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## **Jesus and the Mosaic Law: Agapic Love as the Foundation and Objective of Law**

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## JESUS AND THE MOSAIC LAW: AGAPIC LOVE AS THE FOUNDATION AND OBJECTIVE OF LAW

*Robert F. Cochran, Jr.\**

*“[E]very [Mosaic Law] scribe who has been trained for the kingdom of heaven is like the master of a household who brings out of his treasure what is new and what is old.”<sup>1</sup>*

### I. INTRODUCTION

I am honored to have been asked to present these thoughts, first at Touro Law School’s conference celebrating Sam Levine’s work on Jewish and American Law and now for the *Touro Law Review*’s symposium issue on the same topic. Sam and I were colleagues at Pepperdine for eight years. It was a feather in my cap that I was the chair of faculty appointments who hired Sam. He was a dear colleague.

On several occasions at Pepperdine, I organized a conference or edited a book on law and religion that primarily focused on Christian perspectives of law. I often had Sam give a Jewish response. I am honored that Sam and Touro are returning the favor and that I can share some thoughts on Jesus’s reaction to the Mosaic Law and what that might tell us about law in general.

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\*Louis D. Brandeis Professor of Law, Pepperdine University of Law; Senior Fellow, Institute for Advanced Studies in Culture, University of Virginia. I would like to thank Randy Lee, Sam Levine, Michael Helfand, and Chaim Saiman for comments on early drafts of this article. Thanks as well to Zachary Wertheimer and Zach Carstens for their assistance in research.

<sup>1</sup> *Matthew* 13:52 (Jesus speaking). All quotations from the Christian Bible are from the New Revised Standard Version (“NRSV”), unless otherwise indicated. For a searchable version of this and other translations, see <https://www.biblegateway.com/>.

I came to admire Sam for his wisdom, and I like to refer to Sam as “My Rabbi” though I am not sure either of our religious traditions would approve. But, of course, “rabbi,” in its generic sense, merely means “teacher.” I am pleased to identify Sam as my teacher. Many of those with whom Jesus had contact referred to him as “rabbi” in this sense.

Sam and I had an immediate affinity for one another. We (like many people in the law, religion, and legal ethics worlds) shared Tom Shaffer of Notre Dame Law School as a mentor. Sam and I also shared a belief—he influenced by Rabbi Soloveitchik, I by John Calvin—that our religious faiths had implications for all of life, including law and legal ethics. In Sam’s collection which we celebrate in this symposium, he says:

As Rabbi Soloveitchik has eloquently explained, Jewish thought “does not differentiate between the [person] who stands in [the] house of worship, engaged in ritual activities, and the mortal who must wage the arduous battle of life.” Jewish tradition “rejects such a personality split, such a spiritual schizophrenia,” instead “declar[ing] that [a person] stands before God not only in the synagogue but also in the public domain, in [one’s] house, while on a journey, while lying down and rising up.” In short, “[t]he marketplace, the street, the factory, the house, the meeting place, the banquet hall, all constitute the backdrop for the religious life.”<sup>2</sup>

As John Calvin puts it, “The whole world is a theatre for the display of the divine goodness, wisdom, justice, and power \* \* \*”<sup>3</sup>

Sam gave me a particular insight—one that is central to this conference—that has helped in my work on Christianity and law. Sam suggested that American Law might view Jewish Law in the way comparative law scholars view the law of other countries or the way a

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<sup>2</sup> 1 SAMUEL J. LEVINE, *Reflections on the Practice of Law as a Religious Calling from a Perspective of Jewish Law and Ethics*, in JEWISH LAW AND AMERICAN LAW 221, 221 n.1 (2018) (quoting Rabbi Soloveitchik’s “Halakhic Man”).

<sup>3</sup> 5 JOHN CALVIN, COMMENTARY ON PSALMS, 111 (trans. James Anderson (1849)) <https://www.ccel.org/ccel/calvin/calcom12.xix.iv.html> and <https://www.reformedontheweb.com/calvin/16-commentary-on-psalms-volume-5.pdf>.

state judge might view the law of another state.<sup>4</sup> Not imposing religious law on those who do not share the Jewish faith but drawing in its insights where they might fit. As I will note later in this essay, that is the way I have come to believe Jesus looked at the Mosaic Law and its implications for positive law. It may give us insight as to what our law should be. I have also come to view Christian insights into law this way. Secular law should use them when they are helpful. Pope John Paul II expressed a similar thought about Catholic teaching and law: “The Church proposes; she imposes nothing.”<sup>5</sup>

Another Orthodox Jewish scholar who helped in my consideration of Jesus’s view of law is Chaim Saiman of Villanova Law School. Several years ago, Chaim did a critique of Jesus’s views of law in which he assessed three book collections that focused on Jesus and the law—two of which I had edited or co-edited.<sup>6</sup> The collections included contributions by dozens of the leading Christian scholars in the country. Chaim gently commented, “Notably absent from this literature, however, is any extensive examination of Jesus, and *his* views about jurisprudence and legal theory. Despite the overall diversity of the writings, there is little discussion about what Jesus thought about law, lawyers, legal rules and the legal order.”<sup>7</sup>

Chaim pushed me to think about what Jesus said about the law and how that might relate to our understanding of law today. That has been the focus of much of my work in recent years.<sup>8</sup> I have concluded

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<sup>4</sup> Samuel J. Levine, *Applying Jewish Legal Theory in the Context of American Law and Legal Scholarship: A Methodological Analysis*, SETON HALL L. REV. 933, 947 n.59 (2010) (citing to Arnold N. Enker, *Aspects of Interaction Between the Torah Law, The King’s Law, and the Noahide Law in Jewish Criminal Law*, 12 CARDOZO L. REV. 1137 (1991)); see also Levine, *supra* note 2, at 6.

<sup>5</sup> John Paul II. *Redemptoris missio: On the Permanent Validity of the Church’s Missionary Mandate*, ENCYCLICALS, (1990), 39, [http://w2.vatican.va/content/john-paul-ii/en/encyclicals/documents/hf\\_jp-ii\\_enc\\_07121990\\_redemptoris-missio.html](http://w2.vatican.va/content/john-paul-ii/en/encyclicals/documents/hf_jp-ii_enc_07121990_redemptoris-missio.html).

<sup>6</sup> Chaim Saiman, *Jesus’ Legal Theory—A Rabbinic Reading*, 23 J. L. & RELIGION 97 (2007) (reviewing THE TEACHINGS OF MODERN CHRISTIANITY ON LAW, POLITICS AND HUMAN NATURE (John Witte Jr. & Frank S. Alexander eds., Colum. Univ. Press 2006), FAITH AND LAW: HOW RELIGIOUS TRADITIONS FROM CALVINISM TO ISLAM VIEW AMERICAN LAW (Robert F. Cochran, Jr., ed. NY Univ. Press 2008), & CHRISTIAN PERSPECTIVES ON LEGAL THOUGHT (Michael McConnell, Robert F. Cochran, Jr., and Angela Carmella, eds., Yale Univ. Press (2001)).

<sup>7</sup> Saiman, *supra* note 6, at 100.

<sup>8</sup> See generally Robert F. Cochran, Jr., *Jesus, Agape, and Law*, in AGAPE, JUSTICE, AND LAW 13-37 (Cochran & Calo eds., Cambridge Univ. Press 2017); Robert F. Cochran and Dallas Willard, *The Kingdom of God, Law, and the Heart: Jesus and*

that much of what Jesus said about the Mosaic Law gives us insight into what Jesus might say about any type of law. In my view, the Gospels—the stories of Jesus’s life—present Jesus as having a new take on law that extends beyond his comments about the Mosaic Law, beyond Christianity, to insights on law for all of humanity. In this essay, I consider what rabbi Jesus might have to say about law.

Though much of what I say below will focus on Jesus’s criticism of Mosaic Law interpretations that were common in his day, these must be viewed in the broader context of Jesus’s great respect for the Mosaic Law. Indeed, as William Loader has noted, “[The] most striking feature” of the Gospel writer Luke’s stories of both Jesus and the early church is that “both Jesus and those who surround him or later follow him are faithful to [the details of] Torah.”<sup>9</sup> Moreover, Jesus highlighted the importance of the Mosaic Law in one of his few statements that addressed the relationship between his ministry—the kingdom of heaven—and the Law: “[E]very scribe who has been trained for the kingdom of heaven is like the master of a household who brings out of his treasure what is new and what is old.”<sup>10</sup>

I am not an expert in Jewish Law. During the course of this essay, with the help of those who know Jewish Law much better than I do, footnotes and some text will direct the reader to Jewish Law’s treatment of some of the issues addressed by Jesus. As you might guess, in some cases, there is agreement between Jesus and the Jewish Law scholars; in some cases disagreement. Often, some Jewish Law scholars agree with Jesus, and others do not.

## II. JEWISH LAW, JESUS, AND THE HEART

First, I would like to qualify what is often seen as a difference between Christians and Jews. In Jesus’s inaugural sermon, which is known as The Sermon on the Mount, he takes pains to focus on the heart and criticizes mere obedience to the law. The following

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*the Civil Law*, in *LAW AND THE BIBLE* 151-182 (Cochran & VanDrunen, eds., InterVarsity Press 2013); and Robert F. Cochran, *The Bible, Positive Law, and the Legal Academy*, in *THE BIBLE AND THE UNIVERSITY* 161-187 (David Lyle Jeffrey and C. Stephen Evans, eds., Zondervan 2007). See those publications for a fuller development of many of the themes addressed herein.

<sup>9</sup> WILLIAM LOADER, *JESUS’ ATTITUDE TOWARDS THE LAW: A STUDY OF THE GOSPELS* 379 (Wm. B. Eerdmans Pub. Co. 2002).

<sup>10</sup> *Matthew* 13:52.

selections are taken from Jesus's Sermon on the Mount in Matthew 5. Footnotes address analogous biblical and Jewish Law commentary.

