

MUST LOVE AND JUSTICE FOREVER BE AT ODDS?

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Two concepts long prominent in the moral culture of the West are *love* and *justice*. One can imagine a society in which one or the other of these was absent; indeed, one can imagine a society in which both of them were absent, a society in which nobody thought in terms of love and nobody thought in terms of justice. In our society, many of us think in terms of both.

The reason for this is that we are the inheritors of two comprehensive imperatives issued by the writers of antiquity that employ these concepts. The imperative to do justice comes to us from both the Athens-Rome strand of our heritage and the Jerusalem strand. “Do justice,” said the prophet Micah in a well-known passage. The ancient Roman jurist Ulpian said that we are to render to each what is his or her *right* or *due* (*ius* in Latin). The imperative to love comes to us only from the Jerusalem strand: love your neighbor as yourself, even if that neighbor is an enemy.

These two imperatives, do justice, and love your neighbor as yourself, do not reveal on their face how they are related to each other. Thus it is that over and over the question has been raised in the writings of the West, by philosophers, by theologians, by poets and novelists: how are these two imperatives related to each other? What do love and justice have to do with each other?

The fact that it is only in our Jerusalem heritage that both of these imperatives are to be found has the implication that the topic of love and justice was not discussed by the ancient Greek and Roman writers. The ancient Stoic, Seneca, wrote a small book titled *de Clementia*.

“Clemency,” as used in present-day English, refers to foregoing the appropriate punishment for some crime out of mercy for the offender or his family or out of concern for the common good. So one would expect Seneca’s topic to be that particular aspect of the relation between love and justice. But that is not his topic. By “*clementia*” Seneca did not mean foregoing the appropriate punishment of some wrongdoer out of mercy; he meant choosing the lesser of the punishments specified in law for some crime.

Pervasive in the literature on love and justice is the theme of tension or conflict. Sometimes this theme takes the form of writers arguing that it is impossible to follow the two imperatives simultaneously; they are inherently conflictual. To act out of love is perforce not to act as one does because justice requires it; to act as one does because justice requires it is perforce not to act out of love. At other times the theme of tension or conflict takes the weaker form of writers arguing that following the love-imperative will *sometimes* wreak injustice or that following the justice-imperative will *sometimes* be unloving.

The examples offered of love wreaking injustice fall, for the most part, into three types. First, generosity is sometimes dispensed in such a way that it is unjust. This is the issue posed by Jesus’ Parable of the Laborers in the Vineyard. Second, benevolent paternalism is sometimes exercised in such a way that it is unjust. And third, a persistent charge against forgiveness, pardon, amnesty, commutation of sentence, and the like, is that in foregoing or diminishing punishment of the wrongdoer, justice is violated. This charge is at the center of the controversies swirling around truth and reconciliation commissions of the past thirty years or so. It is also the issue Anselm raised when he discussed the relation between God’s love and God’s justice in his *Proslogion*. Addressing God, Anselm asks, “How do you spare the wicked if you are all-just and supremely just?”

There are both different kinds of justice and different kinds of love. So a question that comes to mind, once one has noted the theme of tension between love and justice, is what kind of justice and what kind of love do those writers have in mind who see tension between these two, be it inherent tension or occasional tension?

The major distinction within the field of justice has traditionally been marked by distinguishing between distributive and so-called commutative justice on the one hand, and retributive justice on the other. I think that this is an inept way of marking the distinction. I prefer to speak of *primary* justice and *reactive* justice. Primary justice is the justice present in society insofar as we treat each other as we have a right to be treated. Such justice certainly includes distributive justice and commutative justice, that is, justice in exchanges; but it goes beyond those. Rape doesn't fall under either distributive or commutative injustice; but it is certainly a case of injustice.

Reactive justice consists of responding justly to breakdowns in primary justice, responding justly to injustice. It will often take the form of retribution -- that is, of retributive punishment. But here, too, it includes more than that. If you treat me unjustly, a just reaction on my part is anger. But to be angry at you is not to impose retributive punishment on you; you might not even be aware that I am angry at you.

Back to our question: what kind of justice is thought to be in tension or conflict with love? The answer is, all kinds. Sometimes the justice that a writer has in mind is primary justice; sometimes it is reactive justice. And within primary justice, sometimes it is distributive justice, sometimes commutative, sometimes neither.

