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2004

When Would Jesus Sue? Tort Law in the Hands of Christ

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When Would Jesus Sue: Tort Law in the Hands of Christ

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INTRODUCTION

The profound absurdity of the image makes it enlightening: Mary of Magdala recognizes the risen Christ in the garden. She whispers, "Rabbouni," and, kneeling, embraces His ankles, her tears once more washing His feet. Then, she feels Him draw away from her. "Mary," He tells her, "do not hold on to me, for I have not yet retained my lawyer."¹

Not only did this not happen, but the Christian intuitively knows that it could not have happened, at least not without radically changing our understanding of who Christ is and what He has called us to become. This is not to say He did not have cause for a lawsuit. The personal injury claims flow through His Passion the way such claims flow through a first year law school exam: assault, false imprisonment, malicious prosecution, defamation, battery, conversion, intentional infliction of emotional distress, wrongful death; the list seems endless. Yet, Christ's response to His injuries necessarily transcends not only the legal options of His day, but of ours as well.

Does this illustration, however, suggest too much? Despite our intuitions, one also can find evidence to suggest that Jesus and litigation are not alien. Even if Jesus did not sue, the judicial resolution of private disputes was not beyond His imagination. He understood the legal system, and He drew on its imagery. Did not Jesus instruct that one should "[s]ettle with your opponent quickly while on the way to court with him, [lest] your opponent hand you over to the judge, and the judge will hand you over to the guard, and you will be thrown into prison"?² And isn't this precisely what happened to the unforgiving servant in Christ's parable illustrating forgiveness?³

Furthermore, just as Jesus drew on the imagery of a legal system, America's legal system today draws on the imagery of God. Our oaths are sworn on Bibles and in the name of God; our judges clothe themselves in

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1. See *John* 20:14-18. For a discussion of the historical view that this Mary is the same Mary who previously washed the feet of Christ, see EDITH FILLIETTE, *SAINT MARY MAGDALENE, HER LIFE AND TIMES* (1983).

2. *Matthew* 5:25.

3. *Matthew* 18:23-34.

priestly robes to weigh disputes on the scales of justice; even our Supreme Court adorns its walls with reminders of the God of Abraham.⁴ Regardless of whether Jesus has an interest in the legal system, the American legal system looks to God to lend itself legitimacy and credibility. Although Paul asked the Corinthians, "[h]ow can any one of you with a case against another dare to bring it to the unjust for judgment instead of to the holy ones?,"⁵ perhaps the American legal system seeks to be the "holy ones." Perhaps the American legal system truly seeks after God rather than merely seeking to assimilate Him.

The legal system that Jesus would use today in America to sue for his injuries is the tort system. Tort law defines when one person can sue another for the injuries the latter person has caused her. While tort law encompasses a vast body of different causes of action comprised of a wide variety of different motivations and injuries, the basic structure of all torts is remarkably consistent. Every tort is made up of a duty, a breach of that duty, an injury, and a causal relationship between the breach and the injury. Thus, to prevail in the typical negligence cause of action, for example, the plaintiff, or person suing, must show that the defendant owed a duty of reasonable care to him, that the defendant's actions breached that duty, that the plaintiff suffered an injury, and that the defendant's breach caused that injury.⁶

In applying this structure to real life incidents, the tort system speaks in terms that parallel Biblical concepts. The tort system calls people to recognize that their actions have consequences and that they must atone for these consequences.⁷ There will be a judgment in a tort action, and this judgment will bring justice. Through these judgments, people can be led to act in ways that are good and righteous.⁸

However, beneath these similarities in rhetoric lay profound differences between the tort system and the teachings of Christ. Perhaps the most obvious is that while the legal system's notion of "justice" focuses only on making whole the plaintiff in a lawsuit, Christ is also equally concerned with healing the defendant. The Gospels assure us of this in proclaiming that "God did not send his son into the world to condemn the

4. *Allegheny County v. ACLU*, 492 U.S. 573, 652 (1989) (Stevens, J., concurring in part, dissenting in part) (acknowledging and explaining the presence of Moses and the Ten Commandments in the courtroom of the Supreme Court).

5. *Corinthians* 6:1.

6. See VICTOR E. SCHWARTZ ET AL., *PROSSER, WADE & SCHWARTZ'S TORTS: CASES AND MATERIALS* 130 (10th ed. 2000).

7. See, e.g., *Delair v. McAdoo*, 188 A. 181, 184 (Pa. 1936) ("An owner or operator cannot escape simply because he says he does not know. He must know. The hazard is too great to permit cars in this condition to be on the highway.").

8. See W. PAGE KEETON ET AL., *PROSSER AND KEETON ON THE LAW OF TORTS* § 4, at 25 (5th ed. 1984) ("When the decisions of the courts become known, and defendants realize that they may be held liable, there is of course a strong incentive to prevent the occurrence of the harm.").

world, but that the world might be saved through him."⁹ Thus, it follows that after Jesus' resurrection, He may not have retained a lawyer for Himself, but He most certainly sought to heal and strengthen those who had denied and abandoned him.¹⁰

Christ's calling of Zacchaeus the tax collector illustrates this difference between Christ's concerns and those of American justice. Zacchaeus was the chief tax collector in Jericho and a despised sinner. As Jesus passed through the city, He saw Zacchaeus peering at Him from a tree, all the encouragement Christ needed to invite Himself to Zacchaeus's home for dinner. At the dinner, Zacchaeus, having encountered Christ, announced that he would repay four-fold anyone whose money he had taken wrongfully.¹¹

In this situation, the tort system would have contented itself with knowing Zacchaeus's victims had been made whole, but Christ wanted more. Christ also celebrated the salvation of Zacchaeus because Christ came not only to heal the sick and feed the hungry but also "to save what was lost,"¹² to take what was scarlet and make it "white as snow."¹³

Christ's justice, then, is interwoven with His pursuit of forgiveness, redemption, and peace, all in a common purpose to save, and, therefore, it necessarily transcends merely achieving the satisfaction of the victim. As such, Christ's justice yields results that the tort system would find conflicting. On the one hand, Zacchaeus headed off to pay back all those he had cheated four-fold, but the woman caught in adultery paid no damages, her accusers restrained and sent off to examine their own hearts and she instructed to "go, and sin no more."¹⁴ In the Old Testament, falling somewhere between the previous two examples, David had to watch the child of his adulterous relationship with Bathsheba die; yet, the Lord then blessed the marriage of David and Bathsheba with Solomon, the wise king whom the Lord loved.¹⁵

Disparate outcomes between the tort system and Christ's justice result not only because Christ seeks to do things that the tort system does not seek to do but also because Christ can do things that the tort system cannot do. In particular, God can bring order to such diverse results as those described above because God, unlike the tort system, is the perfect reader of hearts.¹⁶ Only God can recognize the "broken, humbled heart," the "willing spirit" that approaches without reservation and without defense into the mercy of

9. *John* 3:17.

