

September 7, 2013

Love and Law Conference

PEPPERDINE UNIVERSITY SCHOOL OF LAW, MALIBU, CALIFORNIA

FEBRUARY 7-8, 2014

Agape, the Golden Rule, the Rule of Law, and Wealth Maximization: All the Same Idea?

“Thou shalt love the Lord thy God with all thy heart, and with all thy soul, and with all thy mind. This is the first and great commandment. And the second is like unto it, Thou shalt love thy neighbour as thyself. On these two commandments hang all the law and the prophets.” Matthew 22. Much of criminal law involves retribution and is motivated by the first commandment. The second commandment is about human relations. Agapaon is better translated as to esteem something or someone than as to love. It is more closely related to law than to mercy. Under the rule of law, the government uses the threat of force to compel people to do things only in accordance with prespecified rules. We also think of “the rule of law” as treating everyone the same regardless of his status, virtue, or desert. The rule of law does not constrain people from showing mercy or generosity, however. Everyone is esteemed as a potentially virtuous being and everyone is given the chance to show his esteem for others. The law merely sorts out who has the right to make which decisions. That would be useful even in a society in which everyone is benevolent; having rules for a game is useful even if everybody just wants to enjoy it and not to slant things in their own favor. “Wealth maximization” is a provocative term of art which is misleading to those who have not encountered it. It means establishing property rights and legal rules such that nobody would be willing to pay enough to compensate losers from changing to a new arrangement. As an objective, it makes sense only if everyone’s willingness to pay is treated as equal in value. It provides, however, a simple but powerful justification for much of the morality and law that we have, as David Friedman has pointed out particularly well. Thus, it is no great task to use agape in law--- we do so already. This is true even in criminal law, which as Martin Luther explained in the Two Kingdoms framework is set up for the State to prosecute wrongdoers for the general good, in contrast to the victims’ duty to forgive.

Eric Rasmusen is the Dan R. and Catherine M. Dalton Professor of Business Economics and Public Policy at Indiana University’s Kelley School. He received his Ph.D. in Economics in 1984 from M.I.T. He has spent years visiting Yale and Harvard Law Schools as an Olin Fellow, and has several times taught economics to judges in George Mason’s Law and Economics Center programs. His religious beliefs are Bible based and the creed he likes best is *The Thirty-Nine Articles*. He is best known for his book on game theory, *Games and Information*, but he has also published in various economics and law journals. erasmus@indiana.edu. [Http://rasmusen.org/vita.htm](http://rasmusen.org/vita.htm) .