The situation with respect to the concept of love being employed in these discussions about tension and conflict is different. Among the various things that our English word "love"

refers to is love as attraction: the love that consists of being drawn or attracted to something on account of its worth or excellence – as when one says, “I love Beethoven’s late string quartets.” A classic discussion of such love is Plato’s *Symposium*. Another thing that our English word “love” refers to is love as gratuitous benevolence or generosity – seeking to advance the well-being of another as an end in itself, paying no attention to whether or not justice requires this.

To the best of my knowledge, whenever a writer talks about the tension or conflict between love and justice, it is always love as gratuitous benevolence that he has in mind. Writers seldom say that this is the sort of love they have in mind; they just talk about love. But when one looks closely at what they say, it becomes apparent that it is love as gratuitous benevolence that they are thinking of. Perhaps justice also sometimes comes into real or apparent conflict with love as attraction; but I know of no case in which it is love as attraction that the writer has in mind when he talks about real or apparent conflict between love and justice. Always it is love as benevolence, love as gratuitous generosity.

Cases of real or apparent conflict between justice and benevolence are often ethically important and intellectually intriguing, as are many of the proposals for resolution that writers have offered. It is well worth considering, for example, whether forgiveness does in fact undermine justice. But on this occasion I want to set such cases of real or apparent conflict aside so as to raise a prior question: if love as gratuitous benevolence so often yields real or apparent conflict with justice, forcing us either to choose between love and justice or to analyze the case in such a way that the conflict is only apparent and not real, may it be that we are misinterpreting our Jewish and Christian inheritance? May it be that when Jesus issued the imperative to love our neighbor as ourselves, it was not gratuitous benevolence that he had in mind but some other form of love? And may it be that justice and this other form of love are not in tension with each

other? May it even be that between them there is some deep form of unity? May it be that we must re-think our understanding of love – and for some of us, our understanding of justice?

That's the idea I want to explore in this talk.

The Greek word that the New Testament writers used to report Jesus' injunction to love one's neighbors as oneself is *agapê*. The view that what Jesus meant by *agapê* was gratuitous self-sacrificing benevolence or generosity was never more thoroughly developed than by certain members of the so-called agapist movement in late 19th and 20th century Protestant ethics, in particular by Søren Kierkegaard in his *Works of Love* and by Anders Nygren in his *Agape and Eros*. Kierkegaard was undoubtedly the more profound. But not only was Nygren the more influential; he also devoted a good deal more attention to the relation between love and justice than did Kierkegaard. So let's take a brief look at what Nygren had to say about love and justice; this will prove to be a good way of identifying some of the fundamental issues that we must address.

Nygren saw three great motifs, as he called them, locked in a struggle for dominance in Western thought. One motif is that of *eros*, eros being love as attraction. The motif of eros is dominant in the Platonic tradition; it's the topic of Plato's discussion in his *Symposium*. Nygren argues, implausibly in my view, that eros is at bottom a form of self-love. A second motif is that of *nomos*, law. Nygren associates *nomos* with justice; and he holds that the motif of *nomos* is dominant in the Old Testament. The third motif is *agapê*, understood as gratuitous self-sacrificial benevolence that pays no attention to what justice requires. The motif of *agape*, so Nygren argues, is dominant in the New Testament; it is the love that Jesus attributes to God and that Jesus enjoins on us in the second love command.

Nygren unhesitatingly affirmed the implications of this scheme, including the implication that, in the New Testament, the Old Testament motif of justice has been supplanted by the New Testament motif of agapic love. The Old Testament God is a god of justice; the New Testament God is a god of love.

Jesus, says Nygren, “enters into fellowship with those who are not worthy of it.” His doing so is directed “against every attempt to regulate fellowship with God by the principle of justice” (*Agape and Eros*, 86). “That Jesus should take lost sinners to Himself was bound to appear, not only to the Pharisees, but to anyone brought up and rooted in Jewish legal righteousness, as a violation of the order established by God Himself and guaranteed by His justice” (83). For them it was “a violation not only of the human, but above all of the Divine, order of justice, and therefore of God’s majesty” (70).

Nygren’s point is unmistakable: the agapic love displayed and enjoined by Jesus does not incorporate or supplement justice but supersedes it. “‘Motivated’ justice must give place. . . to ‘unmotivated’ love” (74). We are not to love the neighbor agapically *in addition to* treating her as justice requires; we are to love her agapically *instead of* treating her as justice requires.

