

# THE JUSTNESS OF LOVE: THE ESSENCE AND STATUS OF JUSTICE IN LUTHER'S THEOLOGY

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## *Abstract*

Luther's views on justice provide a useful platform of departure for discerning 'points of contact' between Christians and non-Christians on the nature and role of justice in society. The main elements of such 'points of contact' are contained in the principle that the simplest and most important element in moral and juridical discipline is inserted in all human souls by divine Providence because everyone stands in need of it. Justice is the simplest, most basic, and noble idea - every other value possessed by positive law is accidental, accessory and derivative, and the essence of the perfection of laws consists in justice alone. Justice is necessarily present in every human being in whom the tiniest ray of reason shines, obliging every rational being to mutual love and benevolence in all social relations. Justice is not the invention of philosophy or science but a manifestation of the supreme truth, and commands us to acknowledge truth (or justice) as soon as the Holy Spirit reveals it to us. In short: justice, as the supreme value in society, is the manifestation of the supreme truth, namely the duty to love your neighbour as yourself and to promote benevolence as the supreme good in society.

## 1 INTRODUCTION

In his work *Creeds, society, and human rights*, Max L Stackhouse (1984:55) argues in favour of the view that Lutheranism did not develop a genuinely urban base which would allow "appropriation of notions of civil rights, corporate independences, or cosmopolitan values". Stackhouse observes that the social doctrines of Lutheranism remained attached to more authoritarian, medieval conceptions of social hierarchy, "even as it advocated spiritual equality for all" (Stackhouse 1984:55). To Stackhouse, Luther held rather closely to the 'concession' theory of political life, which had dominated some medieval Catholic thinking. In his view the right to organise groups for any purpose beyond family, church, and government was seen as "something requiring the king's permission" (Stackhouse 1984:55). He concludes that Luther called upon political authority, and the public at large, to "kill, stab and slaughter" those who wanted to apply notions of religious freedom to social-political revolution (Stackhouse 1984:55).<sup>i</sup> Elsewhere Stackhouse states that although Luther stands as the great heroic and symbolic leader of the ecclesiastical conflict with conservative Roman views and practices on

spiritual matters, he nevertheless continued to share many of the conservative Roman attitudes on social and political organisation (Stackhouse 1984:55).

This line of argument by Stackhouse and others could be called the 'traditionalist' interpretation of Luther's social and ethical thinking. However, such 'traditionalist' interpretations of Luther's social, political and legal ethics lack a clear appreciation of the depth and internal dynamics of theological-spiritual traditions, and the possibilities of conceptual development and application of the original ideas posited by the Lutheran reformation beyond the boundaries of ecclesiastical reform. While the Neo-Thomist tradition produced many examples of spiritual followers and sympathisers who fruitfully interpreted and applied the original views of St Thomas, thereby developing a distinct Thomist tradition of social and political ethics, this is largely lacking in the Lutheran political and legal tradition.

The irony is that, whereas 'Reformed' interpretations like those of Stackhouse distinctly slant towards crediting Calvinism with contributing most of all towards recapitulating "the social-organizational heritage as well as the intellectual heritage of the minority movement of Conciliar Catholics," Calvinism itself not only drew its internal ethical dynamics from Luther's thought, but also proved to be unable to provide a lasting basis for engagement with non-Christians on issues concerning justice and fundamental rights.

Arguably one of the most demanding challenges posed to Reformational Christians involves the discourse with non-Christians on ethics in general and the possibility of identifying common ground concerning matters related to justice in particular. How, for example, should Reformed Christians proceed to identify common ground for fruitful discourse on the essence and status of justice and to stimulate open discussion on these matters? In a wider context Reformational views on justice contribute very little in providing platforms to either evangelical Christians or non-Christians for engagement on issues related to legal ethics, justice and human rights. As a result of widely held Protestant views that there is no common ground relating to justice, fundamental rights and practical jurisprudence, Reformational views on these matters have had very little impact on legal and political systems over the last century in the world generally and South Africa in particular.

In many respects the issue of the relevance of Reformational jurisprudence for debates concerning justice, law and politics has become an urgent matter in evangelical circles. Furthermore the marginalisation of Reformational jurisprudence is the direct result of its inability to find common ground for engagement on these matters.

