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Responsibility, refusal, and return: Thoughts on an ethics of inclination

ABSTRACT

In this article written in honour of Desmond Tutu, I raise inclination as put forward by Cavarero, together with disorientation/reorientation, as per Ahmed and Honig, to think differently about law, rule of law, and legal culture. Drawing on Ndebele, Klare and Van der Walt, I consider inclination as being also about abandoning those vertical and upright certitudes acquired by habit and culture. An ethics and ontology of inclination could, by way of refusal, disclose alternative understandings of law and rule of law. It could challenge those assumptions of certainty and truth that are so central to formalist and black-letter takes on law and current legal culture. I raise inclination also in the vein of a minor jurisprudence and joining McVeigh and Barr's writing on minor jurisprudence to engage with the question of how to take responsibility for a lawful life, how to respond to the legacy of the past.

1. INTRODUCTION

This is an article in honour of the life of the late Desmond Tutu, whose dedication and contribution to the struggle of becoming human go beyond words. Tutu, vilified by those whose absence of ethics he so skilfully exposed, was vigilant in the fight for justice. I write not from the perspective of a theologian or scholar of religion but, drawing on McVeigh (2017:165), as a "jurisprudent", "someone who has taken up the office of law", or more precisely, legal scholarship. I write, first, as a person, a White woman, acknowledging my past and enduring privilege whilst trying to make sense of it; secondly, also struggling with questions



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on how to respond, to be responsive, responsible as a person but more pertinently, for the purpose of this contribution, as a scholar of jurisprudence. I argue that Tutu's life and work set an example for everyone concerned about humanity, dignity, and the endless struggle to honour it properly. I argue that it gives specific guidance for me as jurisperdent and the questions that haunt anyone who has taken up the office of law.

The question that inspires and lies behind this reflection is how the law, to be more specific jurisprudence and even more the teaching of it could respond, be responsive, and accept responsibility. As part of this consideration, many ideas, concepts, theories, and methods come to the fore. I invoke or maybe release ideas on minor jurisprudence; finding; patterning; justice; withdrawal; walking; footprints together with inclination; reorientation; disorientation; refusal, and return. My main focus is on legal culture and the importance to change it fundamentally – primarily from one that relies on notions of the law as science, black-letter law approaches, law as technique, to one that opens up to becoming human.

While looking at a number of photos of Tutu taken at different stages of his life, I noticed the extent to which his body often gestured toward inclination when listening or speaking to someone, often when praying but also sometimes when crying. I discuss the idea of an ethics of inclination, as put forward by Italian feminist Adriana Cavarero (2016) and consider what inclination rather than rectitude might mean for law, jurisprudence, and its teaching. Returning to work done previously (Van Marle 2007:194), I consider inclination together with laughter and (with reference to Maluleke [2021:327]) humour as ways to refuse pervasive systems. I invoke both laughter and inclination in this article, with Tutu as example.



<https://rfkspain.org/en/archbishop-desmond-tutu-has-left-us/>



<https://www.tutu.org.za>

I start off, first, by recalling reflections by McVeigh (2017:165) and Barr (2017:214) on minor jurisprudence in their search for how to take responsibility for lawful conduct. Turning to the question of law in the South African context, I focus on legal culture as central to the quest for responsibility. I finally turn to refusal to reflect on Cavarero's (1995) earlier writing on laughter and, more recently inclination (Cavarero 2016), as ways of refusal, which I relate to Tutu. Threads of the paradoxical relation between striving for whilst not achieving justice; critiquing law whilst not letting go of it, and refusal and return are present in all sections.

2. TAKING RESPONSIBILITY

What does it mean "to take responsibility for the conduct of a lawful life"? In honouring the late Tutu in this article, I take him as a stellar example of someone who took up the responsibility of office, his office being that of a theologian, a priest, an archbishop. In this instance, lawful, for me, does not refer to law in a positivist sense as law as rules but rather in the sense of law as what is morally right. This is a question asked by McVeigh (2017:165) in a piece in which he focuses on how someone acting in the office of the jurist in London can take responsibility for the conduct of a lawful life. He situates this question within the framework of a minor jurisprudence and underscores the importance of the conduct of lawful relations for minor jurisprudence. Minor jurisprudence is formulated in many different ways. Peter Goodrich and Panu Minkkinen, for example, drawing on Gilles Deleuze and Felix Guattari's work on "minor literatures", reflected on minor jurisprudence. McVeigh (2017:166), focusing on the notion "of the persona and office of the jurist as well as their engagement with office and place", highlights three ways in which a minor jurisprudence has been formulated. First, some scholars aim to distinguish lawful relations related to a minor jurisprudence from dominant political and philosophical approaches. Secondly, others focus on the differences between minor jurisprudence and major Western traditions from the perspective of modes and styles. Thirdly, others engaging with modern jurisprudence are concerned with judgement and the genres of jurisprudence writing. McVeigh (2017:166) notes the extent to which writing on minor jurisprudence is related to