### Concerning Murder

You have heard that it was said to those of ancient times, 'You shall not murder';<sup>11</sup> and 'whoever murders shall be liable to judgment.'<sup>12</sup> But I say to you that if you are angry with a brother or sister, you will be liable to judgment;<sup>13</sup> and if you insult a brother or sister, you will be liable to the council;<sup>14</sup> and if you say, 'You fool,' you will be liable to the hell of fire. \* \* \*

### Concerning Adultery

You have heard that it was said, 'You shall not commit adultery.'<sup>15</sup> But I say to you that everyone who looks at a woman with lust has already committed adultery with her in his heart.<sup>16</sup> \* \* \*

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<sup>11</sup> *Matthew* 5:21-22.

<sup>12</sup> *Cf. Leviticus* 24:21; *Genesis* 9:6; *Numbers* 35:16.

<sup>13</sup> *Cf.* 7:10; MAIMONIDES, *MISHNEH TORAH: THE BOOK OF KNOWLEDGE, LAWS RELATING TO MORAL DISPOSITIONS AND TO ETHICAL CONDUCT* 2:3 (Moses Hyamson trans., Boys Town Jerusalem 1962) ("Anger too, is an exceedingly bad passion, and one should avoid it to the last extreme . . . The ancient sages said, 'He who is angry—it is the same as if he worshipped idols.'"), [https://www.sefaria.org/Mishneh\\_Torah%2C\\_Human\\_Dispositions.2.3?lang=bi&with=all&lang2=en](https://www.sefaria.org/Mishneh_Torah%2C_Human_Dispositions.2.3?lang=bi&with=all&lang2=en); THE ZOHAR, 1 BERESHITH 104 (Harry Sperling & Maurice Simon trans., Soncino Press 1984) ("[I]t has been laid down that 'to fall into a passion [of anger] is like worshipping idols.'"), <https://www.sefaria.org/Zohar.1.27b.2?lang=bi&with=all&lang2=en>; *cf. Leviticus* 19:17.

<sup>14</sup> *Cf.* Talmud Bavli, *Bava Metzia* 58b, in THE TALMUD OF BABYLONIA, 21B TRACTATE BAVA MESIA 152 (Jacob Neusner trans., Jacob Neusner et al. eds., Brown Judaic Studies, Scholars Press 1990) ("Whoever embarrasses his fellow in public is as though he shed blood."), [https://www.sefaria.org/Bava\\_Metzia.58b?lang=bi](https://www.sefaria.org/Bava_Metzia.58b?lang=bi); *id.* at 153 ("It would be better for someone to throw himself into a fiery furnace than to embarrass his fellow in public."), [https://www.sefaria.org/Bava\\_Metzia.59a.3?lang=bi&with=all&lang2=en](https://www.sefaria.org/Bava_Metzia.59a.3?lang=bi&with=all&lang2=en). Quotations from the Talmud herein are taken from Jacob Neusner's "The Talmud of Babylonia" translation unless indicated otherwise. Following citations to it, links to the sefaria.org online version are included for reader convenience.

<sup>15</sup> *Exodus* 20:14; *Deuteronomy* 5:18; *see also Leviticus* 18:20.

<sup>16</sup> *Cf. Exodus* 20:17 ("[Y]ou shall not covet your neighbor's wife."); *see also Deuteronomy* 5:21; MAIMONIDES, *Mishneh Torah*, in THE CODE OF MAIMONIDES: THE BOOK OF HOLINESS, LAWS CONCERNING FORBIDDEN INTERCOURSE 21:12

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**Love for Enemies**

You have heard that it was said, ‘You shall love your neighbor<sup>17</sup> and hate your enemy.’<sup>18</sup> But I say to you, Love your enemies and pray for those who persecute you, so that you may be children of your Father in heaven; for he makes his sun rise on the evil and on the good, and sends rain on the righteous and on the unrighteous. For if you love those who love you, what reward do you have? Do not even the tax collectors do the same? And if you greet only your brothers and sisters, what more are you doing than others? Do not even the Gentiles do the same? Be perfect, therefore, as your heavenly Father is perfect.<sup>19</sup>

In each of these cases, Jesus calls for a heart attitude that corresponds with the physical requirements of the law. Of course, the heart can bear an important relationship to the law. The change of heart called for by Jesus would cause someone to want to do the good,

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(Louis Rabinowitz & Philip Grossman trans., Leon Nemoy ed., Yale Judaica Series, Yale Univ. Press 1965) (“[T]he sages have forbidden a man to have intercourse with his wife while thinking in his heart of another woman.”), [https://www.sefaria.org/Mishneh\\_Torah%2C\\_Forbidden\\_Intercourse.21.12?lang=bi&with=all&lang2=en](https://www.sefaria.org/Mishneh_Torah%2C_Forbidden_Intercourse.21.12?lang=bi&with=all&lang2=en); Talmud Bavli, *Nedarim 20b*, in THE TALMUD OF BABYLONIA, 15A TRACTATE NEDARIM 55 (Jacob Neusner trans., Shaye J. D. Cohen et al eds., Brown Judaic Studies, Scholars Press 1992) (“So that I won’t ever look at any other women, and my children end up in the status of *mamzerut* [products of extra-marital intercourse].”), [https://www.sefaria.org/Bava\\_Metzia.59a.3?lang=bi&with=all&lang2=en](https://www.sefaria.org/Bava_Metzia.59a.3?lang=bi&with=all&lang2=en); Talmud Bavli, *Sanhedrin 75a*, in THE TALMUD OF BABYLONIA, 23B TRACTATE SANHEDRIN 255 (Jacob Neusner trans., Jacob Neusner et al eds., Scholars Press 1990) <https://www.sefaria.org/Sanhedrin.75a.2?lang=bi&with=all&lang2=en>:

There was the case of a man who gazed upon a woman and whose heart became sick with desire for her. They came and asked physicians, who said, ‘He has no remedy unless he has sexual relations with her.’ Sages ruled, ‘Let him die but not have sexual relations with her.’ . . . [The physicians proposed] ‘Let her talk with him [from] behind a wall.’ [Sages ruled] ‘Let him die and let her not talk with him [from] behind a wall.’

*Id.*

<sup>17</sup> *Leviticus* 19:18.

<sup>18</sup> *Cf. Proverbs* 11:10 (Common English Bible) (“When the wicked perish there are shouts of joy.”); *Psalms* 139:21 (“O LORD, You know I hate those who hate You, and loathe Your adversaries.”).

<sup>19</sup> *Matthew* 5:21-22; 27-28; 43-48.

and in most cases, to automatically do the good. As he says elsewhere: “The good person out of the good treasure of the heart produces good.”<sup>20</sup> In addition, however, he notes that evil comes from the evil heart: “[I]t is from within, from the human heart, that evil intentions come: fornication, theft, murder, adultery, avarice, wickedness, deceit, licentiousness, envy, slander, pride, folly.”<sup>21</sup>

As I mentioned, as to the heart, I want to qualify what is often identified by Christians as an issue between Christians and Jews. That issue is whether the objective of the faithful religious life is obedience to law or a transformed heart. In my view, Jesus and more enlightened Christians and Jews believe that it is a transformed heart that is the objective of the obedient life. Do not misunderstand me. Obedience to the law has great value in itself, and submission to the law can be a step in the transformation of the heart, but we are called to keep our eyes on the prize, which is a transformed heart. As the noted Christian philosopher and theologian Dallas Willard has argued, God wants to bring us to the point where we can do whatever we want—God wants to transform our hearts to the point where we will naturally want the right things.<sup>22</sup>

We find this focus on the heart in many places within the Hebrew Scriptures—that portion of the scriptures that Jews and Christians share. As the following verses illustrate, these include all the different types of Hebrew scripture. Note the close connection that some of these verses suggest between the heart and the law:

### **The Mosaic Law and the Heart**

You shall love the LORD your God with all your heart,  
and with all your soul, and with all your might.<sup>23</sup>

Keep these words that I am commanding you today in  
your heart.<sup>24</sup>

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<sup>20</sup> *Luke* 6:45 (English Standard Version).

<sup>21</sup> *Mark* 7:21-22 (New Revised Standard Version).

<sup>22</sup> DALLAS WILLARD, *THE DIVINE CONSPIRACY: REDISCOVERING OUR HIDDEN LIFE IN GOD* 250 (1998) (“What God gets out of our lives—and, indeed, what we get out of our lives—is simply the person we become. It is God’s intention that we should grow into the kind of person he could empower to do what we want to do.”).

<sup>23</sup> *Deuteronomy* 6:5; 10:12.

<sup>24</sup> *Id.* at 6:6.



Circumcise, then, the foreskin of your heart, and do not be stubborn any longer.<sup>25</sup>

You shall put these words of mine in your heart and soul, and you shall bind them as a sign on your hand, and fix them as an emblem on your forehead.<sup>26</sup>

This very day the LORD your God is commanding you to observe these statutes and ordinances; so observe them diligently with all your heart and with all your soul.<sup>27</sup>

### **The History of Israel and the Heart**

Then Samuel said to all the house of Israel, “[i]f you are returning to the LORD with all your heart, then put away the foreign gods and the Astartes from among you. Direct your heart to the LORD, and serve him only, and he will deliver you out of the hand of the Philistines.”<sup>28</sup>

[T]he LORD does not see as mortals see; they look on the outward appearance, but the LORD looks on the heart.”<sup>29</sup>

.Biblical Poetry and the Heart

[T]he precepts of the LORD are right,  
rejoicing the heart.<sup>30</sup>

David concludes his great meditation on God’s creation and God’s law:

Let the words of my mouth and the meditation of my heart

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<sup>25</sup> *Id.* at 10:16.

<sup>26</sup> *Id.* at 11:18.

<sup>27</sup> *Id.* at 26:16.

<sup>28</sup> *1 Samuel* 7:3.

<sup>29</sup> *Id.* at 16:7.

