

A Reformational Perspective on Law and Justice

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*With what shall I come before the Lord ... ?
He has told you, O mortal, what is good; and
what does the Lord require of you but to do
justice, and love kindness, and to walk humbly
with your God? (Micah 6:6, 8)*

Introduction

Christians who take seriously the unity of God's Word-Revelation in its written textual form (Bible), in creation generally and in the person of Jesus Christ cannot avoid being confronted by the call to seek justice for others and to act justly themselves. Justice is more than a desirable aspiration but a divinely instituted normative requirement of human existence in all its diverse spheres. It may only infrequently be realised in an enduring and comprehensive manner within a particular society. In some cases it may be grossly disregarded, but the requirement itself always remains and cannot be removed from human relationships by subjective belief, ideas, or action. In other words, justice is a *universal* (normative) condition of human existence.

Contemporary thinking which denies the universality of justice, therefore suppresses a fundamental truth. It is misled by the fact that societies and communities within societies can have differing conceptions of justice which express themselves in the practical and institutional arrangements for dealing with injustices. Different conceptions of justice and the different forms of response to the claims for just treatment are not merely consistent with the universality of the "justitial" norm, they presuppose it (but not *necessarily my conception* of it).

This essay, first, briefly indicates how law and legal institutions make an appeal to a universal norm of justice which I then argue is intrinsic to the notion of valid binding law. Secondly, it will explain the manner in which the universal creational calling to do justice applies in different spheres of human life and how this universal calling to justice corresponds to a universal jural dimension or aspect of human life. We will then examine how the universal normative jural dimension receives concrete expression in the different kinds or "types" of law which are the result of human responses to the norm of justice within those different spheres of life. Finally, we will begin to see how the different types of non-state law and their positive jural norms are integrated, and held to a normative standard of public justice, by the law of the state carrying out its typical jural calling in a public-legal manner.

Law's Appeal to Justice as a Universal Norm

A favourite maxim of lawyers and judges that frequently recurs in connection with administration of justice in the courts is that each case depends on its own facts. Yet it would not even be possible to address particularised legal claims or calls for justice without appealing to something which is universal. A claimant cannot obtain a particular remedy or redress for a particular injury or wrong in a court of law by merely stating the specific wrong and claim. "Someone damaged my goods, so I ought to be recompensed by the one who caused the damage" or "You, the Crown (political authority) agreed to safeguard us, the aboriginal people of this land, in our land and "treasured" possessions" so give us back that land and those possessions or give us compensation as redress." These may be the particular claims but there is no possibility of their succeeding unless the claimants can point to general legal rules or norms that are based on *principles of justice*. And though these principles may vary in form amongst different societies and cultures the claim of justice itself is an appeal to a principle or norm which transcends nation and culture.

The claim of indigenous peoples for self-determination and recognition is an internationally recognised claim which depends for its force on internationally accepted norms of justice. The mere possibility of countries with different cultural traditions being able to agree on common principles for dealing with international relationships presupposes universal normative conditions which ground that possibility.

It may not have escaped the reader's attention that I quickly moved from talk of justice in general to discussion of law and legal institutions (Courts, international bodies) formed to deal with claims based on an appeal to justice. John Rawls, the prominent political philosopher has said that justice is the "first virtue" of institutions. From our perspective we can be more precise and say that justice is a normative requirement which characterises (or "qualifies") *legal* institutions, that is, gives to legal institutions their characteristically legal or *jural* quality. This is reflected in the description given to the courts of the land as "Courts of Justice" and the function they perform as being "the administration of justice." Judges are duty-bound to perform their judicial task impartially in order to arrive at just decisions and court advocates similarly owe a duty to the court and its goal of achieving justice.

