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The Justice of God and the Formation of Society

Reynaud de la Bat Smit

Ph.D Thesis

1994

Abstract

This theological study is a contribution to the search for a conception of justice which will form a just society. Its aim is to discover whether two leading modern secular theories of justice might be mediations of the justice of God, which I take to be a principle in Creation and the basis for the formation of society. My interdisciplinary approach advocates and employs critical theory to expose the pathologies of modernity, particularly domination (or the arbitrary use of power) as a major cause of injustice, and thus an impediment to the formation of a just society. This approach is undergirded by an Incarnational and Trinitarian theology which, through the use of a socio-political hermeneutic, transcends the biblical categories from which it originates. It recognises that the justice of God, understood throughout this thesis as right relationship or true sociality, is mediated through human agency and action which accord with God's nature and will. The theories of John Rawls and Jürgen Habermas which I choose to examine understand justice in terms of normative legitimacy, achieved through a publicly discursive and justificatory procedure, leading to a rational consensus about the social norms which form and direct society. My study assesses how far each mediates God's justice in forming society. It concludes that Habermas's theory has a stronger claim in this regard owing to its greater degree of consonance with the communicative nature of that justice, and to a recognition that the reality underlying Habermas's theory of justice as communicative action is God's justice, mediated in the linguistic structure of Habermas's procedure. In conclusion, I propose that the Church, in adopting this communicative understanding of justice, commit itself to the building and defence of a vibrant public sphere, in which justice is discursively determined; and in which all members of society, especially the disadvantaged for whom God is concerned, participate deliberatively in the formation of the society God justly wills.

**The Justice of God
and the Formation of Society**

Reynaud de la Bat Smit, M.A. (Oxon.)

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Submitted for the Degree of Doctor of Philosophy

University of Durham

Department of Theology

1994



10 JUN 1994

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Declaration

None of the material contained in this thesis has previously been submitted for a degree in the University of Durham or any other university.

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Dedicated to
Glenda, Julian and Geneviève

Acknowledgements

I am grateful to a number of people for their advice and assistance in producing this thesis, including Professor David Brown, Professor James Dunn, Professor Daniel Hardy (who supervised this project until he departed for Princeton), Peter Hughes, Dr. Walter Moberly, Dr. Robert Song, and Dr. Alan Suggate. I am especially grateful to my supervisor, Dr. Ann Loades, whose constant help and encouragement brought my work to fruition. I am also deeply thankful to my family for their support and patience.

Introduction

This thesis stems from a concern to understand what constitutes social justice in a world where the social policies, norms and principles which form society and affect people living together grow ever more complex. Since people raise differing normative validity claims about social policies and social organisational principles, and frequently come into conflict about them, there is an urgent need for an understanding of social justice which addresses the question of the formation of society.

Although justice has been very widely discussed in Christian literature, there is still no clear understanding of the concept of social justice. This is so despite the fact that the quest for social justice at a national and international level has been a central concern of the Church since its earliest days, arising from the divine imperative to do justice, and from the Church's reflection on the concept of justice in the teaching by Jesus about the Kingdom of God. According to Konrad Raiser, the conceptual difficulty arises from the fact that the results of intensive ecumenical reflections on [social] justice "cannot be formulated within the framework of a consistent theory which integrates convincingly the biblical understanding of justice and is critically related to the contemporary debate among social philosophers, political scientists and lawyers".¹ Raiser's point is that the ecumenical reflections of the churches do not amount to providing a substantive theory of justice which could help to form a just society:

[Ecumenical] reflection is oriented towards searching for ways to overcome apparent injustice and not so much guided by an ideal concept which could then serve as a basis to formulate clear criteria for the building of social order.²

My thesis is a contribution to the search for a conception of justice which will form a just society. It is based on my contention that ultimately it is the justice of God which forms society, because the locus of justice rests in God himself, specifically in the righteousness or justice which is the essence of his nature, and because scripture and tradition point to the justice of God as a principle in creation, particularly in the formation of society and social order. Justice is this righteousness mediated through human agency and activity in society which accord with God's will. Justice or righteousness in the Judeo-Christian tradition is a highly relational term, and denotes "right relationship", which is the guiding concept throughout this thesis.

The kind of society formed by the justice of God is characterised by the essential nature of that justice - right relationship or, as I interpret it at a societal level, true sociality. My aim in this thesis is to discover how this might be achieved under the conditions of modernity, by investigating whether certain modern secular theories of justice may be mediations of God's society-forming justice. I turn to these theories because I believe that they may provide systematic explications of the inchoate understanding of social justice in the Judeo-Christian tradition. Although this may be a bold claim, it is not without precedent. According to H.-H. Wolf, the WCC's Uppsala Report recognised that

the church is nowadays being confronted with insights from the Word of God which are beginning to be realised in contemporary secular human society or which are being advocated strenuously although they are not realised to be specifically Christian. This is a challenge to Christians and puts them to shame for in human society now we see taking place, albeit fragmentarily, something which Christians have failed to achieve for themselves and to which they should have devoted all their energies.³

Biblical categories, and theology as methodological reflection on these categories alone, will not conceive adequately the function of justice in forming society under modern conditions in advanced capitalist, welfare-state mass democracies. The theological search for a deeper understanding of justice and society is congruent with that of modern secular thinkers who explore how the social conditions of freedom, truth and justice can be conceived and secured so that a just and maturely human society can be formed. Political theology, in particular, has the responsibility of reflecting on the meaning and implications of God's demand for justice in the world of which it and the Church are an integral and vital part.

A theological thesis which contends that the justice which forms society is the justice of God must take into account modern theories of justice and society, including the philosophical discussions of rationality and its relation to justice, which form the backdrop to these theories. This necessity derives from the nature of modern theology as intrinsically correlational, because, in the joint endeavour with other disciplines seeking a more just society, it makes available its normative resources to the public sphere. When the Church enters its claims about justice, it cannot demand privileged consideration for these claims, but must recognise that all claims to justice must be rationally justified in the public sphere.

In this sphere, theology is a "modern discipline that clarifies and defends its implicit validity claims".⁴ The requirement that modern theology, especially a political theology which attempts to understand justice under modern conditions, correlate its resources and content with the best insights from secular disciplines seeking similar understanding, does not mean a simple appropriation of modern

theories, or an appending of theological statements to such theories, but an integrated approach to the issue of how to form a just society.

I do not accept that the dialectical interaction between theology and other disciplines will sacrifice the integrity of the distinct disciplines, or dilute the Christian position until nothing distinctively Christian remains. On the contrary, an interdisciplinary approach is mutually informative and enriching, mutually critical and corrective. With regard to the formation of society, a theologically-motivated interdisciplinary approach tries to discern the presence and action of God through the Holy Spirit within that enterprise. I do not see open dialogue with non-Christian thought as a risk if God is present in that thought.

What I am asserting in this thesis, without a simplistic and uncritical 'baptism' of theories which share a common interest with political theology, is that there is, in accordance with a theological emphasis on the Incarnation, a sense in which God is the reality underlying human thought and action oriented toward forming a (just) society. A mutually critical approach ensures the distinctive position of each, including the primacy of God required by theological method.

The two modern theories of justice which I have chosen to study in this thesis are, in my view, the two leading theories in modern times, namely those of John Rawls and Jürgen Habermas. Both theories are representative of modern justice theory in general, which has taken a marked normative departure, in the sense that it emphasises the importance of the meta-ethical question of the ground or justification of the principles of justice and of those norms which form and steer society.

However, as my search for a society-forming concept of justice progresses, it reveals that the kind of theory which political theology may find most useful will be one which points less to the provision of a substantive set of principles than to normative legitimacy, especially the establishment of a procedure which critically assesses social norms, institutions and arrangements. Such a theory will entail a transformation of ethics, in which ethics becomes discursive and universalistic, and stresses the priority of the right over the good. The moral point of view advocated in this understanding of ethics does not simply explicate the intuitions of specific cultures or groups, but is open to universal consensus. Justice understood in such a theory would be the outcome of a publicly discursive procedure, leading to a rational consensus about social norms which form and direct society.

The formation of society requires not only the establishment of a public procedure for the rational justification of norms that underlie social practices and political arrangements, but also a theory of justice which prevents domination (or the illegitimate use of power). The understanding of justice which I am proposing in this thesis goes further than traditional approaches, which hold that social justice is concerned with the fair distribution of primary social goods and the regulation of relationships and competing interests. My contention is that to consider social justice is to consider societal formation in terms of the legitimacy of political authority (and the norms on which it is based), because this authority is responsible for such distribution and regulation.

This contention rests on an incarnational theology which discerns the justice of God in the reflective and discursive practices and procedures which determine the legitimacy of, and obligation to, political authority. My 'incarnational' approach

also sees God's justice operating in critical theory, ideology-critique and social analysis which unmask illusion and the arbitrary use of power. Without these social analytical tools, and without engaging social theory, theology will not be able to achieve an adequate grasp of the complexities of the issues surrounding justice and the formation of society, nor will it be able to penetrate the false consciousness and the pathologies which beset modern society.

The first chapter of my thesis lays the groundwork for claiming that ultimately it is the justice of God which forms society. It sets out the need for justice to be understood as normative legitimacy, achieved dialogically, and examines the rational justifiability of normative theories. It includes a section on social contract theory, since the social contract has been considered to be the basis of social formation. Owing to the constraints of space, I do not discuss the development of the social contract, the essential functions of which are to evaluate the legitimacy of political authority and to prevent domination. Instead, I begin this section with a discussion of Kant's idea that the social contract should be a test of the justice or legitimacy of norms and laws, which should be the outcome of the united agreement of all who are subject to them. The chapter emphasises the need for social analysis, and specifically for critical theory, in order to understand the complex issues of social formation, and to identify factors which inhibit that formation, including legitimisation crises and the deformation of the public sphere in modernity. At the end of the chapter I suggest that the Church should be committed to a spirited defence of the public sphere, since this is where justice is determined.

The second chapter provides a substantiation for my argument that society is formed through the universal principle of justice as normative legitimacy. My

contention is that this principle is located in God's Trinitarian and social Being. I examine the biblical evidence for the social and relational nature of God's justice, and argue that there are in the biblical material vital indicators of the communicative and procedural nature of that justice. Since my aim in this thesis is to investigate whether modern theories of justice may be considered to mediate God's justice, I search for congruence or consonance between such theories and biblical and theological categories. This means that it is not possible to present a comprehensive analysis of biblical justice, because such a study (which I have done) involves a full discussion of the terms for justice and their etymology, of the developing understandings of justice in the Bible (the forensic, the ethical and the religious), of the tension between the retributive and redemptive dimensions of God's justice, and of the elevation of the concept of justice into the Doctrine of the Atonement. The biblical categories from which I develop my critical-theoretical Christology and Trinitarian and Incarnational theology are ultimately transcended by these theological bases. The latter are correlated with critical social theory in my attempt to establish the ground for the communicative understanding of justice which I am proposing. Hence this chapter concludes with an interpretation of Jesus' attempt to establish justice in terms of the theory of communicative action. The adoption by Jesus of a certain form of discourse to achieve agreement about the norms which guide people's actions in society, and which regulate their interaction, points to the need for an examination of theories of justice which use a discursive or procedural basis to achieve justice under modern conditions, thereby forming a society in accordance with God's will.

