

*The Law of Love*

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Abstract

The core of love is found in encounter, reaching out to the other in his or her full humanity. Religion is an expression of love, but it can also resist love's total call. Similarly, the law can encompass love, but love is also in tension with the law's necessary impulse to abstraction and categorization.

My paper will examine these themes by way of a discussion of two very different but mutually resonant narratives in legal history. The first is the story of the Flushing Remonstrance, the 1657 letter from English settlers in Flushing, then a part of New Amsterdam, to Peter Stuyvesant, refusing his demand that they turn over a group of Quakers for arrest. The letter beautifully invokes the "law of love, peace and liberty in the states extending to Jews, Turks and Egyptians, as they are considered sons of Adam," a law that "extending to all in Christ Jesus, condemns hatred, war and bondage." The Remonstrance is considered one of the roots of the American church-state dispensation and tradition of religious liberty. But its invocation of "love" seems far removed from contemporary constitutional doctrine. I wonder how our own free exercise and establishment law would look if the imperative to love the stranger played a more prominent role in its formulation.

The second story goes further back several hundred years to the (possibly apocryphal) account of the authorities of medieval Bologna refusing to convict, for the crime of "shedding blood on the streets of Bologna, a barber-surgeon who had, in an emergency, treated by bleeding the victim of a seizure on the city streets. The story is usually touted as a standard example of "common sense interpretation." But it is probably much more complicated and fraught, given some very specific medieval attitudes about even the innocent or therapeutic "shedding of blood." I wonder, then, if this story can be understood, in its own way, as an expression of the "law of love," a love through which judges can encounter both the parties before them and the otherwise cold, lifeless, texts that they must read and construe.

Short Bio

Perry Dane is a Professor of Law at the Rutgers School of Law - Camden. He was previously on the faculty of the Yale Law School, and served as a law clerk to William J. Brennan, Jr., Associate Justice of the United States Supreme Court. His research and teaching interests include religion and the law, conflict of laws, constitutional law, jurisdiction, American Indian law, the law of charities, the jurisprudence of Jewish law, legal pluralism, comparative constitutionalism, the debate on same-sex marriage, and the Canadian legal system. In 2011, Professor Dane received the Inaugural Dean's Award for Scholarly Excellence at the Rutgers School of Law - Camden. During the 2010-11 academic year, he was a full-time resident fellow at the Tikvah Center for Law & Jewish Civilization at the New York University Law School.