<sup>30</sup> *Psalms* 19:8.

be acceptable to you,  
O LORD, my rock and my redeemer.<sup>31</sup>

Those who ascend the Lord's hill and stand in his holy place are those who have both "clean hands and pure hearts."<sup>32</sup>

When David confesses his sin of adultery with Bathsheba and murder of her husband, he does not pray that God would enable him to keep the seventh and sixth commandments.<sup>33</sup> He prays:

Create in me a clean heart, O God,  
and put a new and right spirit within me.<sup>34</sup>

### **The Prophets and the Heart**

The Lord said:

[T]hese people draw near with their mouths  
and honor me with their lips,  
while their hearts are far from me,  
and their worship of me is a human commandment  
learned by rote.<sup>35</sup>

I will give them a heart to know that I am the LORD; and they shall be my people and I will be their God, for they shall return to me with their whole heart.<sup>36</sup>

But this is the covenant that I will make with the house of Israel after those days, says the LORD: I will put my law within them, and I will write it on their hearts; and I will be their God, and they shall be my people.<sup>37</sup>

I will give them one heart, and put a new spirit within them; I will remove the heart of stone from their flesh

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<sup>31</sup> *Id.* at 19:14.

<sup>32</sup> *Id.* at 24:3-4.

<sup>33</sup> *Exodus* 20:13-14 ("You shall not murder. You shall not commit adultery."); *see also Deuteronomy* 5:17-18.

<sup>34</sup> *Psalms* 51:10.

<sup>35</sup> *Isaiah* 29:13.

<sup>36</sup> *Jeremiah* 24:7.

<sup>37</sup> *Id.* at 31:33.

and give them a heart of flesh, so that they may follow my statutes and keep my ordinances and obey them. Then they shall be my people, and I will be their God.<sup>38</sup>

I think the question of whether the law or the heart is the central concern of the religious life is an issue *among* Christians and *among* Jews. It is better seen as an intramural issue within Christian and Jewish communities, rather than an interscholastic issue (as it is often seen in Christian communities). My sense is that we each have some within our communities who are heavily legalistic and some who are heavily antinomian (and many of us who at times err each way).

Implicit (at times explicit) in the verses quoted above from the Hebrew Scriptures is very strong criticism of Jews who had become legalistic—they focused on complying with the letter of the law through their hearts were very far from God.

Both legalism and antinomianism were problems for the early church as well. Saint Paul addressed these dangers in the context of the early Christian debate over whether a Gentile male who became a Christian had to be circumcised as Judaism required of its converts. Note that Paul's argument draws from Jesus's position, discussed in the following section, that the law is summed up in love of neighbor.

You who want to be justified by the law have cut yourselves off from Christ; you have fallen away from grace. For through the Spirit, by faith, we eagerly wait for the hope of righteousness. For in Christ Jesus neither circumcision nor uncircumcision counts for anything; the only thing that counts is faith working through love. \* \* \*

For you were called to freedom, brothers and sisters; only do not use your freedom as an opportunity for self-indulgence, but through love become slaves to one another. For the whole law is summed up in a single commandment, "You shall love your neighbor as yourself." \* \* \*

Live by the Spirit, I say, and do not gratify the desires of the flesh. For what the flesh desires is opposed to the Spirit, and what the Spirit desires is opposed to the flesh; for these are opposed to each other, to prevent

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<sup>38</sup> *Ezekiel* 11:19-20.

you from doing what you want. But if you are led by the Spirit, you are not subject to the law. Now the works of the flesh are obvious: fornication, impurity, licentiousness, idolatry, sorcery, enmities, strife, jealousy, anger, quarrels, dissensions, factions, envy, drunkenness, carousing, and things like these. I am warning you, as I warned you before: those who do such things will not inherit the kingdom of God.

\* \* \*

By contrast, the fruit of the Spirit is love, joy, peace, patience, kindness, generosity, faithfulness, gentleness, and self-control. There is no law against such things. And those who belong to Christ Jesus have crucified the flesh with its passions and desires. If we live by the Spirit, let us also be guided by the Spirit.<sup>39</sup>

Both Christians and Jews face the challenges of legalism and antinomianism. However, it may be that Jews, as a group, have a stronger tendency toward legalism and Christians toward antinomianism. As Chaim Saiman suggested to me, each community's views of the importance of law could be plotted on a bell curve, though Judaism has a stronger emphasis on law and Christianity on the heart. In Professor Saiman's words, "though the views within both traditions might be plotted on a bell curve, the curves would not overlap."<sup>40</sup>

The proper place, I think, of law in both traditions is as something that helps to form the character. Law's primary value is as a means of transforming the heart.

### III. JESUS, AGAPIC LOVE, AND LAW

Jesus summarizes the Mosaic Law by quoting two commands in the following encounter:

[A lawyer] asked [Jesus] a question to test him. "Teacher, which commandment in the law is the greatest?" [Jesus] said to him, "'You shall love the Lord your God with all your heart, and with all your

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<sup>39</sup> *Galatians* 5:4-6, 13-14, 16-25.

<sup>40</sup> Telephone conversation between the author and Chaim Saiman, August 23, 2019.

soul, and with all your mind.’ This is the greatest and first commandment. And a second is like it: ‘You shall love your neighbor as yourself.’ On these two commandments depend all the law and the prophets.<sup>41</sup>

Jesus thus summarizes the Mosaic Law as love of God and love of neighbor.<sup>42</sup> In the remainder of this essay, I will focus on what Jesus’s teaching might tell us about the positive law governing relations among humans—the law encompassed in what Jesus identifies as the second great commandment—love of neighbor.

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<sup>41</sup> *Matthew* 22:36-40 (quoting *Deut.* 6:5; *Lev.* 19:18).

<sup>42</sup> Various Jewish Law commentators and talmudic authorities have attempted to summarize the Mosaic Law in a few verses, some like Jesus identifying Leviticus 19:18 (“love thy neighbor”) as central. See, e.g., JACOB B. SOLOMON IBN HABIV, *Introduction to Ein Ya’akov* 4 (Vilna 1857) (“B. Zoma says, ‘There is a verse that encompasses more, “Hear, O Israel! [The Lord is our God, the Lord alone]” (*Deut.* 6:4). B. Nanas says, this is a verse that encompasses [even] more, ‘Love your neighbor as yourself’ (*Lev.* 19:18). Shimon b. Pazi says, this is a verse that encompasses [even] more, “You shall offer the first sheep in the morning, and the second sheep in the afternoon” (*Exod.* 29:39)”), <http://hebrewbooks.org/pdfpager.aspx?req=47602&st=&pgnum=8&hilite=>; *Sifra* 19:18, in *SIFRA: AN ANALYTICAL TRANSLATION*, 3 AHARE MOT, QEDOSHIM, EMOR, BEHAR & BEHUQOTAI 109 (Jacob Neusner trans., Jacob Neusner et al. eds., Brown Judaic Studies, Scholars Press 1988) (“[Y]ou shall love your neighbor as yourself: [I am the Lord]: ‘R. Aqiba says, “This is the encompassing principle of the Torah””), [https://www.sefaria.org/Sifra%2C\\_Kedoshim%2C\\_Chapter\\_4.12?lang=bi&with=all&lang2=en](https://www.sefaria.org/Sifra%2C_Kedoshim%2C_Chapter_4.12?lang=bi&with=all&lang2=en); see also *Jerusalem Talmud Tractate Nedarim* 9:4, in *THE TALMUD OF THE LAND OF ISRAEL*, 23 NEDARIM 167 (Jacob Neusner trans. & ed., Univ. Chi. Press 1985) (““You shall love your neighbor as yourself.’ R. Aqiba says, ‘This is the great general rule of the Torah””), [https://www.sefaria.org/Jerusalem\\_Talmud\\_Nedarim.30b.1?lang=bi&with=all&lang2=en](https://www.sefaria.org/Jerusalem_Talmud_Nedarim.30b.1?lang=bi&with=all&lang2=en). Others have interpreted David or some of the prophets as having summarized the law in a few principles. See *Talmud Bavli, Makkot 24a*, in *THE TALMUD OF BABYLONIA*, 24 TRACTATE MAKKOT 114–115 (Jacob Neusner trans., Shaye J. D. Cohen et al eds., Brown Judaic Studies, Scholars Press 1991) (“David came and reduced them [the 613 commandments] to eleven . . . Isaiah came and reduced them to six . . . Micah came and reduced them to three . . . Isaiah again came and reduced them to two . . . Amos came and reduced them to a single one, as it is said, ‘For thus says the Lord to the house of Israel. Seek Me and live’ (*Amos* 5:4) . . . Habakkuk further came and based them on one, as it is said, ‘But the righteous shall live by his faith’ (Habakkuk 2:4)”), <https://www.sefaria.org/Makkot.24a.3?lang=bi&with=all&lang2=en>.

In the New Testament, the word used for “love” in Jesus’s exchange above is the Greek word “agape.”<sup>43</sup> The Jewish translators of the Septuagint also chose “agape” as the Greek word for the love (“chesed” in Hebrew) used in the Mosaic Law commands quoted by Jesus. At that time, the word “agape” had little meaning. It was a colorless word. Early Christians developed agape’s meaning as they reflected on Jesus’s teachings and life.<sup>44</sup> The New Testament authors (as well as Jesus himself) held up Jesus as the model of agape.<sup>45</sup> Jesus’s teaching on agapic love was striking both in the breadth of the people to whom it was due and the depth of sacrifice for which it called.

#### **A. To Whom is Agapic Love Due?: The Story of the Good Samaritan**

In the following exchange, Jesus answers what modern lawyers might identify as a duty question: Who is this neighbor to whom I owe a duty of love?

[A] lawyer stood up to test Jesus. “Teacher,” he said, “what must I do to inherit eternal life?” [Jesus] said to him, “What is written in the law? What do you read there?” [The lawyer identified the same two commands Jesus had identified as the two greatest commandments.] He answered, “You shall love the Lord your God with all your heart, and with all your soul, and with all your strength, and with all your mind;

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<sup>43</sup> The authors of the Gospels translated the Aramaic word Jesus probably used for love as “agape.” For an examination of Jesus’s development of the Mosaic “love your neighbor” commandment, see AGAPE, JUSTICE, AND LAW, *supra* note 8.

<sup>44</sup> Paul Ramsey has concluded that “[St. Paul] believed such love as he describes in 1 Corinthians 13 [the Christian hymn of agapic love, quoted *infra* at text accompanying note 60] would have been unknown except for Jesus Christ and degrees of love in Christians derivative from his as gifts of his Spirit.” PAUL RAMSEY, BASIC CHRISTIAN ETHICS 18 (Louisville, KY: Westminster/John Knox Press 1993).

