an obligation, a norm that is more ethical, educational, value-based….. I think that the tendency towards a law that stands in its own right is preferable" (Protocol of Constitution, Law and Justice Committee from May 6, 1998, p. 7).

argument is concerned with the *level of understanding and conception* of the law in religious eyes. The prohibition not to stand over the blood was not perceived as a basis for mutuality and responsibility and for creating a relationship between people, but as a religious obligation to save one who is endangered, whose latter-day development raised it from the realm of the individual to that of the nation, the highest ethical duty being to save the People of Israel from danger. This being so, this basic human principle was transformed into a tool, from a universal principle to a particularistic principle. At the beginning of the meeting on December 10, 1997, Prof. Rakover said:

> This obligation [not to stand over the blood], which has often been mentioned both in connection with the Holocaust as well as in other contexts—the obligation not to stand by doing nothing in the face of danger to the individual *or to the public* (my emphasis – Y.E).

These last lines indicate the importance of the title of the law, which alludes to the various contexts of the obligation not to stand over the blood. This subject also received attention in the committee (the following is not brought as a conversation consisting of questions and answers, but as a collection of statements from the committee):

> *Haggai Marom* (Labor Party, secularist): The law begins with the name, and I want to begin with that. I don't see why we need to give it a name like this at all. This is an amendment to the Penal Code, or if you prefer to the Regulations of Damages.
>
> *Hanan Porat*: Beyond the Jewish moral ethos that is reflected in this name, which I think is important…
>
> *Benny Elon*: It is the nature of Israeli legislation to assimilate, at least on the declarative level, basic concepts of Jewish law in terms of style, and specifically in terms of the name.

Haggai Marom: We're not in Jewish law, we're in a civil code… We cannot introduce here slogans, which have heavy and serious impact.

Dedi Zuker: We suggest that the law be called "The Law to Save and to Extend Help."

Yossi Beilin: We are against this entire law from the beginning. There is not a single word here that I can agree with. I think that changing this thing into a law is a mistake of the highest order. Next we'll be having a law, "you shall love your neighbor as yourself." Therefore I oppose here the entire thing.

Haggai Marom: The Penal Code states what should be done with a person who fails to act. We are in the jubilee year of the state. Can any of you tell us about a case in which a person sat on an easy chair while someone was drowning in his presence?

Dedi Zucker: We don't suffer here from social ills of the American type, that we should urgently require such legislation. The Israeli reality is not exactly that each man is a wolf to his fellow, under such critical circumstances.

Haggai Marom: The principle of "You shall not stand over your neighbor's blood" is stronger than the regulations of the law, and in this way you weaken that principle.

(Committee of Constitution, Law and Justice, May 6, 1998, pp. 6-12).

At the beginning of the meeting held on June 9, 1998, the chairman of the committee, Hanan Porat said the following:

"Comments were made last time pertaining to the name of the law. I think it was M. K. Haggai Marom who said that perhaps it is desirable to keep the name of the law, but to make it an amendment to the Penal Code. We thought about this, and this was also the position of the Ministry of Justice, that it is fitting to

> give this law that name, with the public declarative and educational significance of this name.”

In the second and third readings in the Knesset, Hanan Porat again made it clear that the law spoke of a specific case of mortal danger that is happening to a person before the eyes of another person, and Benny Elon took the trouble to point out that:

> “The law is important in two respects. It is important first of all because it states that Israeli society, as it expresses itself by means of civil legislation, takes the verse from Leviticus 19, and understands that the principle of “You shall not stand over the blood of your neighbor“ is not only an ethical principle of the Torah, but that Israel society is not prepared that a person should walk around in the market of Mahaneh Yehudah—and this is something that actually happened—dripping blood over entire streets, and die from loss of blood, and that numerous people saw him and no one bothered to pick up a telephone and call Magen David Adom. Israeli society, by means of this legislation, is saying: We have accepted from Jewish law, from our Holy Torah, this verse, and we adopt it…”

The secular Knesset members focused their criticism of the law on claims taken from the debate concerning freedom and the imposition of morality, as well as with arguments concerning the effectiveness of the law and the result of its turning the obligation into a criminal one. Yossi Beilin opposed any law that imposes ethics. Haggai Marom was troubled by the negative impact of the law if the help given would be by virtue of the law and not stemming from a clear ethical position. However, the context of their argument was not only that of the imposition of ethics upon society in a manner similar to the Hart-Devlin debate; rather, the framework of the debate was as to whether or not it is legitimate to use a political structure in order to legislate “religious” laws—and this,

notwithstanding the fact that the declared aim of Hanan Porat, the initiator of the law, was not at all religious. The secular Members of Knesset were unable to see the humanistic potential embodied within this law. After all, one may also understand this law within the framework of the Anglo-Saxon tradition that requires a relation between the one endangered and the one saving him in order for there to be an obligation to save him. The law itself creates this relationship —the verse, “you shall not stand over the blood of your neighbor” represents first and foremost the drawing of lines between each individual in society, the creation of a relation between them, and the imposition of responsibility upon each individual in society for every other one. One can thus see this law within the context of the existing legal framework, while altering the approach toward the individuals in society—which is, as we have seen, the main goal of the biblical law. The secular Knesset members did not take note of this potential. Nor did the religious Knesset members realize the significance of the imperative implied in the law. They saw the essence of the law in its protecting the value of human life. They failed to see that the essential point of the law is the underlying feeling of mutual responsibility. Its educational significance lies first and foremost in the fact that there is something shared between each individual, that they are not human islands, that there is a deep basic connection between each and every person. Thus, the basic goal of the law, namely, the creation of a mutual connection between human beings, is undercut. Moreover, the basic lesson of the biblical law—that mutual responsibility is only possible by the creation of at least one common basis, call it a common perspective, something totally missing from the discussion of religious and secularist alike concerning the law itself—is not learned. Benny Elon’s statement is diametrically opposed to the wisdom embodied in the biblical law itself. His emphasis upon the adoption by Israeli society of the biblical verse in the acceptance of this law obviates any possibility of arriving at a common point of agreement. One is not speaking here of rhetoric alone. His remarks betray a viewpoint according to which it is his responsibility as Knesset member to implant the concepts of Jewish law within