10. *Id.* at 20:21-23.

11. *Luke* 19:1-10.

12. *Id.* at 10.

13. *Isaiah* 1:18.

14. *John* 8:3-11.

15. *2 Samuel* 12:13-25.

16. *1 Samuel* 16:7 ("Not as man sees does God see, because man sees the appearance but the Lord looks into the heart.").

God prepared to subject itself to God's will, whatever God's will may be;¹⁷ and only God can know how to mend that heart completely.¹⁸ While we as humans may seek to emulate this work, it is perfected only in God. Thus, while God can find order in the proper ordering of hearts, the tort system must content itself with the proper ordering of more tangible monetary awards.

God's commitment to salvation and His focus on hearts sheds light on our initial illustration. Jesus would never have so spoken to Mary of Magdala because Jesus was not about being compensated for His injuries, but suffering for our sins. To the point, He came not to sue us but to save us. All this leads us to recognize that in evaluating the tort system, "[w]hen would Jesus sue?" is answered easily. Given Jesus' exclusive desire to use His life to gain the salvation of souls,¹⁹ He would sue only if suing would, in a way consistent with the will of the Father, save a soul. Having recognized that, however, we must now determine whether Jesus could use the tort system as a mechanism for salvation. Would Christ, had Zacchaeus turned down Christ's offer to dine at Zacchaeus's home, have then said, "[c]ome down from that tree anyway Zacchaeus because I need to take you to court"?

In the Gospels, Jesus interacted with people in ways that were designed to lead to salvation directly: the Transfiguration,²⁰ Last Supper,²¹ and Crucifixion²² for example. But He also used interactions that seemed entirely secular to invite salvation opportunities. Thus, when Jesus asked the Samaritan woman for a drink of water, He was involved directly in an interaction, receiving a drink, that could have had no link to the salvation of a soul. Jesus, however, used this interaction as a vehicle to transform the woman's life for God.²³ Therefore, as we consider whether Jesus would use the tort system as a vehicle for salvation, we must consider not only whether the tort system, itself, is so consistent with God's law that it seeks after salvation, but also whether even if the tort system does not so seek, it still provides opportunities to transform lives for God.

To illustrate this distinction, I once was preparing an inmate client for a parole hearing. To do so effectively required me to work with the young man on his life. We had to find him a job, educational opportunities, a stable place to live, and a healthy support system. In the context of setting all this up, my client felt called to return to the Catholic Church. In the

17. *Psalm* 51:11-19.

18. *Luke* 7:36-50 (forgiveness of the sinful woman who washed Jesus' feet in the home of Simon the Pharisee).

19. CATECHISM OF THE CATHOLIC CHURCH ¶¶ 456-60 (Ligouri ed. 1994).

20. *Matthew* 17:1-8 (Jesus took Peter, James, and John up the mountain to see Moses and Elijah.).

21. See, e.g., *John* 15:11-17.

22. See, e.g., *Matthew* 16:21-28.

23. *John* 4:1-42.

end, I did not find the criminal justice system to be particularly Godly; in this instance my client was paroled only to be "re-incarcerated" on an outstanding probation warrant before he could even leave the prison. However, our work together within that system became a vehicle for the man's eternal salvation. In this vein, Douglas Ammar of the Georgia Justice Project has described his work as a lawyer as being "a source of light and love and support in the midst of a growing darkness."²⁴ Tom Shaffer has described it as being a source of hope.²⁵

Some Christians see in the legal system "a noble instrument for the ordering of human affairs and the just resolution of disputes."²⁶ Focused on such a vision, one could see the tort system being used directly as a vehicle for salvation in Christ. Others, however, do not see the legal system as necessarily pursuing Godly ends.²⁷ Rather, the legal system represents the world's mechanism for ordering the world's affairs;²⁸ yet, even from this perspective the apostle Paul did not hesitate to insist that the world play by its own rules,²⁹ and once in that game, Paul would set out to convert all the other players.³⁰

Thus, as we consider whether the tort system can be used as a vehicle for salvation, we shall consider two things. In Section I, we shall consider first, whether the tort system is true to its rhetorical promises of justice, goodness, and resolution and pursues them as Christ would. Then, in Section II, we shall consider whether, even if the tort system is only a worldly mechanism, a participant in the tort system could still use it as a tool for salvation.

I. CHRIST AND THE TORT SYSTEM: DIVERGENT VIEWS OF JUSTICE

We can begin to examine whether the tort system pursues its goals as Christ would by considering Christ's parable of the Good Samaritan. That parable reveals three differences between Christ's teachings and the tort system. These differences arise because Christ's teachings and the tort

24. Douglas Ammar, *Being Called to the Darkness: Results vs. Presence*, MATTERS OF JUSTICE 1 (1997).

25. Thomas L. Shaffer, *More's Skill*, 9 WIDENER J. PUB. L. 295, 298-302 (2000).

26. JOSEPH G. ALLEGRETTI, *THE LAWYER'S CALLING: CHRISTIAN FAITH AND LEGAL PRACTICE* 7 (Paulist Press 1996). See also THOMAS SHAFFER, *ON BEING A CHRISTIAN AND A LAWYER* (1981); Randy Lee, *Faith Through Lawyering: Finding and Doing What Is Mine to Do*, 11 REGENT U. L. REV. 71, 81-88 (1998-99).

27. See, e.g., *Corinthians* 6:1-8.

28. Cf. Shaffer, *supra* note 25, at 300 (defining law as "a settled regard for reason and intellectual skill in the use of power").

29. See, e.g., *Acts* 16:37 (Paul demanded rights of a Roman citizen after being beaten and jailed in Philippi.); *Acts* 26:10 (Paul exercised rights of a Roman citizen before Festus in Caesarea.).

30. See, e.g., *Acts* 16:25-34 (Paul converted his jailer and the jailer's family in Philippi.); *Acts* 25:13-26:31 (Paul's conversion efforts on the way to Rome and in that city).

system perceive differently the role of causation, the importance of action, and the nature of duty when determining personal accountability.