<sup>45</sup> See, e.g., *John* 15:12 (“[L]ove one another as I have loved you.”) (Jesus speaking); *Philippians* 2:5 (“Let the same mind be in you that was in Christ Jesus.”).

and your neighbor as yourself.” And [Jesus] said to him, “You have given the right answer; do this, and you will live.” But wanting to justify himself, he asked Jesus “And who is my neighbor?” Jesus replied, “A man was going down from Jerusalem to Jericho, and fell into the hands of robbers, who stripped him, beat him, and went away, 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 [a person with whom “Jews [did] not associate”<sup>46</sup>] while traveling came near him; and when he saw him, he was moved with pity. He went to him and bandaged his wounds, having poured oil and wine on them. Then he put him on his own animal, brought him to an inn, and took care of him. The next day he took out two denarii, gave them to the innkeeper, and said, ‘Take care of him; and when I come back, I will repay you whatever more you spend.’ Which of these three, do you think, was a neighbor to the man who fell into the hands of the robbers?” [The lawyer] said, “The one who showed him mercy.” Jesus said to him, “Go and do likewise.”<sup>47</sup>

Jesus does not directly answer the lawyer’s question, “Who is my neighbor?” but as we read the story (and, no doubt, as his listeners heard the story), we empathize with the wounded traveler. It is likely that Jesus’s audience had traveled that very road. We admire the Samaritan. He is the hero of the story. He cares for one who appears to be outside his racial, ethnic, and religious background. Jesus’s implicit answer to the lawyer’s question is that we should emulate the Samaritan—our neighbors include those we might be inclined to hate.

As to this issue, Jesus differs from Jewish Law commentators, who discussed whether “the neighbor” included all, or only some, of those within the Jewish faith. Some commentators argued that the “neighbor” is limited to Jews who observe the Torah and its commandments, thereby excluding Jewish co-religionists who neglect

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<sup>46</sup> *John* 4:42.

<sup>47</sup> *Luke* 10:25-37.

those commandments.<sup>48</sup> Maimonides argued that the duty to love the neighbor extended to “each individual Israelite” including “[a] proselyte who comes to take refuge beneath the wings of the *Shechinah* [God’s presence].”<sup>49</sup>

Jesus taught the breadth of the duty of agapic love, not only from his stories, but from his life. He loved a broad range of “neighbors.” He socialized with, befriended, and went to the aid of people whom many of his followers would have avoided and even hated. He befriended a Samaritan woman at a well.<sup>50</sup> He healed the servant of a hated Roman military officer<sup>51</sup> and the daughter of a Canaanite woman.<sup>52</sup> One of the most notable (and most criticized) things about Jesus was that he ate and drank with “tax collectors and sinners.”<sup>53</sup>

Beyond neighbors (lest there was any doubt about the extent of one’s duty), Jesus taught his followers to love their enemies. He highlighted the difference between his teaching and the Jewish

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<sup>48</sup> *Talmud Bavli, Pesachim 113b*, in THE TALMUD OF BABYLONIA, 4E TRACTATE PESAHIM 67 (Jacob Neusner trans., Shaye J. D. Cohen et al eds., Brown Judaic Studies, Scholars Press 1993) (“It is written, ‘you shall not hate *your brother* in your heart’ (quoting *Leviticus* 19:17) (emphasis added). So if there are witnesses that he did a forbidden deed, then everybody is supposed to hate him . . . R. Nahman bar Isaac said, ‘It is a religious duty to hate him: “The fear of the Lord is to hate evil” (quoting *Proverbs* 8:13).’”), <https://www.sefaria.org/Pesachim.113b.5?lang=bi&with=all&lang2=en>; see also *Avot D’Rabbi Natan* 16:4, in THE MINOR TRACTATES OF THE TALMUD 1 ABOTH D’RABBI NATHAN 98 (Eli Cashdan trans., A. Cohen ed., Soncino Press 1965) (“But does not scripture declare, ‘Thou shalt love thy neighbor as thyself: I am the Lord’? [quoting *Leviticus* 19:18]. And why? Because I created him. If he acts as ‘thy people’ should act, then you must love him, but if not, then you must not love him.”), [https://www.sefaria.org/Avot\\_D’Rabbi\\_Natan.16.4?lang=bi&with=all&lang2=en](https://www.sefaria.org/Avot_D’Rabbi_Natan.16.4?lang=bi&with=all&lang2=en).

<sup>49</sup> MAIMONIDES, MISHNEH TORAH: THE BOOK OF KNOWLEDGE, LAWS RELATING TO MORAL DISPOSITIONS AND TO ETHICAL CONDUCT 6:3–4 (Moses Hyamson trans., Boys Town Jerusalem 1962), [https://www.sefaria.org/Mishneh\\_Torah%2C\\_Human\\_Dispositions.6.3?lang=bi&with=all&lang2=en](https://www.sefaria.org/Mishneh_Torah%2C_Human_Dispositions.6.3?lang=bi&with=all&lang2=en).

<sup>50</sup> *John* 4:4–42.

<sup>51</sup> *Matthew* 8:5–13.

<sup>52</sup> *Id.* at 15:21–28.

<sup>53</sup> *Id.* at 9:10–11, 11:19; *Luke* 5:30, 7:34, 15:1–2. Tax collectors may have been even more disliked in Jesus’s day than today, because they collected for the hated Romans. When Jesus calls on his followers to expel from their community one who fails to respond to reproof, he advises that they “treat him as a tax collector.” *Matthew* 18:17.



teaching of the day: "You have heard that it was said, 'You shall love your neighbor and hate your enemy.' But I say to you, Love your enemies and pray for those who persecute you . . . ." <sup>54</sup>

As to the issue of attitudes toward enemies, Jewish Law teaching varies. The Book of Proverbs says: "Do not rejoice when your enemies fall, and do not let your heart be glad when they stumble," <sup>55</sup> and "[i]f your enemies are hungry, give them bread to eat; and if they are thirsty, give them water to drink." <sup>56</sup> Exodus states: "When you see the donkey of one who hates you lying under its burden and you would hold back from setting it free, you must help to set it free." <sup>57</sup> However, "R. Simeon b. Lakish said: Whoever shows himself merciful in circumstances where he should be pitiless, in the end becomes pitiless when he should be merciful. . . . The Rabbis say: Whoever makes himself merciful in circumstances where he should be pitiless will eventually be overtaken by the Attribute of Justice . . . ." <sup>58</sup>

### B. What is Agapic Love?

Jesus not only broadened the scope of people to whom love was owed, he deepened love's meaning. When Jesus called on his followers to love their enemies, he summarized this love as follows: "Do to others as you would have them do to you." <sup>59</sup>

Saint Paul offers the classic New Testament account of agapic love:

[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 does not insist on its own way; it is not irritable or resentful; it does not rejoice in

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<sup>54</sup> *Matthew* 5:43-44.

<sup>55</sup> *Proverbs* 24:17.

<sup>56</sup> *Id.* at 25:21.

<sup>57</sup> *Exodus* 23:5. For a discussion of the meaning of this verse under Jewish Law, see Chaim Saiman, *Jesus' Legal Theory—A Rabbinic Reading*, 23 J. L. & RELIGION 97, 117-21 (2007).

<sup>58</sup> *Kohleth Rabbah* 7:16, in *THE MIDRASH RABBAH* 8 ECCLESIASTES 199 (A. Cohen trans., H. Freedman & Maurice Simon eds., Soncino Press 1983), [https://www.sefaria.org/Kohleth\\_Rabbah.7.16.1?lang=bi&with=all&lang2=en](https://www.sefaria.org/Kohleth_Rabbah.7.16.1?lang=bi&with=all&lang2=en).

<sup>59</sup> *Luke* 6:31.

wrongdoing, but rejoices in the truth. It bears all things, believes all things, hopes all things, endures all things.<sup>60</sup>

Christian commentators have defined agapic love as “other-regarding care,”<sup>61</sup> “unclaiming love,”<sup>62</sup> and “universal benevolence.”<sup>63</sup> It is other-directed, offered without regard for the interests of the actor. Timothy Jackson defines agapic love as 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.”<sup>64</sup> C. S. Lewis notes that agapic love enables one “to love what is not naturally lovable; lepers, criminals, enemies, morons, the sulky, the superior and the sneering.”<sup>65</sup>

Agapic love can be contrasted with other Greek terms for love. Unlike “eros” (romance), agapic love does not require that the loved one be attractive. The starting point for “eros” is the need of the lover, and its goal is the satisfaction of that need. Unlike “philia” (friendship), agapic love does not require mutuality. “Philia” is love among those who enjoy common interests.<sup>66</sup> Recall the range of people whom Jesus taught his followers to love: Samaritans, sinners, assailants, opposing litigants, Roman soldiers, tax collectors, and Canaanites.

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.”<sup>67</sup> This aspirational character of agapic love 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

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<sup>60</sup> *1 Corinthians* 13:4-7. This section 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 agapic love is likely to be the more important form of marital love in years to come.

<sup>61</sup> GENE H. OUTKA, *AGAPE: AN ETHICAL ANALYSIS* 1 (New Haven: Yale University Press 1972).

<sup>62</sup> Ramsey, *supra* note 44, at 71.

<sup>63</sup> TIMOTHY P. JACKSON, *THE PRIORITY OF LOVE: CHRISTIAN CHARITY AND SOCIAL JUSTICE* 50 (Princeton, N.J.: Princeton University Press 2003).

<sup>64</sup> *Id.* at 10.

<sup>65</sup> C.S. LEWIS, *THE FOUR LOVES* 177 (New York: Harcourt, Brace, Jovanovich 1960).

<sup>66</sup> GILBERT MEILAENDER, *FRIENDSHIP: A STUDY IN THEOLOGICAL ETHICS* (Notre Dame, Ind.: University of Notre Dame Press 1981).

