

Introduction

In a provocative essay, philosopher Jeffrie Murphy asks: “What would law be like if we organized it around the value of Christian love [agape], and if we thought about and criticized law in terms of that value?”¹ The idea that law should be a manifestation of love stands in stark contrast to reigning modern legal theories. Liberalism controlled legal discourse through much of the nineteenth and twentieth centuries. Its focus is on protecting individual rights, but liberalism offers few resources for adjudicating competing rights claims.² Law and economics judges law based on efficiency, but has shorn law of its moral depth and provided little basis for protecting human dignity (at least for the “have nots”). Critical legal studies (CLS) and its interest group progeny have deconstructed law and highlighted ways in which law masks power, but have failed to provide a basis for reconstructing law so as to protect the common good; if, as CLS asserts, law is merely power, it is likely to merely serve the interests of the powerful.

Though each of these schools of thought has brought insight to law, each is ultimately reductionistic, pointing to only a limited aspect of law’s reality. These theories have also divorced law from the deeper sources of moral meaning that informed legal thought in the past. This book offers agape as a resource for critiquing contemporary legal theory and for thinking anew about concrete problems within law. Law grounded in agape offers the possibility of more fully encouraging human flourishing in relationship and community

¹ Jeffrie G. Murphy, “Christian Love and Criminal Punishment,” in this volume, 151, reprinted from *Christianity and the Law: An Introduction*, eds. John Witte and Frank S. Alexander (New York: Cambridge University Press, 2008), 219. Murphy’s question served as the focus of the “Love and Law” conference at Pepperdine University School of Law, 7–8, February 2014. Many of the essays contained in this volume were presented at that conference and address Murphy’s question directly.

² Mary Ann Glendon, *Rights Talk: The Impoverishment of Political Discourse* (New York: The Free Press, 1991).

than the theories that have dominated legal discourse in recent decades. Agape, as understood today, has its source in the Christian tradition, but we believe it offers a vision for law that will be of interest to those from other traditions as well, both because they are likely to have analogous sources of value and because agape presents an inherently attractive foundation for law.

In the ancient world, “agape” was a seldom used and colorless word, analogous to the English word “like.” According to Josef Pieper, “it was a word begging for meaning and Christianity gave it meaning.”³ Agape became *the* Christian word for love. Forms of it occur 341 times in the New Testament.⁴ It was the word the New Testament used to capture the love Jesus commanded for God, neighbors, and enemies. Judaism is also responsible for some of what agape has come to mean. The Jewish translators of the Septuagint chose “agape” as the word for the love of God and neighbor, which Jesus identified as the two most important commands in the Mosaic Law.⁵

Four Forms of Love – Agape’s meaning is best understood when compared with other Greek words for love – eros, philia, and storge.⁶

The broad range of meanings for eros illustrates that even four terms for love may not be enough. Eros can be used for three very different forms of love – Platonic contemplation of God, romantic love, and sexual attraction. These forms of eros share an attraction to beauty (whether of God, a wonderful person, or an exotic dancer). Their starting point is the need of the lover and their goal is the satisfaction of that need. Eros’s danger is obsession – one in the throes of eros may sacrifice reason, money, family, friends, and everything and everyone else for the beloved.

Philia is friendship, a love of those with whom one enjoys common interests.⁷ Friends look at something together, whereas lovers look at one another. Philia can be, as Aristotle taught, a school for virtue. The modern notion of friendship often misses this aspect of philia. In the classic notion, the goodness of a friend is part of the project of friends (a characteristic philia shares with agape). Like eros, philia is exclusive – it selects as its objects particular, attractive individuals.

³ Josef Pieper, *Faith, Hope, Love* (San Francisco: Ignatius Press, 1997), 156.

⁴ William Klassen, quoted in Timothy P. Jackson, *The Priority of Love: Christian Charity and Social Justice* (Princeton: Princeton University Press, 2003), 21.

⁵ For an examination of Jesus’ development of the Mosaic “love your neighbor” commandment, see Robert F. Cochran, Jr., “Jesus, Agape, and Law,” in this volume, 13–37.