As Luke told the Good Samaritan story, a lawyer "desiring to justify himself" asked Jesus who was this "neighbor" whom the lawyer was called to love as himself. Christ replied with the following story:

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 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 inn-keeper, 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 on him." And Jesus said to him, "Go and do likewise."³¹

Although to Christ the behavior of the Samaritan differed from the behaviors of the priest and Levite, the tort system would see no such difference. In the tort system, none of those three men needed to concern himself with the victim in the road, and thus, all three would be seen as equals in the tort system. This difference in the perceptions of the tort system and Christ can be explained by the three ways in which the tort system must be distinguished from Christ's teaching. First, as noted earlier, the tort system imposes liability only when one causes another's injury.³² Here none of the three caused the victim's injuries; the robbers did that, and, therefore, if the victim had a suit against anyone, it would be the robbers.

Second, the tort system imposes liability only for what one does, for one's actions in breaching a duty. Inaction ordinarily does not give rise to tort liability,³³ and here the Priest and Levite are "guilty" only of inaction or for failing to give aid. To Christ, however, we are as accountable for our inaction as we are for our action. Lest one miss this point in the parable, Christ stated it very clearly in the final days of His public ministry when He described to those in the Temple the judgment of nations:

31. Luke 10:27-37.

32. See *supra* text accompanying note 6.

33. KEETON, *supra* note 8, § 56, at 373.

Then he will say to those on his left, "Depart from me you accursed, into the eternal fire prepared for the devil and his angels. For I was hungry and you gave me no food, I was thirsty and you gave me no drink, a stranger and you gave me no welcome, naked and you gave me no clothing, ill and in prison, and you did not care for me."³⁴

In each instance cited by Christ here, it is inaction, a failure to aid, that brings forth God's eternal judgment.

The third difference highlighted in the Good Samaritan parable arises out of the connection between duty and relationship. The lawyer to whom the parable was addressed knew that he was to love his neighbor as himself, but he saw in the word "neighbor" a limitation on the commandment: the lawyer was to love only those with whom he shared the relationship of neighbor. Thus, the lawyer's duty arose out of and was limited to a pre-existing relationship that he shared with some people. Such a view is consistent with tort law where certain pre-existing relationships give rise to certain duties: the invited guest and the host,³⁵ the child and the parent,³⁶ and the patient and the doctor,³⁷ for example.

Jesus turns this completely around. For Him, neighbor is not a pre-existing relationship from which a duty of care can be imposed. Rather, neighbor is a relationship that is created when one shows mercy on another. The Samaritan had no pre-existing relationship to the victim in the road. Samaritans and Jews despised each other, and in fact Jesus, Himself, was expelled from a Samaritan village shortly before He told the parable.³⁸ The Samaritan, however, made the man in the road his neighbor when he showed him mercy. Thus, when Jesus instructed the lawyer to "go and do likewise," Christ was telling him and us to have mercy even on our enemies, to make neighbors of all who need our help, and to love those neighbors as ourselves. Thus, in Christ's eye, the notion of "neighbor" expands rather than contracts the command to love one's neighbor as oneself.

Having identified these three initial differences from the Good Samaritan parable, we may expand our list of differences still further by returning to Christ's judgment of the nations, alluded to earlier.³⁹ There we are reminded that although liability in the tort system can be escaped through excuses, self-justifications, or affirmative defenses, salvation

34. *Matthew* 25:41-44. See also *Leviticus* 19:16 ("nor shall you stand by idly when your neighbor's life is at stake.").

35. KEETON, *supra* note 8, § 61, at 419-28.

36. *Id.* § 122, at 907-10.

37. *Id.* § 32, at 185.

38. *Luke* 9:52-53.

39. See *supra* text accompanying note 34.

depends on Christ's mercy.⁴⁰ Even when duty, breach, injury, and cause have been established in the tort system, any number of affirmative defenses may protect a defendant from liability. Procedurally, the defendant may claim that she is immune from suit,⁴¹ that the lawsuit has been brought too late,⁴² or that the suit has been brought in the wrong court.⁴³ Substantively, the defendant may claim that the victim contributed or consented to his own injury,⁴⁴ that the defendant had a right to inflict the injury,⁴⁵ or that the defendant's action could be justified for some other reason.⁴⁶

When Jesus described the judgment of the nations, however, He was not interested in excuses.⁴⁷ In that description, He spoke of a day when He will place the sheep on His right and the goats on His left, and the sheep He will invite to Heaven while the goats He will ban for all eternity.⁴⁸ While Jesus clearly distinguished the sheep from the goats by their behavior, His description of this event also noted their attitudes. The goats are those who arrive before God ready to justify themselves and to defend their lives saying, "Lord, how can you say we failed you." The sheep, meanwhile, are those who come before God prepared to rest in His mercy, those with faith enough to rely not on their own affirmative defenses but on the mercy of their Savior. Their reward for that faith is to discover that their omniscient God has viewed them not more harshly, but more lovingly than they could ever have judged themselves. As Christ said in the parable of the proud Pharisee and the humble tax collector, "everyone who exalts himself will be humbled, and the one who humbles himself will be exalted."⁴⁹ Thus, salvation comes to those who can say, as did Sister Faustina Kowalska, "O my Lord, my soul is the most wretched of all, and yet You stoop to it with such kindness! I see clearly Your greatness and my littleness, and therefore I rejoice that you are so powerful and without limit, and so I rejoice greatly at being so little."⁵⁰

40. CATECHISM OF THE CATHOLIC CHURCH ¶ 2005 (Ligouri ed. 1994).

41. See, e.g., KEETON, *supra* note 8, § 131, at 1043-51.

42. *Id.* § 30, at 165.

43. See, e.g., Fed. R. Civ. P. 12(b).

44. KEETON, *supra* note 8, § 18, at 65.

45. See, e.g., *id.* § 19, at 124 (discussing self-defense).

46. *Sindle v. N. Y. City Transit Auth.*, 307 N.E. 2d 245 (N.Y. 1973) (discussing defense of justification).

47. The following discussion on mercy draws on Lee, *supra* note 26, at 132-34.

48. *Matthew* 25:31-46.

49. *Luke* 18:14.

50. SAINT FAUSTINA KOWALSKA, *DIVINE MERCY IN MY SOUL* 503 (Marions of the Immaculate Conception 1999) (1987). Similarly, Sister Josefa Menéndez wrote, "[d]on't be afraid of your weakness, for [Christ] will sustain you." He "will receive [sinners] with the most tender and paternal affection." SR. JOSEFA MENÉNDEZ, *THE WAY OF DIVINE LOVE* 218 (Tan Books & Publishers, Inc., pocketbook ed. 1981) (1972).