Why did Nygren see love as supplanting justice in the New Testament? Why not love *and* justice? Nygren’s answer to this question was admirably clear. He held that the paradigmatic New Testament example of God’s love, the example that should shape all our thinking both about God’s love and about our love of neighbor, is God’s forgiving and covenanting love of the sinner. God’s forgiveness is not a case of doing what justice requires; the wrongdoer cannot claim that justice requires that God forgive him. Nygren concluded from this that the love that Jesus and the New Testament writers had in mind expels any note of doing what justice requires. New Testament love is blind to justice and injustice. New Testament

love is an utterly gratuitous self-sacrificing concern for the wellbeing of the other. Here is how Emil Brunner puts the point in his *Justice and the Social Order*: love “does not render to the other what is his due, what belongs to him ‘by right,’ but gives of its own, gives precisely that to which the other has no right.”

Nygren took the argument a step further. In its blindness to justice and injustice, agapic love may perpetrate injustice. Nygren regarded that as the point of Jesus’ Parable of the Laborers in the Vineyard. The landlord, on Nygren’s interpretation, acknowledges that when he paid the late-comers the same amount as those who worked all day in the heat, he was being unfair and unjust to the early workers. But the landowner dismisses their complaint with the remark that he has a right to be generous as he wishes. Nygren drew the lesson that we must expect that agapic love – gratuitous self-giving generosity -- will sometimes wreak injustice. No matter. The follower of Jesus is called to remain faithful to love and say farewell to justice if that proves necessary.

After Nygren, the figure in the modern-day agapist tradition who thought most deeply about the relation of New Testament love to justice was Reinhold Niebuhr. Niebuhr joined Nygren in interpreting New Testament love as gratuitous self-giving generosity that pays no attention to what justice requires; and he agreed with Nygren that such love might perpetrate injustice. But Niebuhr thought that Nygren’s response to the possibility of conflict was socially and politically naïve. Stick with love, said Nygren. Niebuhr thought that, as a social and political policy, that would be a calamity. Try responding to Hitler with agapic love! A major part of Niebuhr’s lifelong opposition to liberal American Christianity was his opposition to what he saw as its naïve assumption that if Christians just loved enough, people would respond in kind and love would rule the world. In this present age, said Niebuhr, we must expect that love will

not evoke love but will instead both perpetrate or abet injustice and get run over. The life of Jesus ended on the cross.

So what to do? Niebuhr thought that it was deeply irresponsible to be content with abetting or perpetrating injustice. Yet as a Christian theologian and ethicist he could not give up on love. His solution was to argue that justice is for this present fallen world of conflicting interests whereas agapic love is for the eschaton of “frictionless harmony,” as he called it. To this he added the qualification that here and now, in small-scale situations where conflict is absent, agapic love can be practiced without aiding and abetting injustice.

I judge that Nygren’s line of thought is untenable – and Niebuhr’s as well, for somewhat different reasons. On this occasion, let me focus on Nygren.

First, Nygren’s line of thought is exegetically untenable. Justice is not supplanted by love in the NT. Even a casual reading of the New Testament will reveal that justice, rather than being supplanted in the New Testament, is at the heart of the New Testament. I argue this point in detail in *Justice: Rights and Wrongs*; here is not the place to repeat that argument. Let me instead confine myself to noting that Nygren has misinterpreted the Parable of the Laborers in the Vineyard – this being his main textual basis for saying that New Testament love may conflict with justice and that, when they do, the Christian must remain faithful to love and say goodbye to justice.

The landowner in the parable does not say to the complaining all-day workers what Nygren interprets him as saying, namely, it’s true that I have treated you unjustly, but I have a right to dispense my generosity as I wish. Let me quote what the landowner does say: “Friend, I am doing you no wrong; did you not agree with me for the usual daily wage? . . . I choose to give to these last the same as I give to you. Am I not allowed to do what I choose with what belongs

to me?” (Matt. 20:13-15).

The Greek word translated here as “wrong” is *adikos*. I am not treating you unjustly, says the landowner to the complainers. Rather than agreeing with the complainers that he has treated them unjustly but then insisting that this is an acceptable consequence of his generosity, the landowner contests their understanding of justice.

Not only is Nygren’s line of thought exegetically untenable; it is also systematically incoherent. We are always to think of love on the model of God’s forgiveness of the sinner, says Nygren. But reflect for a moment on the nature of forgiveness. One cannot just spread forgiveness hither and yon. One can only forgive someone if he has wronged one, and only *for* the wrong he did one. But to wrong someone is to treat that person unjustly, to deprive him of what he has a right to. So forgiveness cannot be blind to justice and injustice. To the contrary: forgiveness presupposes attentiveness to injustice.