⁶ For a fuller development of each type of love, including a consideration of the implications each might have for law, see: Linda Ross Meyer, “Agape, Humility, and Chaotic Good: The Challenge and Risk of Allowing Agape a Role in the Law,” in this volume, 57–74.

⁷ Gilbert Meilaender, *Friendship: A Study in Theological Ethics* (Notre Dame: Notre Dame Press, 1981).

Storge is natural affection, a love like that felt by parents (or at least most parents) for their children (or at least most of their children). In ancient Greek, it was almost always used to describe relationships within the family. Storge can be generated by regular contact with its object and can be felt toward those who are unattractive. It is characterized by loyalty. It is likely to inspire deep ties to the local community, but weak ties or even hostility toward other communities and the broader community. It, like eros and philia, can generate unfair treatment of those outside one's intimate circle. Jesus implicitly criticized this aspect of storge when he asked, "From whom do kings of the earth take toll or tribute? From their children or from others?"⁸

In contrast to the other forms of love, agape is "other-regarding care,"⁹ "unclaiming love,"¹⁰ and "universal benevolence."¹¹ It is other-directed, offered without regard for the interests of the lover or the attractive qualities of the beloved. Timothy P. Jackson defines agapic love as requiring the unconditional willing of the good for the other, equal regard for the well-being of the other, and passionate service open to self-sacrifice for the sake of the other.¹² Gene Outka characterizes agape as "a regard for the neighbor [that] is for every person qua human existent, to be distinguished from those special traits, actions, etc., which distinguish particular personalities from each other."¹³

C. S. Lewis notes that the forms of love other than agape are "always directed to objects which the lover finds in some way intrinsically loveable." By contrast, agape enables one "to love what is not naturally lovable; lepers, criminals, enemies, morons, the sulky, the superior and the sneering."¹⁴ Agape, in other words, is not based on the merit of the recipient, but an ethical duty grounded in the humanity of the other.¹⁵ Agapic love is both particular and universal. It takes as its object the particular neighbor one confronts – the wounded traveler on the side of the road¹⁶ – yet it emanates from a universal love that does not discriminate. As Kierkegaard writes, "Since one's neighbor is every man, unconditionally every man, all distinctions are indeed removed from the object."¹⁷

⁸ Matt. 17:25. All Citations are to New Revised Standard Version.

⁹ Gene H. Outka, *Agape: An Ethical Analysis* (New Haven: Yale University Press, 1972), 1.

¹⁰ Paul Ramsey, *Basic Christian Ethics* (Louisville: Westminster/John Knox Press, 1993), 71.

¹¹ Jackson, *The Priority of Love*, 50.

¹² *Ibid.*, 9.

¹³ Outka, *Agape*, 1.

¹⁴ C.S. Lewis, *The Four Loves* (New York: Harcourt, Brace, 1960), 177.

¹⁵ Rom. 5:7–8.

¹⁶ Luke 10:25–37.

¹⁷ Søren Kierkegaard, *Works of Love*, trans. Howard and Edna Hong (New York: Harper-Torchbooks, 1962), 77.

Like friendship, agapic love is aspirational. It wants the good for the beloved, including the moral good. As Augustine says, “Love reprimands, ill will echoes.”¹⁸ This aspirational character of agape is captured in a line from the movie *Junebug*. Ashley (played by Amy Adams) says to her sullen, ne’er-do-well husband Johnny, “God loves you just the way you are but he loves you too much to let you stay that way.”

Paul offers the classic New Testament account of agape:

[Agape] is patient; [agape] is kind; [agape] is not envious or boastful or arrogant or rude. It does not insist on its own way; it is not irritable or resentful; it does not rejoice in wrongdoing, but rejoices in the truth. It bears all things, believes all things, hopes all things, endures all things.¹⁹

Agape and Justice – Amidst a general recognition among scholars of agapic love’s centrality to the Gospel message and Christian ethics, the relationship between agape and justice has been a hotly contested issue. This issue is particularly important in determining agape’s possible implications for law, politics, and social responsibility.²⁰ Christian thinkers, however, have achieved little consensus on the question of whether agape stands in tension with justice or is rather its fulfillment. Competing theological understandings of agape continue to inform competing understandings of how Christianity should relate to the late modern liberal order.