Brilliant as we are, clever as we are, articulate as we are, in the end our arguments will mean nothing before God. As Dietrich Bonhoeffer, martyr to the Nazis and Lutheran theologian, pointed out, God will see our attempts to justify our own righteousness as "filthy rags."⁵¹ He will blow them away as He blew away so much vain chatter surrounding Job by thundering rhetorically, "[w]ho is this that obscures divine plans with words of ignorance?"⁵² As poet James Weldon Johnson simply put it, "[y]our arm's too short to box with God."⁵³ Instead, as C.S. Lewis stressed repeatedly in the *Chronicles of Narnia*,⁵⁴ we need to trust in Christ as the Divine Advocate. As He saved both the greedy Edmond and the noble though misguided Emeth, He can save us as well. But when He does so, our affirmative defenses will mean nothing to Him. Our love, trust, and humility will mean everything.

One might infer from this discussion of differences that the tort system could be altered to be Christ-like. Certainly the changes would be radical: a refocus to make whole both victim and defendant, liability for inaction, elimination of the cause requirement, a duty to build relationships, and an elimination of affirmative defenses. Yet, even with these changes, the tort system would not pursue justice as would Christ. While both Christ and the tort system claim to pursue justice, each has such a radically different understanding of the person and his role in his community that Christ's justice and tort justice must necessarily be different. This can be demonstrated by looking more closely at the most frequently used tort cause of action, negligence.

The current standard of care, or duty, in negligence is to behave as would the reasonable, prudent person. That person's behavior is normally to be determined by using either the Learned Hand test⁵⁵ or a similar test

51. DIETRICH BONHOEFFER, *THE COST OF DISCIPLESHIP* 335 (R.H. Fuller, trans., 1973) (1949).

52. *Job* 38:2.

53. James Weldon Johnson, *The Prodigal Son, in GOD'S TROMBONE: SEVEN NEGRO SERMONS IN VERSE* 21 (Penguin Books 1976) (1927). See also Rich Mullins, *Alrightokuh-huamen, on SONGS* (Reunion Records 1996) ("You can argue with your Maker, But you know that you just can't win.").

54. See, e.g., C.S. LEWIS, *THE LION, THE WITCH, AND THE WARDROBE* 142-43 (Scholastic ed. 1995) (1950) (Edmond recognizes the need to remain silent and allow Aslan to defend him before the White Witch); C.S. LEWIS, *THE HORSE AND HIS BOY* 214-21 (Scholastic ed. 1995) (1954) (Rabadash refuses to leave himself to Aslan's mercy and turns himself into a donkey making his own defense); C.S. LEWIS, *PRINCE CASPIAN* 153 (Scholastic ed. 1995) (1951) (Lucy tells Susan that Susan need not explain her failures to Aslan); C.S. LEWIS, *THE LAST BATTLE* 169 (Scholastic ed. 1995) (1956) [hereinafter *BATTLE*] (Aslan says of the dwarves who have been left in darkness, "[t]hey will not let us help them. They have chosen cunning instead of belief"); *BATTLE*, *supra*, at 188-89 (After Emeth allows Aslan to advocate for him so that Emeth is allowed to enter Paradise, Emeth notes, "[a]nd this is the marvel of marvels, that he called me Beloved, me who am but as a dog.").

55. *United States v. Carroll Towing Co.*, 159 F.2d 169 (2d Cir. 1947).

from sections 291-93 of the Restatement (Second) of Torts.⁵⁶ Under the Hand test, to determine what care the reasonable person would require of himself, one identifies the burden on the reasonable person of taking adequate precautions to avoid the injury and balances that against the gravity of the injury should it occur times the probability that it will occur.⁵⁷ Thus, within the tort system, one acts unreasonably and, hence, is subject to liability when the burden of his avoiding an injury was less than the severity of the injury that the victim suffered times the probability that the injury would be suffered given the defendant's behavior.

Traditionally this balance has been expressed as the algebraic equation

$$\text{Burden} > < \text{Probability} \times \text{Loss}$$

or more simply

$$B > < PL.^{58}$$

To facilitate the use of this equation, numeric values can be assigned to each of the three variables. For the burden and loss variables, these values are reflected in either monetary values or relative utilities. The Restatement approach differs from the Hand test only in that it measures the burden and loss factors in terms of social burden and loss rather than in terms of the burden and loss to the parties.⁵⁹

While the tort system seeks after this reasonable person with algebraic precision, Christ has called His followers to be fools for Christ.⁶⁰ Rather than reduce the lives of the people around them to mathematical abstractions, Christ has called His followers to make strangers their neighbors⁶¹ and to lay down their lives for their friends.⁶² In Christ's realm one need not concern one's self with the limits of liability, for none are to be found; there one "bears all things, believes all things, hopes all things, endures all things."⁶³ In Christ's realm, one concerns one's self not with reasonableness but with love.

56. RESTATEMENT (SECOND) OF TORTS §§ 291-93 (1977).

57. *Carroll Towing*, 159 F.2d at 173.

58. *Id.*

59. RESTATEMENT (SECOND) OF TORTS, *supra* note 56, at §§ 291-93.

60. *Corinthians* 3:18 ("If anyone among you considers himself wise in this age, let him become a fool so as to become wise."). See also THOMAS A. KEMPIS, IMITATION OF CHRIST 25 (Everyman's Library ed., 1960) (1910) ("Thou must become a fool for Christ's sake, if thou wishes to lead the life of a religious"); Rich Mullins, *Let Mercy Lead, on SONGS* (Reunions Records 1996) ("If we can reach beyond the wisdom of this age into the foolishness of God, that foolishness will save those who believe. Although their foolish hearts may break, they will find peace.").

61. See *supra* text accompanying notes 31-38.

62. *John* 15:12-13.

63. *Corinthians* 13:7.