Issues relating to the 'point of connection' and/or the possibilities of common ground on social matters between Reformational evangelicals and non-Christians confronted the Reformers in the initial stages of the Reformation at the beginning of the early modern period. It is of importance to note that the implications of the classical views of Luther, and his colleague Melancthon, are strongly supportive of identifying the common ground between Christians and non-Christians in the sphere of justice and right.

The implications of the Lutheran perspectives on these matters provide valuable connecting points for discourse and interaction between Christians and members of other religious commitments. This essay investigates the implications of the Lutheran views for opening and promoting the discourse on the essence and status of justice in society beyond the barriers of Reformational views only.

In Luther's theology, issues of justice are not limited to the theological sphere only. The interrelation of the life of the Christian before God and the life of the Christian in society comes to expression in Luther's views on justice. Not only are Luther's views on justice fundamental to the ethical and the political aspects of his theology, but also both the spiritual and the secular spheres find their focal points in Luther's perspectives on justice. Also the two kingdoms and the two governments are closely related to his theory of justice because both reflect God's government of the world. Whilst the church is subject to God's divine government through the gospel (government from which all forms of coercion are excluded), worldly government is accomplished through law and coercion (government which cannot achieve its ends through the preaching of love only).

Due to the inter-relatedness of the two types of government, both law and grace accomplish justice and promote the kingdom of God in all areas of human existence. At the junction of law and grace, the idea of justice in Luther's theology provides valuable connecting points for discourse between Christians and non-Christians. The arguments provided by Luther for discourse on justice run parallel to Plato's distinction between natural and positive justice. Reflecting on Plato's distinction, Luther analyses justice from three distinct Reformational perspectives: firstly, he maintains a strict distinction between the absolute justice (or right) of God, and the relative justice (or right) of humans; secondly, Luther traces the origin of human justice to God's creation of people in the divine image and likeness; and thirdly, he maintains that human justice functions relative to God's will, our calling in the world and our duties and rights in the kingdom of creation. Whilst dealing with these matters, however, Luther does not lose sight of the fact that justice is not the concern of Christians in society only, but that it affects the lives of Christians and non-Christians alike.

This essay supports the conviction that the idea of justice in Luther's theological-ethical thinking could open the door to universalistic ethical guidelines, in the form of brotherly love and social benevolence, for promoting discourse on justice in complex religiously divided societies.

## 2 DIVINE AND HUMAN JUSTICE

### 2.1 The dichotomy between divine and human justice

According to the widely accepted natural law philosophy of Greek antiquity, there are two distinct ways of using the word 'right' or 'just' to describe human

action. In an ultimate sense the word can be used of an action that corresponds to the eternal moral order of the universe, called 'natural law'; but in a limited sense the word is also applicable to actions that conform to the laws devised by societies for the administration of their business, to what is called 'positive law'. The ideal, according to Greek philosophy, was congruence if not an identity, between the two ways of using the word that is between the absolute and relative normative systems of justice.

Alluding to Plato's distinction between that which is just by nature and that which is just by law<sup>ii</sup>, Luther distinguishes between two kinds of justice in the world. Luther calls natural justice the 'healthy' law and legal justice (or human-made law) the 'sick' law. Whatever is done by nature's power succeeds very smoothly without any law, in fact, it overrides all the laws. But if nature is missing and things must be done according to laws, that amounts to mere 'beggary' and 'patchwork', and no more is achieved than is inherent in diseased nature. For that reason, says Luther, the things in the world in general remain "mere patchwork and beggary", it is a "veritable hospital", in which princes, lords, and all rulers lack wisdom and courage - that is, success and direction from God - "even as the sick pagan lacks strength and power". This means that in the fallen state of mankind "one must patch and darn and help oneself with the laws, sayings, and examples of the heroes as they are recorded in books" (*LW*, 13:163 (Selected Psalms II, Psalm 101)).

Luther's distinction between the 'healthy' and the 'sick' manifestations of justice (or right), presupposes a distinction between ideal justice (or right) and legal justice (or human-made justice) (or right). The distinction between 'ideal' justice and 'relative' justice demands reflection on the absolute standards of God's divine justice; divine justice and God's image and likeness in the human person; humankind's fall into sin and its regenerated knowledge of divine justice; divine law as a statement of supreme truth, and justice and the divine duty to act justly.