The reply may be forthcoming that though it’s true that forgiveness cannot be inattentive to injustice – Nygren was mistaken about that -- nonetheless it remains the case that forgiveness is not *motivated* by what justice requires. True. But now take note of another and deeper incoherence in Nygren’s claim that it is acceptable to perpetrate injustice out of agapic love.

If in loving someone agapically I treat him unjustly, then I violate his right not to be so treated; I wrong him. And if he has a right to not being so treated by me, then I *ought not* to treat him that way. In general it’s the case that if someone has a right with respect to me to my not treating him that way, then I have a correlative obligation toward him to not treat him that way. And if I have an obligation to not treat him that way, then I am not permitted to treat him that way. Nygren’s position implies that I am sometimes permitted to do out of love what I ought not to do; sometimes it is even the case that I *should* do out of love what I ought not to do. But

that is incoherent. If I ought not to do it, then I *shouldn't* do it; I'm not *permitted* to do it.

Let us now back up, and rather than going along with the claim of Kierkegaard, Nygren, Niebuhr, and many others, that what Jesus meant by *agapê* was justice-blind gratuitous self-sacrificial benevolence, let us look for clues in the biblical text as to what he did mean.

All three of the synoptic gospels report the episode in which Jesus presented the two love commands (Matthew 22:34-40, Mark 12:28-34, Luke 10:25-37). The episode is described a bit differently in the three gospels. But in their report of the two commands themselves, there are only slight rhetorical differences – with two exceptions. Mark reports Jesus as introducing the first command with the Shema: “Hear O Israel, the Lord our God, the Lord is one.” And Matthew reports Jesus as saying that the second command is like the first.

So consider the two commands. The first says that we are to love God with our whole being. Nygren saw this as posing a difficulty for his interpretation of love as gratuitous generosity. Treating God with gratuitous generosity seemed to him impossible. So with the courage of his convictions he concluded that Jesus and the New Testament writers were speaking loosely when they said that we are to love God. What they meant, strictly speaking, was that we are to have faith in God. In the first command Jesus was enjoining us to have faith in God with our whole being.

What then are we to make of Jesus' statement, in Matthew, that the second command is like the first? Given Nygren's interpretation of the first commandment, the second is quite unlike the first. Faith is not the same as love. I am not aware that Nygren ever addressed this problem.

Now consider the second command: love your neighbor as yourself. The rhetorical structure of this command is the familiar *just as. . . so also* structure. Just as you love yourself,

so also, love your neighbor. You love yourself, right? Love your neighbor as well. The second command presupposes the legitimacy of self-love and enjoins us to love not only ourselves but our neighbors as well. But love of self is obviously not self-sacrificial gratuitous benevolence. Barth often described agape as “being for the other.” But love of oneself is not being for *the* other; it is being *for oneself*.

In this case, Nygren does not resort to saying that Jesus must have been speaking loosely. Instead he emphatically declares in various passages that Christianity is opposed to all forms of self-love. I am not aware of any place in which he asks how this position can be squared with the fact that the second love command takes for granted the legitimacy of self-love.

Now for a point that is more important for our purposes here than either of the preceding two points. The two love commands are not just statements of the essence or heart of Torah. They are quotations from the Torah. The first is a quotation from Deuteronomy 6; the second, a quotation from Leviticus 19. The thought comes to mind that if we look at the context in which these two commandments occur in the Torah, that may illuminate their meaning in the Torah. Context doesn't always illuminate meaning, but often it does. Suppose that in this case it does. I submit that it would have been likely that Jesus and his interrogators understood the commands with the same meaning that they had in the Torah. It's possible that they understood them differently; but the burden of proof lies on the person who holds that they understood them differently.

On this occasion let's confine ourselves to looking at the context in which the second commandment occurs in the Torah. The situation is Moses is delivering the divine law code to Israel. The context extends over several chapters. It will be sufficient for our purposes here to quote just a few of the immediately preceding verses.

You shall not oppress your neighbor or rob him. The wages of a hired servant shall not remain with you all night until morning. . . . You shall do no injustice in judgment; you shall not be partial to the poor or defer to the great, but in righteousness shall you judge your neighbor. You shall not go up and down as a slanderer against your people, and you shall not stand forth against the life of your neighbor. . . . You shall not hate your brother in your heart, but you shall reason with your neighbor, lest you bear sin because of him. You shall not take vengeance or bear any grudge against the sons of your own people, but you shall love your neighbor as yourself. I am the Lord your God.