In this realm of love, community is defined in terms of love responding to need. Thus, Christ's realm cannot co-exist with the tort system of rights and duties because once we impose a duty on someone to respond, we eliminate the possibility for the unselfish giving assumed in love. Similarly, while love can give unselfishly to one who has a need, there is no giving associated with responding to a right; there is only a taking by the one who has the right.⁶⁴ In fact, not only is the system of rights and duties inconsistent with Christ's call to love, but the call to love is so comprehensive that it makes other law superfluous. As Paul told us, "love is the fulfillment of the law."⁶⁵

Of course the love considered here carries with it an immensity often lacking in more common uses of the term "love." In fact, Christ's instruction to "love one another as I have loved you," is so profound as to be almost incomprehensible. Within Christ's Passion, we see the totality of this command. When Christ said in the Garden of Gethsemane, "Father, if thou art willing, remove this cup from me; nevertheless not my will, but thine be done,"⁶⁶ Jesus gave His will over to God. When Jesus allowed himself to be scourged,⁶⁷ He gave over His body. When He allowed the soldiers to mock Him and crown Him with thorns,⁶⁸ He gave over His dignity. When He carried His cross toward Calvary, saying "goodbye" to friends and family and aided only by a stranger pressed into service,⁶⁹ He gave over His community. Finally when Jesus called out, "[m]y God, My God, Why hast thou forsaken me?" and died on the cross,⁷⁰ He gave over both His omniscience and then His life. Only after Jesus had given over His will, His body, His dignity, His community, His omniscience, and His life, did He consider His perfect act of love "finished."⁷¹

Not only is the depth of Christ's call to love reflected in His death, but it is also reflected in His Life. The word for Christ's love, "compassion," is related to the Hebrew word "rachamim," which refers to the womb of Yahweh because "compassion is such a deep, central, and powerful emotion in Jesus that it can only be described as a movement of the womb of God."⁷² Indeed, the suffering of others could inspire Christ to spontaneous acts of kindness, like the raising of the dead son of the widow

64. Some of the issues presented here were originally discussed in Randy Lee, *A Look at God, Feminism, and Tort Law*, 75 MARQ. L. REV. 369, 386-407 (1992).

65. *Romans* 13:10.

66. *Luke* 22:42-43.

67. *Mark* 15:15.

68. *Mark* 15:16-20.

69. *Mark* 15:21-22.

70. *Matthew* 27:46.

71. *John* 19:30.

72. DONALD P. MCNEIL, DOUGLAS A. MORRISON & HENRI J.M. NOUWEN, *COMPASSION: A REFLECTION ON THE CHRISTIAN LIFE* 16 (1982).

of Naim.⁷³ Such suffering could cause the Creator of the Universe to change His agenda⁷⁴ or halt His steps.⁷⁵ And most profoundly the suffering of others made God weep. John told us so in his account of the raising of Lazarus.⁷⁶ There, Christ knew the happy ending about to unfold, that Lazarus was about to walk out of the tomb fully restored, and yet, when confronted with the confusion and anguish of His friends, Christ was "moved by the deepest emotions."⁷⁷ The shortest verse in the Bible tells us that the Master of all Creation "wept" at the suffering of a friend.⁷⁸ In the end the love of Jesus turns the Hand test on its head because Jesus feels our pain more profoundly than He feels His own. If we follow Christ's example and become so profoundly involved in those around us, Christ's call to love becomes a call to give up our very life, all we have and all we are, and become lost with the lost, hungry with the hungry, and sick with the sick.⁷⁹

Proponents of the reasonable person standard would label this calling unrealistic and certainly unworkable as a standard of care. In fact, they might well tell us that "[f]or those who do not live in a dream world and keep their eyes open to the facts of life, compassion can at most be a small and subservient part of our competitive existence."⁸⁰ Yet, people do try to answer Christ's call to love selflessly. As much as we would like to pass these people off as being different from us, they share with us the same flesh, the same blood, the same heart, the same feeling, and surprisingly the same fears and frustrations. For example, as much as we would like to distinguish Mother Teresa as some unobtainable aberration in human behavior, she was the first to acknowledge the frailty she shared with the rest of us. Once, for example, when asked if she was married, she admitted, "[y]es, and sometimes I find it very difficult to smile at Jesus because he can be so demanding."⁸¹

People who pursue love to this depth do have, however, a vision of the world that differs in two ways from that of the tort system. First, they see

73. *Luke* 7:11-15.

74. *Matthew* 15:22-28 (the healing of the daughter of Canaanite woman); *John* 2:3-10 (Jesus telling His mother that His hour had not yet come but then transforming the water into wine).

75. *Mark* 5:24-34 (the healing of the woman with a hemorrhage on the way to raising Jairus's daughter).

76. *John* 11:1-44.

77. *Id.* at 11:33

78. *Id.* at 11:35.

79. MCNEIL, *supra* note 72, at 17. See also CARLO CARRETTO, LETTERS FROM THE DESERT 22 (Rose Mary Hancock trans., Pillar Books 1976) (1964) ("[H]eaven is that place where everyone must be so mature in love as to offer his life for all others.").

80. Leslie Bender, *A Lawyer's Primer on Feminist Theory and Tort*, 38 J. LEGAL EDUC. 3, 32 (1988).

81. MOTHER TERESA, ONE HEART FULL OF LOVE 22 (Jose Luis Gonzalez-Balado ed., 1989).

love not as draining but as fulfilling, and second, they understand themselves to be so interconnected with others that they recognize that the suffering of others can be counted as their own.

Initially, we may turn to Dorothy Day, for fifty years a Christian servant of the poor and working classes, to elaborate on the first of these two ways. In describing her own need to be among the poor, Ms. Day said, "[w]e are here because we are in need. We are here because we are hungry. I am always being told how nice it is that we feed them; but I know in my heart that we are being fed all the time . . ."⁸² The Bible illustrates this vision of love as fulfilling in the story of the widow called by the prophet Elijah to share with him her last bit of flour and oil.⁸³ Although the widow gave away all she believed she had, her jar of meal and jug of oil never ran out but instead became full and fed her and her son for many days.⁸⁴ Thus, rather than draining her, her love both saved and fulfilled her. Sister Faustina Kowalska sought to explain this dynamic when she said, "God so created the world, that in giving to others, we make ourselves rich. Our own souls grow in proportion to the greatness of our love of neighbours."⁸⁵

Both the Old and New Testaments are filled with language that testifies to love doing for everyone what it did for the widow, for Dorothy Day, and for Saint Faustina. For example, in the Old Testament we are told that those who love God will "not want,"⁸⁶ will be "restored,"⁸⁷ and "shall renew their strength, they shall mount up with wings like eagles, they shall run and not be weary, they shall walk and not faint."⁸⁸ This message is taken even further in *Matthew* of the New Testament where we are told that "whoever would save his life will lose it, and whoever loses his life for my [Jesus] sake will find it."⁸⁹ Thus, all one's efforts to preserve himself will be fruitless, and only by trying to love with all one's heart can one begin to gain himself.

82. ROBERT COLES, *HARVARD DIARY: REFLECTIONS ON THE SACRED HEART AND THE SECULAR* 48 (1988). See also *Prayer of St. Francis*:

O Divine Master, grant that I may
not so much seek to be understood as to understand,
to be consoled as to console,
to be loved as to love.