## 2.2 The standards of divine justice

In almost poetical style Luther describes the unsurpassable standards of God's justice and His absolute love of justice. In his comments on the statement that God ('the Rock') and His work are perfect, "for all His ways are justice"<sup>iii</sup>, Luther describes God as "faithful, without sin, righteous, and true" (*LW*, 9:290 (Lectures on Deuteronomy, Deuteronomy 32)). Furthermore this implies that the whole life of God's believers is right and true, going forward in the Word and commandment, not in their own ways and ideas (*LW*, 9:290 (Lectures on Deuteronomy, Deuteronomy 32)). To Luther, in this verse, Moses's statement is expressive both of the nature of God, and of God as He is worshipped and believed by His children.<sup>iv</sup> God's justice is elevated above the throne of rulers and princes (see *LW*, 11:267 [First Lectures on the Psalms, Psalm 97]). Because God condemns those who do not keep His Law, His judgment is right and He saves those who keep it, "and this is the justice of a just Judge" (*LW*, 11:504 [First Lectures on the Psalms, Psalm 119]).

Luther uses various expressions to describe the completeness of God's perfect justice: God's works are perfectly just (*LW*, 9:7 [Lectures on

Deuteronomy, Deuteronomy 1]); all God's ways are just (*LW*, 9:70 [Lectures on Deuteronomy, Deuteronomy 6]); God is wonderful in justice and humanity (*LW*, 10:10 [First Lectures on the Psalms I, Psalm 1]); God's throne is righteousness and justice (*LW*, 11:2 [First Lectures on The Psalms II, Introduction]); God's testimonies are justice (*LW*, 11:5 [First Lectures on the Psalms II, Psalm 76]); God's kingdom is a sceptre of equity (*LW*, 12:4 [Selected Psalms I, Psalm 2]); God's works are truth and justice (*LW*, 13:1 [Selected Psalms II, Psalm 68]); the rule of God is justice and peace (*LW*, 14:5 [Selected Psalms III, Preface]). Luther describes God Himself as justice (*LW*, 14:7 [Selected Psalms III, Psalm 117]), and the divine will as justice (see *LW*, 14:8 [Selected Psalms III, Psalm 117]), because the Lord is exalted in justice (*LW*, 16:6 [Lectures on Isaiah, Isaiah I]) and the Lord is a Lord of justice (*LW*, 16:10 [Lectures on Isaiah, Isaiah I]) and He will fill Zion with justice (*LW*, 16:22 [Lectures on Isaiah, Isaiah I]).

The consistent theme in Luther's dealing with divine law is that God's justice transcends human comprehension: if God's righteousness were such that it could be judged by human standards, it would clearly not be divine and would in no way differ from human righteousness. But since God is the one true God, and is wholly incomprehensible to human reason, it is proper and indeed necessary that His righteousness should be incomprehensible, as Paul also says: "How incomprehensible are His judgements and how unsearchable His ways!" But they would not be incomprehensible if men were able in every instance to grasp how they are righteous. Luther asks: What is man compared with His power? What is our strength in comparison with His resources? What is our knowledge compared with His wisdom? What is our substance in the face of His substance? In a word, what is our all compared with His? (*LW*, 33:289 [The Bondage of the Will]).

Because God is totally different from sinful humans, our reason can neither grasp nor endure that God should act according to human justice, and do what seems right to us, or else cease to be God (*LW*, 33:206 [The Bondage of the Will]). Luther comments that Job's friends, for example, had a worldly and human idea of God and His righteousness, as though He were just like men and His justice like the justice of the world (*LW*, 35:251 [Prefaces to the Old Testament]). Because God is by nature immutably just and merciful, as His nature never changes, so neither does His justice and mercy (*LW*, 33:37 [The Bondage of the Will]).

In essence divine justice is expressive of love - love should be sought through all things, above all things, and in all things. Nor do we need to fear that divine justice will be offended by love, for it is toward that end that righteousness actually impels us (*LW*, 31:166 [Explanations of the Ninety-Five Theses]).

God's perfect righteousness should move us to songs in praise of His justice: since God is a just judge, we must love and laud His justice and rejoice in God even when He destroys the wicked in body and soul, for all this lofty and unspeakable justice shines forth. Thus even hell is no less full of good, the supreme good, than is heaven. The justice of God is God Himself and God is the highest good. Therefore, even as His mercy, so must His justice or

judgment be loved, praised and glorified above all things (*LW*, 42:156 [Fourteen Consolations]).