<sup>67</sup> See JOSEF PIEPER, *FAITH, HOPE, LOVE* 187 (San Francisco: Ignatius Press 1997).

loves you just the way you are, but he loves you too much to let you stay that way.”<sup>68</sup>

Jesus’s central teaching about the Mosaic Law (and, I will argue, about the law in general) is that law should encourage us to take the loving action toward our neighbors, that we should act for their good. Initially, this might be a rather mechanical, even grudging, obedience to law. The ultimate hope is that it would become a matter of the heart, that it would become our natural response to any situation.

Jesus’s definition of agapic love (“Do to others as you would have them do to you.”<sup>69</sup>) is similar to, but different from, Jewish teaching of the same era. Hillel said that he could state the Mosaic Law while his student stood on one foot: “What is hateful to you, do not do to your neighbor. That is the whole Torah; the rest is the explanation of this—go and study it!”<sup>70</sup> Both Jesus and Hillel made an implicit appeal to what we now might identify as empathy—they called on their hearers to consider things from the perspective of other people. The difference is that Jesus went beyond the requirement to do no harm and imposed an *affirmative* duty to aid other people. Jesus required his disciples to aid those attacked and left on the road.

Other Jewish Law commentators defined the type of love commanded in the Mosaic Law in terms similar to Jesus (though, as noted above, they limited the duty to fellow Jews). Maimonides said: “What you would have others do unto you, do unto him who is your brother in the Law and in the performance of the commandments.”<sup>71</sup> In addition, he said:

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<sup>68</sup> JUNEBUG (Sony Pictures Classics 2005).

<sup>69</sup> Luke 6:31.

<sup>70</sup> *Talmud Bavli, Shabbat 31a*, in THE TALMUD OF BABYLONIA, 2A TRACTATE SHABBAT 110 (Jacob Neusner trans., Shaye J. D. Cohen et al. eds., Brown Judaic Studies, Scholars Press 1992) <https://www.sefaria.org/Shabbat.31a.6?lang=bi&with=all&lang2=en>:

There was another case of a gentile who came before Shammai. He said to him, ‘Convert me on the stipulation that you teach me the entire Torah while I am standing on one foot.’ He [Shammai] drove him off with the building cubit that he had in his hand. He [the gentile] came before Hillel: ‘Convert me.’ He [Hillel] said to him, ‘What is hateful to you, to your fellow don’t do. That’s the entirety of the Torah; everything else is elaboration. So, go study.’

*Id.*

<sup>71</sup> MOSES MAIMONIDES, MISHNEH TORAH, IN THE CODE OF MAIMONIDES: THE BOOK OF JUDGES, LAWS CONCERNING MOURNING 14:1 (Abraham Herschman trans., Julian Obermann et al. eds., Yale Judaica Series, Yale Univ. Press 1949),

It is incumbent on every one to love each individual Israelite as himself, as it is said ‘Thou shalt love th[is] neighbor, as thyself’ (Lev. 19:18). Hence, a person ought to speak in praise of his neighbor and be careful of his neighbor’s property as he is careful of his own property and solicitous about his own honor.<sup>72</sup>

Sefer HaHinnuch, in *Affection for a Fellow-Jew*, said:—

[A] man should behave toward his fellow-man as he behaves toward himself—to guard his property and remove all harm from him. And if he relates things about the other one, let him relate them in his praise and have a care for the other’s esteem, and not find honor in the other’s disgrace.<sup>73</sup>

Whereas Jesus interpreted the Mosaic Law by the “Love your neighbor as yourself” standard, Sam Levine suggests that “Love your neighbor as yourself” might serve as a source of statutory interpretation where there is no specific Jewish Law regulation.<sup>74</sup>

Together with enumerated commandments addressing interpersonal relationships and the broad commandment to do the “just” and the “good,” the Torah contains another broad commandment governing interpersonal conduct, “Love your neighbor as yourself.” [citing Leviticus 19:18] . . . [T]his commandment is understood by Jewish religious

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[https://www.sefaria.org/Mishneh\\_Torah%2C\\_Mourning.14.1?lang=bi&with=all&lang2=en](https://www.sefaria.org/Mishneh_Torah%2C_Mourning.14.1?lang=bi&with=all&lang2=en).

<sup>72</sup> MOSES MAIMONIDES, MISHNEH TORAH: THE BOOK OF KNOWLEDGE, LAWS RELATING TO MORAL DISPOSITIONS AND TO ETHICAL CONDUCT 6:3 (Moses Hyamson trans., Boys Town Jerusalem 1962), <https://heionline.org/HOL/Contents?handle=hein.religion/mishtor0001&id=1&size=2&index=&collection=religion>.

<sup>73</sup> Sefer HaHinnuch, *Affection for a Fellow-Jew*, in THE BOOK OF MITZVAH EDUCATION § 243 (Charles Wengrov trans., 1984), [https://www.sefaria.org/Sefer\\_HaChinukh.243.1?lang=bi&with=all&lang2=en](https://www.sefaria.org/Sefer_HaChinukh.243.1?lang=bi&with=all&lang2=en).

<sup>74</sup> 1 Samuel J. Levine, *Unenumerated Constitutional Rights and Unenumerated Biblical Obligations*, in JEWISH LAW AND AMERICAN LAW 161, 174-175 (2018). Levine analogizes such a use of “Love your neighbor” to the role some have suggested for the U.S. Constitution’s Ninth Amendment’s provision protecting “other [rights] retained by the people.” *Id.* at 172-173 (discussing Charles Black’s theory that the Ninth Amendment guarantees certain unenumerated rights).

authorities to clearly indicate that, in addition to the interpersonal obligations enumerated in the biblical text, there are other obligations incumbent on an individual to comply with loving one's neighbor as one's self. . . .

. . .

[T]he broad language of the phrase "love your neighbor as yourself" implies an obligation to identify unenumerated obligations that would express loving one's neighbor as one's self, and then to treat others as one would wish to be treated. Indeed, in his Code of Law, Maimonides cites Talmudic sources listing examples of conduct required by the command, including speaking words of praise for others and being concerned for the monetary welfare of others, just as one would seek one's own honor and be concerned for one's own financial well-being. Emphasizing the importance of these principles, Maimonides quotes the Talmudic statement that "one who gains honor through disgracing another has no place in the World to Come."<sup>75</sup>

### C. Is Agapic Love for the Private Sphere Only?

One might argue that Jesus's moral teaching concerns the private life and that it has nothing to do with social responsibility or the positive law. Law professor David Skeel argued recently that the tradition from which many of the Christian supporters of Donald Trump emerged is one where Jesus's Sermon on the Mount—his fullest development of the meaning of agape—is seen as an ethic for private life only.<sup>76</sup> As I noted at the beginning of this essay, both Sam Levine (citing Rabbi Soloveitchik) and I (citing John Calvin) have argued that there is no place within Judaism or Christianity for such moral and religious schizophrenia.

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<sup>75</sup> *Id.* at 175 (citing to MOSES MAIMONIDES, MISHNEH TORAH: LAWS RELATING TO MORAL DISPOSITIONS AND TO ETHICAL CONDUCT 6:3 (cited *supra* in note 72)).

<sup>76</sup> See David A. Skeel, Jr., *Divided by the Sermon on the Mount*, 47 PEPP. L. REV. 497 (2020).

It is true that Jesus expresses most of his moral teaching in the Sermon on the Mount in the singular personal: “if you are angry. . . .”<sup>77</sup>; “if you insult a brother or sister. . . .”<sup>78</sup>; “if your right eye causes you to sin. . . .”<sup>79</sup>; “if anyone strikes you on the right cheek. . . .”<sup>80</sup>; “if anyone wants to sue you. . . .”<sup>81</sup>; “if anyone forces you to go one mile. . . .”<sup>82</sup> In addition, Jesus’s story of the Good Samaritan involves a single Samaritan assisting a single wounded traveler and is told in response to an individual lawyer who wants to know what he must do “to inherit eternal life.”<sup>83</sup> These might suggest that this was Jesus’s moral teaching about private life, rather than anything that had to do with law or social responsibility.

However, though Jesus frames many of his statements in the singular, he makes many of them in sermons to large groups—a corporate setting. Moreover, he commands his followers to “love your [plural] enemies . . . that you may be children [plural] of your Father in heaven.”<sup>84</sup> In addition, much of this teaching is a commentary on the law. He begins many of his statements in the Sermon on the Mount contrasting his teaching with the Mosaic Law or commentary on it: “You have heard that it was said. . . .”<sup>85</sup>

Jesus’s story of the Good Samaritan is also designed to tell us something about law. It is a *lawyer* who raises the question to Jesus. That sets a legal context for the story. If I tell you that a lawyer asked me a question, you would expect the answer to have something to do with law. Moreover, the lawyer explicitly asks Jesus a legal question: to whom does the *legal* duty to love run—“Who is my neighbor?”<sup>86</sup> Love is the applicable *legal standard*, and Jesus responds that the duty to love runs to all, even those I might be inclined to hate.

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<sup>77</sup> *Matthew* 5:22.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.* at 5:29.

<sup>80</sup> *Id.* at 5:39.

<sup>81</sup> *Id.* at 5:40.

<sup>82</sup> *Id.* at 5:41.

<sup>83</sup> *Luke* 10:25.

<sup>84</sup> *Id.* at 5:44-45.

<sup>85</sup> *Id.* at 5:21, 27, 33, 38, 43.

<sup>86</sup> *Luke* 10:29.

David VanDrunen has argued that Jesus's demanding ethic applies only within the church.<sup>87</sup> By this view, Christians should show forgiving and reconciling love within the church and with their neighbors, but the *lex talionis*, "an eye for an eye," is the standard of justice for the state.<sup>88</sup> VanDrunen proposes an institutional division of standards—agapic love for the church and retributive justice for the state. However, as Dallas Willard and I have argued:

[T]his too neatly avoids the difficult work of determining the implications of Jesus' teaching on love for the state. There is no basis for such a division of authority in Jesus' teaching. Indeed, he taught that love is the framework on which the law hangs. Love is the standard by which the law, including the *lex talionis*, should be judged. Moreover, Jesus' kingdom is primarily about a change in the heart, not about the application of rules. That change of heart, and its accompanying Christian virtues, should affect all of life. Are Christians involved in government leadership to have one heart for the home and the church and another heart for the office and the courtroom? This is not to say that it will be easy to determine the implications of Jesus' teachings for the law. We see that as the challenge that Jesus presents to his followers who are concerned with law.<sup>89</sup>

Jesus did not place limits on the situations in which his followers were to love their neighbors. Law, government, and politics are means by which people's lives can be improved (as well as means by which people's lives can be greatly harmed). One need only look around the world at people who have suffered under oppressive governments and at people who have suffered because there was no government to protect them to see the importance of good government in people's lives. It would be a lack of love to fail to use the tools of law and government to protect them.