For it is in giving that we receive,
And it is in pardoning that we are pardoned,
And it is in dying that we are born to eternal life.

83. 1 *Kings* 17:8-16.

84. *Id.* at 15-16.

85. MARIA TARNAWSKA, *SISTER MARIA FAUSTINA KOWALSKA: HER LIFE AND MISSION* 323 (2000) (1989).

86. *Psalms* 23:1.

87. *Id.* at 2.

88. *Isaiah* 40:31; see also *Matthew* 11:28-30 ("Come to me [Jesus] all who labor and are heavy-laden, and I will give you rest.").

89. *Matthew* 16:25.

Certainly this runs counter to a negligence standard that seeks to identify where one can cease to be concerned about his neighbor and pursue only his own interests. It also runs counter to the culture in which that standard thrives, a culture bent on goals of self-fulfillment, self-awareness, self-esteem, and the emancipation of self, and a culture convinced that only by turning inward does one achieve these goals. But in that struggle to find one's self, are we just bounding from relationship to relationship, job to job, addiction to addiction, distraction to distraction? In the struggle to identify ourselves, are we simply defining ourselves in terms of a type of car, a brand of soda, or a kind of jeans? And is our path toward "self" any more than an expedition through mass movements, self-help books, and popular psychological theories all designed to reduce all people to a common set of responses to a common set of experiences? If that is truly "the search for self," then we truly are lost.

Once we have shed ourselves of the search for self and embraced the perspective that love is fulfilling, difficult as that may be, we have no need for weighing interests or pricing the value of what we give or what we save. The act of caring sustains itself, just as it did for Sister Faustina:

To love God, and out of that love for Him to love souls. In the brain of Sister Faustina, weakened and battered by suffering, this single thought was retained, clearly, precisely and obstinately. She had no strength to reflect on other problems of sanctity. She was wholly consumed in what she was giving, neither weighing nor pricing the greatness of her gift.⁹⁰

While Christ promises us that our love can energize us to greater acts of love, the reasonable person standard promises that the fear of monetary loss resulting from liability will make people more conscious of their neighbors. Yet, the reasonable person promise in this regard is merely a flawed imitation of the promise of Christ. In fact, Christ teaches that unlike those times when we are motivated by love, when we work for money, we eventually become tired in any task, and the money involved ceases to be enough to prevent us from getting careless. Christ articulated this dynamic to Spanish mystic Sister Josefa Menendez:

Contemplate me on the way to Calvary loaded with My heavy Cross, watch Simon carrying it behind Me and consider two things; though he was a man of good will, yet he was [a] mercenary, and if he carried My Cross, it was for pay. So when he began to tire, he allowed the weight to bear more and more on Me and that is how I fell twice.

Secondly, this man helped me to bear part of My Cross, but not the whole of it

90. TARNAWSKA, *supra* note 85, at 338.

When a soul loves truly, she neither measures what she does nor weighs what she suffers; never looking for reward, and seeking only what she believes to be for God's greater glory, she never says "enough" when labour or fatigue are in question . . . and because of the purity of her aim, whatever the result, she neither excuses herself nor protects her good intentions; her motive being love, her efforts and sufferings always give glory to God. She is not troubled nor does she lose her peace of mind if she meets with contradiction or persecution or humiliation, as her sole motive is love and she leaves results in Love's hands.

These souls are not mercenary; they only want Me to be consoled; they desire only My rest and glory. That, too, is why they have shouldered the whole of My Cross and carry its full weight.⁹¹

We may now turn to the second way in which people see the world differently when they seek to love as Christ does, that they recognize the depth of their interconnectedness with others. People who embrace this view may well feel as Saint Faustina put it, "as if I were responsible for all souls. I know very well that I do not live for myself alone, but for the entire Church."⁹² This feeling may well follow from a recognition that "[a]ll mankind is of one author and is one volume . . ."⁹³ Saint Paul described this as being one in the Body of Christ:

For by one spirit we were all baptized into one body — Jews or Greek, slaves or free — and all were made to drink of one Spirit . . . God has so adjusted the body, giving the greater honor to the inferior part, that there may be no discord in the body, but that the members may have the same care for one another. If one member suffers, all suffer together; if one member is honored, all rejoice together.⁹⁴

In this context, I suffer no burden in protecting my neighbor because what I give to her I give to myself, whether the gift comes in the form of avoiding her injury initially or aiding her after she suffers it. In either event, whether she is never hurt or I make her whole after she is hurt, we both in response to that event will rejoice together. Such rejoicing is not anticipated in the tort system either before or after litigation.

91. MENENDEZ, *supra* note 50, at 294-96. Sister Josefa was a coadjutrix sister of the society of the Sacred Heart of Jesus stationed in France. She lived from 1890-1923. THE WAY OF DIVINE LOVE was published with the good wishes and blessings of Pope Pius XII and does not contradict Catholic teaching although the Catholic Church has yet to make final determination on the source of her revelation. *Id.*

92. TARNAWSKA, *supra* note 85, at 338.

93. John Donne, *Meditation XVII*, in THE NORTON ANTHOLOGY OF ENGLISH LITERATURE 1214, 1214 (M.H. Abrams, ed., 3d ed. 1974).

94. *Corinthians* 12:13, 24-26.

Yet, for all love's power to energize us, for all its ability to open our eyes to our union with others, it would be dishonest to suggest that any person can perfectly answer Christ's call to love. While love may be infinite in its capacity to bear, believe, hope, and endure,⁹⁵ all of us are limited in the degree to which we have turned ourselves over to loving. From the first man Adam to the great king David, from the great king David to the first pope Peter, from the first pope Peter to all of us today, only Jesus loves perfectly; only Mary was "full of grace."⁹⁶

The tort system has embraced a standard of care that any reasonable person can live up to, but Christ has called us to aspire to a life in which all of us will fail. Having done that, Christ paradoxically promises that if we embrace this impossible call, we will find rest, for His "yoke is easy, and [His] burden light."⁹⁷ One might suspect that rest, however, would be more likely to be found in the "reasonableness" of the tort system. Despite such suspicions, ultimately it is Christ's promise that rings true.