Some authors contrast agape and justice. Anders Nygren argues that agape supersedes the order of justice – once one is committed to an agapic regime, there is no need for justice.²¹ Reinhold Niebuhr holds love and justice in “constant tension,” as individual “ideals of brotherhood” and “the moral ambiguities of communities” collide within moral and social life.²² David VanDrunen identifies agapic love as the standard to be applied in one’s personal life and in the church, and justice (generally retributive justice) as the standard to

¹⁸ Quoted in Josef Pieper, *Faith, Hope, Love* (San Francisco: Ignatius Press, 1997), 187.

¹⁹ 1 Cor. 13:4–7. This passage is often quoted at Christian weddings, where to young people eros might seem to be the order of the day. Their elders, however, realize that agape is likely to be the more important form of marital love in years to come. For a further development of Paul’s teaching on agape and its relationship to law, see Darryl Tippens, “‘Love Calls Us to the Things of This World’: The Pauline Tradition and ‘The Law of Christ,’” in this volume, 38–54.

²⁰ For consideration of whether Jesus intended agape to extend to the law and politics, see Cochran, “Jesus, Agape, and Law,” 21–27.

²¹ Anders Nygren, *Agape and Eros* (Chicago: University of Chicago Press, 1982), 90.

²² Reinhold Niebuhr, *The Children of Light and the Children of Darkness* (New York: Scribner’s, 1972; originally published 1944), 83–84. See also Reinhold Niebuhr, *Moral Man and Immoral Society* (New York: Scribner’s, 1960), throughout but especially 53–82.

be applied by the state.²³ In contrast, Paul Ramsey, Timothy Jackson, and Nicholas Wolterstorff argue that agape demands justice.²⁴

Gene Outka notes that different understandings of justice may be at the heart of many of the disagreements about the relationship between agape and justice. He identifies four ways of understanding justice that might relate in different ways to agape: (1) “similar treatment for similar cases,” (2) “to each according to his merit or works,” (3) “to each the same thing,” and (4) “to each according to his needs.” Outka identifies the last as closest to agape.²⁵

Reconciliation of agape and justice may be in part a matter of understanding both concepts in a biblical sense.²⁶ On the one hand, biblical justice may look more like love than its modern counterparts. Ramsey argues that agape “elevated [earthly cities] and their justice was infused and transformed by new perspectives, limits, and principles.”²⁷ Biblical justice may include meeting people’s needs, a role that most in the modern world consign to charity. Wolterstorff notes that the section of Isaiah with which Jesus defines his ministry²⁸ describes biblical justice in broader terms than the justice of Enlightenment individualism. Biblical justice is not only a call “to let the oppressed go free” but also “to share your bread with the hungry, and bring the homeless poor into your house [and] cover [the naked].”²⁹

Moreover, biblical love – agape – may look more like justice than its modern counterparts. Timothy Jackson notes that, “Punishment is often love’s taking justice seriously.”³⁰ Paul Ramsey has argued that just war theory was developed by Christians as an application of agape toward both aggressors and victims. Agape will restrain sin, for the sake of both sinners and victims.³¹

William Temple thoughtfully describes the relationship agape and justice might have to legal institutions: “[justice is] the primary form of love in social organization.”³² Justice is the way agape is manifested by those with

²³ David VanDrunen, “Justice Tempered by Forbearance: Why Christian Love Is an Improper Category to Apply to Civil Law,” in this volume, 125–47.

²⁴ See sources cited below.

²⁵ Outka, *Agape*, 89–91. For further development of Outka’s point, see Michael P. Moreland, “Justice, Love, and Duties of Care in Tort Law,” in this volume, 203–4.

²⁶ Nicholas Wolterstorff, “Love, Justice, and Law,” in this volume, 118–24.