### 2.3 Divine justice and God's image and likeness in the human person

The human person's ability to know justice flows from its createdness in the image of God. Luther maintains that God created Adam and Eve in His image and likeness, that is, in justice, wisdom and happiness (*LW*, 1:69 [Lectures on Genesis, Genesis 1]). God created the human person as the lord of creation, with knowledge of God and with the utmost freedom from fear, with justice and wisdom (*LW*, 1:73 [Lectures on Genesis, Genesis 1]). Whilst the animals are designated as 'footprints' of God, the human person alone is God's image, as appears from Peter Lombard's *Sentences* (*Sententiae*, II, Dist. XVI:683-685). In the other creatures God is recognised by His footprints; but in the human being, especially in Adam, He is truly recognised, because in him there is such wisdom, justice and knowledge of all things that he may rightly be called a world in miniature. He has an understanding of heaven, earth, and the entire creation. "And so it gives God pleasure that He made so beautiful a creature" (*LW*, 1:68 [Lectures on Genesis, Genesis 1]).

In the human person's prelapsarian state he had perfect dominion over the whole of creation; a role assigned by God to 'the most beautiful creature', who knows God and is the image of God, in whom the similitude of the divine nature shines forth through his enlightened reason, through his justice and his wisdom. This dominion was given to mankind by God's express command (*LW*, 1:66 [Lectures on Genesis, Genesis 1]). Also the precepts of divine law were inscribed in the human person's heart and mind in the form of divine natural law.

Luther maintains that the image of God, according to which Adam was created, was something far more distinguished and excellent, since "no leprosy of sin adhered either to his reason or to his will". Both his inner and his outer sensations were all of the purest kind. His intellect was the clearest, his memory was the best, and his will was the most straightforward (*LW*, 1:62 [Lectures on Genesis, Genesis 1]). In Adam there was an enlightened reason, a true knowledge of God, and a most sincere desire to love God and his neighbour (*LW*, 1:63 [Lectures on Genesis, Genesis 1]). In addition, Luther adds the foundational perspective that the dominion over creation was assigned to the human person, who knows God and the image of God, in whom the similitude of the divine nature shines forth through his enlightened reason, through his justice and his wisdom (*LW*, 1:65 [Lectures on Genesis, Genesis 1]).

Righteousness was not a gift that came from without, separable from the nature of humankind: it was truly part of its nature to love God, to believe God, to know God, and to honour God. These things were just as natural to Adam as it was natural for the eyes to receive light (*LW*, 1:165 [Lectures on Genesis, Genesis 3]).<sup>v</sup> The precepts of God's divine justice were inscribed on the human person's being and the human being was equipped to know and understand what God required of him or her.

## 2.4 Humankind's fall into sin and the regenerated knowledge of divine justice

Just as leprosy poisons the flesh, so the will and reason of the human person have become depraved through sin. The human person not only does not love God any longer but flees from Him, hates Him, and desires to be and live without Him; the human person's will is impaired, its intellect depraved, and its reason entirely corrupt and altogether changed (*LW*, 1:166 [Lectures on Genesis, Genesis 3]). Luther vividly describes the effects of sin on the human person's intellectual capacities and on the human being's willingness to submit to God's just and righteous will: ignorance of God, smugness, unbelief, hatred against God, disobedience, impatience, and similar faults. These are so deeply implanted in our flesh, and the poison has been so widely spread through flesh, body, mind, muscles, and blood, through the bones and the very marrow, in the will, in the intellect, and in reason, that they not only cannot be fully removed but are not even recognised as sin (*LW*, 1:165 [Lectures on Genesis, Genesis 3]).

Reason *per se*, therefore, does not prescribe what is right, nor does the will *per se* desire what is right, as blind philosophy argues, "which does not know the origin of these fearful impulses to sin in children, the young and the aged" (*LW*, 2:127 [Lectures on Genesis, Genesis 8]). Although all people have a certain knowledge implanted in their minds<sup>vi</sup> by which they know naturally that one should do to others what one wants done to oneself<sup>vii</sup> (being the law of nature and the foundation of human law and all good works), the human person's reason is so corrupted and blinded by malice of the devil that it does not understand this inborn knowledge; or even if it has been admonished by the Word of God, it deliberately neglects and despises it (*LW*, 27:53 [Lectures on Galatians, 1535] [Galatians 1]).

In the human person's post-lapsarian state knowledge of divine justice is only possible to the extent that humankind is regenerated through faith in the Word of God and the working of the Holy Spirit. The working of God's Spirit is, however, not limited to the lives and works of Christians only; the Holy Spirit also produces good works in the lives and works of non-Christians by enlightening their minds and their understanding of justice.