Yet it has often been asserted by an influential theory of law (legal positivism) that the existence of law is one thing, its justice quite another. In other words

law and the “legal system” can be accounted for independently of normative criteria (e.g., justice) even though it may contain normative (“moral”) *content*. The criteria for determining the existence of valid law (legal fact) therefore is said to be independent of normative requirements (legal values) such as justice. As well as being defended as logically sound – you cannot derive an “is” (social fact) from an “ought” (value or norm) – this emphatic differentiating of law and justice has been defended on the “practical” ground that it allows one to criticise bad law for being unjust rather than simply denying the description of valid law to such “rules”. Hence we can criticise the grossly unjust decrees of the Nazi era (or the apartheid regime) as bad and unjust law. To deny to such actions the description of law, as does natural law theory, however, only undermines the force of criticism directed against what are evidently political-legal practices. Law, on this legal positivist view therefore, does not derive its legal quality from normative values such as justice but from the fact of its concrete actualisation as a social phenomenon (“positivisation”).

Legal positivism, however, does not deny that there is a normative dimension to laws for, as we have seen, law may embody a normative content – moral, political and social “values”. Furthermore the very establishment of social practices (rules) as valid or binding law requires a normative (“internal”) attitude of “recognition.”

We have just seen there are *theoretical* objections to making justice an intrinsic element of law. There is, however, a similar kind of objection at the level of common experience. We only too readily perceive the inadequacies of legal processes and how they frequently produce injustices, for example, the conviction of a person who it is later established was innocent of the crime for which he or she was convicted. We, therefore make a sharp distinction between *legal* justice and the *ideal*. Or as Christians we might sharply distinguish between imperfect human justice and the biblical ideal of justice thereby implying an almost unbridgeable gap between the two states.

How can we acknowledge the basis of truth in these points about the connection between law and justice and at the same time maintain the view that the “justitial” norm is not only a universal dimension of human experience but one that characterises a corresponding universal legal or jural dimension of human life?

Creational Norms, Human Response, and the Jural Aspect of Experience

The required approach for addressing this question is already contained within the question. First, justice is a *universal normative creational* requirement of

human life and, secondly, it is the normative requirement that characterises or qualifies the *jural* or legal dimension of human experience. These two basic tenets confirm what no respectable theory of law would deny – law is a normative phenomenon - it both requires people to comply with norms of conduct and enables them to generate such norms. However the two tenets do much more than confirm this widely accepted truth; they provide the basis for insights into law and justice that traditional theories do not furnish or to fail to furnish sufficiently clearly.

Within the entire range of human relationships, both communal and interpersonal, we find that correlated to the universal, divinely sourced, creational norm of justice as a universal “condition” or requirement of those relationships is the *jural* dimension or “aspect” of human relationships. The *jural* or “legal” dimension is a creationally differentiated expression of the divine mandate to give concrete form, to exercise the God-given freedom of responding, to the distinctive “justitial” norm. This response is concretely manifested human law.

As creatures we have been given the capability of responding to a diversity of God-given norms. Besides the norm of justice and its correlated *jural* aspect there are normative aspects requiring: the stewardly management of finite earthly resources (economy), the unfolding of aesthetic possibilities of creation in art and music (aesthetic norm), the displaying of a caring and ethical disposition in all manner of human relations that exceeds the strict requirements of the *jural* norm (ethical norm). These are just a selection of distinctive kinds of God-given normative dimensions of our experience.

These God-given norms are part of the ordering presence of God’s Word, structuring all creaturely existence, both human and non-human, both “social” and “natural”, within the unity of God’s creation. Until these norms receive a human response through the free exercise of God-given human responsibility they lack any concrete (factual) temporal existence in human life. It is only through the exercise of cultural formative power that these norms obtain concrete application in our daily lives. The formation of a business enterprise is the concrete organisational embodiment of the creational calling to manage resources in obedience to the norm of economy for the end of meeting human needs.

