

Why Christian Love Is an Improper Category to Apply to Law: A Contrarian Perspective

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A major theme of this conference is Jeffrie Murphy's question: "What would law be like if we organized it around the value of love [specifically, Christian love] and thought about and criticized law in terms of that value?"ⁱ The claim of my paper is that we ought not to organize law around Christian love; Christian love is an improper category to apply to law. Since I suspect that most conference participants are at least open to the idea of seeking to organize law around Christian love, I have labeled my proposal "contrarian"—but maybe that won't prove to be the case. To be clear about one thing from the outset: I am not suggesting that law should be loveless in every sense. What I argue is that we ought not to organize, think, or critique law in terms of *Christian* love, that is, insofar as love is distinctively Christian. To make this necessarily brief argument, I must identify the nature and purpose of both law and Christian love.

I begin with law. When we consider law—especially the criminal law, Murphy's main focus—we are also considering civil government, or the state, since the state is the institution that ordinarily administers and enforces law. Thus it may be helpful to examine Romans 13:1-7, the *locus classicus* for Christian theological reflection on the state. Among several important things in this text, it teaches that civil magistrates have authority as office-holders instituted by God, and that magistrates are God's servants who

bear the sword to carry out his wrath against evildoers. One of this text's chief puzzles concerns how and when God instituted civil office and endowed it with such authority. Clearly Paul is not saying that God was doing so through the very writing of Romans 13:1-7, for Paul treats legal authority as something already existing. I suggest that if there is any text in Scripture that describes God *instituting* legal authority, Genesis 9:5-6 must be it. Romans 13:1-7 says that civil magistrates have authority from God to do good for society through bearing the sword and carrying out God's wrath against evildoers; Genesis 9:5 states that God himself will seek a reckoning from those who shed the blood of their fellow human beings, and then 9:6 explains that God delegates this work to the human community: "whoever sheds the blood of man, *by man* shall his blood be shed." This sounds precisely like the authoritative task of the magistrate described in Romans 13. Genesis 9:6, it seems, provides the theological background and explanation for Paul's assertions. In the big picture, therefore, in Genesis 9:6 God delegated authority to the human community to execute justice against wrongdoers and in Romans 13:1-7 Paul clarifies that this authority lies specifically with the state's magistrates.

This connection between Genesis 9 and Romans 13 makes sense in light of the fact that Genesis 9:6 falls in the midst of the covenant God makes with Noah after the great flood (8:20-9:17). Let me highlight three aspects of this Noahic covenant. First, it is truly *universal*: God establishes it with the entire human race, "every living creature," and even the cosmic order. Second, its purpose is *preservative*: it never promises blessings of salvation (such as the forgiveness of sins, everlasting life, or the conquest of evil), but only blessings of preservation (aimed at sustaining human society and the natural order, and at constraining evil). To use Reformed theological terminology, this

covenant concerns common grace, not saving grace. Third, the Noahic covenant is put into place “while the earth remains” (8:20), that is, until the final judgment and revelation of the new creation. It is evident, therefore, that the Noahic covenant is God’s means for preserving this whole world until the end of history, and one aspect of this preservative work is commissioning human beings to administer the law by executing justice against wrongdoers, a task carried out especially by civil magistrates, with great assistance from legal professionals, I might add.

Is this administration of the law to be a work of love in any sense? Yes, indeed. It reflects the love of God shown in the Noahic covenant. That is, it reflects God’s benevolence in sustaining the world, providing it with many good things, upholding a measure of peace and order in human society, and bringing relief to victims of injustice. And as God, in the Noahic covenant, shows forbearance in holding back final judgment against a sinful world, so presumably should the administration of law show considerable forbearance (or “mercy,” in Murphy’s termsⁱⁱ) in not bringing down the full force of the law against every wrongdoer on every occasion. Thus the administration of the law involves love in at least these senses: promoting the general welfare of human society, helping victims through the redress of injuries, and showing forbearance or mercy to many wrongdoers.

I now wish to highlight two important implications of my conclusions about law in light of the Noahic covenant. One is that the state’s work of administering the law is grounded in God’s work of preservation (through a covenant of common grace), not his work of salvation. The other implication is that this administration of the law involves the enforcement of retributive justice. This is evident from the fact that Genesis 9:6 is stated

in terms of the *lex talionis*, the “eye for an eye” principle of proportionality: “whoever sheds the *blood* of man, by man shall his *blood* be shed.”

These two implications, I believe, demonstrate why a distinctively *Christian* love is an improper category to apply to law. First, while the state’s work of administering the law is grounded in God’s work of preservation (through a covenant of common grace), Christian love is grounded in God’s work of salvation (through the new covenant in Christ’s blood: Lk 22:20). One way in which *Christian* love is distinctive is through being a response to and consequence of redemptive grace in Christ. As Paul puts it, “Be kind to one another, tenderhearted, forgiving one another, as God in Christ forgave you.... Walk in love, as Christ loved us and gave himself up for us, a fragrant offering and sacrifice to God” (Eph 4:32; 5:2). Or as John says, “By this we know love, that he laid down his life for us, and we ought to lay down our lives for the brothers” (1 Jn 3:16); and again shortly thereafter: “In this is love, not that we have loved God but that he loved us and sent his Son to be the propitiation for our sins. Beloved, if God so loved us, we also ought to love one another” (4:10-11). Christian love, therefore, is based in and imitative of God’s *saving* work in the new covenant; law, in contrast, is based in and imitative of God’s *preservative* work in the Noahic covenant.