a prestigious training in conduct, since their minority is closely aligned with traditions of university metaphysics and a university training in philosophy and law.

His specific concern is with the question of how a "jurist might take up responsibility for a pattern of lawful relations of a place" (McVeigh 2017:166). He relies on the work of Black (2011:16-19) on "patterning". Black, writing

in an Australian context, explains how “the patterning of relations out of and into the land” underlies indigenous jurisprudence. McVeigh (2017:167) interprets “patterning” in Black’s work “as a way of finding, or finding yourself in, relations of law”. Patterning assists him to reflect on “the jurisprudence of a place or the way ‘we’ are placed” (McVeigh 2017:167). His specific focus is the relation between jurisprudence and “a patterning of material, institutional and ideational existence into place” (McVeigh 2017:168).

Taking up office for a jurist means the assumptions of duties, rights, and privileges of public life. McVeigh (2017:168) rightly notes that there are different views on both the responsibilities and training of the jurist and jurist. In the South African context, over the past three decades at least, we have noted a great deal of discussion, debates and contestation on the question of legal education and training. A minor jurisprudence offers a different way to take up office (and, by implication, a different take on education and training). It addresses specifically “aspects of conduct that mark thresholds and transformations of various kinds” (McVeigh 2017:169). Relying on cultural theory, minor jurisprudence relates taking up office to humanist training and asserts that public institutions are sources of relations. With reference to the minor jurisprudence of Minkkinen, McVeigh (2017:173) notes the importance of the desire for justice as well as “holding justice and truth in relation to one another”, which is a paradoxical activity. Although justice is strived for, human desire cannot achieve it. The jurist, in Minkkinen’s view, plays the role of philosopher jurist. The jurist should find a way of “living with the (tragic) limits of office” (McVeigh 2017:174). For Goodrich, the training offered by minor jurisprudence includes the “arts of association and amity (and enmity) and those of interpretation and transmission” (McVeigh 2017:175). McVeigh (2017:175) also includes the minor jurisprudence as practised by Andreas Philippopoulos-Mihalopoulos, which involves an engagement with spatial justice as well as the “material and spatial ordering of a ‘lawscape’”. An interesting aspect of spatial justice, as supported by Philippopoulos-Mihalopoulos, is his notion of “withdrawal”, which McVeigh (2017:176-177) describes as “embodied (spatio-temporal) and strategic”. The suggestion is to withdraw from human judgement and to keep up clarity of judgement. All three examples of theorists of minor jurisprudence support participation in the life of the common: Minkkinen (1994) emphasises a regard for justice; Goodrich insists on the importance of the images of law, and Philippopoulos-Mihalopoulos supports spatial justice. They also support a public teaching of law, either through philosophy; philology and allegory, or mindfulness of affect (McVeigh 2017:177). They all share the idea that

training in personality involves a cultivated withdrawal from the everyday forms of technical and material life in order to effect a transformation in relation to the self and to conduct of office. What is taught ... are exercises for the cultivation of the experience of new thresholds of law and life (McVeigh 2017:177).

Theorists of a minor jurisprudence incorporate persona and place in the training of the jurist. They attend to either the connection between university and community, allegiance and friendship of the city, or a cosmopolitan ethos.

Barr (2017:214), also as part of an exploration of a minor jurisprudence, asks:

What are our legal footprints, what happens when we walk in a common law world where common law attaches to subjects through the body, a common law world with multiple forms of law?