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<sup>87</sup> David VanDrunen, *Bearing Sword in the State, Turning Cheek in the Church: A Reformed Two-Kingdoms Interpretation of Matthew 5:38–42*, THEMELIOS (2009).

<sup>88</sup> *Id.* (citing the Old Testament's *lex talionis* (*Exodus* 21:24) and Paul's teaching in *Romans* 13).

<sup>89</sup> Cochran & Willard, *supra* note 8, at 173.

#### D. Interpretation of Law: “[Law] was made for Humans, Not Humans for [Law]”

For Jesus, agapic love of neighbor was not only the second commandment (behind love of God) it was the standard by which he interpreted the law. He taught that there were priorities among laws, criticizing the teachers of the Mosaic Law at that time for tithing their spices while neglecting “the weightier matters of the law—justice, mercy and faith.”<sup>90</sup> Note that these “weightier matters of the law” are all means of showing agapic love to people—they aim at human flourishing. Jewish Law scholars are much less likely to highlight broad meta-legal principles at the expense of the specifics of law. Indeed, some Jewish Law scholars emphasize the importance of obeying all the Jewish Law, rather than drawing distinctions as to the weight of different commandments.<sup>91</sup>

Chaim Saiman notes that:

[A]ll legal systems—halakhah included—have the potential to become overrun by technical minutiae that can drown out the law’s overarching goals and principles. The rabbis’ idea of halakhah, however, suggests that the opposite may also be true. Whether by design, effect, or some combination thereof, halakhah became the forum to explore and develop the most weighty matters of the law.<sup>92</sup>

Although Jewish commentators recognized exceptions to the Mosaic code in cases of extreme need, Jesus started with meeting human need as the primary standard.<sup>93</sup> When some Jewish legal

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<sup>90</sup> *Matthew* 23:23-24.

<sup>91</sup> JACOB NEUSNER, *Mishnah Avot* 2:1, in *THE MISHNAH, THE FOURTH DIVISION: THE ORDER OF DAMAGES* 501, 675 (Yale Univ. 1988) (“Rabbi [Judah the Prince] says, ‘What is the straight path which a person should choose for himself? . . . Be meticulous in [performing] a small religious duty as in a large one, for you do not know what sort of reward is coming for any of the various religious duties.’”), ([https://www.sefaria.org/Pirkei\\_Avot.2.1?lang=bi&with=all&lang2=en](https://www.sefaria.org/Pirkei_Avot.2.1?lang=bi&with=all&lang2=en)). Nevertheless, Jewish Law commentators do draw distinctions. For example, biblical commands take priority over rabbinic commands and Jewish Law draws distinctions between misdemeanors, felonies, and capital crimes.

<sup>92</sup> CHAIM N. SAIMAN, *HALAKHAH: THE RABBINIC IDEA OF LAW* 125-126 (2018). For further development of this theme, see *id.*, at 125-137.

<sup>93</sup> Ramsey, *supra* note 44, at 56.



officials criticized his disciples for picking grain on the Sabbath, Jesus said: “The Sabbath was made for humankind, and not humankind for the Sabbath.”<sup>94</sup> Jesus here applied agapic love as the standard by which law should be judged. Law has instrumental value; it is not the ultimate value. As Professor Saiman puts it: “Jesus moves the discussion away from what man can and cannot do towards how man should use the Shabbat for his moral and spiritual development . . . . In [the Apostle] Paul’s terminology, Jesus rejects the letter of the law and reaches for its spirit.”<sup>95</sup>

In my view, the method Jesus used in analyzing the Sabbath is an application of love of neighbor in the law. This method should be applied to all of the Mosaic Law, and beyond that to all law. Applying the method Jesus used for the Sabbath to all of the law seems to be proper, in part, because of the importance of the Sabbath regulations. If his method is applied to the most important commandments, it should be applied to the other commandments as well.

In Jesus’s discussion of the Sabbath, he did not merely analyze a minor part of the Mosaic Law. Sabbath observance was rooted in both creation—“God blessed the seventh day and hallowed it, because on it God rested from all the work that he had done in creation,”<sup>96</sup>—and the Ten Commandments—“remember the Sabbath day, and keep it holy.”<sup>97</sup> A very large portion of the Mosaic Law regulated activity on the Sabbath. Some Sabbath violations even merited the death penalty.<sup>98</sup> The underlying purposes of Sabbath regulations were broad, including love of God, love of humans—including slaves—and even love of animals.<sup>99</sup> Indeed, Sabbath regulations could be seen as an application of what Jesus himself identified as both the first and second commandments—love of God and neighbor. The intensity with which the Pharisees challenged Jesus regarding the Sabbath

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<sup>94</sup> *Mark* 2:23-28.

<sup>95</sup> Saiman, *supra* note 6, at 108 (referring to *2 Corinthians* 3:6: “[F]or the letter kills, but the spirit gives life.”); *See also id.* at 112 (explaining some of the details of Sabbath regulations, Saiman notes that “[a]s the common law’s long and tortured history bears out, intricate doctrinal analysis has the uncanny ability to restrict the lawyer’s field of vision, making it easy to lose sight of the intended purpose of the regulation at hand.”).

<sup>96</sup> *Genesis* 2:3.

<sup>97</sup> *Exodus* 20:8.

<sup>98</sup> *See, e.g., Exodus* 31:14; *Numbers* 15:32-36.

<sup>99</sup> *Deuteronomy* 5:14.

indicated both their devotion to it and possibly their belief that the people would turn against Jesus if they perceived that he denigrated it. When Jesus identified a standard by which Sabbath regulations were to be judged—human flourishing—it is reasonable to conclude that he was laying down a standard that had broad implications, that he was laying down a standard by which other portions of the Mosaic Law might be judged. Jesus evaluated the Mosaic Law based on its impact on human lives. Indeed, what Jesus identifies as the second most important commandment (“love your neighbor”) might be captured in a variation on Jesus’s Sabbath teaching—*law* (not merely the Sabbath) was made for humans, not humans for law.

Of course, to say that either the Sabbath (or law in general) should be judged by its impact on human flourishing does not mean that the Sabbath (or law in general) should casually be set aside. Indeed, Jesus’s point is the Sabbath *was made* for humans—it was designed *so that* humans would flourish. Generally, obedience to the law, including Sabbath laws, will benefit humans. Humans need times to worship and times to be refreshed. Just as God rested, humans need to rest. Employers need to set limitations on the time they work their employees. Moreover, the community aspect of the Sabbath is important. When the whole community shares a Sabbath, there will be occasions for fellowship—no excuses (“I have to work”) for not getting together.

As an aside, though I argue that the Sabbath (and law in general) should be interpreted by the standard of human flourishing, I must admit that on this issue, the world could use an injection of Orthodox Jewish “legalism.” Many employers force their employees—from dishwashers in the galleys of cruise ships to associates at large law and accounting firms—to work harsh hours and to live a diminished life. They—we all—need a Sabbath.

Moreover, I must confess that Christians generally do an awful job of applying Jesus’s principle that “the Sabbath was made for humans.” Many Christians are workaholics, with their identities wrapped up in their professions, and they find it difficult to stay away from work on the Christian Sabbath. Many Christian employers require their workers to work on the Sabbath.<sup>100</sup> Many Christian

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<sup>100</sup> A counterexample is the Hobby Lobby Corporation, owned by the David and Barbara Green family, one of the largest craft supply businesses in the world. *Burwell v. Hobby Lobby*, 573 U.S. 682, 703 (2014).

families go for weeks without sharing any family time together, whether on the Sabbath or otherwise.<sup>101</sup> Though I acknowledge that Christian celebration of the Sabbath is a pale imitation of the Orthodox Jewish Sabbath, I think the fault is that Christians fail to keep *Jesus's* teaching on the Sabbath. We act as if the Sabbath was not made for humans, but for employers. Under Jesus's teaching, the Sabbath should be joyously and regularly celebrated, though with flexibility and with the objective of human flourishing.<sup>102</sup>

#### IV. INTERPRETING ALL POSITIVE LAW AS JESUS INTERPRETED THE MOSAIC LAW

In my view, not merely the Mosaic Law, but all law should be based on the standard of agapic love. I am in what I consider to be good company. John Calvin made a similar argument. Like Thomas Aquinas, Calvin divided the Mosaic Law into ceremonial, moral, and positive parts.<sup>103</sup> He argued that the purpose of the Mosaic positive

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Hobby Lobby's statement of purpose commits the Greens to "[h]onoring the Lord in all [they] do by operating the company in a manner consistent with Biblical principles." . . . In accordance with those commitments, Hobby Lobby . . . stores close on Sundays, even though the Greens calculate that they lose millions in sales annually by doing so. . . .

*Id.* Of course, many Jewish businesses also close on the Jewish Sabbath, giving up the other busiest sales day of the week.

<sup>101</sup> I have been blessed on two occasions to have Sabbath dinner with Sam Levine (whom this symposium edition honors) and his family. I joined in the excitement with which Sam's son, Yehudah, and the other children greeted their father when he came home on Friday afternoon before we shared a delicious meal. I must say that I was envious. Part of me wished that I could point to God and say he commands my family to share Sabbath together.