Because God reveals His justice, in the form of natural justice, to all people, insofar as the precepts of divine natural law are inscribed on the hearts of all human beings, God gives His approval to the governments of the non-believers. He knows and rewards excellence even in the ungodly. Yet He does this so far as this present life comes into consideration, not the future life. And reason does have an understanding of what things are good as far as the state is concerned. Without the Holy Spirit the human person is completely ungodly before God, even if he is adorned with all the virtues of the heathen (*LW*, 2:41-43 [Lectures on Genesis 6]).

The Word of God, according to its divinity, is a light which illumines in a natural manner and which has always illuminated the reasoning powers of humans, even those of the non-believers. The light of reason is everywhere kindled by the divine light (*LW*, 52:57 [Sermons II (The Gospel for the Main Christmas Service, John 1[:1-14])]). All who are illumined by natural reason

comprehend the light and are illumined, each according to his measure. However, the light of grace, in Christ, which is given to the human person in addition to the natural light, shines in the darkness, that is, “among the blind people of this world who are without grace, but they do not accept it” (*LW*, 52:57 [Sermons II, The Gospel for the Main Christmas Service, John 1[:1-14)]]).

Through the Word, faith in Christ and the working of the Holy Spirit, the human person’s rational understanding of the commandment to love God and the neighbour is kindled, and the will empowered to promote the principle of neighbourly love in the form of benevolence in all human beings’ social relationships. Social benevolence is the demand carried by divine natural law and the precepts of the moral law.

To Luther the key to understanding the work of the Holy Spirit in the human person’s social relationships in society, is contained in St Augustine’s comments concerning the ‘Gentiles’ who do ‘by nature’ those things which are of the Law. Firstly, the reference to the Gentiles means those from among the Gentiles who are justified in Christ. The words ‘by nature’ are to be interpreted not as if grace were negated by nature, but the nature restored by grace. These words can also be applied to those who, even though they lead an ungodly life and do not properly worship God, are doing some or other good thing for which reason we might say of them that they are doing some of the things which are of the Law and that they have an understanding of them. Luther also follows St Augustine’s views that those who are called philosophers, especially the Platonists, have taught what is true and in harmony with the Christian faith. We are not to shrink from it, but to claim it for our own use from those who have unlawful use of it. In effect this means that the pagan philosophers should not be discarded but that their writings should be studied in such a way that other ‘Christian’ teachings are disentangled from the rest. Just as the Israelites appropriated the vessels and ornaments of gold and silver of Egypt ‘designing them for better use’, all branches of heathen learning have certain false and superstitious fancies and heavy burdens of unnecessary toil, which every follower of Christ should adapt for the better use of the truth, because some contain the most excellent precepts of morality. This also concerns the idea of justice expressed in various precepts. Although Luther does not refer to any specific precepts or norms formulated by non-Christians, he would most probably agree with the following examples: the Roman principles of *honestum vivere, neminem ledere, suum quicue tribuere* (live honourably, do no one an injustice, give to every person his due); the Greek principle of *ta auta prattein* (everyone must perform his duty); Grotius’s *pacta sunt servanda* (pacts must be performed), etcetera.

The ‘connecting point’ concerning morality in general, and justice in particular, in Luther’s theological ethics, consists in the fact that the works of the Law are also written on the hearts of non-Christians. Luther remarks that the apostle did not want to say in Romans 2:14, 15, even if he knew it and could have said it, that they possessed the Law written on their hearts, he wanted to say only ‘the work of the Law’. The words ‘the work of the Law is written’ mean that the knowledge of the work is written, that is, the law is written in letters



concerning the works that have to be done but not the grace to fulfil this law (*LW*, 25:187 [Lectures on Romans, Romans 2]).

The non-Christians show that the work of the Law is written on their hearts. First, they show it to others by doing those things which are of the Law. Second, they show it to themselves as witness of good deeds that have been done. This is done by the thoughts that excuse and defend them (*LW*, 25:187 [Lectures on Romans, Romans 2]). Luther's views on natural law come close to Aquinas's statement about the impulse towards 'the good' in man, which together with the power of rational thought, allows human beings to reach an understanding of what is morally right. However, he differed in two important respects from Aquinas: firstly, that human reason, like other human faculties, are depraved and subject to sin; and secondly, that without the work of the Holy Spirit the human person is unable to know and follow the precepts of natural law - also called 'the spiritual law of love' - because natural law emanates from God, through grace, and not from the human person's reason.

