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THE PRICE OF PUBLIC DISENGAGEMENT

AMOS N. GUIORA*

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I. INTRODUCTION

I come to this essay from different perspectives but with one primary theme: I am engaged presently in a major research and writing project addressing the role of the bystander in the Holocaust, primarily focusing on the “death marches” in late 1944-Spring 1945 and lynching of African-Americans in the 1930s and 1940s. Regarding the Holocaust, the project will examine, in particular:

In late 1944, the tide of war had turned and Allied forces moved across Europe in a series of offensives on Germany. The Nazis decided to evacuate outlying concentration camps. In the final months of the war, SS guards forced inmates on death marches in an attempt to prevent the Allied liberation of large numbers of prisoners.

Those death marches passed directly through many towns, and many died literally at the front doors of townspeople. Many died from starvation, disease, exhaustion, and cold, and thousands more were shot along the way. It is estimated that 250,000 concentration camp prisoners were murdered or died in the forced death marches that were conducted during the last 10 months of World War II.¹

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1. *The Holocaust*, UNITED STATES HISTORY, <http://www.u-s-history.com/pages/h1677.html> (last visited Apr. 18, 2014).

What is the connection between the two? The Bystander project focuses on complicity in two distinct historical paradigms, while this essay examines the danger to society posed by those who disengage from the public domain in the face of extremism. The similarities between the two projects, bystanders and disengagement, have a common philosophical underpinning: a stepping back from constructive contribution to mainstream society and facilitating, to varying degrees, harm to otherwise innocent individuals. The bystander clearly saw and chose to ignore; the disengaged clearly removed himself or saw harm yet sought an alternative means to express his disenchantment from mainstream society. In both instances, the potential for substantial harm clearly exists. In this essay, we will focus on those that ignored clear danger signs and did so knowingly. As discussed below, I am one of them.

These lines are penned as Tahrir Square is, once again, the site of clashes between government forces and demonstrators; unlike those who, in 2011, sought to bring down President Hosni Mubarak, those taking to the street are supporters of deposed President Mohamed Morsi. Though too soon to answer the Egypt “to where” question, the demonstrations reflect deep unrest amongst Egyptians regarding the nation’s future. While much uncertainty exists regarding the true impact of the Arab Spring and its results, undeniable is that the Arab street spoke loudly and resoundingly against decades-old dictatorial regimes.

From Tunis to Cairo, from Tripoli to Damascus, entrenched leaders were overthrown, killed or severely threatened. The cost is high: approximately 100,000 Syrians have been killed in the on-going and brutal civil war.² Though many commentators were quick to comment, if not wax poetically, regarding burgeoning democracy in the Middle East, the final outcome of the Arab Spring remains to be seen. Nevertheless, what cannot be ignored is the clear desire for a government distinct from oppressive and brutal regimes. Loud and courageous voices have made that clear.

These voices, then, reflect public engagement. That is in direct contrast to public disengagement reflecting apathy and disinterest endangering individuals in particular, society in general. Re-articulated: in an age characterized by religious and secular extremism that challenges, if not undermines, democracy disengagement, is not “cost-free.” A bit of an exaggeration? Perhaps, perhaps not. The danger is assuming extremism does not exist and

2. See *Syria Death Toll Tops 100,000, Activist Group Says*, CBS NEWS (June 26, 2013, 9:35 AM), <http://www.cbsnews.com/news/syria-death-toll-tops-100000-activist-group-says>.

that risks to society and individuals are easily ignorable. That said, there is need to address this issue with great care and caution, for the danger of over-estimating threats is similarly dangerous.

II. WHAT WE SHALL DISCUSS: RABIN, LEIPZIG, AND KING

This essay will focus on three distinct historical paradigms: the U.S. Civil Rights Movement, the end of the Cold War, and the assassination of Israeli Prime Minister Rabin. The first two represent extraordinary public engagement by those subjected to unremitting hostility, violence, and hatred; the latter depicts the price when mainstream society willingly, knowingly, and deliberately turns a “blind eye” to a danger visible to all, should they have only chosen to look.

In other words, what is referred to in Israel as the “sane majority” (ha’rov ha’sha’fo’i) chose to ignore the vitriolic hatred spewed by right-wing rabbis. In the name of full disclosure, I belong to that category and take no pride in assigning myself that designation. Whether we convinced ourselves that the incitement against Rabin will never be *actually* acted upon is a matter of historical conjecture; perhaps we *assumed* that the security services have the matter fully under control.

Perhaps we convinced ourselves that an Israeli Jew would never assassinate an Israeli Prime Minister. Most damning of all, we—philosophically and practically—left Prime Minister Rabin unprotected. While he paid the ultimate price for our disengagement, we also paid a price, socially, culturally, politically, and most importantly, the Oslo Peace Process came to a grinding halt in the years following the assassination.³ That the security services failed to protect Rabin is clear; that the intelligence community failed to recognize the danger posed by right wing religious extremists is unforgivable. The forced resignation of the then Head of the Israel Security Services (SHABAK), Carmi Gillon, in the wake of the Shamgar Commission was a “dollar short, day late.” Gillon’s remarkable and stunning incompetence⁴ is a matter of historical record;⁵ what is similarly noteworthy is our individual and

3. As these lines are written, Israeli and Palestinian negotiators are meeting in Washington, D.C.

4. Gillon was appointed by Rabin at the recommendation of out-going Israel Security Agency Head, Ya’akov Peri, who favored Gillon over Gideon Ezra, considered to be “rough around the edges” and therefore unsuited for the position by Peri.

5. See THE GATEKEEPERS (Mac Guff Ligne 2012).

collective failure to demand that the security services and legal and judicial establishment act preemptively and proactively to protect Rabin and punish the inciters.

Historical analogy can enhance discussion; Winston Churchill's "Munich Speech" captures appeasement brilliantly:

Many people, no doubt, honestly believe that they are only giving away the interests of Czechoslovakia, whereas I fear we shall find that we have deeply compromised, and perhaps fatally endangered, the safety and even the independence of Great Britain and France. This is not merely a question of giving up the German colonies, as I am sure we shall be asked to do. Nor is it a question only of losing influence in Europe. It goes far deeper than that. You have to consider the character of the Nazi movement and the rule which it implies.