At its core, the tort system demands success: we are to succeed in avoiding injury to others. When we fail, the reasonableness of our behavior may prevent our liability, but it remains the fruits of our actions that bring our behavior into question.⁹⁸ As Mother Teresa told us, however, Christ is not interested in how successful we are or in how much we accomplish but only in "how much love we put in the doing."⁹⁹ In a world obsessed with gold medals and number one rankings, Christ seeks to relieve us from the fear of failure and the chains of success and convince us that God is satisfied with our doing our best, imperfect as our best may be.¹⁰⁰

The impact of this difference can be illustrated through the case of *Palsgraf v. Long Island Railroad Company*,¹⁰¹ "[t]he most famous tort case of modern times — 'the most discussed and debated,' as Dean Prosser put it."¹⁰² There, the plaintiff Mrs. Palsgraf was injured when a scale fell on her as she stood on a Long Island Railroad platform waiting for a train.¹⁰³ The scale was knocked over by the explosion caused when an unmarked bundle containing fireworks exploded on the nearby train tracks.¹⁰⁴ The

95. *Corinthians* 13:7.

96. *Matthew* 1:28.

97. *Id.* at 11:28.

98. *Palsgraf v. Long Island R. Co.*, 162 N.E. 99, 101 (N.Y. 1928) ("Negligence in the abstract, apart from things related, is surely not a tort, if indeed it is understandable at all.").

99. MOTHER TERESA, *WORDS TO LOVE BY 75* (Ave Maria Press 1983).

100. MARIA VALTORTA, *POEM OF THE MAN-GOD* 764 (Nicandro Picozzi trans., Centro Editoriale Valtortiano vol. 2, 1987).

101. *Palsgraf*, 162 N.E. at 99.

102. John Noonan, *The Passengers of Palsgraf*, in *PERSONS AND MASKS OF THE LAW* 111, 111 (Farrar Straus & Giroux 1976).

103. *Palsgraf*, 162 N.E. at 99.

104. *Id.*

package's owner had dropped the package on the tracks when he had tried to board a moving train and two Long Island Railroad guards had tried to secure him on the train before he fell off.¹⁰⁵

Had Mrs. Palsgraf not been injured, the two guards would have been heroes. Their quick response saved a man who might well have otherwise fallen onto the tracks and been seriously injured. It could not then have been the behavior of the guards that set in motion the *Palsgraf* litigation. Rather, it was the fruit of that behavior, the injury to Mrs. Palsgraf that made their behavior a cause for legal question.

It took the New York judiciary four years, three proceedings, five opinions, thirteen judges, and one jury to decide that the two guards and their employer had not committed a tort to Mrs. Palsgraf.¹⁰⁶ In fact, the jury, seven of the judges, and two of the proceedings concluded that the guards had committed a tort, and their conduct only turned out to be non-tortious because the one proceeding in which the guards and the Railroad won was the proceeding before New York's court of last resort.¹⁰⁷

On the other hand, had the two guards submitted the incident to Christ, they would have been spared all of this time, energy, and uncertainty. Christ would have forgiven them decisively the same night for the injury they had caused to Mrs. Palsgraf, albeit in a "novel or extraordinary" way,¹⁰⁸ and praised them for their attempt, flawed though it turned out to be, to do good.¹⁰⁹ Such is the way of Christ,¹¹⁰ He whose love seeks not to condemn but to save.¹¹¹

James Bryan Smith described the late Christian song-writer Rich Mullins as "a man who stood among the ruins — the ruins created by his own faults and failings" and "pointed to heaven, to the God who bundles our brokenness and heals our wounds."¹¹² That is all to which God calls any of us. He does not ask that we leave behind us great cities but that our steps point to Him. And when we fall, unlike the tort system, He does not

105. *Id.*

106. Noonan, *supra* note 102, at 130-34.

107. *Id.*

108. *Palsgraf*, 162 N.E. at 99.

109. Lee, *supra* note 64, at 398 n.170 (quoting Thomas Merton praying to God, "the fact that I think that I am following your will does not mean that I am actually doing so. But I believe this: I believe that the desire to please you does in fact please you.").

110. Certainly, Christ would have expected the Railroad and the guards to help Mrs. Palsgraf but not because their behavior had caused her injury. He would have expected them to help her because He had called them to be her neighbor. *See supra* text accompanying notes 31-38.

111. *See supra* text accompanying notes 9-13.

112. JAMES BRYAN SMITH, RICH MULLINS: AN ARROW POINTING TO HEAVEN 3 (Broadman & Holman 2000).

search our behavior for a reason to hold us liable. Instead, He gladly bends down to take our hand and help us up.¹¹³

Because Christ is so merciful, because he forgives and redeems and looks to the direction of our steps rather than the fruits of our labors, love becomes not so much a yardstick by which to measure us but a process in which Christ helps us grow. Perhaps this is why Mother Teresa taught so much on how one must begin and begin again and so little on how much one could accomplish. She told us that love begins in the home.¹¹⁴ She told us that "[s]miling is the beginning of love And once we begin to love one another, the desire to do something more naturally follows."¹¹⁵ And most profoundly, she said, "[s]o you begin . . . I begin. I picked up one person — maybe if I didn't pick up that one person I wouldn't have picked up 42,000."¹¹⁶

Christ's burden is light, relative to the tort system, because it frees us from the fruits of our labors and allows love to grow in our hearts. As we stand among the ruins that our lives inevitably generate, we need not explain to God that we acted reasonably. Instead, we can acknowledge and apologize for the damage, trusting that He who created everything from nothing¹¹⁷ will help us pick up the pieces if we will only invite Him.

If from the perspective described so far, Christ's call to love is completely different from the Hand test, from another perspective one could go even further and say that negligence law is the mirror-image, in fact the opposite, of what God has done through Christ. From this latter perspective, one recognizes tort law as an attempt to take flesh, the lives of real people, and reduce it to rules, equations, and ultimately words.¹¹⁸ In Christ, meanwhile, God has taken the perfect rules,¹¹⁹ the perfect Word, and made it flesh.¹²⁰

Having seen men take Divine truths and obscure them with human precepts,¹²¹ God chose to perfect the law in a living Son, who would show men in unmistakable fashion what God made us to be. The Catholic Church has passed down from generation to generation that Word made

113. MARIE BAUDOUIN-CROIX, LÉONIE MARTIN: A DIFFICULT LIFE 76 (Mary Frances Mooney, trans., 1993) (1989) (letter from Pauline Martin to her sister Léonie encouraging her with a poem by their Sister Saint Thérèse).

114. TERESA, *supra* note 81, at 84.

115. *Id.* at 86.

116. TERESA, *supra* note 99, at 79.

117. *Genesis* 1:1-2:4.

118. *See generally* Noonan, *supra* note 102, at 111-51.