In the case of the *jural* dimension of human experience and its core norm of justice, human response to the *jural* norm is in the form of law. Law is the product of the exercise of human cultural power in response to the norm of justice. However, it is both a response to a divine non-human norm and the

human positing (“positivisation”) of a concrete norm to guide, empower or restrict human conduct in conformity to the norm of justice. That there may be different conceptions of what justice entails, or that the prevailing conception of law does not even subjectively consider law to have a prime concern with justice, does not in any way invalidate the claim, from a reformational standpoint, that such law-forming is necessarily a human response to the God-given normative calling to do justice which is embedded in human experience. Conceptions of law and their underlying beliefs about the world and life, to the extent that they depart from a truly biblical understanding, can only result in concrete realisations of the norm that are in principle flawed but not in the elimination of the norm itself.

In legal theory the separation of law and justice has come about through a rejection of the biblical/Christian idea of a divine non-human normative source for the normative dimension of humanly posited “social” norms, legal norms in particular. This means that such “humanistic” theory can only see the normative character of law as a concrete product of human cultural forming. In the classical positivist conception non-positive norms embodied in law are derived from subjective human “values”. Such values are not part of the concept of law. This conception views law as the concrete *form* of acts of human formation (legal fact), and values as merely the non-legal (moral, political, social) normative contents. Some modern legal theories of both positivist (e.g. Waluchow) and non-positivist (e.g. Dworkin,) varieties try to incorporate “moral” dimensions into their concept of law or try at least to find a necessary connection between law and morality. (MacCormick) However, their implicit denial of any notion of a non-human normative source of law’s positive normativity (the result of positing legal norms of conduct for citizens requiring their acting in conformity to the norm) presents insuperable problems in accounting for the normative character of law and results in a fundamental and unresolved tension in their accounts. This is because humanly formed law and its normative content, of which these theories endeavour to give an account, necessarily presupposes some non-humanly-positing normative ordering. Yet from a Christian standpoint such theories attempt the impossible by either locating the ordering conditions of human law formation in a humanly sourced ordering (rational reconstruction of juridical phenomena) or by denying any unified “objective” structural foundation at all to law, either human or divine. (Critical Legal Studies and postmodern legal theory). These prevalent assumptions about the normative character of law and other social phenomena, however, are not confined to *theory* but are deeply rooted as religiously shaped beliefs in modern culture which in turn shape attitudes about the nature and role of law in society and the practice of law-making and legal practice in general.

Such theories, nevertheless, have given us many important insights into the positive structure of law and legal phenomena. Indeed our idea of the jural aspect as a universal normative dimension of human experience implies human acts of positivising or forming, that is, rule-making in the form of law. But as an undeniably *normative aspect* of human experience the jural dimension also implies the notion of positivising or jural form-giving as a *response to a non-humanly-positated normative given*. Human form-giving or positivisation is an incoherent notion unless understood as a forming or positivising of something which is ultimately sourced in that which is not humanly formed or positated. Human creativity is restricted to forming and shaping out of what is given in Creation. Humankind did not create the world either in its natural features or in its normative character. Only a non-human creator (God) could have given that to which our forming, our cultural activity is a formative response. In other words, normative forming activity of human creatures and the idea of legal positivisation, in particular, presupposes a non-humanly-positated source of such positive legal norms.

Because much modern legal theory is compelled to view law only as a positive humanly shaped phenomenon, as legal form, it overlooks the universal character of the non-positive jural aspect normative and tends to focus on the most highly formalised type of law (state law) as the archetype of all law or as the “central case” of what law is. On the other hand, traditional natural law theory (e.g. Thomist) which holds to a non-human source of norms (natural law) against which positive human law is to be measured also has difficulty in explaining the connection between human positive law and non-human natural law. By viewing the latter as itself a kind of higher (i.e. juridical) valid law, by analogy with human positive law, it imports all the problems involved in having to explain the validity or binding force of human law. Natural law interpretations of God’s normative ordering too closely identify that *cosmic* ordering with its *jural* dimension when expressed in concrete human form – the human response to that jural norm. But God’s ordering (“cosmic law”) in fact displays a diverse range of normative dimensions as explained earlier. Jural culture in the form of laws and legal institutions is the human response to only the jural dimension of that ordering. Art, social organisation, ethical relationships, etc. are human cultural responses to other normative dimensions of the cosmic ordering. Furthermore, all of our human responses are always a direct *religious* response, either in obedience and shaped by the basic tenets of biblical faith, or just as religiously directed by some idolatrous belief. Common ground amongst different fundamental perspectives on law, is not found in “shared natural reason” but in the divinely-sourced ordering conditions (rational and non-rational) within the limits of which all human

beings conduct their lives.