The Prime Minister desires to see cordial relations between this country and Germany. There is no difficulty at all in having cordial relations between the peoples. Our hearts go out to them. But they have no power. But never will you have friendship with the present German Government. You must have diplomatic and correct relations, but there can never be friendship between the British democracy and the Nazi power, that power which spurns Christian ethics, which cheers its onward course by a barbarous paganism, which vaunts the spirit of aggression and conquest, which derives strength and perverted pleasure from persecution, and uses, as we have seen, with pitiless brutality the threat of murderous force. That power cannot ever be the trusted friend of the British democracy.

What I find unendurable is the sense of our country falling into the power, into the orbit and influence of Nazi Germany, and of our existence becoming dependent upon their good will or pleasure. It is to prevent that that I have tried my best to urge the maintenance of every bulwark of defence—first, the timely creation of an Air Force superior to anything within striking distance of our shores; secondly, the gathering together of the collective strength of many nations; and thirdly, the making of alliances and military conventions, all within the Covenant, in order to gather together forces at any rate to restrain the onward movement of this power. It has all been in vain. Every

position has been successively undermined and abandoned on specious and plausible excuses.⁶

Churchill's warnings are particularly disturbing because it reflects an unwillingness to learn from history. Public protest, the essence of engagement, is both legitimate and important; the question is *how* opinions, concerns, and desires are expressed. Five hundred thousand East Germans who demonstrated peacefully on November 4, 1989 calling for "fundamental civil rights such as freedom of opinion, freedom of the press, and freedom of assembly, as well as free elections"⁷ represented the essence of public engagement, particularly given the nature of the regime they were protesting against. However, that extraordinary demonstration was not born in one evening, for it reflected a continuum that had previously begun.

Whether there is a specific date that can be identified is a matter of historians to debate; what is clear is that the weekly gatherings in Leipzig on Monday evenings in the Saint Nicholas Church were instrumental in the burgeoning call for rights, including the freedom to travel and elect a democratic government.⁸ The leaderless movement, which expressed the will of the people, took on a life of its own, resulting in the fall of the Berlin Wall and reunification of East and West Germany. While reunification is not without its challenges, the extraordinary rise of ordinary East Germans directly contributed to the Cold War's end. Because no one individual can claim credit for this remarkable development, the fall of the Berlin Wall must be viewed as public engagement in its most extraordinary and powerful manifestation.

While the Rev. Dr. Martin Luther King, Jr. was the readily identifiable leader of the U.S. Civil Rights Movement, the level of public engagement amongst African-Americans in the Deep South was nothing short of remarkable. Facing brutal law enforcement, a hostile public, and indifferent public officials, Dr. King and his followers directly contributed to a stunning paradigm shift in the

6. Winston Churchill, *The Munich Agreement*, Address at the House of Commons (Oct. 05, 1938), available at <http://www.winstonchurchill.org/learn/speeches/speeches-of-winston-churchill/101-the-munich-agreement> (last visited Apr. 18, 2014).

7. *Mass Demonstration in East Berlin*, GERMAN HISTORY IN DOCUMENTS AND IMAGES, http://www.germanhistorydocs.ghi-dc.org/sub_image.cfm?image_id=3048 (last visited Apr. 18, 2014).

8. Francine S. Kiefer, *Why People in Leipzig Protest*, THE CHRISTIAN SCIENCE MONITOR, Nov. 27, 1989, available at [http://www.csmonitor.com/1989/1127/odres__1.html/\(page\)/2](http://www.csmonitor.com/1989/1127/odres__1.html/(page)/2) (last visited Apr. 18 2014); ROLAND BLEIKER, *NONVIOLENT STRUGGLE AND THE REVOLUTION IN EAST GERMANY*, 14-15 (1993), available at <http://www.aeinstein.org/wp-content/uploads/2013/10/NonviolentStruggleandtheRevolutioninEastGermany-Eng.pdf> (last visited Apr. 18, 2014).

U.S. The willingness of African-Americans to risk injury to limb and loss of life under the most painful of circumstances reflects remarkable tenacity and commitment to undo decades of institutionalized discrimination and segregation. Dr. King's "Letter from a Birmingham Jail" brilliantly captures the resolve, struggle, and pain; to fully understand and appreciate its power and historical importance, it is essential to quote a large excerpt:

We know through painful experience that freedom is never voluntarily given by the oppressor; it must be demanded by the oppressed. Frankly, I have yet to engage in a direct action campaign that was "well timed" in the view of those who have not suffered unduly from the disease of segregation. For years now I have heard the word "Wait!" It rings in the ear of every Negro with piercing familiarity. This "Wait" has almost always meant "Never." We must come to see, with one of our distinguished jurists, that "justice too long delayed is justice denied."

We have waited for more than 340 years for our constitutional and God given rights. The nations of Asia and Africa are moving with jetlike speed toward gaining political independence, but we still creep at horse and buggy pace toward gaining a cup of coffee at a lunch counter. Perhaps it is easy for those who have never felt the stinging darts of segregation to say, "Wait." But when you have seen vicious mobs lynch your mothers and fathers at will and drown your sisters and brothers at whim; when you have seen hate filled policemen curse, kick and even kill your black brothers and sisters; when you see the vast majority of your twenty million Negro brothers smothering in an airtight cage of poverty in the midst of an affluent society; when you suddenly find your tongue twisted and your speech stammering as you seek to explain to your six year old daughter why she can't go to the public amusement park that has just been advertised on television, and see tears welling up in her eyes when she is told that Funtown is closed to colored children, and see ominous clouds of inferiority beginning to form in her little mental sky, and see her beginning to distort her personality by developing an unconscious bitterness toward white people; when you have to concoct an answer for a five year old son who is asking: "Daddy, why do white people treat colored people so mean?"; when you take a cross county drive and find it necessary to sleep night after night in the uncomfortable

corners of your automobile because no motel will accept you; when you are humiliated day in and day out by nagging signs reading "white" and "colored"; when your first name becomes "nigger," your middle name becomes "boy" (however old you are) and your last name becomes "John," and your wife and mother are never given the respected title "Mrs."; when you are harried by day and haunted by night by the fact that you are a Negro, living constantly at tiptoe stance, never quite knowing what to expect next, and are plagued with inner fears and outer resentments; when you are forever fighting a degenerating sense of "nobodiness"—then you will understand why we find it difficult to wait. There comes a time when the cup of endurance runs over, and men are no longer willing to be plunged into the abyss of despair. I hope, sirs, you can understand our legitimate and unavoidable impatience. You express a great deal of anxiety over our willingness to break laws. This is certainly a legitimate concern. Since we so diligently urge people to obey the Supreme Court's decision of 1954 outlawing segregation in the public schools, at first glance it may seem rather paradoxical for us consciously to break laws. One may well ask: "How can you advocate breaking some laws and obeying others?" The answer lies in the fact that there are two types of laws: just and unjust. I would be the first to advocate obeying just laws. One has not only a legal but a moral responsibility to obey just laws. Conversely, one has a moral responsibility to disobey unjust laws. I would agree with St. Augustine that "an unjust law is no law at all."