Raising this question in the vein of minor jurisprudence, she relies on the genres of poetry, essay, and photography. Her interest in minor jurisprudence in this specific essay thus relates to method rather than to concept or theory. Minor jurisprudence draws on “less visible archives” than a major jurisprudence, which engages case law, legislation, and sometimes political events. Minor jurisprudence attends to issues of place and space (as seen also in the discussion of McVeigh earlier), also time/temporality (Barr emphasises the importance of slowness) and movement.¹ Barr (2017:221) believes that minor jurisprudence could open radical possibilities for jurisprudence that could deepen our understanding of

where laws are ... how they work, and how we might better live ‘with’ not only our forms of law, but the laws of others.

Barr (2017:221) defines jurisprudence, “at its most basic ... as an act of exercising sound judgment on practical matters of law”. The jurist’s challenge is to remain critical without abandoning law; to think and live with law, even though it may be difficult (Barr 2017:222). I return to this idea below with reference to Cavarero and Honig. I should, of course, also refer explicitly to Tutu who never let go of the struggle for justice and remained committed to it after official apartheid came to an end and the many discrepancies of the new system. Let me highlight two other aspects raised by Barr. First, she acknowledges the existence of plural legal orders. Walking, our footprints, encounter common laws and indigenous laws, but also in a global context many international laws. Secondly, our legal footprints are simultaneously a form of “place-making” and “place-taking” (Barr 2017:230). She asks what

1 McVeigh’s essay relies on taking a bus on a specific London route; Barr invokes walking.

it means to walk as “common-law subjects”? In the context of Australia, indigenous people regard “country” as a form of law.

As Country, therefore, in its temporal and spatial and material dimensions, the land *itself* in Australia can be thought of as a material form of Aboriginal law, even in the cities (Barr 2017:232).

This, of course, brings forth the question that resonates with Black’s (2017:234) reference to “patterning” above, of what it means for “a common law subject to walk on the law of another”.

The question on how to take responsibility for the conduct of a lawful life, addressed by McVeigh and Barr within the context of a minor jurisprudence, is of significance also for legal education and, in particular, legal culture. My sense is that a legal culture that cannot let go of past legacy, privilege or injustice, albeit subconsciously in some instances, remains a huge obstacle to deep transformation. Legal culture relates to the question of taking up office, of the persona and placing of the jurist. South African novelist Njabulo Ndebele (2007: 221) once referred to “the capacity to abandon certitudes acquired through a history of habit”, which I find suggestive for legal culture. Ndebele (2007:221) supports the idea of “mutual vulnerability” between adversaries that could open possibilities for a common humanity. Ndebele (2007: 221) explains:

It is the humility that arises when you give up certitudes around what was previously the uncontested terrain of your value system and unsustainable positions derived from it.

He also invokes the importance of unlearning in this context. US critical legal scholar, Karl Klare (1998:166), defines legal culture as those habits, sensibilities, views on what makes a valid legal argument. He noted that the South African legal culture is a conservative/formalist one that stands in tension with the progressive aspirations of the Constitution and the urgency for deep transformation. Legal culture speaks, of course, to the conduct of legal professionals, scholars, and teachers. It is important for all participants in a specific legal culture to realise that culture is constructed; it is not natural and can and should be challenged and deconstructed. Van der Walt (2006:19) notes that

[t]he cultural code that dominates current legal thinking in South Africa was shaped before and during the apartheid era; and the apartheid sensibilities entrenched in this code must limit the kind of answers and solutions that can be generated for the process of transformation away from apartheid.

Legal culture is intimately tied to an understanding of what law is, including the notion of “rule of law”. Klare (1998:150) asks for a different understanding of law, and an updated/alternative/politicised account of rule of law. He does not provide a specific definition of what such an account might entail, but he does call for a “softening” of the strict boundaries between law and its many so-called others such as law and politics, law and economics, law and ethics. This call for the softening of boundaries can be interpreted also as a call for lines and postures to be drawn differently, a call for a different geometry, which brings me to Cavarero and inclination. My argument rests on how a different approach and different ethics could refuse enduring legal culture and its stifling effect on transformation. Legal culture and the extent to which it either supports or obstructs transformation relates, for me directly, to the question of how to take up responsibility for lawful conduct that I invoke earlier. I indicated earlier that there are many photographs of Tutu that I interpret as gestures of inclination. Next, I consider an ethics of inclination in relation to Tutu and the example he set for responsibility and lawful life.