What we have here is a number of more or less detailed injunctions concluding with the love command.

A question that comes to mind is whether that final command, love your neighbor as yourself, should be interpreted as just one injunction among many. That is obviously not how Jesus and his interrogators regarded it; it was for them the heart of the Torah. And that is not how the Jewish tradition to this day understands it. The love command is the generalized summation of what has preceded. We are to read it as if it were prefaced with the words, “in short.” “In short, love your neighbor as yourself.”

And now for the point relevant to our present concerns. In this passage from Leviticus, love is not pitted against justice. To the contrary: treating one’s neighbor justly is cited as among various ways of loving one’s neighbor. Justice is an example of love.

My conclusion is that the love that Jesus enjoins on us for our neighbors is not to be understood as sheer gratuitous benevolence that pays no attention to whether or not it wreaks injustice. We have to re-think love so that love incorporates justice. We have to understand love in such a way that treating the neighbor justly is an example of loving the neighbor.

How do we do that? Begin with this question: why is it that gratuitous benevolence sometimes wreaks injustice? What does love as benevolence not take account of in such a case? To answer that question I must explain, ever so briefly, how I understand justice.

I hold that justice is grounded in rights; justice is present in society insofar as the individual and social members of society enjoy what they have a right to. In turn, I hold that to understand what a right is we must distinguish between, on the one hand, how well or poorly a person's life is going – his wellbeing – and, on the other hand, the worth or value of that person himself. A truly admirable person may find that his life is going poorly; these are the Job's of the world. Conversely, a person whose life is going very nicely may not be an admirable person; this gives rise to the ancient complaint, why do the wicked prosper? The complaint presupposes a distinction between the worth or admirability of the person and the worth or admirability of his life.

Rights, as I understand them, are an interweaving of these two phenomena, the phenomenon of how well or poorly a person's life is going (his wellbeing), and the phenomenon of the worth or dignity of the person himself. Specifically, one has a right to the life-good of being treated a certain way just in case not being treated that way would constitute being treated in a way that does not befit one's worth. In slightly different words: to deprive a person of his right to the life-good of being treated a certain way is to treat that person with under-respect. An ethical framework, such as classical utilitarianism, that works only with the idea of life-goods, and not also with the idea of the worth or dignity of persons, cannot, in my view, give an adequate account of rights, and hence not an adequate account of justice.

Here then is my suggestion as to how the love that Jesus attributes to God and enjoins on us should be understood. Such love for the other person or for oneself seeks to advance the good of the other or of oneself. But the good of the other and of oneself has two dimensions: the dimension of the wellbeing of the person, how well or ill the person's life is going, and the dimension of respect for the person's worth. Love attends to both dimensions – not just to the

former. Love does indeed seek to promote the wellbeing of the person; but love also sees to it that the worth of the person is honored, that she is treated with due respect. The rule to be followed is this: never seek the wellbeing of someone at the cost of treating that person or anyone else in a way that does not befit their worth or dignity.

I think that the English word “care” is commonly used to express exactly this understanding of love – not caring *for* but caring *about*. When one cares about someone, one not only seeks to advance their wellbeing; one also seeks to insure that they are treated with due respect for their worth -- that they are not demeaned, not treated with under-respect. Love that seeks to promote someone’s wellbeing but at the cost of wronging that person or some other may be an exemplary case of benevolence, but it is a malformed instance of care. I suggest that the love Jesus enjoined on us is not love as self-sacrificial gratuitous benevolence that pays no attention to justice and injustice; the love that Jesus enjoined on us is love as care, love that seeks both to advance the wellbeing of oneself or the neighbor and to see to it that oneself or the neighbor is treated with due respect for their worth.

Many lines of exploration now beg for attention. For one thing, we will want to go back and look once again at the cases of tension that I mentioned at the beginning – unjust paternalism, unjust distribution of goods, etc. Now we will look at them differently, however. Rather than analyzing them as cases of conflict between justice, on the one hand, and love as benevolence, on the other, we will analyze them as cases of malformed care; and the practical goal of our analysis will be to see if we can form some generalizations as to how to prevent love as care from being malformed in such a way as to wreak injustice. But that’s for another occasion.

Let me close by re-stating my main point: we must re-think love – and if necessary, also

justice – so that we no longer think of love and justice as in tension with each other. When love is well-formed care, there is no conflict. Care incorporates justice. Care often goes beyond what justice requires; justice by no means exhausts care. That is important. But well-formed care always does *at least* what justice requires.