

## **AGAPE AND A POST-SECULAR PLURALISTIC CONCEPTION OF LAW**

**Mark C. Modak-Truran**

The “return of religion” to public life has resulted in an existential crisis for secular liberalism and its modern conception of law and religion. What does it mean for the state and the law to be “secular”? Can law and justice be universal and autonomous from religion? Despite the prevalence of these conversations in the academy, contemporary conceptions of law and human rights remain essentially untouched and intact. These conceptions continue to view religion primarily from the perspective of law and presuppose that the law is predominantly secular rather than religious.

Recommending that law should be grounded in *Agape* (the unconditional love of God manifested in the life of Christ) initially appears promising as a response to these conundrums and as a candidate for a religious understanding of law. Many interpretations of *Agape* recognize the human dignity of all persons and provide strong support for human rights. *Agape*, however, strongly suggests a religious understanding of law rooted in the Christian tradition and implicitly proposes a pre-modern conception of law that violates the Establishment Clause and the normative implications of the burgeoning religious pluralism in America.

Alternatively, a post-secular conception of law and religion appreciates the normative significance of the increased breadth and depth of religious pluralism—the “new religious pluralism”. The pre-modern and modern conceptions of law and religion fail to take religious pluralism seriously by proposing unitary religious (pre-modern) or secular (modern) foundations for law. Rather than proposing a fixed, unitary foundation, I will argue that the law depends on the plurality of individual religious and comprehensive convictions in the culture. To support this thesis, I will argue that the “new religious pluralism” has changed the location of religion, and it rules out a Christian, Judeo-Christian, or Abrahamic religious justification for the law at the cultural level. The Establishment Clause also prohibits establishing a national church to legitimate law at the institutional level. Moreover, the new religious pluralism locates religious legitimation at the level of individuals so that the plurality of religious or comprehensive convictions of citizens in a pluralistic, democratic society—the ethos of religious pluralism—provides the basis for legitimating the law and the state. Consequently, under a post-secular conception of law and religion, *Agape* becomes one of the religious convictions within the ethos of religious pluralism supporting law but does not stand alone as its unitary foundation.

**Mark C. Modak-Truran, J. Will Young Professor of Law, Mississippi College School of Law** is a graduate of Gustavus Adolphus College, B.A., the University of Chicago, M.A., Ph.D., and Northwestern University School of Law, J.D. He has twice been the Co-Chair of the AALS Section on Law and Religion and focuses his research on law and religion and legal theory. Recent law and religion publications include “Beyond Theocracy and Secularism (Part I): Toward a New Paradigm for Law and Religion,” 27 *Miss. C. L. Rev.* 159 (2007-2008), and *Legitimation, in Encyclopedia of Political Thought* (Michael T. Gibbons, Diana Coole, & Kennan Ferguson eds. (Wiley-Blackwell) (forthcoming).