## 2.5 Divine law as a statement of supreme truth

The effects of humankind's ability to know justice as a statement of supreme truth, in Luther's theology, reflect his optimistic views on the non-manipulable and non-relativistic nature of justice. To Luther justice is a statement of supreme truth which transcends the human ability to change or manipulate its content according to the arbitrary human will or to considerations of utility. Luther's anti-utilistic perspectives on justice can fruitfully be compared with examples of early Greek legal positivism. The Greek thinker Carneades, the founder of the third academy, held that justice consists of two parts, one of which is called civil justice and the other natural justice. To him civil wisdom exists but it is not justice; natural justice also exists, but it is not wisdom (Lactantius, Book 5, chapter 16). Although Carneades discerned justice, he, in effect deduced it from utility.

Contrary to Carneades's views, Luther maintains the view that divine justice is expressive of a supreme truth, and that the truth is not hidden from people, but revealed and kindled by the Holy Spirit, to the extent that it can authoritatively be perceived by people. Luther's view that justice is a supreme truth that transcends human agendas, knowledge of which is gained through the Holy Spirit, is briefly summarised in his comments on Psalm 119:142: "Thy righteousness *is* an everlasting righteousness, and Thy law is the truth" (*LW*, 11:507 [Lectures on the Psalms, psalm 119:142-144]): "It matters little to me that I am despised by those that are pleased with their own righteousness, their own truth, their own opinion, their own wisdom. I know that all these things may quickly disintegrate and become nothing. But Your righteousness, by which You justify me and because of which I am despised, is eternal and will not fail." Luther adds that to the present day the hypocrites are preferred to the saints and lowly in heart. But because it is hypocrisy, it is very often found to have received an end with confusion. Luther adds: "Therefore do not be afraid of those boasting hypocrites; you must keep humility and the truth of the spirit. You will see that that fiction and sham will finally not endure, but your righteousness from God will be forever" (*LW*, 11:507 [Selected Psalms, Psalm 119]).

Justice is a statement of supreme truth, therefore the human person's first, supreme, duty is to adhere to it, the nature of which is set in the two tables of the Decalogue; Holy Scripture praises divine law as the highest manifestation of truth. The voice of this Law of truth impressed by God on our hearts will continually be heard, because the Law of justice makes itself heard by all human beings (albeit not to the same degree) through the working of the Holy Spirit, in all its authority, loveliness and power. God's supreme justice is a manifestation of the Lord's love, mercy and benevolence towards humankind; it is reflected in God's Law and impressed upon the nature of the human being.

## 2.6 Justice and the duty to act justly

From Luther's comments on the deceitful conduct of Jacob's sons in avenging the rape of their sister, as described in Genesis 34, it is clear that he draws a distinction between justice and the execution of justice; between justice and the duty to act justly. Although the rape of a virgin is a capital crime in itself by all law, divine and civil, "as the rape of Helen, for example, was the cause of the destruction of Troy, and in all ages this crime has been punished in a fearful manner" (*LW*, 6:201 [Lectures on Genesis, Genesis 28]) and, given the fact that Schechem and Hamor are unjust men, "since they do not acknowledge the sin and do not repent, confess, and make satisfaction, neither side follows what is just and right" (*LW*, 6:201 [Lectures on Genesis, Genesis 28]). The truth remains that "(w)hat is just you should carry out in a just manner" (*LW*, 6:201 [Lectures on Genesis, Genesis 28]). Although Simeon and Levi have a 'very just cause' for the slaughter, their deeds are condemned (*LW*, 6:201 [Lectures on Genesis, Genesis 28]). In Genesis 49, when their father, Jacob, is about to bless Simeon and Levi, he does not excuse their deed but says: "Simeon and Levi are brothers; weapons of violence are their words. O my soul, come not into their council; for in their anger they slay men, and in their wantonness they undermine a wall" (Genesis 49:4-5) [see *LW*, 6:201 (Lectures on Genesis, Genesis 28)]. Before Jacob's death, they are cursed and condemned, even though they have a very just cause for the slaughter (*LW*, 6:20 [Lectures on Genesis, Genesis 28]).