Chapter 3 examines John Rawls's theory of justice. Both Rawls and Habermas subscribe to the consensus principle of legitimacy, which asserts that the legitimacy of norms and of normative institutional arrangements can be justified only by the principle of rational consensus. They share the meta-theoretical premise of "methodological proceduralism", which contends that a rational consensus about social institutions and the norms underlying them is to be achieved only *procedurally*, "by specifying strategies and modes of argumentation".⁵ In this chapter I present and assess Rawls's theory of justice, giving particular attention to the adequacy of his discursive device of the "original position" in determining social justice. The conclusion to be drawn from an investigation into Rawls's justificatory method is that it is individualistic and monological, and therefore not compatible with a Christian understanding of the social and relational justice of God. The recognition that the justification of social norms and principles is tied to the idea of a public discourse pushes us in the direction of a communicative or discourse ethics, in which the basic idea is that a norm is justified only if it could be agreed to by all concerned as participants in a practical discourse where no force but that of the better argument prevails.

Habermas's discourse ethics, which is part of his theory of communicative action, contains an implicit theory of justice, which is the subject of chapter 4. Habermas develops his theory of justice in the form of a discursive legitimation procedure for rationally evaluating the legitimacy of a political order and for justifying proposed social norms of action, thereby providing a method of moral argumentation among citizens in civil society. A constitutive rule of their argumentation is the principle of universalisability. Habermas's position is that this prin-

ciple, and the norm of discursive will-formation on generalisable interests, can be derived from the unavoidable and universal pragmatic presuppositions of argumentation and everyday communication. They are also derivable from the notion (implicit in communicative action) of what it means to justify a norm of action. Thus Habermas asserts that agreement about social norms, principles and values is achieved only *communicatively*, through a special kind of linguistically mediated interaction which is both ideology-critical (unmasking the illegitimate and arbitrary use of power) and domination-free.

In chapter 4 I set out some of the complicated and interrelated elements of Habermas's social theory, as well as his theory of universal pragmatics and his theory of truth, which are the foundation of his theory of justice. My explication of his theory of justice concentrates on the notions of universalisability and discursive will-formation, since these provide the link between justice and the formation of society. I conclude with an endorsement of Habermas's theory because, although it does not provide substantive principles of justice, it does provide a genuinely dialogical procedure for establishing true sociality in accordance with our social, relational and linguistic constitution by God. However, the endorsement of Habermas's theory of justice as a possible mediation of God's justice can be made only after treating a major aporia in his theory of communicative action, namely the limitation of solidarity entailed by his universalism. In chapter 5 I consider how only the theological category of the Resurrection can answer the problem of the utmost limit situation formulated by the structure of communicative action - universal solidarity in the unlimited communication community with all victims of injustice.

In chapter 5 I argue that not only can Habermas's theory of justice as communicative action be appropriated and transformed from a theological perspective, but that it has a theological dimension in that the reality at the heart of his theory is the just and saving reality of God. I argue that Habermas's theory of communicative action, which is inseparable from his theory of justice, has a theological dimension. I do this in the light of two theologians, Helmut Peukert and Rudolf Siebert, who have developed the thought of Habermas and other thinkers of the Frankfurt School. Peukert's reconstruction of a foundational theology from the theory of communicative action, while it is not the subject of my investigation, contains some crucial insights which assist my task of examining the role of justice in the formation of society. His familiarity with thinkers like Horkheimer, Adorno and Benjamin of the Frankfurt School enable him to find a theological solution to the paradox of anamnestic solidarity, which they pose to anyone who seeks justice and the formation of a just society.

Following Peukert, I argue that the explicitly theological and Christian categories of the Cross and the Resurrection not only resolve a theoretical paradox, but more importantly are an expression or demonstration of God's justice, which also empower human action to achieve reconciliation and universal solidarity in history, and thereby to establish justice in the social dimension. I conclude that Habermas's theory of justice, lodged within his theory of communicative action, has a specifically Christian core (even though he may be unaware of it): its dimensions are congruent with those of Christian action, and may be regarded as an incarnational medium for the expression of those dimensions in modern times for modern conditions.

In the sixth chapter I pursue the claim that the justice of God is operative incarnationally in secular theories which aim at the formation of a more just and humane society. I offer reasons for giving greater consideration to Habermas's theory of justice as a mediation of God's justice, owing to its truly social rather than monistic character, and because to a greater degree than Rawls's theory it meets the criterion of congruence or consonance with a theological understanding developed from the biblical notion of justice. Finally, I assert that the dialogical insights which such a theory generates about the public nature of justice impel us to develop a theory of justice in closer connection with a model of properly deliberative democracy (towards which Habermas's theory tends). I also return to my recommendation that the Church should commit itself to a defence of the public sphere, in which all participants, whatever their differences, can meet and discuss any claim that is rationally redeemable.

In conclusion I affirm interdisciplinary engagement with secular theories through which God's justice may be mediated, and which may help the practical task before the Church - active, critical involvement in the political process in order to build a vibrant public sphere, in which all may have the opportunity to participate deliberatively in the formation of the kind of society which God wills through his justice.

Footnotes

- 1 K. Raiser: "Reflections about Social Justice within the Ecumenical Movement", in *Justice and Righteousness (Biblical Themes and their Influence)*, ed. H. G. Reventlow and Y. Hoffman, *Journal for the Study of the Old Testament*, Supplement Series 137, Sheffield Academic Press, 1992, p. 154.
- 2 *ibid.*, p. 155.
- 3 H.-H. Wolf: "Towards an Ecumenical Consensus", in Preston, R., Ed.: *Technology and Social Justice*, SCM, 1971, p. 440. Although Wolf is referring to the idea of unity, his remarks are just as apposite to the idea of justice.
- 4 D. Tracy: "Theology, Critical Social Theory, and the Public Realm", in Browning, D. S. and Fiorenza, F. S., Eds.: *Habermas, Modernity, and Public Theology*, New York: Crossroad, 1992, p. 25.
- 5 S. Benhabib: "The Methodological Illusions of Modern Political Theory: The Case of Rawls and Habermas", *Neue Hefte für Philosophie* 21 (1982), p. 49.

Chapter 1 Justice and the Formation of Society

Introduction

In this chapter I elaborate my contention that justice is the basis of society, and I lay the groundwork for claiming that ultimately it is the justice of God which forms society. In addition to its theological themes, this justice is mediated through certain secular theories which can be interpreted as systematically explicating for modern times both those themes, and the inchoate understanding of social justice in the Bible - the primary source of the Judeo-Christian tradition. The chapter primarily contains a discussion of justice in terms of normative legitimacy and of the need for rational justification of principles and norms proposed for the formation of a just society.

The first section is given to a discussion of the basic need for a ground, namely justice, to order and regulate social interaction. It advances a claim that traditional approaches to justice need to be supplemented by an understanding of justice as normative legitimacy, i.e. the outcome of a rational consensus about the norms and principles which form and steer society. The second section concerns the status of normative theories and the concept of rational justification, the latter being important when considering the issue of universal obligation to a proposed system of justice.

In section three I argue that the formation of society requires a theory of justice which prevents domination or the illegitimate use of power. The concept of the legitimacy of social and political norms is embedded in the idea of the social contract, which is considered to be the basis of social formation. Social contract theory emphasises the importance of the public determination of legitimacy or the

principle of 'publicity' - the public testing of the validity of social and political norms. This principle in turn raises the issue of the distinction between the right and the good, i.e. between issues of right or justice and issues of the good life. The principle of publicity also raises the issue of the deformation of the public sphere in modernity, which is the consequence of its systematic neglect.

In section four I point to the need for a critical social theory as a tool to analyse society and to unmask the illusions and injustices upon which society has based itself. For reasons of length it is not possible to provide a comprehensive and rigorous discussion of critical theory, nor of its critique of instrumental reason which is responsible for domination and injustice in society. However, I do refer the reader to Habermas's two-fold theory of society as lifeworld and system,¹ in order to show how legitimation crises occur when economic and administrative systems invade the socio-cultural realm, thereby depoliticising the subjects of society and preventing them from proper participation in the public procedure of determining justice (i.e. legitimating or justifying social norms and principles).

Section five provides an explanation of the theory of legitimation crisis, and also proposes that the Church, by recognising the presence of God's justice in secular theories of justice, become the agent of social transformation. It does this not only by resisting the deformation of the public sphere in which justice is determined, but also by emphasising the dialogical nature of justice. This is taken up in the next chapter, where I explicate justice's social provenance in the Trinity. I conclude with an emphasis on the need for justice to be understood as normative and procedural legitimacy, determined by the rational agreement and consensus of free and equal people. My contention in this section is that an incarnational

understanding of the progress of society sees God's justice within those reflective and relational practices which determine legitimacy.

1.1 Justice, society and normative legitimacy

It is a tenet of Christian belief that God created human beings to live in communion with him and with one another in society. The warrant for this belief is to be found not only in Scripture, but in the great social doctrines of Christianity, namely the Trinity, the Incarnation, and the Kingdom of God. These warrants indicate that God is essentially social in his nature,² and assert that it is his will that his creation should be characterised by true sociality or justice. Such justice in the Judeo-Christian tradition is a highly relational term, and denotes "right relationship", which is the guiding concept throughout this thesis. A key aspect of this study is the way in which the justice of God is deemed to intend harmonious human society, and how this intention may be realised under modern conditions in advanced western welfare-state mass democracies.

It is clear that people living together in a society are caught up in a web of patterned relationships, needing a stable environment in which to interact, plan securely, carry on various sorts of transactions and work to attain their purposes. For instance, the sociologist D. Phillips points out that

at the societal level, stability and survival depend upon regularities and uniformities among the distinct individuals and groups which constitute society. Whatever the differences may be in their concrete form in one place and time or another, each and every society has distinct social arrangements for dealing with births, deaths, sexual relations, socialisation, the allocation of goods and the like. These regularities and uniformities of human conduct - sometimes spoken of as social institutions - provide the order that is the necessary matrix of social life.³

A society achieves cohesion or identity by its adherence to common norms and rules. It is dependent for its cohesion on being committed to common interests and goals, and, as I hope to show, through publicly discursive consensus about these interests and goals. The guiding concept of justice in this thesis is right relationship or true sociality. It has to do with the proper ordering of power and social life, the satisfaction of needs and interests, and the fair distribution of primary social goods. The matter that has to be ordered is the interactions of people living together, and thus justice is a term which covers the interactive behaviour of people in society, and the norms guiding their economic, social and political behaviour. To consider justice under modern conditions is to assess the quality of social and political life, and to examine for legitimacy the social norms which regulate society.

Publicly discursive consensus, as justice, helps to establish regularities of behaviour, i.e., the societal practices requisite for the formation of society.⁴ "Thus justice," as Rawls asserts, "is the first virtue of social institutions, as truth is of systems of thought".⁵ Important here are the generic categories of non-violence, non-fraudulence, truth-telling, promise-keeping, and benevolence, conformity to which would appear to be a pre-condition of society.⁶ An analysis of what forms a society points to the general conformity of individuals living together to civil, economic and legal regulations. This conformity is not accidental, and arises not from an indispensable motivational link between an individual's expectation of general conformity and her tendency to conform herself to that expectation: rather, it arises from the awareness of people living together that general conformity gives them some reason to want deviance discouraged, including their own deviance if that is the cost of general discouragement.⁷ As Rawls says, "One may

think of a public conception of justice as constituting the fundamental charter of a well-ordered association".⁸ We may go further and say that included in the notion of the basic structure of society are principles for the formation of society, i.e. the principles for choosing among various social arrangements and institutions.

Even a cursory glance at past and present societies will reveal that a range of social evils and injustices have prevented people from forming the kind of society which they desire, or indeed which God wills. Many people in modern western societies (which are to be the focus of our concern) are afflicted by social ills like homelessness and unsafe housing, poverty, poor education and health-care, violation of human rights, unemployment, dependence and loss of freedom. In addition, the disparity of ideologies, the alarming diminishment of natural resources, the increasing recourse to violence to implement one's own interests, the diminishing influence of the family, the violation of personal conscience by certain sectors of the state, are some of the factors which cause large numbers of people to feel afraid, manipulated, abused, cheated, alienated, and powerless; they feel that they have lost hope of the possibility of a decent, just and humane society. However, some people retain the conviction that there must be something better than what now exists, and offer visions of a new society in which a just social order will be established. Of course, such visions require an understanding of the determination of norms and principles which underlie the practice of justice in society.