Now, what is the difference between the two? How does one determine whether a law is just or unjust? A just law is a man made code that squares with the moral law or the law of God. An unjust law is a code that is out of harmony with the moral law. To put it in the terms of St. Thomas Aquinas: An unjust law is a human law that is not rooted in eternal law and natural law. Any law that uplifts human personality is just. Any law that degrades human personality is unjust. All segregation statutes are unjust because segregation distorts the soul and damages the personality. It gives the segregator a false sense of superiority and the segregated a false sense of inferiority. Segregation, to use the terminology of the Jewish philosopher Martin Buber, substitutes an "I it" relationship for an "I thou" relationship and ends up relegating persons to the status of things.

Hence segregation is not only politically, economically and sociologically unsound, it is morally wrong and sinful. Paul Tillich has said that sin is separation. Is not segregation an existential expression of man's tragic separation, his awful estrangement, his terrible sinfulness? Thus it is that I can urge men to obey the 1954 decision of the Supreme Court, for it is morally right; and I can urge them to disobey segregation ordinances, for they are morally wrong.⁹

Dr. King's words are majestic, his thoughts compelling, and his message to White America clear as his phrases: no more, we have had enough. Similarly, the unspoken message to African-Americans is of equal importance and strength: we must continue our struggle. While the Letter was directed to America's establishment, explaining the basis for the Civil Rights Movement and its resolve to gain the rights guaranteed by the Founding Fathers, the text speaks powerfully to those who will bear the burden of this effort. King's Letter is a call to engagement, regardless of the price which, as he made clear, would continue to be exacting, painfully so. Demonstrator and non-demonstrator felt that pain; the White southern establishment—politicians, Billy-club wielding law enforcement, and genteel society—perceived African-Americans as second-class citizens, at best. King's message was clear: we cannot and must not accept our collective and individual fate any longer.

III. U.S. CIVIL RIGHTS MOVEMENT: ENGAGEMENT NOTWITHSTANDING BRUTALITY

The U.S. Civil Rights Movement is of particular importance to the disengagement discussion: societal and institutionalized racism against African-Americans arguably left civil rights leaders no alternative but to organize, demonstrate, and protest. The extremism which they confronted on a daily basis, based on deep-seated racism enabling systemic, callous, institutionalized disregard of their constitutionally guaranteed rights, was a primary motivation in King's efforts to seek justice and redress for African-Americans.

9. Martin Luther King, Jr., *Letter from Birmingham Jail*, (Apr. 16, 1963) in THE NORTON ANTHOLOGY OF AFRICAN AMERICAN LITERATURE 1854-66 (Henry Louis Gates, Jr. & Nellie Y. McKay eds., 1996), available at http://www.africa.upenn.edu/Articles_Gen/Letter_Birmingham.html (last visited Apr. 18, 2014).

While King was a profound believer in non-violence, he was incarcerated on a number of occasions by local law enforcement and convicted for his actions.¹⁰ All of his convictions were for non-violent crimes such as preventing the operation of a business without “just or legal cause,” trespassing, loitering, and obstructing the sidewalk.¹¹ These stemmed from organizing and participating in sit-ins, boycotts, marches, and simply standing in a public place.¹² King’s political philosophy was distinct from the Black Panthers who were, in response to the racism that gave birth to the Civil Rights Movement, violent extremists in their own right. While King largely, but not exclusively, sought change legally, the Black Panthers conduct was overtly violent, illegal, and openly disdainful of government, White society, and King. Broadly speaking, albeit with caveats and cautionary flags raised, King’s Civil Rights Movement was inclusionary whereas the Black Panthers excluded Whites and moderate Blacks alike.¹³

The King-Black Panthers discussion is important not only with respect to the Civil Rights Movement, but also in the context of the larger extremist discussion, for it requires addressing the question “how to respond to extremism.” Re-articulated: should extremism be fought with extremism or are moderate measures more effective and ultimately more successful? While local circumstances and conditions significantly impact the course chosen, larger principles must not be discounted. If those whose rights are violated reach the conclusion that ‘working within the system’ and calculated/deliberate tolerance of intolerance is no longer effective, then more violent measures may be understandably adopted.

The larger question is: what is the goal of the relevant group? If the group is dedicated to long-term change, then moderate measures, predicated on compromise, are legitimate and perhaps effective. However, if the group’s focus is on immediate impact rather than far-reaching strategic considerations, then moderate action is, largely, irrelevant. Determining which tact to adopt is essential; after all, seeking to affect change is inherent to democracy and the democratic process. If society/law enforcement over-reacts to extremism—real or perceived—then not only is

10. See Mitchell Brown, *Timeline of Events in Martin Luther King, Jr.’s Life*, LSU LIBR., <http://www.lib.lsu.edu/hum/mlk/srs216.html> (last visited Apr. 18, 2014) (listing dates and locations where Martin Luther King, Jr. was arrested by local law enforcement).

11. See *Dr. Martin Luther King, Jr. Chronography*, U.HAW., <http://www.hawaii.edu/mauispeech/html/mlk.html> (last visited Apr. 18, 2014) (listing dates, arrests, and convictions of Martin Luther King, Jr.).

12. *Id.*

13. Pictures from Civil Rights marches consistently show significant white participation; that is in direct contradiction to the Black Panthers.

government legitimacy in question, but the ranks of the extremists may, inadvertently from the perspective of government, increase.