<sup>102</sup> Ironically, Jews may benefit from the loose attitude of many Christians toward the Christian Sabbath. In *Braunfeld v. Brown*, 366 U.S. 599 (1961), the Supreme Court considered a challenge by an Orthodox Jewish store owner of a law requiring stores to be closed on Sunday, the Christian Sabbath. Such laws impose significant burdens on Saturday Sabbatarians, since such laws result in their businesses being closed all weekend, the most important time of the week for many retail stores. The Supreme Court in *Braunfeld* held that the Sunday closing law did not violate the Free Exercise Clause, since there was a legitimate secular purpose for the law (having a uniform day of rest) and because the law imposed only "indirect" as opposed to "direct" burdens on religious practice. Though the Supreme Court approved Sunday closing laws, few jurisdictions have such rules today, probably, in part, because of the generally loose attitude of Christians toward the Sabbath.

<sup>103</sup> See, e.g., JOHN CALVIN, INSTITUTES OF THE CHRISTIAN RELIGION, IV, XX, 14, 663 (Henry Beveridge trans., Grand Rapids: Wm. B. Eerdmans Publishing Co.

law was to preserve agapic love. The Mosaic positive law looked to “the best method of preserving that charity [agapic love] which is enjoined by the eternal law of God . . . .”<sup>104</sup> Calvin argued that God left nations at liberty to enact laws which they judge to be beneficial, but “these are always to be tested by the rule of charity so that while they vary in form, they must proceed on the same principle.”<sup>105</sup> Just as Jesus judged the Mosaic Law based on agapic love, all nations’ laws should be judged based on agapic love. It seems to me that this position is supported by four arguments.

A first argument for judging all law by the standard of agapic love flows from Jesus’s story of the Good Samaritan. Its answer to the lawyer’s legal question (“Who is my neighbor?”) is that agapic love is owed to people of all cultures, irrespective of race, religion, or national origin. The laws of any nation have the potential to be a blessing or a curse to its citizens. One way of showing agapic love to people in any nation is to see that they have laws that enhance their flourishing. Agapic love is a matter of helping people flourish and law can be a source of that help. Agapic law is among the most important means of showing agapic love to people in any country.

A second argument for extending the agapic love standard to all law is also present in the story of the Good Samaritan. Note that it is a Samaritan who complies with the duty to love one’s neighbor. He senses a duty to love his neighbor as himself. This suggests that agapic love is a universal duty, not one limited to Jews and Christians. We admire the Samaritan because he loves beyond his own community; we also admire him because he senses this responsibility to care for others. The duty to love one’s neighbor appears to be a part of what Saint Paul later identified as the law “written on the heart.”<sup>106</sup> It appears to flow from a natural empathy the Samaritan feels for the wounded traveler—the Samaritan saw him and “he was moved with pity.”<sup>107</sup> Not only is agapic love due to all—the answer to the question

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1989); THOMAS AQUINAS, *SUMMA THEOLOGICA*, 2a, Question 99, Article 4, <http://www.newadvent.org/summa/2099.htm>. Though this is a helpful means of analyzing the Mosaic Law, there is no such division in the Mosaic Law itself. Protestants commonly use the term “civil law” to refer to the “positive law”—the law instituted by human governments.

<sup>104</sup> John Calvin, *supra* note 103, at 664.

<sup>105</sup> *Id.*

<sup>106</sup> *Romans* 2:14-15.

<sup>107</sup> *Luke* 10:33.

asked by the lawyer—but the fact that the hero of the story is not a Jew suggests that all are called to show agapic love. And again, a most important means of showing and teaching agapic love is seeing that the laws of a nation encourage human flourishing.

A third argument for judging all law by agapic love as Jesus judged the Mosaic Law is based on an analogy between the Mosaic positive law and the law of other nations. This type of argument is familiar to lawyers. A legal standard in one jurisdiction may serve as an influential authority in another. That standard may be worthy of consideration, and possibly of emulation. The field of comparative law recognizes analogies between legal systems and considers the possibility that the law in one jurisdiction should influence the law in another. Jewish Law commentators, including Sam Levine, have suggested that Jewish Law might have such an influence on the law of other nations.<sup>108</sup> Jesus does not say that other legal systems are bound by his analysis of the Mosaic system, but his treatment of the Mosaic Law provides a pattern for the treatment of other nations' laws that might be persuasive.

In order for this analogy between Jesus's critique of the Mosaic Law and other legal systems to carry weight, the Mosaic Law—the law that is the object of Jesus's critique—must be similar in important ways to those other legal systems. Obviously, different legal systems address greatly different cultures, with greatly different practices, and the Mosaic system faced issues that are quite different from those facing modern cultures. It did not regulate the internet, air travel, or firearms. On the other hand, Mosaic Law faced many of the same major challenges faced by modern cultures. Law's purposes in any legal system are to organize society and to restrain evil. Law in all cultures must deal with the effects of the fall—both citizens and leaders will act in their selfish interests unless regulated by law. All legal systems carry with them the risks of abuse Jesus confronted—of legal authorities focusing on the details of the legal system and losing sight of the people it serves; of law being interpreted narrowly to serve only the privileged; of law being implemented harshly and hypocritically; and of authorities using law for their own and their social class's benefit at the expense of other people. In my view, the abuses of the Mosaic Law that Jesus addressed have enough in common with abuses in other legal systems that his critique should be applied to all law.

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<sup>108</sup> Levine, *supra* note 4.

Agapic love suggests that all law should be carried out with human well-being in mind. Law in any system should be “made for humans.”

A fourth argument for extending Jesus’s critique of the Mosaic Law to all positive law is that in making his argument, Jesus appealed to an authority which applies to all people. He appealed to a higher authority (another practice familiar to lawyers). Jesus analyzed the Mosaic Law based on standards found in creation. He pointed to Genesis’s creation narrative for the standards by which to judge the Mosaic Law’s teaching on both the Sabbath and divorce. In both cases, the underlying standard he applied was agapic love.

Jesus grounded his argument for interpreting Sabbath regulations based on human need in creation. The Sabbath “*was made* for humankind.” This standard was prior to the Mosaic Law. It also applied more broadly than the Mosaic Law. The fact that Jesus’s critique was grounded in creation suggests that it applied to all of Adam and Eve’s descendants. Moreover, in contrast to the dominant rabbinic teaching that the Sabbath was made for the Jews, Jesus taught that the Sabbath was made *for all of humanity*.<sup>109</sup> When God rested on the seventh day, he suggested a holiday for all humans. Jesus grounded his agapic understanding of the Sabbath in creation.

Jesus also grounded his arguments regarding marriage and divorce in creation. The Mosaic Law did not explicitly approve of divorce, but it mentioned without criticizing a husband’s divorce if his wife “has become displeasing to him because he finds something indecent about her, and he writes her a certificate of divorce.”<sup>110</sup> When some Pharisees asked Jesus, “Is it lawful for a man to divorce his wife for any cause?” Jesus pushed them beyond the controversy over divorce, back to God’s original design for marriage:

Have you not read that the one who made them at the beginning ‘made them male and female,’ and said, ‘For this reason a man shall leave his father and mother and be joined to his wife, and the two shall become one flesh’? So they are no longer two, but one flesh.

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<sup>109</sup> 1 JOHN P. MEIER, *A MARGINAL JEW: RETHINKING THE HISTORICAL JESUS: THE ROOTS OF THE PROBLEM AND THE PERSON* 281-83 (New York: Doubleday 1991).

<sup>110</sup> *Deuteronomy* 24:1-4.

Therefore what God has joined together, let no one separate.<sup>111</sup>

Jesus reasoned, based on the creation narrative, that marriage is for life. This can be seen as an application of “Love your neighbor as yourself.” As Paul Ramsey argues, it is best “to regard [Jesus’s] strenuous views on marriage and divorce as another manifestation of unclaiming love [Ramsey’s phrase for ‘agapic love’] transcending enactment into statute.”<sup>112</sup> “Unclaiming love will hardly find any cause for divorce, least of all will it fasten first upon what is the chief reason for divorce in the attitude of a person mainly concerned to claim his own rights.”<sup>113</sup> The moral law, rooted in creation, called on the parties to a marriage to show self-giving, unclaiming, agapic love and to work through the problems in their marriage.

Here, as with the Sabbath, Jesus ties his critique of law to creation—“it was not so from the beginning”—suggesting a universal standard, a standard applicable to all of Adam and Eve’s children. As to both the Sabbath and divorce, Jesus applies an agapic standard, rooted in the creation account, to judge the Mosaic Law.<sup>114</sup>

In summary, four aspects of Jesus’s teaching suggest that all law should be judged by a standard of agapic love:

- (1) Jesus taught that our neighbors include all people and law is an important means by which they can be loved;
- (2) The Good Samaritan—Jesus’s example of one who applied the standard of agapic love—was not a Jew, suggesting that the agapic love standard applies beyond Judaism;
- (3) The big challenges facing the Mosaic legal system are analogous to the challenges faced by all legal

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<sup>111</sup> *Matthew* 19:4-6 (quoting *Genesis* 1:27, 2:24). For Jesus’s critique of Moses’s teaching on divorce, see *Matthew* 19:7-9, quoted and discussed *infra* at text accompanying notes 117-119.

<sup>112</sup> Ramsey, *supra* note 44, at 71.

<sup>113</sup> *Id.* at 72.

<sup>114</sup> As an aside, note that each of these examples illustrates a different way in which agapic love might impact law. In the case of the Sabbath, Jesus suggested that *the law* should be loving toward people—law was made for people and should work for their benefit. In the case of marriage, Jesus’s agapic critique suggests that law should teach people to act lovingly toward one another—married couples should show agapic love toward one another.

systems, and by analogy, it may be that the standard by which Jesus judged the Mosaic Law should be the standard by which other systems are judged; and (4) Jesus rooted the agapic standard by which he interpreted the Mosaic law in creation and creation's standards apply to all humans—we are all Adam and Eve's children.

#### V. IMPOSE THE MORAL LAW?: AGAPIC LOVE, MORAL LAW, AND POSITIVE LAW

If we are to judge all nations' laws based on the standard of agapic love, as suggested by the prior section, does that mean that the positive law should impose agapic love in all situations? Phrased another way, should the positive law incorporate all of God's moral law? And a further question, might the positive law ever be *contrary to* (not merely different from) the moral law?