119. Rabbi Lawrence A. Hoffman, *Response to Joseph Allegretti: The Relevance of Religion to a Lawyer's Work*, 66 FORDHAM L. REV. 1157, 1162 (1998) ("The giving of the law is God's most loving act, celebrated with a daily blessing 'Blessed art Thou who loves your people Israel.'").

120. *John* 1:14.

121. *Matthew* 15:8-9.

flesh for almost 2,000 years. It has done so in teachings, prayers, meditations, and encyclicals, but ultimately it is in the lives of the saints of each generation that the message of God through Christ is most perfectly passed. No human word can communicate Christ as clearly or as loudly as the life of a Francis or Thérèse or Mother Teresa. Perhaps that is why Mother Teresa instructed, "[w]e are supposed to preach without preaching, not by words, but by our example, by our actions."¹²²

For all the differences that have been expressed here between the tort system and Christ, this one denies both explanation and repair: the tort system believes that all the passions and chaos of humanity can be transformed into neat statements of "clarity, symmetry, [and] simplicity,"¹²³ but God believes that man cannot comprehend the truths that really matter in words alone; God believes that words of life must be made flesh.¹²⁴

II. THE TORT SYSTEM: A TABLE ON WHICH TO PURSUE SALVATION

From all this, we can see that the tort system does not pursue justice as Christ would. As noted earlier, however, the tort system might still be usable as a tool for salvation. In fact the lives of many committed Christian lawyers, clients, co-workers, and even adversaries would argue that secular as the tort system is, it still could be used by Christ.¹²⁵

The life of Jesus may help us see this. If one had gone to Jesus' carpentry shop 2,000 years ago to buy a table, she would have gotten a table, and the fact that Jesus was an incredibly holy person would not have changed that. But all the while that person was in Jesus' shop, Jesus would have been trying, as He did with the woman at the well,¹²⁶ to save her soul.

If one goes to the shop of an American tort lawyer today, she is going to get tort law, and the fact that her lawyer may be an incredibly holy person is not going to change that. She is, as we have discussed here, not going to get justice; she is not going to get redemption; she is not going to get healing or forgiveness. The laws of the tort system and the nature of God are just too different for her to get any of those things. But she will get tort law, she will have the opportunity to see if the world is willing to play by its own rules, and there is no more reason that she should not have that, if that is what she wants, than there is reason she should not have a table. What is more, if her lawyer is an incredibly holy person, maybe he will invite her to more even while he is getting her her *table*.

122. TERESA, *supra* note 99, at 72.

123. Noonan, *supra* note 102, at 150.

124. *John* 1:14.

125. Lee, *supra* note 26, at 81-135. Saint Thomas More also argued in this context that "what you cannot turn to good, you . . . make as little bad as you can." THOMAS MORE, *UTOPIA* 36 (Peter K. Marshall trans., George M. Logan & Robert M. Adams eds., 1973) (1965).

126. *John* 4:4-42.

One might argue, as Paul did, that lawsuits being what they are, one's eternal salvation is better guaranteed by putting up with injustice than by bringing suit.¹²⁷ After all, the world is a confusing place and one's pursuit of justice may end in her inflicting injustice on her brother.¹²⁸ Yet, just as pursuing litigation may lead to ungodly results so may getting another table, and no one has suggested we not have carpenters. After all, is it not ungodly to have ten tables upon which our food might rest when our brother has no food; yet, how many tables do we have in our homes, and how many brothers are left unfed?

This is not to say Paul's warning should not be respected. It is, in fact, a warning not only worth respecting but frequently worth heeding. This is to say only that we should not foreclose the possibility that God chooses to use the tort system to reach some people whose attention can be found there. In this light, we must recognize that we need wise people in the tort system not so much to guarantee that we will win but to guarantee that we do not become nor remain lost.¹²⁹

Christ did not give people God because He gave them a table, but He did give people God when He gave them a table. So too, if anyone enters the tort system to dispense or receive God's justice through that system, that person will be disappointed. The tort system can give someone tort law, but it cannot deliver God's justice. This is true both because the tort system lacks God's saving focus, His wisdom, and His call to love, and because the tort system believes it can reduce Divine truth to human concepts, excuses, and words.

If one enters the tort system, however, to be God's witness to all she meets, whether they be lawyer, client, judge, adversary, or co-worker; if she seeks to give flesh to God's love, justness, and mercy, to His insatiable desire to heal, forgive and redeem; if she hungers to be His "source of light and love and support in the midst of a growing darkness;"¹³⁰ then she may well find herself not simply a table but a useful tool in the Carpenter's hand. He may use her to sue because He longs to use her to save.

CONCLUSION

Even though the tort system does not pursue justice as Christ does, Christ can still use the tort system, and those who work within it, as a tool in His quest for salvation. The tort system departs from Christ's justice in its insistence on causation and action for liability, in its narrow view of relationships and its pursuit of reasonableness over love, and in its amenability to excuses and self-justification as an alternative to mercy.

127. *Corinthians* 6:7-10.

128. *Id.*

129. See generally Randy Lee, *Lawyers and the Uncommon Good: Navigating and Transcending the Gray*, 40 S. TEX. L. REV. 207 (1999).

130. Ammar, *supra* note 24, at 1.

Most of all, however, the tort system departs from Christ's justice because it deceives itself into believing that words can capture the essence of life.

Despite these limitations, God can use people who work in the tort system in His plan for salvation even though salvation is not what the tort system is designed to provide. This is true, however, only to the degree that people in the tort system seek to be God's tools for salvation within that system. To the extent that they seek to be tools of earthly power, violence, or condemnation, they will not be tools of God.

When would Jesus sue? The Gospels do not answer this question with certainty. There is, of course, no record of Jesus ever bringing a legal action. On the other hand, Jesus was known to reprimand,¹³¹ to give tangible expression to righteous anger,¹³² and to speak of the reality of litigation.¹³³ But in doing so, Christ's exclusive unrelenting, and uncompromising purpose was always to save all concerned.¹³⁴ For those of us who have felt called to serve in the realm of tort law, we would do well to heed His direction to "[g]o and do likewise."¹³⁵

131. See, e.g., *Luke* 11:46 ("Woe unto you also ye lawyers! for ye lade men with burdens grievous to be borne, and ye yourselves touch not the burdens with one of your fingers.").

132. *John* 2:13-22 (first cleansing of the temple); *Matthew* 21:12-17 (second cleansing of the temple).

133. See *supra* text accompanying notes 2-3.

134. See *supra* text accompanying notes 9-15.

135. *Luke* 10:37.