How society reacts to the moderate-extreme paradigm is of the utmost importance; however, as the Civil Rights Movement demonstrated, even moderate groups (though engaged in illegal activity as defined by the criminal code) may be subjected to extremist responses by society and law enforcement alike. Government's extreme response to real or perceived extremism is, generally, justified as necessary to protect society; in accordance with the social contract, which ironically, is violated when government denies otherwise guaranteed rights. In addressing rights guaranteed either by a national constitution or specific laws, it is necessary to inquire whose rights are at stake and what protections can be demanded.

History is important: the Civil Rights Movement to which Dr. King dedicated his life challenged basic norms and mores of American society in the 1950's and 1960's; in innumerable ways, it changed America. Obviously, for millions of Americans, that was extraordinarily unsettling, if not threatening; one only has to listen to the speeches of George Wallace and Lester Maddox and to see pictures from Birmingham, Alabama, to viscerally feel the pure hate and unadulterated racism that defined how much of White America (in both the North and South) reacted to Dr. King's message. Governor Wallace's inauguration speech in 1963 is a striking and clear example:

Today I have stood, where once Jefferson Davis stood, and took an oath to my people. It is very appropriate then that from this Cradle of the Confederacy, this very Heart of the Great Anglo-Saxon Southland, that today we sound the drum for freedom as have our generations of forebears before us done, time and time again through history. Let us rise to the call of freedom-loving blood that is in us and send our answer to the tyranny that clanks its chains upon the South. In the name of the greatest people that have ever trod this earth, I draw the line in the dust and toss the gauntlet before the feet of tyranny . . . and I say . . . segregation today . . . segregation tomorrow . . . segregation forever.

The Washington, D.C. school riot report is disgusting and revealing. We will not sacrifice our children to any such type school system—and you can write that down. The federal troops in Mississippi could be better used guarding the safety of the citizens of Washington, D.C., where it is

even unsafe to walk or go to a ballgame—and that is the nation's capital. I was safer in a B-29 bomber over Japan during the war in an air raid, than the people of Washington are walking to the White House neighborhood. A closer example is Atlanta. The city officials fawn for political reasons over school integration and THEN build barricades to stop residential integration—what hypocrisy!

Let us send this message back to Washington by our representatives who are with us today—that from this day we are standing up, and the heel of tyranny does not fit the neck of an upright man . . . that we intend to take the offensive and carry our fight for freedom across the nation, wielding the balance of power we know we possess in the Southland that WE, not the insipid bloc of voters of some sections . . . will determine in the next election who shall sit in the White House of these United States . . . That from this day, from this hour . . . from this minute . . . we give the word of a race of honor that we will tolerate their boot in our face no longer and let those certain judges put that in their opium pipes of power and smoke it for what it is worth.

Hear me, Southerners! You sons and daughters who have moved north and west throughout this nation we call on you from your native soil to join with us in national support and vote . . . and we know . . . wherever you are . . . away from the hearths of the Southland . . . that you will respond, for though you may live in the farthest reaches of this vast country your heart has never left Dixieland.

And you native sons and daughters of old New England's rock-ribbed patriotism . . . and you sturdy natives of the great Mid-West . . . and you descendants of the far West flaming spirit of pioneer freedom . . . we invite you to come and be with us . . . for you are of the Southern spirit . . . and the Southern philosophy . . . you are Southerners too and brothers with us in our fight.

What I have said about segregation goes double this day . . . and what I have said to or about some federal judges goes TRIPLE this day.¹⁴

14. Governor George Wallace, Inaugural Address (Jan. 14, 1963), available at http://web.utk.edu/~mfitzge1/docs/374/wallace_seg63.pdf (last visited Apr. 18, 2014)(use of ellipses in original).

IV. RABIN'S ASSASSINATION: IN OTHER WORDS,
THE PRICE OF DISENGAGEMENT

While I do not ascribe significance to the relationship between similar events and the date that they occurred, the date November 4 is of particular significance for the subject at hand. In 1989, 500,000 East Berliners said "enough," and in 1995 a religious right-wing Jewish extremist assassinated Israeli Prime Minister Rabin after months of hate-filled incitement against Rabin by rabbis.¹⁵ Moments before Yigal Amir assassinated Rabin, a rally attended by 100,000 Israelis had ended. Those attending came both to express their support for the Oslo Peace Process and to denounce the virulent hatred against Rabin. Ironically, the rally ended with the crowd, and Rabin, singing "Song of Peace."¹⁶

Those Israelis who attended, largely but not exclusively secular Jews, were sending three powerful messages: support for the peace process, outrage at the incitement, and solidarity with Rabin. The last two points are of particular importance regarding the engagement/disengagement discussion: it was the first time, in the face of relentless and unmitigated incitement, that the so-called "silent majority" left the comfort of their homes and individually and collectively said "enough."

However, the "silent majority"—of which I am a part—stayed silent for an extended period of time before the assassination thereby enabling the rabbis and their supporters to act with impunity. In other words, we individually and collectively ignored the impossible to ignore incitement; simply put, we turned a blind eye. Rabin had previously warned that the Hebrew expression "it will be okay" (*ye'he'e be'se'der*) are the most dangerous words in Hebrew because they enable ignoring clear danger signals.¹⁷ Needless to say, he was, tragically, correct.

In the aftermath of the assassination many Israelis asked themselves: "What happened, where was I?" "Where we were" was going about our daily lives, choosing not to see what we knew we should not ignore, and assuming that, while the hatred was vile and consistent, it was only "talk." We miserably failed to understand the power of rabbinical incitement and thoroughly underestimated the extent to which the religious extremist right-wing was deeply opposed to the Oslo Peace Process. The

15. Yoram Peri, *THE ASSASSINATION OF YITZHAK RABIN* (Yoram Peri ed., 2000).

16. *Id.*

17. Yitzhak Rabin, Prime Minister, Israel, Remarks to the IDF Staff and Command School (Aug. 1992).

Rabin assassination brought to light the existence of what Ami Ayalon termed “deep schisms in Israeli society.”¹⁸

Rabin’s assassination, in retrospect, should have come as no surprise. What was shocking was the utter failure of state agents to take seriously the unmitigated incitement and the incompetence of the State Attorney General to prosecute those responsible for inciting Rabin’s assassin. I lived in Israel during those terrible days; like many others, I was aghast at the unrelenting hatred but did not entertain the thought that a Jew would kill the Prime Minister. Perhaps like many others, I was skeptical that the incitement would actually lead to violence thereby underestimating rabbinical influence. Whether that reflects skepticism regarding the sway of religion or ignorance regarding the relationship between rabbi and parishioner is an open question; regardless of the answer, the silent majority—to which I belong—abandoned Rabin to an opponent whom we did not understand in a game played without rules and morality. That is the price of disengagement.