Although it is part of the multifaceted task of morally constituted authority to regulate social interaction, a very important function of justice with regard to the formation of society is the selection of a just social charter, which requires the establishment of public procedures for the rational justification of the norms that

underlie social practices and political arrangements. We need to find ways of living together which bring about both personal happiness and fulfilment and social justice and harmony, so that personal freedom and solidarity become harmonious rather than contradictory concepts. Such ways must enable every individual to work out his or her own lifestyle based on unconditional mutual recognition of and respect for others, and to do so ultimately in a universal perspective. What needs to be found is a procedure to determine a mode of human action (and interaction) which aims not at domination of others but seeks the autonomous responsibility of the individual within an intersubjectivity of unconstrained agreement. What is envisaged here is a process of finding such a possible consensus. To understand justice in these terms is to recall the mutuality and relationship at the root of the biblical idea of justice, and to see it as part of a larger project, namely the establishment of a communicative or discourse ethics in which the dimension of intersubjectivity is paramount.

Traditional approaches to social justice, following Aristotle, have tried to understand it in terms of a moral virtue exercised in relation to others and with regard for the good of others.⁹ This tradition asserts that a society is just if it renders to its members what is due to them, and is in accord with the ancient notion of "*suum cuique*", which "ever since the earliest times became the common possession of the Western tradition through Plato, Aristotle, Ambrose, Augustine and ... Roman Law ...".¹⁰ Traditional approaches have attempted to define social justice as proper distribution of social goods, opportunities, duties, punishments, status, privileges, etc.; as right-dealing; as beneficence; as love; as equality; as fairness; as

reciprocity; as utility, etc. All these approaches are well-known and have been thoroughly studied and discussed.¹¹

However, since the early 1970s, justice theory has particularly emphasised the importance of the meta-ethical question of the ground or justification of the principles of justice and of those norms which form and steer society. This departure does not ignore the fact that certain principles (for example, the principle of equality) are an integral part of the concept of justice, but it recognises that principles and norms pertaining to the formation of a (just) society are based on moral judgements which claim a certain authority, and claim to be backed by reasons which are generally valid,¹² and rationally justifiable in the public sphere. The norms which are proposed for the formation of a good and just society, and the validity claims on which they rest, must appeal beyond subjective, individual feelings and beliefs to the intersubjective consensus of rational beings. This approach is not entirely new; justice has since ancient times been considered to be a concept of reason, which requires us to enter rational discussion and to be ready to generalise any claims made or reasons given.¹³ Justice in this sense is the outcome of an agreement or consensus about norms whose rightness and validity have been justified through practical discourse.

In all sociological theories, the consensus of opinion of people in society plays a central role in explaining social order, and in forming society. Important in any analysis of the formation of society is a consideration of the role of language in co-ordinating social action, in providing intersubjective meaning and overlapping interpretations of situations, and in leading to agreement and consensus. My argument in this thesis is that the idea of justice as the outcome of a consensus

among free and equal people is consistent with the sources and traditions of the Christian faith; and further, that it is incumbent upon us, in late modernity or post-modern times, to discern whether God is mediating his society-forming justice through theories which express justice as normative legitimacy, and attempt to establish a universal procedure for securing it. This will not satisfy those who maintain that justice cannot be justified or defended (because it rests on 'irrational' needs, interests, and values), or that it rests ultimately on arbitrary decisions or acts of faith. When Christians enter the debate about what will bring about social justice or a just social order, they cannot appeal to certain principles contained in their faith as self-evident; for example, the principle of equality (equal consideration) cannot be established by an appeal to the theological doctrine that all people are the children of God as a proof that all people are to be accounted equal. Frankena rejects such an appeal, because "the premise does not logically entail the desired conclusion and is itself an act of faith of just the kind that the one appealing to it is trying to avoid in the conclusion".¹⁴ Rather, Christians would do well to acknowledge that a claim to justice is only validated in a situation where an ideologically undistorted (domination-free) agreement is reached by people who recognise and respect one another as free and equal moral beings.

Principles of justice thus agreed will be sustained by all who make a full and free review of them through an intersubjective process of argumentation, and will thus attain a genuine and transcendent validity. This idea is not at odds with Brunner's insistence that any claim to justice appeals to the transcendent, absolute, eternal divine standard,¹⁵ because God's justice as a "primal ordinance" may well be incarnationally expressed through rational agreement and consensus of those

contesting normative validity claims in practical discourse. Frankena acknowledges the divine provenance of justice in his discussion of Brunner's contention that all judgements of social justice presuppose the eternal standard of God's justice: "Judgements of social justice do presuppose principles which in a sense transcend both the feelings of the speaker and the institutions of human society - principles which are claimed to be absolutely or eternally valid in the sense at least that all men or an impartial spectator, taking the appropriate point of view and being free and fully informed (God would be such a spectator), would accept them."¹⁶

In a theological understanding of justice the provision of a rational basis points to the fact that a theory of justice is a reflective rather than an empirical form of enquiry, i.e., its data are made available through reflection. A thesis such as mine which claims that God's justice is mediated in certain secular theories of justice needs to synthesise the categories found in the Judeo-Christian normative tradition with the two main categories found in politico-philosophical approaches,¹⁷ namely reliance on certain judgements or intuitions about matters of principle (e.g., all human beings are equally deserving of human respect), and reliance on certain considered judgements about particular matters (e.g., slavery is wrong, arbitrary arrest unjust, religious repression indefensible).¹⁸ The political theology towards which this thesis tends relies on a broad reflective equilibrium between what is normative in the Judeo-Christian tradition of justice and what is publicly defensible through universal principles or conceptions of justice, a point to which I shall return in the final chapter.

It is my contention in this thesis that ultimately it is the justice of God which forms society, because the locus of justice rests in God himself, specifically in the righteousness or justice which is the essence of his nature: justice is this righteousness mediated through human agency and activity in society which accord with God's will, whether or not those practising justice overtly recognise its ultimate source.

However, to make such a theological assertion requires caution and due recognition of the complex ways and procedures by which the content of justice is established in modern society by a wide range of people who are equally interested in trying to achieve a better society. Theologians need to work closely with all who seek justice and put forward their visions of a more just social order; Emil Brunner made this point in 1945 when he said that "it can hardly be contested that it is the duty of the Christian theologian to take his share in the reconstruction [of a just social order]... It is high time that theologians, philosophers and jurists should unite to comprehend and clarify the meaning of this great idea, the idea of justice..."¹⁹

The difficulty with Brunner's commendable enthusiasm for the reconstruction of society and Christian contributions to it is that he did not foresee the objections which would be raised from an increasingly secular (Western) society, including charges of cultural imperialism, arrogance and naiveté. For, as Beckley has noted in an important essay,²⁰ there may be a dilemma

when a group with distinctive beliefs and values seeks, on the basis of moral standards inferred from its beliefs, to influence the major institutions of society which determine the distribution of rights, duties, benefits, and burdens for all citizens.²¹

In modern society the belief is generally held that, despite the enforcement of institutions which a group committed to a better society may require on the basis of faithfulness to the moral implications of their belief, others should not be forced to act upon moral standards that are justified on the basis of beliefs which they should be free to reject. Beckley says that our current understanding of religious liberty is that non-Christians should be free to reject distinctive Christian beliefs, and he defines the dilemma facing Christians as follows:

How can an evaluation of the distribution of rights, duties, benefits, and burdens which society necessarily imposes upon all of its citizens be faithful to Christian beliefs without forcing others to accept the distinctive moral implications of the beliefs they do not and should not be required to share?²²

This is a crucial question, not only for Christians but for all who seek to work together to establish the vision of a better and more just society. For in a predominantly secular and pluralistic culture it can equally be posed to any group which seeks to influence major social institutions by imposing its particular theory of justice. Any such group must confront the dilemma of adjudicating between faithfulness to its beliefs and the liberty of others to hold and act upon other beliefs. Although the authors considered in this thesis do not explicitly address this dilemma, it is at the heart of their attempts to justify their theories of justice. The issue before Christians is whether they can affirm conceptions of justice which do not spring directly from distinctively Christian beliefs and values but which, crucially, may be sufficiently continuous or consonant with those beliefs. In spite of my contention that the locus of justice rests in God, it is untenable to expect general recognition of this, or to expect the general acceptance of a substantive Christian theory of justice which has a special bias towards the protection of the poor, the

weak and vulnerable, the needy - indeed all who are disadvantaged. As Beckley points out, "if that justification depends upon distinctively Christian beliefs, we are attempting to obligate others to moral, political and economic implications of belief that they do not hold and which we presumably believe they should not be required to hold".²³ By the same token, other conceptions of justice need to be justified and reasons need to be given for acceptance of their systems of justice.

The real issue at stake here is whether Christians (or others) can justify universal obligation to a system of justice based upon distinctive beliefs and values. In the modern world, that can only be done by presenting a rational justification for one's system which is sufficiently compelling to command general acceptance. Beckley believes that the dilemma can only be resolved "if the justification for principles of justice is founded upon general beliefs and values that others can hold, or can be reasonably expected to hold, and which Christians can affirm on the basis of their distinctive beliefs. Such a resolution ... does not require ... that the justification for principles of justice be compatible with any beliefs persons hold".²⁴ He also makes the very important point that since justice does not encompass the whole of morality, Christians and others can agree to a common theory and conception of justice while disagreeing about other moral standards.²⁵ This argument suggests that we could commit ourselves as Christians to a particular perspective of justice without using it for all of Christian ethics. Another way the dilemma could be resolved is by seeking a common normative foundation among different conceptions of justice.

Despite the strong reservations of some Christian ethicists, e.g. Hauerwas²⁶ and Yoder²⁷, I believe that Christian theologians must explore the possibility of a

common normative foundation for different ways of life bound to one another by ties of symmetric reciprocity.²⁸ Theologians are in a position to support sociologists who stand out against the dominant "value-free" or "neutral" position in the social sciences, which maintains their purely descriptive and explanatory role, and which maintains that normative questions about justice are beyond systematic discourse, prohibiting social theorists from proposing alternative institutional arrangements and modes of social organisation. In this regard, it is important that theology is properly informed by contemporary social analysis, a point to which I shall return shortly. The question of the normative component in the search for the just charter which forms society needs to be dealt with at this stage in my argument.

1.2 The rational justifiability of normative theories

Theologians who are concerned with the question of social order are accustomed to working with prescriptive statements as they attempt to understand the nature of God (justice), and how this is expressed through the divine imperative to do His will. Social scientists, on the other hand, have traditionally avoided making prescriptive statements or specifying and justifying particular mechanisms that should provide for social order. Following their scientific tradition not to make "ought" statements or to become involved in the assessments of values, they have tended to describe or explain the different mechanisms which have produced social order, e.g., compulsion, coercion and fear, manipulation, as well as consensus about certain codes of social conduct.²⁹ The provision of alternative descriptions and explanations by social scientists may show that social order can be achieved in a wide variety of ways, but does not point to a rational justification for one set of mechanisms in preference to another, nor does it consider whether there are any

compelling arguments for the normative superiority or inferiority of internal or external sources of social order. This position stems from the scientific belief that moral values or value-judgements are not rationally justifiable and cannot be shown to be true or correct; hence they are "only individual, subjective preferences outside the realm of rational enquiry".³⁰ This leads to the conclusion that much social analysis, in conformity to its methodological canon of "value-neutrality", lacks deep and explicit concern about the moral elements in social life. However, if the *raison d'être* of social analysis is ultimately to seek a "better" or the "best possible" society, these moral elements and evaluation cannot be avoided, particularly when, given the existence of competing sets of moral principles, we are faced with the question of whether it is possible to justify rationally one set as superior to others.