From our reformational perspective natural law theory also suffers from a further fundamental flaw. It obscures the direct relationship between God's (normative) ordering for the creation and human response by interposing between God's "eternal law" a "natural law" accessible to all human creatures via "natural reason" without the need for Revelation. The reformational position, however, holds that whilst God's creational ordering holds for and is experienced by all human creatures our insight into that ordering including its juridical dimension requires an understanding of that phenomena informed by a total, thoroughgoing biblical perspective. Such an approach can benefit from insights of human rational inquiry shaped by different perspectives that are not founded in a Christian world-view. But these fruits of rational/analytical inquiry will bear the marks of scholarship unshaped by the beliefs of revelational truth and will require re-forming to bring them within a Christian perspective.

Universality of the Jural Dimension in Human Life

Up until now the universality of the jural dimension of our human experience in its normative calling to do justice has simply been asserted. It is now time to explain specifically *how* this jural normative displays itself as a universal dimension of all human relationships.

A human family is bound together by the bonds of mutual love and care amongst its members. Even in a family where the natural (biotically-founded) feelings of love and affection of parents for children is present there can arise conflict. It may occur amongst children or between parent(s) and child. A child may resist the discipline of the parent who seeks the child's best interests or the child may feel she is being subject to unfair treatment. For the parents who are charged with responsibly exercising their God-given authority they take the lead in finding a just resolution to the conflict consistent with the norm of moral love that binds the natural community. The same applies to the intimate love-bond between husband and wife. Issues of fair treatment of one partner by the other will arise. For example, there is a normative requirement for the man to give equal respect and recognition to the woman's needs for personal development of talents and abilities within the love-bond. Where that respect is lacking on one side of the relationship a disharmony exists which calls for redressing. This is the case even where the woman herself does not consciously acknowledge the wrong done to her. Such an imbalance can stunt the flowering of the relationship. It is only too well-known that within the Western form of marriage one of the functions which a period of engagement can serve is to work through such potential problems in a manner of mutual respect and

love. Mere feelings of love which may have initiated the relationship are not enough to produce a lasting and stable relationship. Without the persistence of genuine caring love between people in an intimate human relationship of whatever kind the relationship cannot survive. However, it is a feature of these distinctively “ethical” relationships that a failure to observe the jural normative requirements of the relationship, that is, the need for attending to the ongoing requirement of fairness or inter-personal justice, is a failure of one of the essential constituents of intimate caring relationships. This in turn precludes a genuine love-bond developing or even coming into existence. The response to the norm of justice in such relationships will not display the same formal public features characteristic of state law (legislative rules or judicial rulings). But the normatively governed response is no less a concrete positivisation of the jural norm and as such constitutes a type of law. It is not uncommon for parents and children to resolve conflict within the family by establishing firm rules such as, “We all have to help with the household chores at the end of the week”; or, “You must finish your homework before you can watch a television programme”; or “You must be in bed by 8:30 PM during the week.”; or, “We all have to put twenty cents into a collection for *World Vision, Oxfam, etc.* whenever we use ‘swear words.’” These rules of behaviour whether imposed by parents or agreed on as a kind of family “contract” are shaped by the requirements of the ethically qualified bonds of family, marriage or friendship and express the jural dimension of these ethical relationships. They display a very different form as compared with the internal rules of a sports organisation or the public-legal rules of the state. They are rules for the re-establishing and fostering of harmony within relationships characterised by the requirements of loving care and mutual fidelity. They nurture *in a jural manner* openness and honesty within these bonds of love. Such “rules” or norms of behaviour are not merely desirable but *essential* for genuine relationships of this kind.