V. DISENGAGEMENT CAUSES HARM: THE LARGER DISCUSSION

The ignoring of clear danger signs manifests violation of the social contract; there is little doubt that extremism benefits from this willful blindness, which, depending on the circumstance is either a criminal act or an extraordinary moral failure. In either paradigm—criminal or moral—the results are arguably similar: harm is caused to the vulnerable because mainstream society and those in official positions failed to sufficiently protect those most in need of that very protection. It seems, then, that there is something about extremist behavior that fosters reticence on the part of larger society; that very weakness emboldens extremists who are committed to a worldview intolerant of compromise that brooks no dissent.

That reality defines an internal society which poses extraordinary dangers to those deemed apostates or insufficiently devout; in other words, those declared by the group’s leaders to not be “true believers” are at risk. As history demonstrates, vulnerable members of an internal society are subject to unrelenting abuse with little hope of external mitigation of their distress. In other

18. THE GATEKEEPERS, *supra* note 5.

words, the price of tolerating intolerance is neither abstract nor ephemeral; it is very real with tragic consequences.

Society's turning a blind eye to extremism is a pattern that tragically repeats itself. It is, in many ways, insignificant whether the deliberate ignoring of the threat posed by extremists is a crime or "only" a moral failure. In both cases, the victims of extremism are unprotected; whether Penn State officials in positions of power—who may have had the opportunity to ensure that child abuse desist and Sandusky be prosecuted—committed a crime (i.e. child endangerment) or failed morally (brand/institution protection rather than child protection) will be determined by prosecutors and courts. An investigative report written by former FBI director Louis Freeh finds Penn State officials guilty, not of simple negligence, but rather of willfulness in covering up Sandusky's abuses.¹⁹ Currently, the Penn State officials responsible for the cover up are awaiting trial.²⁰ What is clear, similar to the response of the Catholic Church to horrific and unceasing reports of child abuse by priests, is that Penn State officials had a deliberate policy intended to protect the institution rather than the victim. In both cases, Penn State and the Church, the damage to the institution would be extraordinary; in both cases, institution leaders made egregious errors reflecting willful blindness at its most unconscionable extreme.²¹

While neither Penn State nor the Catholic Church is the focus of this essay, each is instructive in examining dangers extremism poses to society; the failure to act in the face of a clear wrong largely defines society's response to extremist behavior. Perhaps, by analogy, it is akin to the schoolyard bully whose actions fellow students and authorities know, yet whose response time, traditionally, has been painfully delayed. Whether that hesitation, recently the subject of extensive media attention,²² will change is

19. FREEH SPORKIN & SULLIVAN, LLP, REPORT OF THE SPECIAL INVESTIGATIVE COUNSEL REGARDING THE ACTIONS OF THE PENNSYLVANIA STATE UNIVERSITY RELATED TO THE CHILD SEXUAL ABUSE COMMITTED BY GERALD A. SANDUSKY (2012), available at <http://progress.psu.edu/the-freeh-report> (last visited Apr. 18, 2014).

20. Tim Rohan, *Three Penn State Officials Are Ordered to Stand Trial*, N.Y. TIMES (July 30, 2013), <http://www.nytimes.com/2013/07/31/sports/ncaafotball/three-penn-state-officials-are-ordered-to-stand-trial.html>.

21. See *Roman Catholic Church Sex Abuse Cases*, N.Y. TIMES, http://topics.nytimes.com/top/reference/timestopics/organizations/r/roman_catholic_church_sex_abuse_cases/index.html; see also Erik Kain, *How Penn State and the Catholic Church Covered Up Sexual Abuse and What We Can Do to Stop It*, FORBES (Nov. 7, 2011, 2:19 PM), <http://www.forbes.com/sites/erikkain/2011/11/07/how-penn-state-and-the-catholic-church-covered-up-sexual-abuse-and-what-we-can-do-to-stop-it/>.

22. See Kirk Semple, *Army Charges 8 in Wake of Death of a Fellow G.I.*, N.Y. TIMES (Dec. 21, 2011), <http://www.nytimes.com/2011/12/22/us/8-charged-in-death-of-fellow-soldier-us-army-says.html>.

an open question; the historical pattern reflects a policy best described as “fear of confronting.” The extremist not only poses a danger to victims (specific or random) but also benefits from society’s reticence to confront a clear and present danger.

The idiom “there cannot be a policeman on every corner” brilliantly conveys the reality of living in a democracy. Protecting civilians is the primary responsibility of government, but protection is neither absolute nor guaranteed. It is not absolute because, literally and figuratively, there cannot be a policeman at every corner; not guaranteed because the freedoms of speech, religion, information and association are similarly protected. Freedoms cannot be considered in a vacuum; the question is what circumstances justify their limits and subject them to what criteria, standards and guidelines. The notion of limits is essential to balancing state power, ensuring that the unfettered executive is kept at bay. Achieving this critical goal poses great challenges, politically and philosophically alike.

In addressing this tension, the core assumption is that guaranteed rights must be protected; that is, after all, inherent to the social contracts between the individual and society and between the individual and the state. The question is whether threats to national security and public order justify minimizing free speech. In some ways, American history has demonstrated a ready willingness to answer in the affirmative. The costs, as repeatedly demonstrated, are significant with respect both to First Amendment principles and on a human, practical, individual basis.

Disregarding legitimate threats to national security is *also* dangerous. The dilemma, then, is determining the seriousness of the threat to public order and ascertaining whether limiting free speech will mitigate that threat and at what cost to individual liberty. The risk in finger pointing is extraordinary; there is always a danger in identifying the ‘other’ as posing a threat to society.

In many ways the “tolerating intolerance” paradigm espoused by Professor Martha Minow is directly “on point” with respect to the limits of free speech.²³ That is, do religious and secular extremists pose a sufficient enough threat to society that *their* freedom of speech protections need be re-defined? There is, clearly, danger in raising this question; it suggests deliberate identification of a specific group as worthy of special attention in the context of

23. See generally, Martha Minow, *Tolerance in an Age of Terror*, 16 S. CAL. INTERDISC. L.J. 453 (2007).

establishing a rights minimization paradigm. The risk in this proposal is significant; similarly, the possible risk to public safety and individuals alike in failing to recognize the possible harm posed by religious and secular extremists is also fraught with danger.