First, note that divorce law is the only part of the Mosaic positive law (as contrasted with the Mosaic moral law and ceremonial law<sup>115</sup>) on which Jesus comments directly.<sup>116</sup> Thus, his discussion of marriage and divorce law is our primary source for understanding what Jesus might say about the positive law.

Following the section from *Matthew* 19 quoted above,<sup>117</sup> in which Jesus argues from the creation account that marriage is permanent, Jesus notes that “[i]t was because you were so hard-hearted

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<sup>115</sup> As previously noted, both Aquinas and Calvin draw these distinctions in the Mosaic Law, though they are not drawn by the Mosaic Law itself. *See supra* note 104.

<sup>116</sup> The other statement of Jesus that might arguably address the Mosaic positive law is in *John* 8, where a group of scribes and Pharisees brought before Jesus a woman who had been caught in adultery. They said, “Now in the law Moses commanded us to stone such women. Now what do you say?” *See John* 8:5. Jesus responded, “Let anyone among you who is without sin be the first to throw a stone at her.” *See John* 8:7. The men all walked away. Jesus said to her, “Neither do I condemn you. Go your way, and from now on do not sin again.” *See John* 8:11. Jesus's statements here are subject to multiple interpretations regarding the Mosaic Law. Dallas Willard and I identify six possibilities. *See Cochran & Willard, supra* note 8, at 180-82.

<sup>117</sup> *See supra* text accompanying note 112.



that Moses allowed you to divorce your wives, but from the beginning it was not so . . . .”<sup>118</sup> Jesus does not criticize Moses for allowing divorce. Indeed, he appears to approve of Moses’s actions. Jesus appears to approve of an aspect of the Mosaic positive law that permitted and even identified the procedures for a deviation from God’s moral law. It may be that Jesus, as well as Moses, envisioned the harmful consequences that would have arisen if divorce was not allowed: some husbands would abandon their wives and take other women without the benefit of divorce; husbands would father illegitimate children; it would be unclear whether abandoned women were free to re-marry; abandoned wives and children would be destitute; inheritance rights would be unclear and would generate conflict. Law that yielded such consequences would be the opposite of agapic love.

Though God’s marriage ideal (as expressed at creation) called on both parties to a marriage to show agapic love and to remain together, agapic love as expressed in the Mosaic positive law, in light of the hardness of human hearts, allowed something short of that ideal. Jesus appears to have envisioned the Mosaic Law as a prudential and agapic response to the situation of the time, though he leaves open the possibility that in a different situation law might more closely approach God’s creation ideal.

The view that Jesus affirmed Moses’s best-practical-alternative human laws may provide a basis for understanding some of the troubling aspects of the Mosaic Law. For example, the Mosaic Law need not be taken to have approved of slavery, any more than to have approved of divorce. Jesus’s reaction to the provisions in the Mosaic code that regulated slavery might well have been similar to his reaction to divorce: “It was because you were so hard-hearted that Moses allowed [slavery], but from the beginning it was not so . . . .”<sup>119</sup>

Jesus’s comments on the Mosaic divorce law suggest an enormous opportunity (and responsibility) for judges and legislators who seek to apply agapic love to their work. They will prudently and creatively craft laws that reflect agapic love with eyes firmly fixed on practical reality. Viewed in this way, agapic love can pull law in two

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<sup>118</sup> *Matthew* 19:8.

<sup>119</sup> *Cf. Matthew* 19:8. Whereas in *Matthew* 19:4-6, Jesus quoted *Genesis* 1:27 and 2:24 to establish that creation taught that marriage was to be permanent, in an analogous statement he might have argued that slavery was wrong from the beginning because all people are created “in the image of God” (*Genesis* 1:26-27).

directions. God's moral law calls people to the full challenge of agapic love, but agapic love also imposes limits on the level to which it might be incorporated in the positive law. The lawmaker must exercise pragmatic, wise, agapic judgment in light of the hardness of human hearts. For that, we need wisdom—another subject about which the Hebrew Scriptures have much to say . . . .

In one respect, we end where we started, with a discussion of the human heart. As I noted at the beginning of this article, Jesus identified the transformation of the human heart as the most important aspect of the religious life. Indeed, one with a transformed heart may seldom need to consider the law; he or she will automatically do what is right in most cases. But in Jesus's consideration of divorce, we come to the gritty realism of law in a fallen world. The hardness of human hearts creates both the need for law and sets limits on what law can do. In light of the hardness of human hearts, law can only do so much.

## VI. CONCLUSION: IMPLICATIONS FOR AMERICAN LAW

The symposium issue in which this essay appears addresses the implications of Jewish Law for American Law. In this final section, I will consider the implications of Jesus's teaching on the Mosaic Law for American Law. As I have argued in this article, I believe all law should be judged by the standard of agapic love. What are the implications of agapic love, as defined by Jesus's life and teachings, for American law? I will address three general categories that I have considered in this essay.

*Loving Samaritans* – Samaritans are the outsiders in the midst of a country—those of a different racial, religious, national, or cultural background. Followers of Jesus should be the first to protect them and to support laws that give them access to basic needs.<sup>120</sup> I fear we are not doing a very good job.

*Loving Enemies* – Government leaders confront public enemies from within and without. The Christian faith calls for leaders to show agapic love to both citizens and enemies. This will involve protecting citizens and deterring enemies, for the good of both. The Christian faith holds up two standards which by some accounts are in conflict with one another—justice and mercy. Early in Christian history, these

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<sup>120</sup> See Jennifer Lee Koh, *Immigration Law through the Lens of Grace and Agapic Love: An Evangelical Perspective in AGAPE, JUSTICE, AND LAW*, *supra* note 8.

two were pulled together with the standard, “justice tempered with mercy.”<sup>121</sup> Here again, the principle of agapic love may be of help. It may be that “*Love does not choose between justice and mercy, for these two goods are internally related to agapic love.*”<sup>122</sup> The question facing those in the public square is the good of all those concerned.<sup>123</sup>

Operating a justice department based on a principle of agapic love would present significant challenges. Jeffrie Murphy has argued that “[f]or the law of crime and punishment, those motivated by *agape* will seek punitive practices that contribute to, or at least do not retard, the moral and spiritual rebirth of criminals.”<sup>124</sup>

It is almost impossible to imagine conducting war on the basis of agapic love—indeed, the general practice of government public relations efforts is to induce hatred for enemies. War places great challenges on Jesus’s followers, for agapic love calls for both love of

<sup>121</sup> Oliver O’Donovan traces this formulation to Ambrose. See OLIVER O’DONOVAN, *DESIRE OF THE NATIONS: REDISCOVERING THE ROOTS OF POLITICAL THEOLOGY* 200 (Cambridge: Cambridge University Press 1996).

<sup>122</sup> Jackson, *supra* note 63, at 110 (summarizing the position of Paul Ramsey; italics in original). For further discussion of the relationship between justice and mercy, see Greg Randall Lee, *A Look at God, Feminism, and Tort Law*, 75 MARQ. L. REV. 369 (1992) and Greg Randall Lee, *Who’s Afraid of William Shakespeare: Confronting Our Concepts of Justice and Mercy in ‘The Merchant of Venice,’* 32 DAYTON L. REV. 1 (2006).

<sup>123</sup> For discussions of the relationship between justice and agapic love, see my *Jesus, Agape, and Law*, in AGAPE, JUSTICE, AND LAW, *supra* note 8. Judaism, as well as Christianity, has wrestled with the justice/mercy dichotomy. Sam Levine, citing Besdin and Rabbi Soloveitchik, suggests that within Judaism leaders often were on one or the other end of the justice/mercy dialectic:

Throughout much of Jewish history, the nation has been served by what Rabbi Joseph Soloveitchik described as a form of “dual leadership.” Rabbi Soloveitchik delineated a typology of leadership corresponding to the mercy/justice dichotomy—or, to use his terminology, the “*chesed-emet* dialectic.” One type of leader emphasizes the quality of *emet*, truth, thus “demand[ing] unbending justice.” Such a leader engages in “criticizing, exhorting, holding people accountable for transgressions and failures,” because strict justice requires that “[o]ne must be rewarded according to one’s merits.” The second type of leader “is primarily guided by *chesed*, limitless compassion and overflowing kindness.” This kind of leader personifies “unqualified love,” a love “gratuitous as well as boundless.”

Levine, *supra* note 2, at 196-197 (citations omitted).

<sup>124</sup> JEFFRIE G. MURPHY, *Christian Love and Criminal Punishment*, CHRISTIANITY AND LAW: AN INTRODUCTION (John Witte, Jr. and Frank S. Alexander, eds 2008), reprinted in AGAPE, JUSTICE, AND LAW, *supra* note 8. See the full essay for a development of the place agapic love might play in criminal punishment.

the enemy and protection of those at risk. Some Christian traditions refuse to engage in any combat. Paul Ramsey argues that just war theory as developed by Christians is an application of agapic love toward both aggressors and victims. Agapic love will restrain sin, for the sake of both.<sup>125</sup>

*Meeting Needs* – Jesus identified himself as having come “to bring good news to the poor . . . to proclaim release to the captives and . . . to let the oppressed go free.”<sup>126</sup> As William Loader has noted, Jesus’s “radical concern for people in need” was reflected in his teaching on law.<sup>127</sup> Jesus envisioned law as a means of serving the poor and oppressed. Agapic love will generate sacrifice for the poor and needy by individuals, churches, and private charitable organizations, but it will also support a public social safety net. The challenge is to help those in need in ways that will enable them to flourish.

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<sup>125</sup> PAUL RAMSEY, *WAR AND THE CHRISTIAN CONSCIENCE* 56 (Literary Licensing, LLC 2011).

<sup>126</sup> *Luke* 4:17-21 (quoting *Isaiah* 61:1-2).

<sup>127</sup> WILLIAM R. G. LOADER, *JESUS’ ATTITUDE TOWARDS THE LAW: A STUDY OF THE GOSPELS* 130 (Grand Rapids: Eerdmans 2002) (commenting on Mark’s Gospel). Loader also notes that “[m]uch of Jesus’ distinctive Torah interpretation in Matthew reflects the value of compassion for the needy.” *Id.* at 265.