Beckley suggests that a resolution to this dilemma is possible only if, on the basis of their beliefs and values, Christians can embrace general beliefs obligating all persons to a system of distributive justice.³¹ Beckley believes this because he sees, for example in Rawls's contract theory of justice as fairness, a justification of universal obligation to a system of justice without obtaining full agreement on the question of the good or all other moral values or principles. He argues that Rawls's theory is helpful to Christians "because it justifies a conception of justice on the basis of the general and shared beliefs that persons are free, rational, and equal without ignoring the distinctive beliefs and moralities persons also hold".³²

Although Beckley's argument is by no means acceptable to all Christians, he does make the important point that a belief in the rationality of persons requires that people living together in society, who hold different beliefs, moralities and

life-plans, should respect the rationality of other ways of life by not basing the principles of justice on their distinctive beliefs.³³ Both Rawls and Habermas also base their theories on the reasonableness of treating persons as rational even though they might hold different or conflicting conceptions of the good. The criticisms of those who are suspicious of rationality³⁴ are diminished if it can be shown that while people who hold distinctive beliefs, ends and moralities are rational, the principles of rational choice and the notion of deliberative rationality do not entail specific ends or moral standards.³⁵

The issue of rationality is integral to modern ethical discourse, as may be seen in the many works devoted to it in recent years;³⁶ Habermas, whose theory of justice will be considered in Chapter 4, argues throughout his work that discourse and argumentation, including the procedure of rational justification, are the basis for establishing the validity and correctness of norms and the truth of statements. The assessment of a claim is a matter of determining whether it meets the agreed-upon standards of the relevant community; by this token, a normative claim is in principle just as susceptible to justification as a strictly empirical claim.³⁷

Normative theories such as those considered in this thesis have no less status than explanatory theories and are no less objective or rational, because they, too, are concerned with justifying their truth- and knowledge-claims. As Rorty points out, *conversation* is "the ultimate context within which knowledge is to be understood".³⁸ This does not mean that the argument has to be totally compelling nor that the conclusion is the only one that could have been reached: "with justification, the status of truth and knowledge is granted (always provisionally) to the proposi-

tions and theories that have survived the criticisms and objections of the particular audience to whom they have been directed."³⁹

What rationality requires is a commitment to certain modes of argument whose very nature is to lead to (or allow for) agreement; without the hope of agreement argumentation would be pointless. Rationality rests in general agreement about modes of argument or methods which allow for the possibility of consensus about specific propositions and theories. This is equally true for explanatory (empirical) theories and for normative theories: "What makes them rational is that they rest on arguments, reasons and justifications which allow for their appraisal and evaluation."⁴⁰ Rationality also requires respect for the rational interests of others participating in a discourse who may have different goals. The search for the principles which would form a just society requires respect for the rationality of fellow seekers with different, even conflicting, beliefs and conceptions of the good.

It is with an actual community of enquirers that justification of verbal and written arguments provides the basis for claims about validity, truth and knowledge. Crucially, any kind of scholarly discourse in the community of enquiry, whether scientific or ethical, requires the basic moral norm of truth-telling, since without it discourse and argumentation would be impossible. Such discourse also assumes a commitment to the equality of all the participants to explicate, defend, and justify (extensively) their truth- and justice-claims. All must also satisfy the requirements of coherence and consistency, and since at their best they share an emphasis on reason and rational justification, it is fair to conclude that the logical

status and structure of the normative theories in this thesis is identical to those of explanatory theories.

Theology, in its attempts to find, develop and recommend an understanding of justice which would serve as the ground for the formation of society in the modern world, can make common cause with those social scientists whose sociology has taken account of the importance of normative issues with regard to social order and the forming of a society that is more just, more legitimate and more authentic for the lives of human beings and, indeed, for the creation in general. Whereas it is now widely agreed among philosophers that the rigid dichotomy between descriptive and prescriptive, along with a commitment to detachment and value-neutrality, is a thing of the past, many sociologists still adhere to this dichotomy and commitment. However, there are some sociologists who, like moral and political philosophers, have rejected value-neutrality and the dictates of positivism, and who are engaged in openly normative theorising, concerned with providing an adequate justification for specified moral principles which can be used to assess the moral rightness of a norm or act, or the justice of an institution.

Central to the formation of society is a theory of justice which not only resolves the problem of competing interests in society by permitting adequate redistribution of wealth or other social goods, but also addresses the problem of injustice, namely the illegitimate use of power (i.e., domination). The optimal form of social formation must be one "which looks in some broad sense to the interests of people and which does not place the interests of some above those of others in an arbitrary fashion: that is, in a manner for which there is no plausible justification".⁴¹ The arbitrary placing of certain parties' interests above others is the

illegitimate use of power, the consequence of domination. The concept of the legitimacy of social and political norms is embedded in the idea of the social contract, which has exercised philosophers in the modern period from Kant to Rawls and Habermas. Since social contract theory constitutes the major mode of conceiving of the formation of human society in western culture, and since the modern revival of social contract theory has been as a theory of justice, we cannot proceed with our analysis without due consideration of this theory, which, in its Kantian form, is the basis of the theories of justice to be investigated in this thesis.

1.3 Social contract as the formation of society

Kant's version of the social contract, which is based on the notion that laws and institutions are legitimate only to the extent that they could receive the consent of citizens regarded as free and equal moral persons, requires some attention before we can move on to the notion of publicity, to which Rousseau had drawn attention in *The Social Contract*,⁴² in his conception of the general will.⁴³ Kant was the first to state clearly and explicitly that the social contract was not an actual event in history but a regulatory ideal, an idea of practical reason:

It is in fact merely an *idea* of reason, which nonetheless has undoubted practical reality; for it can oblige every legislator to frame his laws in such a way that they could have been produced by the united will of a whole nation, and to regard each subject, in so far as he can claim citizenship, as if he had consented within the general will.⁴⁴

This idea of reason is a criterion, not of political obligation, but of the *rightness* of political institutions and authority. Kant's position is that, while political institutions have not derived from a historical contract, the idea of a social contract can and should be used to test their rightness; that they should be such that they could

have been produced by the united will of all, i.e. agreed to by all who are subject to them.⁴⁵ In this sense, Kant's idea of the social contract is that it should serve as a guide for legislators and rulers, and as a test for the legitimacy of their legislation as well as for the rightness of political institutions and authority. This presupposes the practice of criticising or justifying social norms and institutions, and calls into question the normative grounds on which this practice rests. Any modern understanding of justice must consider these grounds because, as Kenneth Baynes argues, "it is widely assumed that such grounds are necessary if criticism is to express anything more than the subjective preferences or particular interests of the critic".⁴⁶ Kant's moral and political philosophy is relevant to the effort to establish the objectivity of these grounds and to ensure that social criticism reflects generalisable interests.

As will become clear in our examination of Rawls's theory of justice, Rawls's constructivist (rather than teleological) understanding of Kantian moral philosophy⁴⁷ attempts to account for the objectivity of normative assessments by relating the ideals and principles employed in critical practices to an expressly normative conception of practical reason, that is a conception of human beings as free and equal moral persons.⁴⁸ In the case of Habermas, the clarification of the basis of public social criticism and justification of social norms is carried out with reference to a mode of communicative reason. In both cases (Rawls and Habermas), the basis of social criticism - necessary for the establishing of justice - is developed with reference to a normative conception of practical or communicative reason; and by seeking a device or procedure which can assess the legitimacy of social norms and produce the principles of justice for the formation of society.

Kant goes further than Hobbes, Locke and Rousseau in using the 'idea' of the social contract as a test of the justice of laws, or the legitimacy of legislation. In Kant's view the test for valid legislation is the (counterfactual) ideal of that to which free and equal moral persons could agree. Thus political legitimacy, for Kant, is based on the consent of the governed. According to Kant, laws should be framed in such a way that they could be consented to by every citizen.⁴⁹ This entails that all subjects should be equal before the law, that there should be no hereditary legal privileges for favoured groups, no unequal taxation of subjects of the same class, and that there should be equal freedom within a workable general law.⁵⁰ Much of Kant's social contract theory takes place in the context of his discussion about property rights (which formed the basis of Locke's social contract theory).

A problem arises with his proposal of testing the rightness of political institutions by whether or not they could have been agreed to in social contract. The operative word in this proposal is "could"; Kant does not mean that citizens *would* agree to certain political institutions, but that the test of their rightness is that they *could* be agreed to by all in a social contract. The reason that certain things, like hereditary privileges, are proscribed by the contractarian test, is not because it is not in the self-interest of certain parties to the contract, but because people of mature rational powers would not prescribe laws which permitted such things.⁵¹ Kant's essential conclusion about such people, i.e. free and equal moral agents, is that their most basic interests must coincide with those given in a conception of themselves as citizen legislators of a notional republic.⁵² The principles according to which these rational agents operate is the supreme moral principle or categorical imperative, which specifies that we should act only on that maxim which we can at

the same time will that it should become a universal law.⁵³ Concern for the universal effect of the maxim underlying one's action, and the preparedness to formulate it as a universal law, is quite evidently not the consequence of pure self-interest. On the other hand, there is a flaw in Kant's process, in that it is monological: this seriously diminishes its credibility as a way of determining the universal validity of norms and maxims. This point is taken up in my critique of Rawls's thought, who also does not recognise the intersubjective dimension of moral autonomy and plays down intersubjective recognition and justification of norms for their validity.

Although to adopt the stand-point of self-interest is in accord with the social contract tradition in general, and although the mature rationality of contractors does not preclude this adoption (because, as Lessnoff argues, "there is no necessary contradiction between self-interest and rationality"⁵⁴), Kant disavows self-interest as a motive for contractual agreement. Rationality for Kant "is co-extensive with morality, and hence cannot be reconciled with purely self-interested motivation".⁵⁵ Kant's theory of the social contract, which is closely related to his project of grounding the principles of justice in the notion of non-instrumental, practical reason, does not rest on considerations of rational self-interest; rather, his aim is "to specify a basic set of rights and a criterion of political legitimacy (the social contract) with reference to a notion of practical reason that cannot be reduced to instrumental reason or self-interested rationality".⁵⁶

What is in the interest of all can be interpreted in terms of communicative rationality, that is a self-transcendent rationality which has an unselfish but equally rational orientation toward the other and her needs and interests. In correcting the

Kantian stance, however, Christian theologians may wish to argue for communicative rationality, and advocate its adoption in the interests of forming a just society: Trinitarian sociality is the analogy here (see chapter 2, pp. 80f., 84f.). Such advocacy must demonstrate the dialogical and intersubjective nature of the process of agreeing what is in the interest of all. Not only does this process, which is at the heart of the social contract, establish justice, but it is itself part of the task of justice. It must not be forgotten that the social contract developed as a hypothetical concept from which to deduce political authority and its limits, and to test its legitimacy. The standard of legitimacy it proposes is not the self-interest of any individual,⁵⁷ but rather a (hypothetical) contract that promotes or reconciles the legitimate interests of *all* concerned. Social contract theory, according to Lessnoff, "appeals not only to self-interest, but also to a due concern for the interests of one's fellows".⁵⁸

Hence theologians may advocate the principle of publicity, which Kant introduces as a principle of practical reason possessing a transcendental status: "All actions affecting the rights of other human beings are wrong if their maxim is not compatible with their being made public."⁵⁹ Baynes suggests that the principle of publicity is "the citizens' counterpart to what is, strictly speaking, a standard or criterion for the legislator".⁶⁰ Both notions refer back to the idea of the general will or united agreement, but the former points to the public sphere as a realm of discussion and debate among reasoning citizens,⁶¹ even though in Kant's thought the public sphere was restricted to "active" citizens, i.e. propertied males. However, what is important in Kant's idea of 'publicity' or public reason is that it does not refer to the institutions of government, but to a civil, political sphere of public debate among private citizens (see chapter 6, pp. 333ff.). The value of

Kantian thought for our discussion is the idea that the public use of reason stands over against the state, thus making it the supreme instrument for its criticism and reform.