The most obvious harm extremism poses is physical injury to members of society; in that vein, it is the primary responsibility of the nation state to ensure physical safety of the populace, from internal and external threats alike. To dismiss the possibility that extremists have the capability, and under certain conditions the willingness, to cause harm is to undermine the social compact that Rousseau brilliantly outlined in *The Social Contract*.²⁴ After all, in exchange for entering into a social compact with the state, the individual expects protection and safety. That is, by willfully entering into an association with other individuals under the 'umbrella' provided by the state, the person rightfully demands protection and safety.²⁵ In addition, the individual agreeing to the social compact expects laws that reflect the majority will. Nevertheless, the individual has the right to oppose particular laws the majority has viewed favorably.²⁶

That is, after all, the essence of democracy; while the individual may oppose particular laws, he is guaranteed protection from the majority provided the laws do not minimize otherwise guaranteed individual rights or facilitate violence to person or property. The social compact, in establishing an association, articulates a paradigm whereby the individual sacrifices liberty for protection; that, however, does not mean the individual agrees to be subjected to violence and harm. After all, the motivation in forming an association and joining society is to be free from harm and danger. In examining the harm posed by extremism, the question is not only one of existential harm to society, but also of physical harm to individual members of society who are, potentially, at risk.

It is important to recall that "risk" may come both from society at large and from a particular group the individual belongs to. In many ways, the social contract theme is essential to the extremism discussion; the willingness of the individual to voluntarily join society is based on the understanding that loss of some freedom

24. See generally JEAN-JACQUES ROUSSEAU, *THE SOCIAL CONTRACT* (Ernest Rhys ed., G.D.H. Cole trans., J.M. Dent & Sons 1923) (1762), available at <http://www.archive.org/stream/therepublicofpla00rousouft#page/n3/mode/2up>.

25. *Id.*

26. It is important to note that Rousseau rejected the individual's right to resist a general will. See *id.* at 15, 23-33.

and liberty is voluntarily relinquished in exchange for protection and safety. In other words, the individual has made a “deal” with society whereby protection is proffered in exchange for minimization of personal rights.

Failure to protect the individual violates the contract; more importantly, it enhances the vulnerability of the individual by exposing him to harm from which he is unprotected. In the context of examining extremism one of the most important—and troubling—realities is that the nation state tolerates conduct that, as history has consistently demonstrated, harms individuals, whether randomly or specifically. The social contract model articulated by Rousseau sought to create a model whereby harm to individuals is minimized; yet, the pages of history are replete with examples where the contract has been violated by the nation state that turns a blind eye to extremism.²⁷ In that vein, the social contract is at the epicenter of that confluence, for it articulates state responsibility to the individual. When the nation state chooses not to confront extremism or extremists, the social contract has been violated.

The social contract is predicated on an understanding that neither national security nor individual rights are absolute and that respect for both is essential to a thriving civil, democratic society. After all, the voluntary joining of society necessarily implies rights minimization in exchange for protection. One of the great dilemmas from the perspective of the individual is what alternatives exist if the contract is violated; *prima facie*, three options seem viable: submissiveness; peaceful, civil disobedience;²⁸ and violent protest. Circumstances and conditions of particular environments are significant determinants in analyzing how an affected group or specific individual responds to societal tolerance of extremist behavior that directly impacts their security and safety.

When the social contract is violated the “at harm” individuals or groups are vulnerable; they are forced to either accept their fate or to engage in “self-help.” However, on innumerable occasions decision makers have failed to decisively act in the face of internal harm to an individual. The reasons for this failure are varied ranging from “political correctness” to unjustified deference to religion/race/ethnicity to ignorance regarding the influence of internal group leaders.

27. *Id.*; For historical examples, see anti-Semitism in Europe, institutionalized racism in the Deep South, and Japanese treatment of Korean sub slaves.

28. See generally PETER SINGER, *DEMOCRACY AND DISOBEDIENCE* (1973).

As an Israeli journalist ruefully commented, the failure of the Israeli media (including this journalist) to soberly assess *clear* danger posed by extremist right-wing rabbis inciting against former Prime Minister Rabin was based on a belief (secular) that religious-based incitement is not a sufficient motivator for action. In other words, to paraphrase the journalist, “no one really takes religious extremists seriously.” Needless to say, the media’s failure to sufficiently appreciate the power of religious extremist speech was a malady that permeated throughout Israeli society prior to Rabin’s assassination. It was only after Yigal Amir assassinated Rabin, acting in the spirit of unrestrained and unmitigated religious extremist incitement, that mainstream society asked “where were we?” The question, posed in anguish and deep remorse by many, was the wrong question; the correct query is ‘why did we consistently fail to underestimate the power of religious extremist speech?’ In many ways, the answer is arrogance; a secular arrogance that religious leaders must not be taken ‘seriously’ by their congregants who should understand that religious speech is just that, religious speech and is therefore inapplicable to modern society.

This arrogance born of inability to understand the power of religious extremist speech is not restricted to a powerful disconnect between religious extremists and secular members of society for it extends to secular extremist speech. That, too, is minimized by a mainstream society largely convinced that extremist speech represents mere “venting” by a disaffected few and does not pose a threat to society or individuals. As McCarthyism made clear, ignorance is not bliss, and the price to be paid for willfully disregarding extremist speech is high, indeed. The sheer numbers of careers ruined, lives destroyed, and irreversible harm caused to innumerable innocent victims highlight the dangers of speech “dismissed” by society as the ranting of a lone individual.²⁹

Three ingredients—powerful leader, concise message, and unifying symbols—facilitate “rallying” around a particular idea whose consequences, if unchecked, may destroy society. Message framing, verbal or symbolic, requires intimate knowledge of the audience and its core needs and beliefs. The ability of extremists, religious or secular, to concisely frame an idea, devoid of nuance, is essential to shaping public opinion. The message is critical to the dissemination of extremism; the more concise and direct, the more powerful and compelling. The concise message is essential to

29. See generally ELLEN SCHRECKER, *THE AGE OF MCCARTHYISM: A BRIEF HISTORY WITH DOCUMENTS* (2d ed. 2001).

extremist movements; the “simpler” the message, the more powerful the “punch.” Nuance is perceived as weakness whereas focused themes have a much greater ability to move people to action, particularly when a target group has been identified.