Second, a distinctively *Christian* love is an improper category to apply to law because, while the administration of law involves the enforcement of retributive justice, Christian love excludes the practice of retribution, or just deserts. Most famously on this score, Jesus said in the Sermon on the Mount: “You have heard that it was said, ‘An eye for an eye and a tooth for a tooth.’ But I say to you, Do not resist the one who is evil. But if anyone slaps you on the right cheek, turn to him the other also...” (Mt 5:38-42).

Christ's apostles echo this idea. Paul writes: "Repay no one evil for evil.... Beloved, never avenge yourselves, but leave it to the wrath of God, for it is written, 'Vengeance is mine, I will repay, says the Lord'" (Rom 12:17, 19). Peter also commands, "repay no one evil for evil" (1 Pt 3:9). Thus, while the Noahic covenant prescribes the *lex talionis* as normative for civil magistrates administering the law, the New Testament says this has no part in Christian love.

I might note tangentially, though I cannot elaborate here, that I believe these two characteristics of Christian love that contrast with the character of law are related. Christian love flows out of God's redemptive love for the Christian in Christ, and this love of God in Christ is a forgiving love that satisfied all claims of retributive justice against us. This, it seems to me, is precisely why Christian love, reflecting God's redemptive love, refuses to press the claims of retribution but instead freely forgives.

In contrasting two characteristics of law with two characteristics of Christian love, I believe I have established the main claim of this paper. Law ought not to be organized around, thought about, or critiqued in terms of Christian love. To do so is to confuse the nature and purpose of the Noahic covenant and the nature and purpose of the new covenant in Christ's blood. It is to confuse God's work of providence and his work of salvation. It entails asking law to be something it is not meant to be, to do things it is not designed to do, and to forsake things that it ought not to forsake.

I realize that even those who recognize the force of the previous argument may be disinclined to believe it's really true, because of the intellectual and practical difficulties it seems to entail. Murphy's account is attractive in holding that, while Christian love suggests that law should be reformed in certain ways, love and law can and ought to fit

together harmoniously. Nicholas Wolterstorff's account, which argues that retribution has no proper place in either Christian love or law, has a similar attraction.ⁱⁱⁱ My account, on the other hand, may seem to create an uncomfortable tension or even hostility between love and law. What are the consequences if God has authorized civil magistrates to administer the law in part by enforcing retributive justice, while God also requires Christians to practice a love that forsakes retribution? Are we left with some sort of Anabaptist or pacifist solution, in which the state may indeed be appointed by God to accomplish certain purposes, but Christians should have no part of it?^{iv}

I reject that conclusion strongly, for a variety of overlapping reasons. I have time, however, to sketch an explanation only in a cursory way. In the Gospel of Matthew, I noted, the Sermon on the Mount forbids the *lex talionis* most clearly and forcefully. But the Sermon is not a political constitution or legal code. The Sermon presents an ethic for the coming kingdom of heaven as it is somehow to be manifest already here and now. The state, and the legal system it administers, does not manifest this coming kingdom. The New Testament never describes it in this way; on the contrary, it describes the state in terms of the Noahic covenant, which concerns God's providential government of the world in its present form, until the end of history as we know it. The coming kingdom of heaven breaks into this Noahic world in the midst of history, but does not (for now) replace it or take away any of its legitimacy. Christians live under *two* divine covenants, the Noahic covenant and the new covenant, and they must fulfill responsibilities under *both*—even though, I freely admit, these respective responsibilities are sometimes in tension with one another. I cannot discuss here how to negotiate that tension,^v but I conclude by noting that just because Christian love is not to find institutional expression

in the law does not mean it can find institutional expression nowhere at all. Later in the Gospel of Matthew, in fact, Jesus illustrates how a retribution-spurning Christian love is to be embodied in *the church*. I have in mind his instructions, explicitly given to “the church,” for resolving conflicts when “your brother sins against you” (18:15-20). Here the wrongdoer is not to receive retributive justice, or be punished in any way, but is to be urged to repentance, and to be forgiven, reconciled, and restored. Paul guides the church in Corinth in the same way in 1 Corinthians 5. The church is the institutional embodiment of a distinctively Christian love.

So perhaps we’ve stumbled into the answer to Murphy’s original question: “What would law be like if we organized it around the value of [Christian] love and thought about and criticized law in terms of that value?” Well, law would then be like biblical church discipline. And biblical church discipline, while mandatory for the church, is no business of the state.

ⁱ Jeffrie G. Murphy, “Law Like Love,” *Syracuse Law Review* 55.1 (2004): 18.

ⁱⁱ Murphy, “Law Like Love,” 26.

ⁱⁱⁱ Nicholas Wolterstorff, *Justice in Love* (Grand Rapids: Eerdmans, 2011), chapters 15-17.

^{iv} E.g., Craig A. Carter, *Rethinking Christ and Culture: A Post-Christendom Perspective* (Grand Rapids: Brazos, 2006).

^v For that, see David VanDrunen, *Divine Covenants and Moral Order: A Biblical Theology of Natural Law* (Grand Rapids: Eerdmans, forthcoming), chap. 9.