A business is characterised by its economic purpose of producing goods and services for the meeting of human needs. It achieves this through economically efficient management of its relatively scarce material resources and management of the human contributions of labour at every level within the employment relationships. Within that structure a high degree of internal regulation can be displayed. As with the family or other “moral bonds” this positivisation of the internal jural sphere within a business organisation does not display the traits of public legal justice characteristic of state law but concerns, amongst other things, the regulation of internal authority relations. In smaller firms these “rules” may never attain visibility in the form of written codes of practice. Such internal rules can be contrasted with the legal requirements imposed on all corporations by the state in exchange for their

recognition by that public body and the legal privileges and protections which accompany that recognition, for example, limited legal liability of its shareholders.

An educational institution of any size, such as a university, will have a variety of rules and regulations displaying formal features consistent with its educational-nurturing purpose. Behaviour which threatens its educationally qualified function requires addressing in the form of rules of conduct. Once again the distribution of authority within the structure of the organisation will require a degree of formalisation in “statutes” and regulations in order to ensure a harmonisation of, and fair procedures in, the multitude of functions carried out within the organisation. One might say, irrespective of the content of the rules, that formalisation of norms of process and conduct is itself a positivisation of the jural norm - the observance of the rule of law within the private internal sphere of such non-state organisations.

Similarly there can be a high degree of rule-formalisation within sports organisations or any body to promote its recreational purposes. And even the least insitutionalised religious sect requires rules of faith to meet the proclivities of human sinfulness towards disputation and dissent and for the fair resolution of conflict within the sect. In established Christian denominations, including the Anglican, to which I belong the internal jural practice of centuries is expressed in the Church canons.

A final example concerns indigenous societies. Though lacking the highly differentiated development of modern societies, they also display a diversity of social spheres within which the universal jural norm functions. The calling to positivise the jural norm in their families and extended kinship groups and other intra- and inter-tribal relationships is no less present. The customary law of such societies is no less law for not having originated in the manner of modern state law. The notion that such customary law requires recognition from modern state legal organs of legislature or state courts to be genuine law is a positivist prejudice which reduces all legal norms to that of the public body. For example, the *recognition* which the state laws of common law jurisdictions have given to aboriginal title relating to proprietary rights over land and sea and other natural resources assumes the pre-existence of positive jural norms within those societies prior to recognition within a state system of law. The lack of a “system” of rules however, does not make the jural norms of aboriginal societies any the less positive law demanding recognition and respect from other communities and societies. Colonial political institutions have often suppressed such indigenous law even when motivated by worthy ideals.

The Normative Character of the Jural Dimension: How the Jural Aspect Expresses the Norm of Justice in the Different Types of Law

Thus far in our story of law and justice we have explained that the norm of justice is a universal normative requirement of human life grounded in the creational ordering of God. It has also been argued that justice is embedded in the creational ordering as a (universal) normative jural dimension or “aspect” of life. Human law-forming was explained as a concrete response to this universal “justitial” dimension. And examples were given to show that this normative *jural* dimension does indeed express itself in human responses as kinds or “types” of *law* in different spheres of life and relationships. But these examples provide only the barest intimation of the normative “justitial” character of the jural aspect governing human activity expressed in its different spheres. I can now go a little further and describe some of the salient normative features of the jural dimension as it is expressed in human law.