The relationship between the individual and the state is the essence of the social contract; the danger is when the individual feels significantly disconnected from the state. The danger is, at least, two-fold: disengagement politically, socially, and economically and affiliation and subsequent association with problematic non-state groups. That is, disengagement from mainstream society may well extend beyond “checking out” for it may well involve identification, for example, with groups that pose threats to society and individuals alike.

VI. WHAT DOES ALL THIS MEAN?

Larry Graham, former Member of the Australian Parliament notes:

This public disengagement is an extremely disturbing and dangerous trend that was confirmed in research conducted by the Lowy Institute. Their 2011 poll showed that nearly a quarter of young Australians think that “it doesn't matter what kind of government we have.”

The disengagement is further highlighted by the voting figures in this state where there are 606,951 people aged 18 and over who are either, not on the electoral role or who posted an invalid vote. At 26 per cent of the population, the percentage not voting is similar to the Lowy poll national numbers and is dangerously high.

Another way of looking at this is that the people not participating in our democracy dwarf the vote of any political party (2008 election: Liberals received 418,000 votes, Labor 390,000). This must rob government of its legitimacy. What party can claim any sort of mandate when the vast majority of the state did not vote for them?³⁰

30. Larry Graham, ‘None of the Above’: *The Disengaged Public's Vote*, WA TODAY (Feb. 28, 2013), <http://www.watoday.com.au/comment/none-of-the-above--the-disengaged-publics-vote-20130228-2f7h1.html#ixzz2YMaxBvbW>.

According to Victoria Barnett:

The bystander is not the protagonist, the person propelling the action; nor is the bystander the object of the action. In a criminal case, the bystander is neither victim nor perpetrator; his or her legally relevant role is that of witness—someone who happened to be present and could shed light on what actually occurred.³¹

Barnett's definition clearly does not describe Dr. King or those who stood with him, shoulder to shoulder in the face of brutal violence and studied indifference alike. It does, however, describe the "sane majority" that stood silent as Rabin was subjected to unmitigated hatred, looking in askance but failing to act. When leaders of the opposition—Benjamin Netanyahu, Ariel Sharon, Tzahi Hanegbi, Moshe Katsav, and Yitzhak Shamir—stood on the balcony overlooking Jerusalem's Zion Square and saw Rabin's likeness in a SS uniform, they individually and collectively turned their gaze in another direction.

While Messrs.' Netanyahu, Sharon, Hanegbi, Katsav, and Shamir did not commit a crime in accordance with the Israeli Penal Code, their moral compass, if it existed, went astray. In the engagement/disengagement paradigm, the Israeli "street" was solidly engaged and aligned, tragically so, with the forces of hatred and violence. The moral culpability—not legal—culpability—of Netanyahu et al. was to facilitate the voices of unmitigated incitement. To that end, standing on the balcony is not akin to being a bystander. While not equating to the level of involvement of direct participants, it is important to ask what would have been the outcome had the opposition politicians called on their supporters to refrain from inciting against one of Israel's greatest military leaders who defined himself, when Prime Minister, as a "soldier for peace." Tragically that is a rhetorical question for Netanyahu et al. focused solely on their narrow and immediate political interests rather than understanding the true significance of the hatred articulated (yelled) by their supporters at the urging of rabbis. Their shameful and unforgiveable conduct was met, largely, with silence by the disengaged "sane majority."

In July 2013, I spent five days in Berlin and Dresden; conversations with academics, security officials, and politicians focused on the National Socialist Underground (NSU) and the National

31. VICTORIA J. BARNETT, *BYSTANDERS: CONSCIENCE AND COMPLICITY DURING THE HOLOCAUST 9* (1999).

Democratic Party (NDP). The former is responsible for ten murders over ten years, killing nine immigrants (eight Turks, one Greek) and one German policewoman.³²

The NDP [is a right-wing political party] which holds seats in two state parliaments [Saxony and Mecklenburg-Vorpommern ANG] vehemently opposes immigration and rejects the German constitution, claiming it was imposed on the country by the victorious Allies after World War II. Germany's domestic intelligence agency has called it a "racist, anti-Semitic, revisionist" organization determined to abolish democracy and create a Fourth Reich³³

Efforts to ban the NDP have been initiated by the German states before the Constitutional Court.³⁴

With respect to right-wing extremism, described by some as "pissed off white man," Professor Hans-Gerd Jaschke has written the following:

Non-acceptance of immigration and prejudice toward immigrants are common values of right-wing voters in Europe. This electorate mainly consists of younger males on a low skill and education level. Most of them are laborers or unemployed

Recent public discourse in Germany highlights right-wing extremism as a social movement This is a new development, because until now the political operations of the far right had been considered to be part of a subculture, neglected more or less by the general public. It is being argued now that the intensity of networking, demonstration and provocation turned the far right into a modern working-class movement, based on stable milieux.³⁵

The danger, then, is of ignoring the threat or of, at the least, the possible threat to society and individuals alike. To cut to the chase:

32. Kate Connolly, *Neo-Nazi Gang Trial to Get Under Way in Germany After Chaotic Start*, THE GUARDIAN (May 3, 2013, 10:29 AM), <http://www.guardian.co.uk/world/2013/may/03/beate-zschape-trial-germany-neo-nazis>.

33. Andrew Bowen, *World from Berlin: 'You Can't Outlaw Stupidity' of the Far-Right*, SPIEGEL ONLINE (Mar. 19, 2013, 2:14 PM), <http://www.spiegel.de/international/germany/press-review-german-cabinet-backs-off-attempt-to-ban-far-right-ndp-a-889671.html>.