²⁷ Paul Ramsey, *War and the Christian Conscience: How Shall Modern War Be Conducted Justly?* (Durham: Duke University Press, 1961), xxi.

²⁸ Luke 4:17–21.

²⁹ Isa. 58:6–7; Nicholas Wolterstorff, *Justice: Rights and Wrongs* (Princeton: Princeton University Press, 2008), 116–17.

³⁰ Jackson, *The Priority of Love*, 153.

³¹ Ramsey, *War and the Christian Conscience*, 56.

³² “Christian Love and Criminal Punishment,” 151–52, reprinted from *Christianity and the Law*, 219, quoting from Lord Denning, *The Influence of Religion on Law* (Alberta: Canadian Institute for Law, Theology, and Public Policy, 1997), 3.

responsibilities to a group. Those in authority should not show love to privileged individuals only, but to all who might be affected by their actions. We are communal beings and must attend in love to everyone involved. Justice may be the most loving thing one can do for all of the people for whom one is responsible.

Agape and Jurisprudence – While agape has been an important dynamic in Christian thought about political justice, surprisingly little attention has been given in the modern era to its relationship to law and jurisprudence. Neither theologians nor legal scholars have focused on how agape – the central ethical category of Christianity – should inform thinking about legal meaning and order.

This omission of agape from Christian legal thought might be explained by both theological and jurisprudential factors. Many Catholics and Protestants have resisted seeing agape as an apposite category for legal thought. Within each tradition, a different pair of dichotomies has tended to separate law from agape. Among Catholics, that dichotomy is nature and grace. As Michael Moreland notes in his essay herein, “while Protestant theologians . . . explored at great length the distinctiveness of agapic Christian love in ethics and politics, Catholic writers more often made arguments about natural law and practical reason when reflecting on social questions.”³³ There has been a tendency within certain strands of Catholic social thought, particularly the Thomistic tradition, to separate nature and grace and, by extension, law and love.³⁴

While Protestant social thought has given more sustained attention to agape, much of it is colored by a suspicion that love is counter to the vocation of law and politics. The perceived dichotomy between law and grace has limited the influence agape might have on the civil law. Particularly within main currents of Reformed and Lutheran thought, the coercive work of the state and the redemptive work of the church remain at a vast remove from each other. This impulse is captured in Luther’s warning that ruling the world by the Gospel, rather than the “godly estate” of the sword, would loose “the ropes and chains of the savage wild beasts.” “Christians, among themselves and by and for themselves,” might live according to a love that forgives and

³³ Moreland, “Justice, Love, and Duties of Care in Tort Law,” 190.

³⁴ The Catholic tradition has supported varied understandings of the relationship between nature and grace, but has often emphasized that human nature, although corrupted, can discern truths through unaided reason. New ways of understanding nature and grace have flourished since the mid-twentieth century, particularly as influenced by the *ressourcement* movement. Pope Benedict, perhaps most notably in his encyclical, *Charity in Truth: Caritas in Veritate* (San Francisco: Ignatius Press, 2009), made love a central category within Catholic social thought.

does not seek redress, but this cannot be the basis for a legal order.³⁵ A ruler might engage in acts of mercy or clemency but agape, in the full sense of its Christian meaning, has little to offer the operation of law. David VanDrunen's essay herein addressing why "Christian Love is an Improper Category to Apply to Civil Law" stands within such a tradition. These disjunctive accounts of the relationship between law and love continue to bind the Catholic and Protestant jurisprudential imaginations.

Modern legal thought poses additional challenges to thinking agapically about law. In the modern era, we seldom think of law having any relationship to theology, much less the theological virtue of love. The tension between law and love is not an entirely modern phenomenon, but something has changed in modernity, particularly with respect to how law is conceptualized in relationship to religion. As Remi Brague argues, "in modern societies, law, far from being conceived of in any relation with the divine, is quite simply the rule that the human community gives itself, considering only ends that it proposes for itself."³⁶ Law in modernity is thus increasingly defined as a closed system of meaning, subject to its own internal rules, and reduced to an expression of self-interested power. Theology, in turn, is not only irrelevant for understanding law, but is rendered antithetical to the construction of legal meaning.