The first important point to note is that the jural aspect or dimension, as a universal normative requirement in all human spheres, is indeed only an aspect or dimension of concrete law. This becomes quite apparent when we reflect on the fact that state law in the form of a statute or judicial decision can be the object of scientific or scholarly analysis from many different angles. For example, such law can only be expressed in words, typically in writing. It can therefore be the object of linguistic analysis for the expert in linguistics. Modern state law, because of its public character and central importance in any community, also displays a complex nature as to its composition in both its raw statutory form and in the public and carefully articulated reasoning structure of judicial rulings which interpret the statutory material or generate their own legal norms (“common law”) as a source of law. Law, therefore, can be the object of an analysis which reveals how its structure expresses itself as a uniquely jural response to the universal rational/logical dimension of human life. This is a kind of inquiry requiring expertise in the discipline of logic as well as jurisprudential insight. Similarly legal actions such as the process of forming a contract or the judicial decision-making process can also be examined from its “social dimension” as the object of sociological analysis. Studies have been carried out on the way in which the social background of judges is reflected in their judicial function of deciding cases. Strictly speaking however such investigation is not examining concrete jural phenomena from the viewpoint of its jural dimension though sociological analysis certainly depends on such jurisprudential insight to provide its socio-legal focus.

Enough has been said to establish that the jural dimension is but one of

several normative (and non-normative) aspects of concrete law. But it is the jural dimension that gives to concrete law and legal phenomena their jural character. It is this dimension that gives a jural “flavour” to all the other diverse aspects of concrete law. There is much more that could be said about other non-jural dimensions of legal phenomena. However, we must pass on to consider the internal normative complexity of the jural aspect itself for it is here that we discover how the norm of justice reveals itself as a uniquely jural norm.

The jural dimension as a normative ordering dimension of human life in all its different spheres involves at its core a balanced harmonizing of a plurality of human interests according to a standard of proportionality and in a *retributive manner*. All of these elements, *harmonizing, balancing*, according to a standard of *proportionality*, (i.e. giving the appropriate or *due weight* to each interest to avoid detriment or harm to any particular interest) have a jural normative meaning in the core sense of retribution. Here retribution does not have a purely criminal-legal or penal meaning it has a uniquely and irreducible jural meaning understood in the widest sense of the jural dimension and its concrete expression as law. Synonyms, or near-synonyms, for retribution are restoration (restorative justice), restitution, reparation, redress, recompense, all characteristically jural terms familiar to practitioners and students of law which apply beyond the criminal sphere. But we can put these general abstract terms into a concrete setting to make clearer this core meaning of retribution and its cognate notions, as well as to elucidate its normative elements of harmonising, balancing, etc., associated with it. The example is taken from the law of contract.

Every mentally and physically able adult person in a modern society (and many younger persons) as consumer or provider of goods and services will have entered into this mundane kind of transaction. It is an essential instrument of economic activity. Take, for example, an agreement involving the sale of goods, let us say a fixed quantity of cans of fruit bought by a trader from a manufacturer for the purposes of resale to consumers. The agreement may be embodied in a written contract that meets the formal requirements of a binding contract under the state rules of the jurisdiction in which the contract is concluded.

Concluding the agreement as a contract is to express the economic transaction in a jural form, that is to say, a type of private law-forming has taken place. “Law” here has a double sense. This is because the contract itself, irrespective of the state law (law of contract) that applies to it, already creates as between the parties mutual *jural* obligations for both parties. The central jural

obligations of the parties are delivery of goods by seller owed to purchaser and acceptance and payment of goods by purchaser owed to seller. We could express it differently and say the seller possesses the right to payment and the purchaser the right to delivery. The contract is a way of *binding* the parties to the agreement to perform their mutual obligations thereby providing the parties a form of *assurance*, a degree of *security* that such obligations will be confirmed; it provides a measure of certainty that is necessary for the conduct of sound business.

The contract protects the economic interests of both parties by requiring an expression of commitment to performance. The contractual undertakings or promises are *not* mere *moral* promises but promises or undertakings that have a distinctly positivised jural character. A failure to perform or an expression of intention not to perform by one of the parties will damage the economic interests of the parties. By embodying the obligations in the form of a contract the parties have given their economic interests a jural or legal form so that the party who has failed to perform the obligation and thus damages the other party's economic interests has now also violated a legal interest contained within the contractual agreement. It is the jural expression of those interests that allows the state law in the form of the law of contract to provide public legal redress for the jural transgression, for the breach of contract, for the private legal wrong or *injustice*.