3. REFUSAL, LAUGHTER, INCLINATION

Cavarero (1995:31) draws on the following passage from Plato:

While looking at the sky and scrutinizing the stars, Thales fell into a well. Then a quick and graceful maidservant from Thrace laughed and told him that he was far too eager to find out about everything in the heavens, while things around him, at his feet, were hidden from his eyes.

Cavarero (1995: 50) responds as follows:

I am not sure that she was a servant from Thrace, but some woman laughed at the philosophers. A quick smile can often be seen on the faces of women as they observe the self-absorption of brainy intellectual men. Philosophers have put this down to biased ignorance, not realizing that it is the expression of a kind of detachment that locates the roots and meaning of female existence elsewhere.

I have previously considered laughter and detachment as ways of refusal, in particular a refusal of patriarchy whereby women can seek to create their own spaces from where to engage in political ways of living (Van Marle 2007:198). The notion of refusal was also explored by legal scholars to consider how a certain understanding and doing of law, in particular of constitutionalism, can be refused, in order to disclose alternatives (see, in general, Van Marle 2009). Laughter in this vein is not only a refusal but happens also in a way that can be described as counterintuitive. Ndebele regards the notion of giving

up certitude in search for humanity also as counterintuitive which brings me to Maluleke's (2021:327) focus on what he calls "the liberating [but also] humanizing humour" of Desmond Tutu. With reference to Mandela and Biko, he emphasises the extent to which the aim of the struggle was to restore the humanity of Black people, which extended to the restoration of the humanity of White people (Maluleke 2021:329). For Maluleke, Tutu is an excellent example of someone who employed humour to humanise both the oppressed and the oppressor. He relates Tutu's humour with his use of *ubuntu* noting "the ability to reach out to one another through laughter and humour is what makes us human" (Maluleke 2021:332). Maluleke (2021:332) notes that, when Tutu told a joke or made a funny gesture, he was "reaching out to the innermost human core – the ubuntu dimension – of his fellow beings". He described Tutu's humour as one of "gesture, movement, and sound", but also as one of "storytelling". Drawing on the reflection of Tutu as mystic (Battle 2021), he also considers humour in the "spiritual hermeneutics of Desmond Tutu" and, lastly, his biographical humour, the extent to which he made jokes about himself (Maluleke 2021:338-339). Maluleke's aim in exploring Tutu's humour is to underscore how it relates to his reliance on *ubuntu* and, in particular, to humanise both victims and perpetrators of oppression. My own engagement with laughter was to consider it as a way of refusing pervasive structures and cultures. My own interest in *ubuntu* is also the extent to which it can be viewed as a refusal of Enlightenment's emphasis on rationality and individualism. *Ubuntu*, in particular from a jurisprudential perspective, holds potential as a critical theory that exposes the contingency of a system that is often offered as normal and fixed as well as highlights the extent to which such a system excludes, silences, and marginalises certain perspectives and people. In this vein, I turn to Cavarero's work on inclination that is also considered by Honig in her work on refusal on which I elaborate below. Honig challenges some of the well-known takes on refusal, for example Giorgio Agamben's refusal that leads to inoperativity, in her insistence of a refusal that also leads to return. In this tension between refusal and return, I find true potential for critique and possible alternatives. Tutu's life and his commitment to struggle that endured after the end of official apartheid and his continued refusal to accept dehumanising actions whilst striving for humanity also exemplifies this tension. Together with Honig, I read Cavarero's ethics of inclination as refusal.

Cavarero (2016:1) starts her work on inclination by invoking a remark made by Walter Benjamin in relation to Kant, namely that, if we could think differently about inclination, it could turn out to have profound meaning for morality. Cavarero notes that it is not clear exactly what Benjamin meant, but she assumes that he was referring to the negative stance in which the ethical tradition conceives of human inclinations. Kant provides a good example of a general philosophical attitude on inclination which does not appreciate, but

rather combats inclination. Cavarero remarks that there are numerous methods relied on by philosophy to reject inclination and to underscore verticalisation, the upright man, as alternative. Not only Benjamin but also Arendt (2003:81) commented on the treatment of inclination in Kant, noting that

every inclination turns outward, it leans out of the self in the direction of whatever may affect me from the outside world (as quoted by Cavarero 2016:5-6).