The principle of publicity is adverted to in Rawls's theory of justice, and given wider scope in Habermas's theory. In both cases, the importance of the public sphere is stressed as the arena in which justice performs its society-forming task; each theorist presents a different method for publicly testing the validity of the norms which form and direct society. I intend to show that Habermas gives greatest prominence to the concept of publicity.

The conception of publicity raises a final but significant point in justice theory, namely *the distinction between the right and the good*,⁶² i.e. between normative issues of justice (what is a matter of justice to which all people have a claim) and evaluative issues of the good life (what is a matter of one's individual pursuit of a particular conception of the good life within the limits of justice).

As we shall see, Rawls and Habermas, although firmly in the Kantian tradition, decide differently as to how this distinction is to be made, but both agree substantially with Kant's insistence that principles of justice or right, which are based on what all can agree to as free and equal moral beings, have priority over the plurality of conceptions of the good life. This distinction is especially important for an understanding of justice in modern pluralistic societies, because it provides a means of dealing with a plurality of conceptions of the good within the limits of justice. It concedes that diverse conceptions of the good life can exist, yet insists that conceptions of justice can be defined independently of comprehensive theories of the good.

The capacity to frame, revise and pursue various conceptions of the good is a characteristic of the freedom, equality and independence of a moral agent who is a party to the social contract,⁶³ but this freedom is restricted by the social conditions necessary for the effective realisation of the freedom of others (Rawls), and by the satisfaction of needs and interests whose validity is recognised by all (Habermas). Both these positions follow Kant's dictum that "each may seek his happiness in whatever way he sees fit, so long as he does not infringe upon the freedom of others to pursue a similar end which can be reconciled with the freedom of everyone else within a workable general law".⁶⁴ Rawls distinguishes not only between justice as a basic political virtue of society and a full theory of the good, but he also makes a distinction (central to his political conception of justice) between "thick" and "thin" conceptions of the good.

A "thick" conception of the good denotes a full, common conception of the good, which it is not feasible to obtain in a modern pluralistic society. A "thin" conception of the good signifies some overlapping, less full and comprehensive conception shared in society, which relates to that society's understanding of right and justice.⁶⁵ Habermas, on the other hand, goes further than Rawls in his understanding that conceptions of justice should limit what can be legitimately and justifiably be claimed to be a conception of the good life. On the point of the priority of justice, Habermas's discourse ethics, which discusses questions of the good life as questions of justice within a discourse about justice that takes into account interests and needs, gives justice a more central and basic role than Rawls does; for in Habermas's theory, "justice specifies, delineates and determines one's conception of the good".⁶⁶

The concept of publicity which arises in social contract theory is also given prominence by critical theory, which helps us to analyse and understand society and the issues surrounding its formation, especially the connection between justice and rationality and modernity. What a critical social theory does in the service of justice and the formation of society is to reveal the debasement, corruption and erosion of the public sphere (in which social norms and principles should be rationally justified) owing to the adoption of erroneous and fallacious forms of rationality. If the public sphere, in which normative validity claims are publicly redeemed, is damaged, so is justice, with detrimental consequences for society. A critical social theory also assesses the devices and procedures which may assist people in the public sphere to choose norms, thus shaping a properly democratic polity.

According to David Tracy, the need of the public sphere is twofold: "first, to clarify the character of rationality so that the genuinely *public* nature of the public realm may be defended; second, to clarify the sociological realities that have weakened the public realms in ... advanced industrial and post-industrial Western democracies."⁶⁷ From a theological perspective, part of the task of justice in forming a society under modern conditions is to make a contribution to the repair of a damaged public sphere. A public sphere, as Tracy argues, is dependent on a shared concept of reason, and refers to "that shared rational space where all participants, whatever their other particular differences, can meet to discuss any claim that is rationally redeemable".⁶⁸

Justice is not confined to the contractual agreements between persons, but has to do with the fundamental arrangement of major social institutions in the

context of which other associations form and individual transactions take place. For this reason, a theory of justice needs to take account of the background social institutions that shape the expectations and opportunities of representative members within that society. For the same reason Rawls believes that the basic social structure is the primary subject of justice.⁶⁹

However, Rawls's analysis of the basic social structure makes a distinction between the public and the private sphere, something which Baynes considers to result in "undesirable consequences" for a theory of justice, owing to Rawls's systematic neglect of the public sphere in civil society. Baynes rightly charges Rawls with neglecting a discussion of how certain institutions in civil society might curb the regulatory power of the state.⁷⁰ Rawls assumes that social justice can be realised and maintained through the active intervention of the welfare state into the private sphere. However, it is this very intervention which creates pathologies, and crises of legitimation, within the private sphere (or lifeworld). Intervention or intrusion of the system into the lifeworld, through 'juridification'⁷¹ and other mechanisms which colonise the lifeworld,⁷² disables citizens from participating in the public realm. Some may argue that a socio-theoretical analysis of the basic structure is not the task of a theory of justice, but, as Baynes contends, the failure to take such an analysis into consideration has negative implications for an understanding of justice.⁷³

The problem of the defence of the public sphere has a direct bearing on the search for a legitimation procedure, and is intimately related to the function of justice. A neglect of the public sphere and the forces which threaten it (which are covered by a theory of modernity like that of Habermas) leads to an inadequate

and unsatisfactory understanding of democratic participation, and therefore of achieving social justice and forming a just society. David Tracy argues that "there is no good theological reason why publicness (which entails a willingness to defend all implicit validity claims and implies a democratic polity) should be ignored by any form of theology",⁷⁴ because in the modern period theology has become a critical mode of inquiry willing to give reasons for any of its claims. Modern political theology, in its attempts to enter the claims of God's justice to form society, must note the demand of critical theory for the testing of all claims to publicness in a society, and for reflective reason.

1.4 Critical theory's exposure of domination as the basis of Injustice

The analysis of society in critical theory⁷⁵ is useful to theology as it considers the important question of how the conditions under which we live are shaping our very capacity to think and make wise choices about our collective destiny, and as it prescribes a remedy for the injustices and social ills of the contemporary world. The immense value which critical theory has for a theology concerned with justice and the formation of society lies in the fact that it unmask the illusions upon which society has based itself; more specifically it unmask domination, coercion and the illegitimate use of power in society. According to Helmut Peukert, theology, "as a methodically controlled reflective form of religion", has been concerned with the basic problems of advanced civilisations, the most important being the unsolved fundamental problem of the accelerating accumulation and systematic organisation of power and its unjust use.⁷⁶

Peukert argues that religion and its reflective form - theology - cannot be understood as the attempt to endorse these mechanisms, but must be understood as the attempt to put them into question.⁷⁷ Critical theory provides the means for this questioning, which is essential not only to theology as a critical discipline but more importantly to its task of delegitimizing illegitimate political authority and of establishing justice:

Ever since modernity's critique of religion, theology is suspected of having covered up and also legitimising the mechanisms of accumulation and of the unjust sharing of power. And, in general, theology is accused of obscuring the true recognition of the human condition by producing an illusory consciousness. The most extreme perversion of religion, then, consists in the exploitation once again of the angst of existence and the desperation of human beings by a religious system interested in exerting its power. The fundamentalistic regressions, which presently can be observed even inside the major churches, sufficiently illustrate the danger of this perversion. Theology, then, must first always prove itself anew as a critical endeavour. The attempts of a new "political theology," of a "theology of liberation," or of a "theology of the public realm" must be counted as attempts in the great tradition of theology to develop and bring to bear the critical potential of religion even within theology itself.⁷⁸

What theology needs to do is to seek to correlate its normative tradition with those disciplines or theories (including critical theory) which attempt to ground other ways for human beings to relate to one another, i.e., ways other than domination or the legitimation of domination.

Critical theory emphasises the capacity of humans for the reflective, i.e., critical, use of reason. As conceived of by Habermas, critical theory has the practical intention of the self-emancipation of people from domination. It has shown how historical circumstances inhibited the range and depth of reflection, effectively permitting all kinds of injustice, exploitation, repression and domination to go unquestioned and unchallenged, resulting in people's entrapment in

unjust structures. Although oppressive religious and political powers have less influence over thought than action, the most effective repressive force on individuals and society may operate at deep unconscious levels owing to cultural conditioning, especially when individuals freely limit their own reflection.⁷⁹

Thus critical theory requires consideration of "a number of consciously and unconsciously operative factors deriving from the cultural and historical assumption of the time, the current paradigms of thought, and the cultural mechanisms exercised by ... political and religious structures".⁸⁰ In other words, critical theory requires attention to the role of ideology. Geuss, in his study of critical theory, distinguishes three senses of the term "ideology" - descriptive, pejorative and positive.⁸¹ Critical theory tends to regard ideology in the second of these senses, namely the pejorative; here ideology is a particular constellation of beliefs, attitudes or disposition that distort reality, creating a false consciousness.

The aim of my use of critical theory is to show that the Christian tradition of justice can appropriate the point of secular social theorists from Kant and Hegel onwards (especially Marx and the central members of the Frankfurt School - Horkheimer, Adorno and Marcuse), namely the struggle for human emancipation, and the formation of a good and just society. The insights of the Frankfurt School, which are vital to a theory of justice and society, were the result of the refinement of the critique of reason conjoined with sociological research into the principal currents of twentieth century modernity.⁸² One of the most important aspects of Horkheimer and Adorno's work was their focus on rationality, and specifically their critique of instrumental reason,⁸³ which they perceived to be an instrument of domination, and to be responsible for the injustices and ills of society. This insight

is crucial for understanding the disabling of the public sphere in which people engage in the justice-working activity of public normative legitimation (i.e., justification of norms and principles).

As public normative legitimation emerges as the theme of this thesis, we need to examine understandings of justice which will help to secure such legitimation in the interests of forming a just society, and to inquire into how far they may be seen to be congruent with, or mediations of, God's justice. This perforce delimits the scope of our investigation, and does not permit us to enter a detailed socio-theoretical analysis of rationality and modernity, nor of the social and systemic integration adumbrated by such an analysis.⁸⁴ However, a major insight which is gained from this analysis is the recognition, *contra* Weber's concept of goalrationality, that social action might be more than "that action which, as far as its intended meaning is concerned, refers to other people's behaviour and remains oriented to this while it proceeds".⁸⁵ This definition, because it is embedded in the philosophy of consciousness, ignores the fact that social action might be more than means-end or goal-oriented, and might be directed toward the achievement of shared understanding. It also does not take into account that interaction is co-ordinated in basically different ways. The achievement of shared understanding as to what certain acts of cognition and manipulation of objects mean, and the achievement of the co-ordination of social action through linguistically mediated (justifiable) validity claims, are key elements of the new paradigm of communicative rationality which must replace goal- or instrumental rationality. Unless such an expanded rationality is sought and developed, the pessimistic conclusions of Weber and the Frankfurt school are inevitable.

An emphasis on goalrationality involves the loss of the wider rationality which is needed to demonstrate that society is formed properly through social action that is genuinely communicative, and through a rationality which attempts to co-ordinate social action on the basis of shared understanding. Weber's theory of society and social analysis, because it gave a central place to the isolated actor, could not grasp the essentially intersubjective nature of action; the achievement of understanding is perforce the result of intersubjective activity:

If we assume that the human species maintains itself through the socially coordinated activities of its members and that this coordination has to be established through communication - and in certain central spheres through communication aimed at reaching agreement - then the reproduction of the species *also* requires satisfying the conditions of a rationality that is inherent in communicative action.⁸⁶

This passage emphasises the need for a communicatively-based procedure to determine justice for the purpose of forming society.