Legal redress in this context is a jural response which may take the form of enforcing the contract ("specific performance" in the "common law"), which is the outcome of the parties' own jurally formative agreement, or contractual recompense (damages) for the breach which is given according to the appropriate contractual *measure*, or it may entitle a purchaser who has received defective goods, for example, to treat the contract as at an end and reject the goods. In other kinds of contracts cancelling the contract is an equivalent legal remedy. Legal *redress* is a *retributive* act for it involves a *response* or *reaction* to the violation of a jural interest, to the disruption in the jural balance which in this case, the parties themselves have arrived at within the contract. The response *re-establishes* this jural balance in a retributive or *restorative* manner by either requiring the transgressing party to perform her obligations under the agreement or, where that is not practical or just, to at least require her to pay compensation for the loss suffered as result of the breach (which in the case of a contract may include an element of loss of expected profit). Where the parties themselves cannot by their own unaided means come to some such just solution within the framework of their contractual agreement then the state law of contract allows the party complaining of the wrong to seek contractual justice from the legal

institutions (Courts) established for administering its public legal norms.

We have taken the practice and law of contract to illustrate the core meaning of the jural dimension as *retributive justice* within the context of a particular kind of human activity, economic market transactions. Though contractual justice has its own typical features and terminology nevertheless it is but a specific expression of the universal normative jural dimension of human experience that sets ordering conditions for every sphere of human interacting and functioning of human communities according to the norm of retributive justice. Hence we referred to the internal jural dimension of the family, business organisations, educational and ecclesiastical institutions and of indigenous societies. And, as an ordering condition for each of those spheres of human life retributive justice holds as the normative demand of the jural dimension in the same general sense as for the market activity of contracting. That is to say, the jural dimension within the family also demands a kind of retributive justice which involves those elements of harmonizing, balancing and weighing of interests of the persons concerned . But the actualisation of the jural dimension within the family has a different typical character from that within the economic sphere of market transactions. Although it is now not unusual to talk of “contracts” within the context of family and marital relations, the interests which are actualised in the jural form of internal family rules or marriage contracts have a different normative character from that of commercial agreements. For it is the “ethically qualified nature of this family bond that characterises these interests. Rather than obligations or duties to performance of economic acts (delivery of goods, payment, etc.) the duties and obligations that are owed by parent to child and child to parent are actions of mutual love and care. The informal rules which families (or marriage partners, or friends) arrive at to deal with the disruption, or possible disruption, of the harmony necessary for maintaining these ethical bonds embody, and give protection to, the mutual ethical interests of the members of these small intimate communities. By ethical interests we mean the interests of caring nurturing love. Promises of fidelity and love which marriage partners exchange in their wedding vows are moral or ethically qualified actions. But these promises imply duties and obligations that are *owed* by virtue of the marriage bond. These refer to the jural dimension of the ethical relationship. Similarly, the duties of parents to ensure their children’s material needs of food and clothing are met, and to ensure that they receive education, are the expression of the jural dimensions of that family bond. And, just as in the case of commercial contracts, a failure within the relationship or community to re-harmonise the interests of the members of the relationship may require state law to redress the jural balance of ethical interests which has been disrupted by a failure in the performance of ethical duties.

The re-harmonising of jurally embodied ethical interests which state law performs can be illustrated from a different area of law. It is not only in domestic contexts that ethical relationships arise. Even in commercial contexts this can occur. The relationship between a lawyer and her client is an ethical one within which ethical duties of fidelity or loyalty arise. Where a lawyer causes economic loss to her client through breach of those duties (for example failure to keep client information confidential or failure to disclose information affecting the client's interests) the law will hold the lawyer *retributively accountable* for such breach by requiring him or her to pay damages for economic loss incurred as a result of the breach of fiduciary duty.