Although it seems that the guilt of Simeon and Levi is on a par with the punishment, there is, nevertheless, a difference between justice and the execution of justice; the sin and the punishment which is inflicted on account of the sin (*LW*, 6:204 [Lectures on Genesis, Genesis 28]). Luther quotes from Romans 12:19 and Hebrews 10:30: "Vengeance is Mine, I will repay", and God's demand: "What is just you should execute with justice" for his conclusion that although Schechem is not punished unjustly, it is not agreed whether they execute justice in a true or just manner: "For no judge is present, and they simply repay evil for evil and revenge one wrong with another, measure for measure" (*LW*, 6:204 [Lectures on Genesis , Genesis 28]).

From Luther's exposition it follows that the distinction between that which is 'just', and 'justice' has to be maintained. That which is 'just' expresses a quality of action, and does not refer to the intention of the person who acts.

Distinguished from 'just', 'justice' is a virtue, a habit through which we give to all, with a constant persevering will, that which is just, that is, their right. Justice is present only when the internal will is upright; and that which is just is such when it is linked to justice. Therefore the distinction between *justum* and *justitia* has to be maintained in all human actions because of the duty of social benevolence imposed upon all human beings by the will and Law of God.

Justice is not manufactured by human beings, nor to be dismantled by human hands, and because it is prior to laws made by human beings, such laws only being expressive of justice, justice can be defined as a notion of the mind used for making judgements about the moral goodness or moral evil of human actions, which must be guided by it. In this sense the expression *fiat justitia, ruat coelum* (let justice prevail, whatever the consequences) receives its particular moral character from the principle of benevolence towards all people.

### 3 THE MORAL IMPLICATIONS OF LUTHER'S PERSPECTIVES ON JUSTICE AS AN EXPRESSION OF BENEVOLENCE

Because of the moral character of justice in Luther's theology, a number of important implications in the temporal sphere of the human person's social relationships can be discerned:

3.1 Justice is the essence of all laws to the extent that nothing can be a law if it lacks justice. St Augustine in his *De Gratia et Libero Arbitrio* (1, 5)<sup>viii</sup>, and *De Civitate Dei* (19, 21)<sup>x</sup>, stated that where there is no justice no valid law can exist: "Where, therefore, there is no true justice there can be no right. For that which is done by right is justly done, and what is unjustly done cannot be done by right. For the unjust inventions of people are neither to be considered nor spoken of as rights; for even they themselves say that right is that which flows from the fountain of justice, and deny the definition which is commonly given by those who misconceive the matter, that right is that which is useful to the stronger party. Thus where there is no true justice there can be no assemblage of people associated by a common knowledge of right" (*De Civitate Dei* (19, 21). St Augustine proceeds: "Further, justice is that virtue which gives everyone his due. Where, then, is the justice of human beings when they desert the true God ..." (*De Civitate Dei*, 19, 21). Luther also follows closely St Thomas's remarks in his *Summa Theologica* (I-II, q. 96, art 4), to the effect that when laws are not conducive to the common good, but for the cupidity or vainglory of the authorities; or exceeding the power committed to the authority; or when burdens are imposed unequally on the community, 'although with a view to the common good', these are acts of violence rather than laws. In the event of laws being opposed to the divine good, for example the laws of tyrants inducing to idolatry, or to anything else contrary to the divine law, laws of this kind must nowise be observed because, as stated in Acts 5: 29, "we ought to obey God rather than man".

3.2 In the line of St Augustine's and St Thomas's views on justice as the essence of all laws, Luther would support the view that no authority exists except as a servant of justice; justice is the very essence of authority itself, according to the words of Proverbs 8: 15: "By me kings reign, and princes decree justice."

3.3 On the one hand perfect legislation is not accomplished by presenting new codes of law and dispensing with the study of natural right. On the other hand care should be taken to prevent awarding exaggerated authority to legal usage and ancient legal customs, such as Roman law.

3.4 The idea of a perfect code of law which will decide all cases should be swept away. What remains immutably and universally, is the teaching of natural justice.

3.5 It is foolishness to attempt to usurp natural law and divine law through human law. Human laws are merely simple, fallible, imperfect declarations of

rational law, and not the almighty, unique, infallible, unappeasable, inflexible and unchangeable instruments of law some people make them out to be.

3.6 In their law-making efforts legislators should reflect the public virtue of humility by subjecting themselves to God's divine Law. First of all, human beings we are not to make laws but to interpret carefully the supreme law of justice (the supreme juridical law) by means of all the enlightenment available to us. This interpretation will not be found where power is the greatest, but where the greatest wisdom is used by legislative authorities, because laws must be ruled by eternal justice.