Cavarero argues that this remark reminds us that the meaning of the word “inclination” points to a geometrical imaginary clarifying the extent to which the centre stage is taken by an I, whose position is straight and vertical. She notes that words such as “righteousness” and “rectitude” are often found in dictionaries of morals and were used in the Middle Ages for the rectification of bad inclinations. Cavarero (2016: 6) explains as follows:

The upright man of which the tradition speaks, more than an abused metaphor, is literally a subject who conforms to a vertical axis, which in turn functions as a principle and norm for its ethical posture.

This view provides the reason for philosophers viewing inclination as a perpetual source of apprehension, a view that, even though present in each epoch, gains strength during modernity when Kant’s free and autonomous individual comes to the fore. As per Arendt, inclination disturbs the I, by pushing it away from its internal centre of gravity, making it lean to the outside. This outside, being objects or people, undermines the I’s stability. Cavarero (2016:6) remarks that inclination, besides being a moral problem for how the self is conceived, is also a matter of structural equilibrium and ends up as being an ontological problem:

An inclined I, leaning toward the outside, is no longer straight: it leans forward with respect to the vertical line that supports it and that, because it allows it to balance itself, makes it an autonomous and independent subject.

The prevailing geometry of the subject in modernity involves the individualistic ontological model, found in Kant. Cavarero reminds us, of course, that this notion of the “autocratic, integrated and cohesive ego” has been questioned and criticised for at least a century, being the main target of postmodern accounts of the fragmented subject. Cavarero (2016:11) responds to this idea, saying that one should resist the temptation to break the subject down into fragments, “turning its pretence of unity into a feast of difference”. Drawing on Arendt, her response: instead of breaking the subject, try to incline it. Cavarero (2016:11) explains: “Instead of breaking its vertical axis into multiple pieces, one could try bending it, giving it a different posture.” This bending

could involve inclining the subject toward the other, which fits well into what has been described as the relational model.

Cavarero (2016:11) explains that she relies on the relational model to include all those perspectives that focus on the relation to rethink “a subjectivity marked by exposure, vulnerability, and dependence”. These perspectives are also present in recent feminist work, including “new embodied ontology”, “ontology of the human”, “altruistic ethics”, “new humanism” (Cavarero 2016:11-12). She notes the extent to which these ideas rely on Arendt’s relational conception of the human as well as on the writings of Emmanuel Levinas, both, of course, writing about the tragedy of totalitarian violence. Cavarero (2016:12; Levinas 1996:19) quotes Levinas, writing:

The history of the theory of knowledge in contemporary philosophy is the history of the disappearance of the subject/object problem. Contemporary philosophy denounces as an abstraction the subject closed in upon itself and metaphysically the origin of itself and the world. The consistency of the self is dissolved into relations: intentionality in Husserl, being-in-the-world or *Mitteindersein* in Heidegger, or continual renewal of *duree* in Bergson. Concrete reality is man always already in relation to the world, or always already projected beyond his instant. The latter would only confirm the autonomy of the thinking subject. In order to demolish the idea of the subject closed in upon itself, one must uncover, beneath objectification, very different relations that sustain it: man is in situation before situation himself.

Cavarero notes that, for Levinas, demolishing the autonomous subject is not merely an epistemological question. Rather, Levinas aims to counter the violence of the egocentric subject and the

violent practices of domination, exclusion, and devastation ... [ranging from racism to sexism, to homophobia ... war and other ... forms of destruction] (Cavarero 2016:12-13).

What we find in the relational model is an emphasis on vulnerability and with it, an emphasis on politics, ethics, and the social. Vulnerability is not invoked as an abstraction, but it is rooted in concrete situations, as Butler (2004:24) phrases it, “precarious lives”. Butler (2004; Cavarero 2016:13) has been explicit about her aim not being to promote a relational view of the self over an autonomous one, as a form of correction as it were, but rather “to think relation itself as originary and constitutive”. This view, of course, challenges social contract theory’s idea of the self as free and autonomous and underscores material vulnerability and inequality. Cavarero (2016:13) notes that a radical version of the relational model does not allow any symmetry, but only “a

continuous interweaving of multiple and singular dependence". In this model, "protagonists are altogether unbalanced".