State Law and Public Justice: The Public-Legal Role of the State

In the course of providing examples of how the jural norm displays itself in different spheres of human activity we have encountered a fundamental juridical truth concerning the interrelationship of different types of law or positive jural norms functioning within those spheres. It is the typical task of state law and its norms to integrate every other type of jural norm within non-state spheres of life in a retributive manner according to the core normative meaning of the jural or "justitial" aspect. Within the family, marriage and other typically ethical relationships, within private commercial relations and transactions, within business organisations and corporations, within educational institutions and within other societal communities, the state has a superintending, coordinating and integrating role with respect to the inner jural dimension of those non-state institutions and relationships. But this public-legal function is limited by the fundamentally jural or justitial character of state law. Whereas non-state types of law or rules of non-state communities and relationships receive their typical character from the ethical (family, marriage, and other intimate relations) or economic (commercial contracts, internal rules of business corporations), state law is itself qualified in its typical character by the jural dimension. In other words, the state as a *public* institution, (*res publica*), is a typically *jural* institution. It is, therefore, also to be characterised by the distinctive normative character of that aspect which, as we have reiterated throughout this essay, refers to the norm of justice.

State law is not the only kind of law but it is the only type of law that possesses the public-legal function of integrating all other types of law in a retributive manner. Within the institutions of the state the universal normative call to justice is expressed in public-legal justice. But this public-legal task is not only one of integrating the jural normative functioning of all non-state spheres. Within the territory of the state itself it has a task to posit norms of

public justice for all its citizens, not only to provide public retributive justice for criminal acts but to maintain a balanced harmony within the diversity of different interests of communities groups and individual persons within its jurisdiction. This will require action on the part of the state to implement, by public legal means, public policy designed to correct large disparities in wealth and income which result in sections of society living in poverty or who are vulnerable to exploitation by those with economic power and command of technological and other means of control over others.

Its role of promoting public justice also requires the state to implement laws that safeguard the integrity of the non-state communities, groups and institutions against intrusion by other power-groupings and also against violation by the state itself. From a reformational standpoint there is a jural balance to be maintained amongst the different spheres of societies with their distinctive callings. The state undoubtedly has a critical function to perform in promoting the healthy normative functioning of social institutions, communities, voluntary organisations and domestic relations.

But our story of the functioning of different social spheres in the universal jural dimension of created reality also tells us that such communities and relationships possess their own jural competence to form rules, standards and principles for promoting justice within their own social spheres. God's creational ordering guarantees that such "private" jural competences cannot be eliminated by state intrusion or the intrusion of any other societal institution. The state does not transgress that limiting principle when it holds those internal jural spheres of law to public legal standards of accountability through legislation and the judicial process, because it is the central normative function of that public body to integrate all such jural spheres according to the public standard of justice (social justice). It is in this normatively prescribed manner that the state does indeed maintain a jural balance amongst the different types of societal communities and thereby promotes their welfare including the welfare of the citizens who comprise the public body itself.

Conclusion

We have seen that there is an intrinsic connection between human law and the universal norm of justice. The former is but a concrete human response to the latter and both are grounded in the ordering presence of God's Word for the Creation. The requirements of the universal norm of justice differ in kind according to the diverse kinds of contexts in which the divine call to justice is addressed. The concrete, human response to the "justitial" or jural aspect of human activity correspondingly displays itself in different kinds of law or "positivisations" of that jural dimension. State law is only one type of law,

though one with a central and critical role in coordinating and integrating other types of law found in non-state contexts. However much state law (e.g. criminal law, public laws relating to health, education and social welfare, etc.) departs from a Christian or any other ideal of justice, human law-makers cannot abolish, or escape, the normative conditioning limits of God's creational call to do justice which is intrinsic to the activity of making law.