Given these obstacles, how might agape meaningfully speak to law? The essays in this volume explore this relationship. Possibilities include the following:

A New Framework for Thinking about Law – Though we have noted ways in which there might be both theological and jurisprudential resistance to the idea, agape offers resources for drawing Christian thought into conversation with law. Recent years have seen the development of ever more sophisticated scholarship on the relationship between religion and law, but there have been relatively few efforts to connect theology with fundamental questions of law and legal theory. Agape provides a way to facilitate this connection, while also speaking to the distinctive conditions of legal modernity. An agapic account of law addresses questions of power and mercy, judgment and forgiveness, autonomy and the common good. It offers ways to rethink issues arising in the practice of law³⁷ and the operation of legal institutions. More generally, it

³⁵ Martin Luther, *Temporal Authority: To What Extent It Can Be Obeyed* (1523). A more comprehensive introduction to Luther's doctrine of the two kingdoms and the two governments can be found, e.g., W.D.J. Cargill Thompson, *The Political Thought of Martin Luther* (Brighton: The Harvester Press, 1984), 36–61.

³⁶ Remi Brague, *The Law of God: The Philosophical History of an Idea* (Chicago: University of Chicago Press, 2007), 1.

³⁷ Robert K. Vischer, *Martin Luther King Jr. and the Morality of Legal Practice: Lessons in Love and Justice* (New York: Cambridge University Press, 2013). Vischer presented his discussion of Dr. King at the Pepperdine University conference that led to the present volume.

provokes reflection about the deeper moral life of law that has eluded modern legal theory.

The questions addressed in this volume stand within the long tradition of Christian political and legal thought. Yet, it is the current state of legal thought that gives urgency and shape to this project. As noted in the beginning of this introduction, modern schools of legal thought have failed to provide a grounding for law that encourages human flourishing. The possibility of agape-grounded law challenges the tendencies of liberalism toward isolationism, of law and economics toward selfishness, and of CLS toward cynicism.

The deconstruction of law, which often has revealed law as mere instrumental power, also may open space for law's reconstruction on theologically informed terms. In our view, agape can both illuminate the modern situation and serve as a constructive alternative. As Oliver O'Donovan writes, "Recovery of theological description enables us to understand not only what the goods of our institutions and traditions are, but why and how those goods are limited and corruptible, and to what corresponding errors they have made us liable."³⁸ This volume offers agape as a source of theological description for diagnosing both the limits and the possibilities of law in the late-modern age.

Agape and the Substance of Law – As Dallas Willard and Gary Black Jr. have argued:

[In the] social or governmental setting, [agapic] love does what it can to establish and sustain arrangements and practices that will benefit everyone or as many as possible. . . . [Agape compels us] to care deeply for the economic, political, social, familial, and religious circumstances within our communities, because we care for (love) the people interacting and engaging in all these aspects of human life.³⁹

Jesus summarized the Mosaic Law as love of God and neighbor. Much of the Mosaic Law, as well as much modern law (from the prohibition of murder to the prohibition of double parking), requires citizens to act agapically toward one another. Law based on love would protect all citizens, especially those who have the greatest need – "the widow, the orphan, and the stranger."

Too many people view law either as (1) merely a means of protecting their interests, or (2) too corrupt and corrupting to be worthy of their involvement. However, agape might lead legislators, judges, lawyers, and voters to adopt laws that treat citizens well. One need only travel to one of the many countries

³⁸ Oliver O'Donovan, *The Ways of Judgment: The Bampton Lectures* (Grand Rapids: William B. Eerdmans Pub. Co., 2008), xv.