Israeli legislation. By the passing of this law Elon “recorded,” from his viewpoint, “another victory.” But the prohibition of standing over the blood of ones neighbor teaches us that such an approach in itself negates the feeling of responsibility and mutual involvement among the individuals within society, since it creates two parallel points of reference that can never meet. Elon sees the secular Knesset members “face to face” but does not turn toward their faces.

5. *Conclusion*

Writing about responsibility and feelings of mutuality towards the other involves, like all intellectual writing, a movement of externalization—the embodiment of ideas in words. This distance allows the author to be impressed by his own ideas. However, writing about human relations and responsibility toward the other also involves the opposite movement, of internalization. Nor is there an element of self-pride, as responsibility toward the other is naturally connected with modesty and a lack of arrogance. Identification of the sadness, the suffering and, on the other hand, the happiness and joy in the face of the other requires sensitivity and a lack of pretentiousness. Passing legislation whose essence is responsibility to the other involves a similar movement. Specifically the legislation of such a law requires particular sensitivity.

> Is Levinas’s thought utopian? Evidently so. A well-known movement takes place here. Those individuals who are less burdened by day-to-day troubles, so that they are more able to distinguish the “faces” that surround them, are generally speaking more able to respond to the ethical obligation imposed by the other or to feel a sense of guilt because of their own apathy. But if they respond to the obligation that confronts them in the face of the “others,” they lose their credibility in the eyes of the “others”: the

devotion and generosity they display is not understood by the “others” in any language that they know how to speak. If, on the other hand, they are apathetic towards them, they become an oppressive, dominating and hostile element in the lives of the “others.”

Levinas would of course completely reject this. The duty and responsibility imposed upon the self, derived from the other, is imposed upon every individual regardless of his economic situation and without any demand for mutuality. Levinas does not relate to the sociological aspects of his teaching. It seems to me that the Torah, on the other hand, *does* in fact relate to these aspects. Its ethical demand is one of responsibility to the other, coming from within yourself. Love your neighbor as you love yourself. The Torah preferred to utilize the mechanism of egoism within man for ethical purposes, rather than to hope and wait for overall ethical and emotional development.

The Torah taught us another important message as well—that responsibility to the other must come from a shared, basic perspective. Unlike Levinas and his principle of lack of reciprocity, the Torah sees at the basis of the principle of responsibility at least two people looking from the same perspective, so that they have an objective basis for dialogue. This is perhaps the main lesson of the prohibition against standing over the blood. In a lean, shocking and silent picture, there is no room for narrative; one can only cry over the blood that has been spilled.

Returning to these first principles of mutual responsibility as expressed in Leviticus 19: 15-18 also clarifies the context in which different groups in Israel read the new law: “You shall not stand over the blood of your neighbor Law, 5758 - 1998”. This law, that makes use of the verse in Leviticus, but in practice applies the midrashic interpretation of the verse, is understood by religionists as part of the context of

protecting the value of life, but also of the values of the people, the nation and the land. It is likewise inexorably connected to the idea of the midrash: “and each man stumbles in his neighbor...”—i.e., mutual accountability and responsibility as part of a mechanism of enforcing the mitzvot. Paradoxically, this law, that was intended to serve as a cornerstone for elevating the value of human life, is closely connected to that same religious obligation which was associated with the infamous assassination of Prime Minister Yitzhak Rabin—the law of the pursuer. On the other hand, the secularists see this law in the context of the principle of freedom and the issue of the imposition of ethics by legislative means. The connection of this issue to old-new religious obligations (the prohibition against standing over the blood), in an age in which religion and tradition are considered as synonyms for religious coercion, and the use of democratic mechanisms for religious needs, cannot be accepted by them as an honest and serious move. Moreover, the obligation of saving others in its Israeli formulation, rather than coming as a deterrent, serves as a kind of declaration: the proclamation of a red line—human life—around which all of Israeli society is united. Hence, the formulation of this obligation to save must express more consensual principles. The underlying approach of the biblical law, namely, the understanding that there is a basic human connection that connects all of us together and that creates among us a relationship that cannot be ignored: this understanding, which is the “declaration” underlying the basis of this Israeli law lacking in “teeth”—is lost as a result of the

cultural and contextual baggage of the different groups reading the law.

I do not think that one ought to adopt the approach of total responsibility toward the other. In the dispute between two educational schools: demand much and the impossible and receive the desired, or demand the desired and the possible and receive them, I advocate the latter approach. I believe in the healing power of the word, especially when it is spoken between man and his fellow. The process of emptying and refilling that characterizes every human discourse is necessary to man as a living creature. Conversation, face-to-face meeting, interpersonal communication, can only occur through a common basis; otherwise it “dissipates in every direction” in other and parallel channels. It is worthwhile, in the Israeli context, for us to adopt the imperative of the prohibition to stand over the blood, and to begin our dialogue from the end (blood, death, responsibility) to the beginning (a shared, common life, concern for the other, love of ones fellow).