3.7 Enlightened reason must have a free voice in the state, and must act as living legislation which corrects written, dead legislation because every authority must take its stand on what is good and true: "For we cannot do anything against the truth but only for the truth."<sup>x</sup>

3.8 The enlightened philosophy of justice remains as the unshakable foundation of every human authority and of every legislation which springs from such authority.

3.9 Legal systems which abandon the light of natural justice and desert justice as an end, by keeping solely to the material letter of the law and aim at settling cases abstractly without reference to the precepts of justice, would seriously jeopardise the whole legal system.

3.10 Obedience to the precepts of natural justice contained in the moral law, means, as Cicero says, that even if we were able to hide what we do from all the gods and from all mankind, we should nevertheless abstain from all avarice, injustice, lust and intemperance (*De Officiis*, 3, 8).

3.11 Human persons are not obliged by nature and their natural instincts, but by the moral force of justice to act correctly. Any good not in accord with this unalterable law must therefore be omitted.

3.12 The voice of the Law of justice impressed by God in our hearts will continually be heard if we consider the effects it produces in us.

3.13 In order to be just, the human person's benevolence (demanded by the moral law) must be properly guided by the science of justice.

3.14 With the coming of Christ the abstractness of justice as the moral expression of benevolence was made real and subsistent through his example of complete love towards God and the neighbour.

3.15 Justice cannot be separated from morality and morals, and receives its life from these. So, for example, if moral dignity and humility are removed from human actions, the actions should not be the object of any legislation.

3.16 The force of obligatory action contained in the idea of justice, reveals itself in us from the moment the force of truth (as divine justice) reveals itself in us.

3.17 Although the human person was originally endowed with a tendency to do good, it is equally true that in its present state humankind is obliged to act according to the Law of truth and justice that is revealed in God's Word.

3.18 No earthly sanction is sufficient to restrain humankind in all possible cases from doing evil; only the Law of justice can provide the stimulus for such virtuous action. Only the Law of justice would have sufficient authority to prescribe the mode of action and make us act accordingly.

## 4 SUMMARY

Luther's comments on justice provide useful 'points of contact' between Christians and non-Christians concerning the nature and role of justice in society. The main elements of such 'points of contact' concern firstly, the status of justice, the principle that the most simple and important element in moral and juridical discipline is inserted in all human souls by divine Providence because everyone stands in need of it. It remains in the depth of the spirit, common to all, yet neglected, as proved by the prevalence of injustice in the world. Secondly, the importance of justice is highlighted by the fact that it is the simplest, most basic, and noble idea. Every other value possessed by positive law is accidental, accessory and derivative; and the essence of the perfection of laws consists in justice alone. Thirdly, the practical manifestation of justice is made real and subsistent through the example of Christ. Fourthly, the point of departure for our knowledge of justice is our reason; justice is necessarily present in every human being in whom the tiniest ray of reason shines - the force of the obligation to benevolence reveals itself in us in every act by which, from the first moment, the force of truth reveals itself in us. Fifthly, justice does not come to birth with philosophy or science but with the truth, and begins by commanding me to acknowledge truth (or justice) as soon as the Holy Spirit reveals it to me.

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## ENDNOTES

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- 1 For similar arguments, see Lakoff 1964 and Wolin 1960.
  - 2 See the line of Plato's argument in *The Republic*. Since the early 1500s new attention was paid to the demands of justice in classical antiquity, as a result of which Luther's contemporaries in several fields of study - law, philosophy and theology - were devoting considerable attention to the relation between natural law and the positive or written law of the nations. Luther also paid attention to this relation, as well as to the connection of both natural and positive law with the Law as taught in the Scriptures, especially in the Ten Commandments.
  - 3 Deuteronomy 32:4.
  - 4 For the meaning of this distinction, see Luther's comments on Psalm 51:1 (*LW*, 12:312-314 [Selected Psalms, Psalm 51]).
  - 5 God did not create Adam evil, He created him perfect; rational, holy, with a knowledge of God, with sound reason, and with goodwill towards God (*LW*, 2:122 [Lectures on Genesis, Genesis 8]).
  - 6 Romans 2:14-15.
  - 7 Matthew 7:12.
  - 8 *On grace and free will*, Book 1, chapter 5, c. 426/427 AD.
  - 9 *The City of God*, Book 19, chapter 21.
  - 10 2 Corinthians 13:10.