³⁹ Dallas Willard and Gary Black, *Divine Conspiracy Continued: Fulfilling God's Kingdom on Earth* (San Francisco: Harper One, 2014), 191.

that do not have functioning legal systems to see the harm citizens suffer. Citizens who do not have access to the rule of law suffer great injustice – sex trafficking, wage slavery, casual rape, and police brutality. These citizens need law. Those motivated by agape will be passionate in protecting victims and enforcing the law. Passing and enforcing just laws is one of the most loving things people can do. Law grounded in agape may be a way of thinking about and developing law that will bring meaning to those involved in creating law and yield human flourishing for those impacted by law.

Agape, Law, and Character – Agapic law would not simply be concerned with making people’s lives more pleasant. As Jeffrie Murphy notes, agape is not “cuddly.”⁴⁰ If agape is the aim, a country will “design legal practices and institutions with a view to the moral and spiritual improvement in virtue of affected citizens.”⁴¹ Murphy argues that law organized around the value of agape, from regulations governing pornography to the treatment of those in prison, will be concerned with citizens’ character. Law can teach citizens to care for one another. In the Hebrew scripture, love for neighbor manifested itself in a practical outworking in everyday life – placing a retaining wall around the roof to keep people from falling⁴² and allowing the poor to glean leftovers from the orchards and fields.⁴³ Hopefully, citizens who engage in such practices and their modern counterparts will develop the habit – the virtue – of caring for other people in ways not required by law.

There are, however, dangers to grounding law in love. C.S. Lewis expresses it well:

Of all tyrannies a tyranny sincerely exercised for the good of its victims may be the most oppressive. It may be better to live under robber barons than under omnipotent moral busybodies.⁴⁴

But the risk of the abuse does not necessarily mean that something should be avoided all together. The danger of overreach may merely be a risk citizens should be aware of, as they seek to faithfully ground law in love. Moreover, law truly grounded in love will give citizens a substantial amount of freedom within which to operate, at times to fail, and to grow morally.

⁴⁰ Jeffrie G. Murphy, “Christian Love and Criminal Punishment,” in this volume, 155, reprinted from *Christianity and Law*, 224.

⁴¹ Ibid. at 156.

⁴² Deut. 22:8.

⁴³ Lev. 19:9–12.

⁴⁴ C.S. Lewis, “The Humanitarian Theory of Punishment,” *The Twentieth Century: an Australian Quarterly Review* III, no. 3. Reprinted, C.S. Lewis, *God in the Dock*, ed. Walter Hooper (Grand Rapids: William B. Eerdmans, 1970), 287–94.

Essays herein explore law's relationship to agape as a matter of both theory and practice. Part I traces the development of agape in Jesus and Paul – the two most important biblical contributors to its meaning. Part II explores many of the issues raised in this introduction: the meaning of agape, the challenge of acting with agape in law toward all people, the promises and risks of agapic law, the tensions both between love and justice and between love and law, the danger that law grounded in agapic love will be oppressive, and the danger that law grounded in agapic love will not have the muscle to rule effectively. Part III considers the role agape might have in particular areas of law – criminal punishment, judging, torts, elder law, immigration, corporations, intellectual property, and international relations.

Throughout the history of Christianity, many of the greatest Christian thinkers have explored the meaning of agape. The essays herein explore and build on the insights of many of these, including: Augustine, Thomas Aquinas, Martin Luther, John Calvin, Søren Kierkegaard, Anders Nygren, Gene H. Outka, Paul Ramsey, C.S. Lewis, Martin Luther King, Jr., Reinhold Niebuhr, and Popes Pius, John Paul II, Benedict XVI, and Francis.

This book is designed for Christians who want to think deeply and seriously about the implications of the Christian faith for civil law, as well as for non-Christians who want to understand how Christians might thoughtfully engage this subject. Moreover, we believe that agape is not merely a duty imposed on Christians, but is a compelling vision of human relations that will be attractive to those in other traditions. In this respect, agape offers a new and timely lens through which to think about questions of pressing import within law and politics. Yet agape is not simply another interpretive paradigm or another variant of “law and” scholarship. Rather, agape might be understood as the end of law and as thus containing within it a new jurisprudential logic. If this is the case, agape offers ways to fundamentally reorient our thinking about legal meaning and legal problems.