34. *Id.*

35. Hans-Gerd Jaschke, *Right-Wing Extremism and Populism in Contemporary Germany and Western Europe*, in RIGHT-WING RADICALISM TODAY: PERSPECTIVES FROM EUROPE AND THE US, 22, 34 (Sabine von Mering and Timothy Wyman McCarty, eds., 2013).

those members of white society who chose to ignore the horrors of lynching in the Deep South adopted the same attitude that secular Jews in Israel did in the face of unremitting incitement by extremist Jewish rabbis prior to Prime Minister Rabin's election. The attitude is best described as tolerating intolerance. The failure of the mainstream Israeli public, as well as the stunning failure of law enforcement and Justice Ministry officials to fully appreciate the power of religious extremist incitement prior to the Rabin assassination, is a collective tragedy. More disturbing, or at least no less disturbing, is the *continued* failure to recognize the danger extremist rabbis pose to civil democratic society.

Recent examples of this danger are found in remarks made by right-wing extremists towards former Defense Minister Ehud Barak when West Bank settlements were put on a ten month freeze: "If you think of destroying the settlements, you are mistaken, and I will kill you . . . I will harm you or your children, be careful . . . If not now, then when you are no longer a minister and have no security around you."³⁶ An additional example is a warning given by the former Head of the Israeli Security Agency, Yuval Diskin, to Prime Minister Benjamin Netanyahu and Defense Minister Ehud Barak: "The Rabin assassination can repeat itself. There are extremist Jews within the Green Line as well, not only in the territories. It's an optical illusion that they're all in the territories. . . . There are dozens willing to use firearms against their Jewish brothers"³⁷

It is, admittedly, difficult to be courageous in the face of a mob; similarly, it requires either extraordinary individual leadership as manifested by Dr. King or nameless and faceless individuals reaching the conclusion that "enough is enough." That is the remarkable and distinguishing quality of the East Germans in Leipzig; the end of the Cold War began when individuals took to the streets with the understanding that harm may befall them. In doing so, they cast aside their justified personal fears in a remarkable demonstration of courage, fortitude, and determination. The individual and group decision to demand rights was extraordinary, for neither East Germany nor the Soviet Union had distinguished themselves as tolerating dissent or alternative voices.

36. Amos Harel, *Barak Gets Death Threat Over West Bank Settlement Freeze*, HAARETZ (Jan. 5, 2010, 8:23 PM), <http://www.haaretz.com/news/barak-gets-death-threat-over-west-bank-settlement-freeze-1.260859>.

37. Chaim Levison, *Yuval Diskin: West Bank Evacuation Could Lead to Another Political Assassination*, HAARETZ (Apr. 28, 2012, 7:08 PM), <http://www.haaretz.com/news/diplomacy-defense/yuval-diskin-west-bank-evacuations-could-lead-to-another-political-assassination-1.426979>.

Re-articulated: the communist regime brooked no dissidents, as its authoritarian nature demanded absolute obedience to the party and the state. And yet, in 1989 the regime was confronted with individuals not cowed by state force or power. Undoubtedly, the regime's stuttering response encouraged, if not emboldened, the demonstrators and their supporters who, perhaps, understood they had wrestled initiative and momentum from state leaders.

Dr. King, as clearly articulated in his Letter,³⁸ fully understood the forces he was facing: an entrenched political and cultural system intended to ensure the permanent subordinate position of African-Americans and national political leaders hesitant to fully embrace King and his movement. President John F. Kennedy's failure to demonstratively and publicly support King powerfully reinforced the complexity and enormous risks associated with King's efforts; while historians correctly credit President Lyndon B. Johnson with determination and efforts regarding the Civil Rights Movement, it is important to recall the loneliness of King's road and its travails.

That, however, is the essence of leadership. A note of caution: the lack of a strong leader does not necessarily lead to disengagement from the public sphere as dramatically demonstrated in Leipzig, and the presence of a strong leader cannot be offered as an excuse for the incitement-based engagement that resulted in Rabin's assassination. The three examples touched upon in this essay present distinct paradigms; two reflect courage, and one manifests the danger of turning a blind eye. Needless to say, this is not a new phenomenon: in 1943 U.S. Supreme Court Justice Felix Frankfurter met with Jan Karski, a Polish emissary who managed to escape Nazi Europe, and reported to Allied countries regarding the Holocaust. Justice Frankfurter could not believe what he heard, stating, "I am not saying that he is lying. I only said that I cannot believe him, and there is a difference."³⁹

Similar to the turning blind eye of the Israeli majority, what I suggest reflects disengagement. Barnett writes:

Such responses [like those of Justice Frankfurter] are typical of bystanders In a sense, they were a form of denial—not the denial of those people today who claim that the Holocaust never happened, but a form of denial that came to characterize bystanders everywhere: *the denial that it was possible to do anything to stop what was*

38. See King, *supra* note 9.

39. BARNETT, *supra* note 31, at 51.

happening. Paralyzed by the sense of helplessness and powerlessness, people became convinced that what was happening was inevitable. . . . [T]his phenomenon suggests that we are looking at something other than simple indifference or even prejudice.⁴⁰

Martin Luther King, Jr. was not a bystander, neither were those demonstrating in Leipzig; the results of their determination and engagement changed America and the world respectively. King was able to harness the energy, anger, and pain of African-Americans whose lives were a mockery of the U.S. Constitution; the hundreds of thousands of demonstrators looked the proverbial tiger in the eye, and he blinked. King and his supporters, some who paid the ultimate price for their engagement, stand proud; the same holds true for those who brought the East German regime to its knees. Both stand in direct contrast to the disengaged Israeli majority whose response to rabbinical incitement was akin to Justice Frankfurter's reaction to *Karski*: disbelief and denial. That is, the "sane majority" assumed that harm would not befall Rabin, and therefore passivity ruled the day.

Needless to say, the disengaged rued the day they failed to understand that religious extremists act in accordance with rabbinical interpretation of religious text. The social contract was violated by both the inciters/incited and the disengaged; however, blame should not be appropriated equally. While Yigal Amir pulled the trigger and extremists noted with satisfaction the demise of the peace process, the core failing—morally not legally—rests with those like this author who let the extremists control the tone and tenor of Israeli political discussion and society. Rabin's assassination is the unequivocal result of disengagement.

As a rejuvenated peace process is seemingly in the offing, both the security services and mainstream society must draw their own conclusions; the former must take threats to Prime Minister Netanyahu seriously, the latter—even if Netanyahu is not "their" candidate—must not sit passively when the voices of hate enter the fray. To that end, the "sane majority" can learn from the U.S. Civil Rights Movement and the East German demonstrations. The lessons are clear; failure to learn and apply is, tragically, deadly. That is the price of disengagement.

40. *Id.*