I have already mentioned the abuse of power and the problem of domination in the areas which justice, in the interests of forming a society, needs to address most urgently. For those who control power control the distribution of social goods, which has been the traditional concern of theories of social justice. The legitimisation of power, and particularly legitimisation in terms of the justification of "steering" norms and actions, becomes a major concern for a theory of justice.

Any analysis of modern society would be incomplete without an examination of the problem of legitimisation crisis, because such an examination reveals the issues which a theory of justice needs to address; probably most prominent among these issues are the deformation of the public sphere and the depoliticisation of subjects through the economic and bureaucratic intervention of the state in late

capitalist economies, as it seeks to forestall the withdrawal of legitimation by the pacification of class conflict, and by buying off protest by compensating measures and system-conforming rewards.

1.5 Legitimation crisis

The basic thesis of legitimation crisis was stated by Habermas in his book of the same title,⁸⁷ which was a major contribution to the analysis of contemporary capitalism, and to the analysis of modern western society in general. A more succinct expression of the thesis occurs in his essay "Legitimation Problems in the Modern State".⁸⁸ Baldly stated the thesis of legitimation crisis reveals capitalism as a system of unfair exchange between capital and labour, which is the consequence of crisis tendencies inherent in its mode of production. These crises, which originate in the economic system owing to systemic steering imperatives that assert themselves in the pressure for capital realisation, are expressed in the lifeworld as class conflict. The continuing tendency toward disturbance caused by these steering imperatives "can be administratively processed and transferred by stages through the political and into the socio-cultural system".⁸⁹ The class conflict thus generated could be acute and destabilising, thus threatening the state and its legitimacy.

Power needs legitimation, but crises threaten the possibilities for its legitimation because the inequalities and dysfunction of the economic system cause citizens to withdraw their legitimation. They also threaten the motivation of subjects which the state needs for its continual functioning. Thus legitimation and motivation require protection by the state's intervention through state power. However, the state attempts to compensate for the functional deficiencies of the market without going to the extreme of total regulation of the economy; its

interference amounts to the manipulation of conditions for private entrepreneurial decisions and the implementation of strategies to avoid the negative side-effects of the unhampered functioning of the market. Nevertheless, this interference is significant enough to create a tension between the economy and the (democratic) process of legitimation.

Legitimation, in modern western societies, is and can only be bestowed on power by democratic procedures. The tension between democracy and capitalism occurs because they correlate with different forms of integration: the former implies the primacy of the Lifeworld and integration through communicative action, whereas the latter requires that the subsystems follow their own inner dynamics, are held free from legitimation requirements and fulfil their necessary functional roles, even at the cost of the technification and reification of the lifeworld. In order to lift the possible threat to the legitimation of and motivation for the System, the democratic welfare state buys off protest in the lifeworld by using the increase in its social product for compensatory measures, thus pacifying class conflict and averting legitimation crises. But, as Brand points out, "in doing so, it interferes by using law as a medium, in communicatively structured areas of the lifeworld, ... damaging in the process the cultural resources necessary for the continued existence of its symbolic structure".⁹⁰ This interference is an aspect of the colonisation of the lifeworld, which implies the partial monetarisation and bureaucratisation of the lifeworld, threatening its symbolic reproduction, most crucially the public domain in which consensus about "governing" norms is reached. This is the domain of justice as normative legitimacy and communicative action.

It is beyond the scope of this chapter to present fully Habermas's argument about the inherent and contradictory problems of capitalism; what I wish to draw from this line of argument is the destructive effects of the intervention by power in the public sphere of the lifeworld which follows in the wake of a legitimation crisis, because it is here that justice is operative in the form of the justification of those norms which form a just society.

As the rights of citizens to political participation became established in the course of social evolution, legitimation became a consequence of democratic procedure, thus creating a problem for capitalist states trying to avert attention from the basic contradiction of organised capitalism, namely the private appropriation of public wealth:

Genuine participation of citizens in processes of political will-formation, that is, substantive democracy, would bring to consciousness the contradiction between administratively socialised production and the continued private appropriation and use of surplus value. In order to keep this contradiction from being thematised, the administrative system must be sufficiently independent of legitimating will-formation.⁹¹

However, the independence of the administrative system is not easy, or even possible, to secure. As the administrative-political system encroaches upon or intrudes into the socio-cultural system, it undermines and weakens cultural traditions; this has the unintended side-effect of

causing meanings and norms previously fixed by tradition and belonging to the boundary conditions of the political system to be publicly thematised. In this way the scope of discursive will-formation expands - a process that shakes the structures of the depoliticised public realm so important for the continued existence of the system.⁹²

The rationalisation of society which follows in the wake of the increased need for justification of government intervention into new areas of life destroys the

unquestionable character of traditions and their validity claims that were previously taken for granted. Habermas remarks that the "stirring up of cultural affairs [which are] taken for granted thus furthers the politicisation of areas of life previously assigned to the private sphere".⁹³ This development signifies danger for the civic privatism (i.e. "political abstinence combined with an orientation to career, leisure and consumption" that promote the expectation of suitable rewards within the system) which is essential to the structurally depoliticised public realm.⁹⁴ Thus, the paradoxical effect of the administrative processing of economically conditioned crisis tendencies is an increased pressure for legitimation which cannot be relieved by the rationality introduced by that very administrative processing:

As long as motivations remain tied to norms requiring justification, the introduction of legitimate power into the reproduction process means that the "fundamental contradiction" can break out in a questioning, rich in practical consequences, of the norms that still underlie administrative action. And such questioning will break out if the corresponding themes, problems, and arguments are not spared through sufficiently sedimented pre-determinations.⁹⁵

Even though the state recognises that the recoupling of the economic system to the political means greater use of democratic institutions and participation to secure legitimation for its expanded activities, it still would prefer to keep its administrative system independent of the legitimating system. Here Habermas introduces the idea that states arrange "formal" democratic institutions and procedures to ensure that administrative decisions are made largely independently of the specific motives and interests of the citizens. These institutions and procedures are democratic in form, but not in substance, ensuring a "diffuse mass loyalty" and the avoidance of real participation; this alteration leads to a structurally depol-

iticised public realm, in which subjects in a society "enjoy the status of passive conditions with only the right to withhold acclamation".⁹⁶ Thus the political system in capitalist societies, which set up the public realm for effective legitimation, tries to change its function to directing attention toward topical areas, that is, "of pushing *other* themes, problems, and arguments below the threshold of attention and, thereby, of withholding them from opinion-formation".⁹⁷ However, this whole attempt flounders when citizens in the process of democratic rationalisation and justification see through the mode of procurement of legitimation for a basically unjust enterprise.

The way the state can counter the critical awareness unleashed through the process of rationalisation, with its ensuing legitimation deficits, is by securing the loyalty of the masses through rewards and welfare compensation.⁹⁸ Habermas's thesis is that a properly functioning public realm, based on a universal discourse ethics, will produce an entirely different and just basis for the formation of society, and not a cynical willingness to accede to a political order because it provides an acceptable flow of system-conforming rewards. McCarthy uses this as a possible argument against Habermas's legitimation crisis thesis, noting that such a willingness is not necessarily cynical and may follow "for the reason that nothing better seems practically possible in the given circumstances".⁹⁹ Such a willingness, according to McCarthy, can and does serve to legitimate political systems: "... it is difficult to see why the justification of a political order on the grounds that it provides an acceptable (in an imperfect world) distribution of 'primary goods' (Rawls) could not be widely effective in sustaining that order."¹⁰⁰

McCarthy exposes a weakness in the predictive power of the legitimisation crisis thesis, because empirical motives can be shown to have as much power in forming a society as communicative rationality and communicative action, and because it is too theoretical and insufficiently practical, despite Habermas's purpose of developing his critical theory as a systematically generalised history with practical intent. However, McCarthy's critique neglects the practical dimension of critical theory, and neglects the connection between theory and praxis. The purpose of a critical theory is to enlighten its addressees about their actual situation, real interests, and practical possibilities. Habermas's model for social critique is *the model of the suppression of generalisable interests*,¹⁰¹ which is concerned with those interests that can be shared (or agreed upon) in rational discourse. In a key passage in *Legitimation Crisis* Habermas asks: "How would the membership of a social system, at a given stage in the development of productive forces, have collectively and bindingly interpreted their needs (and which norms would they have accepted as justified) if they could and would have decided on organisation of social intercourse through discursive will-formation, with adequate knowledge of the limiting conditions and functional imperatives of their society?"¹⁰² The critical scrutiny by subjects in this regard would recognise the domination built into the prevailing normative structures and their interpretations, which is revealed as "the 'injustice' of the repression of generalisable interests",¹⁰³ further, this critique would reveal the *de facto* consensus underlying the institutionalised distribution of opportunities for the legitimate satisfaction of needs and interests as unwarranted, illusory, and ideological.¹⁰⁴

The point of modern theories of justice (and of a modern social critical theory) is to eliminate domination, which is the root of injustice. This requires attention, in the first instance, not to specific interests and needs (which may be the immediate basis of socio-political critique), but to establishing a procedural criterion for assessing the rationality or legitimacy of concrete interests. If a theory of justice has such a *mediate*, normative-theoretical basis, its mode of social analysis will require attention to its normative grounding, and therefore is bound to stress the theoretical as the basis for the practical; as a consequence its practical import may be diffuse, but this in no way diminishes its ultimate practical value, especially if it succeeds in eliminating or reducing domination in society. How this process occurs is treated in chapter 4, in my examination of Habermas's theory of justice.

The theory of legitimation crisis reveals the need for public debate in late capitalist democratic societies, in order to assess the legitimacy of concrete interests and norms. This public debate is intended to take place in the public sphere, and envisions the replacement of the rule of authority (i.e. domination) with that of reason. Habermas claims that the dessication of the public sphere, the surrender of the idea of rationalising power through the medium of public discussion, is a result of transferring practical into technical questions. This transformation legitimates the withdrawal of practical questions from public discussion and deprives the public sphere of its critical function; a depoliticised public sphere, which is essential to the stability of state-regulated capitalism, is legitimated and sustained by technocratic ideology: "Technocratic consciousness ... not only justifies a *particular class's* interest in domination and represses *another class's* partial need for emancipation, but affects the human race's emancipatory interest as such."¹⁰⁵ In

eliminating the distinction between the practical and the technical, it "violates an interest grounded in one of the two fundamental conditions of our cultural existence: in language".¹⁰⁶ Faced with this "substitute ideology", critical theory must now "penetrate beyond the level of particular historical class interests to disclose the fundamental interests of mankind as such".¹⁰⁷

The difficulty with the noble aim of a critique which tries to reveal the basic human interest in domination-free communication is that it is not clear how this level of self-understanding to assist an effective political practice is to be achieved. Critical theory's penetration beyond class interest to the fundamental interest of humankind requires a potential agent of social transformation, i.e. a group or organisation which will protest against social injustice; and through its justice-working activity of engendering (class-conflictual) public debate and discussion will change the existing order in the interests of forming a more just society.¹⁰⁸ Habermas believes that the re-politicisation of the public sphere is potentially the most crisis-laden tendency in contemporary capitalist society because the expansion of discursive will-formation shakes the structures of the depoliticised public realm so important for the continued existence of the system.¹⁰⁹ However, he is very pessimistic about the emergence of an organised social movement which will engender a genuine legitimisation crisis leading to a radical transformation of society.¹¹⁰