The primary example of this relational model is the infant finding itself totally dependent on the mother. This is an example that is obvious and, therefore, also stereotypical. Cavarero (2016:13) highlights the extent to which, in the image of mother and child depicting relational ontology, the mother disappears, is absent, which troubles philosophical speculation. She argues, and this in a way captures her work on inclination, that the maternal stereotype should be "reinterrogated and exploited to its fullest potential" (Cavarero 2016:14), in order to make sense of the turn between verticality and inclination. The figure of the Madonna and Child takes centre stage in her analysis: the maternal stereotype that, for Cavarero, has great critical potentiality that risks remaining concealed because of overexposure, is in direct contrast with the geometry of the autonomous subject. The depiction of mother and child is a scene of vulnerability

par excellence, the infant not only unilaterally consigns itself to the other, but also, and more importantly, provides for originary bending (Cavarero 2006:14).

Cavarero (2006:14) explains:

It is as if the fundamental concept of ethics were now seen, despite ages or sermons on moral uprightness, from the perspective of the vulnerable – or, more to the point, inclination.

I do not elaborate on Cavarero's writing in further detail. My main aim is to consider inclination as an alternative gesture for rectitude, which is the dominant one for law, for the legal subject who typically stands upright and vertical and ultimately asks how it could alter legal culture. In a context, where law and those involved in law must take up responsibility for lawful conduct, they are urged to respond to a violent past and present, an ontology that starts with vulnerability and inclination. Ndebele's invocation of humility could be of value. Before I conclude and bring the argument back to Tutu and his embrace of humanity, I turn briefly to Honig's take on Cavarero's inclination that I think is important to take note of.

4. REORIENTATION/DISORIENTATION AND RETURN

Honig (2021), in her latest work, takes the Greek tragedy by Euripides, the *Bacchae*, as starting point to rethink the notion of refusal. She recalls three ways in which refusal has been invoked in literature, namely Agamben's

“inoperativity”; Cavarero’s “inclination”, and Hartman’s “fabulation”. She re-reads each of these together with another theorist to substantiate her understanding of refusal. In this instance, I only focus on her reading of Cavarero’s inclination, which she reads alongside the work of Ahmed (2006). Honig’s theory of refusal is based on a feminist re-reading, re-interpretation, and re-telling of the *Bacchae*, which tells the story of Dionysus coming to Thebes and the events that unfold when the women of Thebes join the festivities, reject work, leave the city to explore alternative lifestyles, but later return to claim the city.

Honig (2021:46) argues that Cavarero’s inclination as a theory of refusal “does not reject use; [but] offers a way to rethink or recover use as care and mutuality”. Normativity in this approach is not suspended as with Agamben, but reoriented. The idea of reorientation, in this instance, also reminds me of Van der Walt’s argument in a piece on the possibility of transforming property rights that things can be different, but for things to be different, we need more than an oppositional stance, we need a reorientation. Van der Walt (2001:263-294) relies on the code of dancing to delve into the complexities of property land in a context of transition. He compares apartheid property jurisprudence to “volkspele” (a traditional Afrikaner dance) and post-1994 reforms to *toyi-toyi* (the dance of anti-apartheid protesters). He exposes how the two, in being perfect opposites, keep the status quo in place instead of bringing about something different. I referred earlier to Cavarero who, instead of supporting a postmodern notion of fragmentation of the subject, suggests inclination as alternative to rectitude associated with modernist subjectivity and autonomy. She relies on maternalism’s gesture of care to suggest “a subversive ethics of altruism” (Honig 2021:47). Honig (2021:52) recalls the riddle that the Sphinx gives to Oedipus, and notes that, although he manages to solve it, he still misses the lesson that she is trying to teach him, being the wisdom of inclination.² Another lesson coming from the riddle noted by Honig (2021:53) is pluralisation, that human life is made of multiple gestures, none of them essential. Pluralisation, pluralism is an important feature of a critical approach to law, legal culture, and lawful conduct. McVeigh and Barr both underscore the importance of plural accounts of the law. Current legal culture will have to face but, more than that, live up to the reality and urgency of legal pluralism.