The thesis of legitimisation crisis asserts that crisis tendencies occur in modern capitalist societies because the state has to implement class-based, economic imperatives and simultaneously secure general normative acceptance. However, the processes of reification and fragmentation now decrease the necessity of the

political system to rely on "normatively secured or communicatively achieved agreement", and increase "the scope of tolerance for merely instrumental attitudes, indifference and cynicism ..."¹¹¹ The task of justice in modern societies is less a direct matter of the distribution of wealth, and more of resisting the increasing colonisation of the lifeworld, of reacting against cultural impoverishment, and of arresting and reversing the fragmentation of consciousness. The task of justice in the formation of a just society is the development of a critical consciousness which withdraws legitimation, which protests against the deformation of the structures of subjectivity, and which tries to establish principles and procedures for securing normative legitimacy, thus overcoming the pathologies following societal rationalisation in modernity. The pacification of class conflict by welfare-state mass democracies does not mean that protest potential has been altogether laid to rest.¹¹²

New social movements (e.g., antinuclear and environmental movements, single-issue and local movements, the women's movement, etc.), which embody this "protest potential", have emerged. A characteristic of these new social movements is their "self-limiting radicalism",¹¹³ i.e. their rejection of revolutionary theory which envisages collective revolutionary subjects speaking in the name of all of society and seeking to take over the economy and polity.¹¹⁴ These movements must not be understood simply as a reaction against the uprooting of "traditional forms of life", but rather as a reaction against the deformation of "posttraditional forms of life"¹¹⁵ which arise with the structural differentiation (i.e. rationalisation) of the lifeworld. Thus the new social movements must attempt mainly to protect the conditions of "communicative sociation",¹¹⁶ rather than to generate a revol-

utionary ideology to combat capitalism. White sums up the rationale of these new social movements: "The problem is less that of building a collective, revolutionary ideology to combat that provided by capitalism, than it is one of overcoming the colonisation and fragmentation of consciousness by creating enough slack in the system for the ongoing autonomous articulation of plural identities by the groups involved."¹¹⁷

While the differentiation of the structures of modern capitalist societies brings some benefits, the process of systemic rationalisation threatens our integrity as independent, critical beings capable of shaping the direction of our collective lives in a democratic way.¹¹⁸ The new social movements provide examples of a new stance vis-à-vis the formal political system: the critical consciousness which lies behind their activity bodes well for the kind of critical politics and re-emergence of a critical public sphere which Habermas desired in *Legitimation Crisis*.

Although he mentions religious fundamentalism as one of the new social movements,¹¹⁹ he does not refer to the potential of political theology and the Church both for protest and transformation. It is my contention that a political theology which develops an understanding of justice as communicative action could enable the Church to be that agent of social transformation, not by being another self-limiting social movement trying to create space for communicative sociation and for the articulation and protection of its identity, but by going much further and promoting the notion of a universal ethics in the interests of forming a just society (both at a national and an international level). A political theology must promote an understanding of justice which engages, albeit warily, with the formal political system, by trying to ensure that the state returns to a basis of

normative legitimacy, through the adoption of a discourse ethics and the establishment of communicative rationality and communicative action.

While this is an ambitious programme, it is different from a totalising revolutionary programme, because it relies upon the non-coercive commendation of a procedure which itself attempts to secure normative legitimacy through domination-free, fully intersubjective communication, based on shared understanding, agreement, co-operation and consensus. The Church is well-placed to undertake such a programme because there is virtually no other institutional locus in which this can be done. Since Habermas severs his discourse ethics from any religious foundations and institutions, and thus fails to provide an institutional social and cultural locus for the discussion of practical moral issues, the Church appears to be one possible agent which could provide the institutional base in modern society for a universal discourse ethics.¹²⁰ Habermas's interpretation of modernity as the impoverishment of the lifeworld (owing to its colonisation by the system), and the concomitant deformation of the public sphere, raises the question about the locus of public discourse regarding issues of justice, right and good. It is F. S. Fiorenza who puts forward the proposal that churches, using political theology which explicates what Habermas acknowledges but does not develop (namely the transcending dimension of the unity of the lifeworld toward which moral discourse is aimed), could provide such an institutional locus, because the churches are constantly endeavouring to interpret the substantial normative potential of their religious traditions.¹²¹ I shall take up this proposal again in the final chapter.

Conclusion

The divine imperative to do justice obliges Christians in modern society to realise the irreducibly social dimension of justice, which is concerned with the formation of society in accordance with God's will for people to live together in right relationship, achieved by domination-free interaction. The province of justice is the democratic, political, public sphere in which validity claims are put forward with regard to the norms and principles that constitute the social charter which forms society.

I have already argued that an investigation which seeks to discover how the justice of God forms society must use an analysis of society, and the insights gained from the necessary interdisciplinary nature of such an analysis. The principal thrust of God's justice is the establishment of right relationship, which I interpret as a polity which comes about through persons operating according to certain principles, norms and codes which regulate their interaction. This requires a procedure for legitimating such a polity: legitimacy here means the worthiness of a political order to be recognised. An investigation into how this legitimacy is to be achieved requires an examination of certain modern theories of justice, to see how the intention of God's justice to form society is mediated through them, and whether they can serve as models for the working out of God's justice in modern societies.

Since political legitimation is a vital function of justice in forming a society, it is essential to our investigation that we consider theories of justice which attempt to establish a method of achieving legitimacy based on general interest and general will. Our discussion of the shift from the traditional sociological understanding of the descriptive role of social theory to a new understanding of its normative role

revealed that an independent evaluation of reasons on which the claim to legitimacy is based cannot be excluded. The theories which I propose to examine are concerned with this evaluation, and particularly with the justification or grounding of the reasons proffered for compliance with a political order which determines social justice. It is not enough for social theory to be concerned with the factuality of validity claims, e.g. in the sense of their frequency or accuracy in specific populations; social theory cannot ignore the fact that normative validity claims meet with recognition because they may be held to be well grounded ("capable of discursive vindication"¹²²). What is needed is a method which helps us systematically to evaluate legitimacy claims in a rational, intersubjectively testable way, in order to arrive at the arrangements which will form a just society.

The difficulty for an attempt to develop theologially the methods, and theories out of which they arise, is that these theories largely tend to exclude or dismiss the 'metaphysical' starting point of such an attempt. The point which I wish to make is that Christian theology, despite its possession of a substantive concept of morality, normative concepts of the good, of public welfare, etc., can endorse a purely procedural method of achieving legitimacy. It can not only use this method, but assert that God's justice implies the use of this method in which various actors, including Christians, enter a discourse and, through a process of rational argumentation, either decide on a set of principles or justify the normative validity of their claims (arising from their substantive normative tradition) to a better social order.

The criticism which Habermas applies to neo-Aristotelian, natural law-based attempts to justify hermeneutically rather than rationally everyday conceptions of the good, the virtuous and the just can be applied equally to Christian under-

standings which fall back purely on the authority of their normative tradition: "if ... philosophical ethics and political theory are supposed to disclose the moral core of the general consciousness and to *re-construct* it as a normative concept of the moral, then they must specify criteria and provide reasons; ..."¹²³ Thus theology must develop a Christian understanding of justice in terms of normative legitimacy, such that it sees the necessity for giving reasons for its normative claims to a better and more just social order. Habermas is wrong when he suggests that the legitimation based on a normative tradition (e.g., the Judeo-Christian or neo-Aristotelian tradition) is untenable "because of the metaphysical context in which it is embedded".¹²⁴ It would only be untenable if norms of action and their legitimation were asserted dogmatically as the only possible ones. There is no reason why Christians cannot engage in the "re-constructive" exercise of justifying their norms of action rather than in mere assertion.

This raises the fundamental question of practical philosophy which, according to Habermas, "has been taken up reflectively as a question of the procedures and presuppositions under which justification can have the power to produce consensus".¹²⁵ A theological investigation into the connection between justice and the formation of society needs to examine the major theories in modern times which try to establish methods or procedures for achieving a consensus about the basic decisions and institutions for a (just) society, i.e., methods and procedures for forming a just society. After an examination of God's justice in the next chapter, I intend to investigate the two theories which appear to have the greatest potential for this achievement, to examine how far they coincide with Christian justice, how

far Christians could live in a society which come about under their proposed arrangements, and how far they may be mediations of God's justice.

Footnotes

- 1 In considering how society is formed, integrated and maintained it is helpful to use Habermas's distinction between social integration, which comes about through communicative action, and systemic or functional integration, which comes about through the intertwining of the consequences of action. According to Habermas, society cannot be analysed using only action theory (Max Weber) or systems theory (Talcott Parsons): it must be analysed at both levels. Only a two-pronged approach, such as that of Habermas's lifeworld and system analysis, can explain phenomena which the classical sociologists Weber, Durkheim and Marx signalled under different names - the 'iron cage', anomie, alienation - but did not adequately analyse. [Arie Brand: *The Force of Reason: An Introduction to Habermas' Theory of Communicative Action*, Sydney: Allen & Unwin, 1990, p. 39.] Habermas claims that these phenomena can only be explained from the mutual relations between lifeworld and system. Habermas's conception of society as "a systemically stabilised nexus of action of socially integrated groups" [T. McCarthy, Introduction to Volume I of Habermas's *The Theory of Communicative Action*, Boston: Beacon Press, 1984, p. xvii] depends on the combination and relation of lifeworld and system. If society is conceptualised as one or the other, the conception of society will be one-sided: both are necessary for a comprehensive conception of society. The Lifeworld concerns the symbolic reproduction of society: it represents the whole ensemble of human relations (social, cultural and personal) which is co-ordinated and reproduced through communicative action (i.e., action that is oriented toward achieving agreement), and thus through the medium of language. The System, on the other hand, concerns the material reproduction of society: it has to do with the preservation of bodies, which takes place through systems of action that have, in modern society, become more or less independent, mainly in the form of the subsystems of the market and the state. [Brand, op. cit., p. xii.] This approach makes the clear conceptual distinction of these different orders of integration a necessity. Habermas's social analysis helps us to see "social evolution as a process of the coming about of the System on the basis of the rationalisation of the Lifeworld, the increasing complexity of the System and rationality of the Lifeworld and the disjunction between these two, and finally, the invasion of core Lifeworld areas by systemic mechanisms". [ibid., pp. 39-40.]
- 2 For a sustained theological development of the social nature of God, see K. Leech's books *The Social God*, SPCK, 1981, and *True God*, SPCK, 1985.
- 3 D. Phillips: *Toward a Just Social Order*, Princeton, New Jersey: Princeton University Press, 1986, p. 3.
- 4 P. Pettit analyses three areas of social life, which are distinguished from one another by characteristic regulations of behaviour - viz. civil, economic and legal, which are effective in the constitution of personhood, ownership and authority; see his *Judging Justice*, Routledge and Kegan Paul, 1980, p. 5.
- 5 *A Theory of Justice*, Oxford: Clarendon Press, 1972, p. 2; hereafter referred to as TJ.
- 6 Pettit, op. cit., p. 6.
- 7 ibid., pp. 6-7.
- 8 TJ, p. 5.