Honig (2021:47), however, reads the main relation of kinship in the *Bacchae* as one of sorority rather than maternity and combines this with Ahmed’s (2006) notion of disorientation to shift Cavarero’s maternal care and pacifism to sororal love, care, and violence. Honig (2021: 55) notes

2 The riddle is: “What crawls on all fours in the morning, walks on two legs midday, and in the evening on three”. The answer is a human, and the riddle thus provides an account of human vulnerability.

how Ahmed, in forging “a queer path of refusal”, considers the possibility of disorientation as a way to refuse rectitude’s “straightness”. Given Tutu’s support to the LGBTQIA+ community, Ahmed’s view can be related to his gesture of inclination as re-orientation/disorientation. For Honig (2021:55), Ahmed’s disorientation discloses the possibility of “gathering ... a ... different way”; of reaching the “very limits of social gathering”. In her words, “to live out a politics of disorientation might be to sustain wonder about the very forms of social gathering” (Honig 2021:55). The value of such a politics of disorientation is that it discloses the possibility of “new social relations” and not mere restoration of old ones to unfold. The shift from maternal care and pacifism to sororal agonist politics urges another shift, namely from refusal to return. I have argued elsewhere that this return to the city, holding on to the city, has critical potential of democracy, even constitutional democracy (Van Marle forthcoming). The women’s return after their refusal relates to the paradoxical relation to justice and to law’s limits and (impossibilities) referred to earlier. In her writing on minor jurisprudence, Barr insists that a critical approach to law relies on a continued engagement with it and not a rejection.

In the context of spatial justice, Philippopoulos-Mihalopoulos (2015:33) argues for law to be self-reflexive, for “a new self-understanding of the law”. He describes spatial justice as follows:

Spatial justice emerges as withdrawal, namely a body’s moving away from its desire to carry on with the comfort offered by supposedly free choices, power structures or even by fate (Philippopoulos-Mihalopoulos 2015:2).

Spatial justice, in this view, goes beyond distributive justice or notions of regional democracy and is an “embodied desire that presents itself ontologically” (Philippopoulos-Mihalopoulos 2015:3). Spatial justice, in this vein, is not a solution, but rather “a process of legal reorientation” (Philippopoulos-Mihalopoulos 2015:3). My argument in relation to Tutu is that he presents us with the possibility of “legal reorientation”. An example that illustrates the possibilities for a different understanding of law is how Tutu, in his engagement with Winnie Mandela, pleaded for her to apologise. Apology was not part of the formal requirements of the proceedings of the Truth and Reconciliation Commission. Winnie Mandela famously did not respond to his plea in a satisfactory manner. However, his gesture to ask for an apology is a gesture of inclination, not rectitude. With this, he beckons for another law, a responsibility beyond formal legality.³

3 My gratitude to one of the anonymous reviewers for suggesting this example.

5. CONCLUDING REMARKS

In this article written in honour of Desmond Tutu, I raise inclination, as put forward by Cavarero, together with disorientation/reorientation, as per Ahmed and Honig, to think differently about law, rule of law, and legal culture. Drawing on Ndebele, Klare, and Van der Walt, I consider inclination as also being about abandoning those vertical and upright certitudes acquired by habit and culture. An ethics and ontology of inclination could, by way of refusal, disclose alternative understandings of law and rule of law. It could challenge those assumptions of certainty and truth that are so central to formalist and black-letter takes on law and current legal culture. I raise inclination also in the vein of a minor jurisprudence and, joining McVeigh and Barr's writing on minor jurisprudence, to engage with the question of how to take responsibility for a lawful life, how to respond to the legacy of the past. The late Tutu's life and work provide a stellar example of a life dedicated to justice, in particular in his embrace of humanity and *ubuntu*.

I end with Tutu's (1999:34-35) explanation of *ubuntu* in his memoir on chairing the Truth and Reconciliation Commission:

Ubuntu is very difficult to render into a Western language. It speaks of the very essence of being human. When we want to give high praise to someone we say, 'Yu u nobuntu'; 'Hey, he or she has ubuntu.' This means they are generous, hospitable, friendly, caring, and compassionate. They share what they have. It also means my humanity is caught up, is inextricably bound up in theirs. We belong in a bundle of life. We say, 'a person is a person through other people'. It is not 'I think, therefore I am.' It says rather: 'I am human because I belong.' I participate, I share. A person with ubuntu is open and available to others, affirming of others, does not feel threatened that others are able and good; for he or she has a proper self-assurance that comes from knowing that he or she belongs in a greater whole and is diminished when others are humiliated or diminished, when others are tortured or oppressed, or treated as if they were less than who they are.

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