- 9 Aristotle: *Nicomachean Ethics*, Book V, 1: translated by D. Ross, Oxford University Press, 1954, p. 108; cf. J. Pieper, *The Four Cardinal Virtues*, Notre Dame: University of Notre Dame Press, 1966, pp. 43-113.
- 10 Pieper, op. cit., p. 44.
- 11 Since the literature is so vast on the topic of justice, it is not possible to give anything but an arbitrary list of references. However, the following help to indicate the issues arising from what Kelbley calls "the incredibly complex concept of justice": C. Kelbley: *The Value of Justice*, New York: Fordham University Press, 1979, p. 1; R. Brandt, Ed.: *Social Justice*, Englewood Cliffs, N. J.: Prentice-Hall, Inc., 1962; C. Friedrich and J. Chapman, Eds.: *JUSTICE* (Nomos VI: Yearbook of the American Society for Political and Legal Philosophy), New York: Atherton Press, 1963; Ch. Perelman: *The Idea of Justice and the Problem of Argumentation*, Routledge and Kegan Paul, 1963; A. Heller: *Beyond Justice*, Oxford: Blackwell, 1987; W. Galston: *Justice and the Human Good*, Chicago: Chicago University Press, 1980; L. Hobhouse: *The Elements of Social Justice*, Allen and Unwin, 1922; H. Bedau, Ed.: *Justice and Equality*, Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1971; D. Miller: *Social Justice*, Oxford: Clarendon, 1976.
- 12 With regard to the obligation of a society to justify its formative principles, D. Bell notes that "any society, in the end, is a moral order that has to justify [i.e. legitimate] its allocative principles and the balances of freedoms and coercions necessary to facilitate or enforce ... rules. The problem, inevitably, is the relation between self-interest and the public interest, between personal impulses and community requirements. Without a public philosophy, explicitly stated, we lack the fundamental condition whereby a modern polity can live by consensus (and without it there is only continuing conflict) and justice": *The Cultural Contradictions of Capitalism*, Heinemann, 1976, p. 250.
- 13 A. Rogers: *The Theory of Ethics*, New York: Macmillan, 1922, p. 192ff.
- 14 W. Frankena: "The Concept of Social Justice" in R. Brandt, Ed., *Social Justice*, op. cit., p. 27.
- 15 E. Brunner: *Justice and the Social Order*, translated by M. Hottinger, Lutterworth Press, 1945, p. 47.
- 16 Frankena, op. cit., pp. 28-29.
- 17 A theological approach ought to be aware that in secular theories which employ normative conceptions of practical reason (like the Kantian and Rawlsian conceptions of ourselves as free and equal moral persons), there is no further claim that the principles or ideals employed in the justification of social norms and institutions correspond to an independently pre-existing moral order, "in the sense that there can be no higher appeal to something beyond the idea of that to which free and equal persons can rationally agree". [K. Baynes: *The Normative Grounds of Social Criticism*, Albany: State University of New York Press, 1992, pp. 1-2.] A theological approach, while endorsing and appropriating rational and critical 'reflexivity', does this dialectically, because it recognises that a purely reflexive approach can become ideological, since it asserts that moral principles and norms can only be justified through rational reflection independent of historical traditions and background theories. F. S. Fiorenza gives an example of this in the 19th century moral injunction barring women from higher education, an injunction based upon unquestioned social assumptions about women's unequal social status and medical assumptions about women's intellectual ability and biology. Fiorenza argues that this sexism and discrimination could not simply be eliminated by reflexive reasoning: "it was only through women's historical protests stemming from their experience that society came to question the social, anthropological, and moral assumptions." [F. S. Fiorenza: "The Church as a Com-

- munity of Interpretation: Political Theology between Discourse Ethics and Hermeneutical Reconstruction", in Browning, D. and Fiorenza, F. S., Eds.: *Habermas, Modernity, and Public Theology*, New York: Crossroad, 1992, p. 84.]
- 18 Pettit, op. cit., pp. 31-32.
 - 19 *Justice and The Social Order*, op. cit., p. 18.
 - 20 H. Beckley: "A Christian Affirmation of Rawls's Idea of Justice as Fairness - Part 1", *Journal of Religious Ethics* 13/2 (1985) 210-242; cf. K. Tanner: "Christian Belief and Respect for Others" and "Christian Belief and Respect for Difference" - chapters 5 and 6 respectively of *The Politics of God: Christian Theologies and Social Justice*, Minneapolis: Fortress Press, 1992, pp. 157-223.
 - 21 Beckley (1985), p. 210.
 - 22 *ibid.*, pp. 210-211.
 - 23 *ibid.*, p. 211.
 - 24 *ibid.*, pp. 211-212.
 - 25 *ibid.*, p. 212.
 - 26 S. Hauerwas: "The Politics of Justice: Why Justice is a Bad Idea for Christians", in *After Christendom?*, Nashville: Abingdon Press, 1991, pp. 45-68.
 - 27 J. H. Yoder believes that Christians should not attempt to develop a common theory of obligation to just institutions, nor participate in public deliberations on universal standards and principles of justice; see *The Politics of Jesus*, Grand Rapids, Michigan: William B. Eerdmans, 1972.
 - 28 A. Heller: *Beyond Justice*, Oxford: Basil Blackwell, 1987, pp. 220ff.
 - 29 Phillips, op. cit., p. 4.
 - 30 *ibid.*, p. 5.
 - 31 "A Christian Affirmation of Rawls's Idea of Justice as Fairness - Part I", op. cit. This is similar to my view that any theory that is advocated in the interests of forming a just society must pay attention to what is potentially generalisable for all human beings.
 - 32 "A Christian Affirmation of Rawls's Idea of Justice as Fairness - Part II"; *The Journal of Religious Ethics* 14/2 (1986), p. 229.
 - 33 H. Beckley, 1986, op. cit., p. 234.
 - 34 like H. Clark in "Justice as Fairness and Christian Ethics", *Soundings* 56/3 (1973), 359-369.
 - 35 Beckley, 1986, op. cit., p. 234.
 - 36 S. Benn and G. Mortimer, Eds.: *Rationality and the Social Sciences*, Routledge and Kegan Paul, 1976; A. Gouldner: *The Dialectics of Ideology and Technology*, Macmillan, 1976; B. Wilson, Ed.: *Rationality*, Oxford: Blackwell, 1979; M. Hollis and S. Lukes, Eds.: *Rationality and Relativism* Oxford: Blackwell, 1982; T. Kuhn: *The Structure of Scientific Revolutions*, Chicago: University of Chicago Press, 1962; S. Toulmin, *Human Understanding*, vol. 1, Oxford: Clarendon Press, 1972.
 - 37 Phillips, op. cit., p. 41.
 - 38 R. Rorty: *Philosophy and the Mirror of Nature*, Oxford: Blackwell, 1980, p. 389.
 - 39 Phillips, op. cit., p. 46.
 - 40 *ibid.*, p. 47.

- 41 Pettit, *op. cit.*, pp. 24-25.
- 42 J.-J. Rousseau: *The Social Contract and Discourses*, translated by G. Cole, Dent, 1963.
- 43 *ibid.*, p. 13.
- 44 *The Political Writings of Kant*, Ed. H. Reiss, Cambridge: Cambridge University Press, 1971. p. 79.
- 45 *ibid.*
- 46 Baynes, *op. cit.*, p. 1.
- 47 Rawls: "Kantian Constructivism in Moral Theory", *Journal of Philosophy* 77/9 (1980), 515-572.
- 48 A constructivist view sees Kant's moral theory, in which the concept of moral autonomy is a basic category, as based on a conception of the person as an autonomous moral agent rather than on a rational intuition of objective ends given to us. A teleological position adopts the latter view, and regards justice as something that exists for the sake of these objective ends. The reason that Kant rejects such a teleological conception is that it violates the notion of human autonomy. [Baynes, *op. cit.*, p. 24; cf. P. Riley: *Kant's Political Philosophy*, Totowa, New Jersey: Rowman and Littlefield, 1983, for a sustained defence of the teleological interpretation of Kant's moral theory.]
- 49 *The Political Writings of Kant*, *op. cit.*, p. 79.
- 50 *ibid.*, pp. 74-79.
- 51 *ibid.*, p. 187.
- 52 B. Williams: *Ethics and the Limits of Philosophy*, Cambridge: Harvard University Press, 1985, p. 65.
- 53 Kant: *Groundwork of the Metaphysic of Morals*, in *The Moral Law*, translated and analysed by H. Paton, Hutchinson University Library, 1948; p. 67 of 1966 edition.
- 54 M. Lessnoff: *Social Contract*, Macmillan, 1986, p. 93.
- 55 *ibid.*
- 56 Baynes, *op. cit.*, p. 13.
- 57 We need to take account of a serious objection to contract theory if we propose its use as part of a theological approach. Thinkers like C. B. Macpherson [*The Political Theory of Possessive Individualism*, Oxford: Oxford University Press, 1962], D. Gauthier ["The Social Contract as Ideology", *Philosophy and Public Affairs*, 6/2 (1977), 130-164], and A. McFadyen [*The Call to Personhood: A Christian Theory of the Individual in Social Relationships*, Cambridge: Cambridge University Press, 1990] regard traditional contract theory as based on the individual pursuit of private self-interest. Although I accept this objection, my discussion of social contract theory, and even the apparent entailment of certain aspects of the theory by biblical and theistic political thought, is not intended to endorse the self-interested, individualistic understanding of the social contract. I am attempting to show that justice, as normative legitimacy, is established by consensus or shared agreement about norms as a consequence of democratic, discursive will-formation. Social contract theory provides the historical basis for this development, which is an advance on the traditional understanding of contract in political theory. This development, as we shall see, is most fully represented in the thought of Habermas, and coincides with a Christian understanding of consensus as not being constituted by self-interest but in an orientation toward the (generalisable) interests and needs of others, and toward the achievement of genuine, unconditional, mutual recognition and agreement. In

this thesis I wish to argue that society is formed through the universal principle of justice as normative legitimacy, and that this principle is located in God's Trinitarian and social Being. Basing justice on normative legitimacy (which includes political legitimation) does not entail a commitment to a contract view of society for the coordination of self-validated interests, but depends on mutuality of understanding achieved in genuine discourse. It depends on a dialogical conception of normative validity claims, an unconditional regard for the other, a self-transcending comprehension of the interests and needs of others, and a will to be incorporated into community with God and others. The formation of society appears, therefore, still to be dependent on agreement about different, even competing or conflicting, interests and needs.

- 58 Lessnoff, *op. cit.*, p. 121.
- 59 *The Political Writings of Kant*, *op. cit.*, p. 126.
- 60 Baynes, *op. cit.*, p. 45.
- 61 *The Political Writings of Kant*, *op. cit.*, p. 85.
- 62 Rawls notes, in his discussion of classic utilitarianism, that the right and the good are the two main concepts of ethics. TJ, p. 24.
- 63 *Kant's Political Writings*, *op. cit.*, pp. 74-78.
- 64 *ibid.*, p. 74.
- 65 Rawls: TJ, p. 396.
- 66 Fiorenza, *op. cit.*, p. 71.
- 67 D. Tracy: "Theology, Critical Social Theory, and the Public Realm" in Browning and Fiorenza, Eds.: *Habermas, Modernity and Public Theology*, *op. cit.*, p. 24.
- 68 *ibid.*, p. 19.
- 69 TJ 7; also J. Rawls: "The Basic Structure as Subject" in *Values and Morals*, edited by A. Goldman and J. Kim, Dordrecht/Boston/London: Reidel, 1978, pp. 47-71; also H. Bedau: "Social Justice and Social Institutions", *Midwest Studies in Philosophy* 3 (1978), 159-175.
- 70 Baynes, *op. cit.*, pp. 162-163.
- 71 By 'juridification' Habermas is referring to the general tendency in modern society to the expansion and greater refinement of codified law; this implies the opening up of areas which were originally not formally organised (like family relationships) to bureaucratic interference and their subsumption under judicial control. [TCA/2, pp. 356ff.]
- 72 This is Habermas's thesis in Part II of his *Theory of Communicative Action*. Habermas's socio-theoretical analysis, which realises its most developed form in the *Theory of Communicative Action*, charts the consequences of social rationalisation (the increased differentiation of social subsystems and the expansion of instrumental reason, the fragmentation of consciousness), thereby assisting us in understanding the role of justice in forming society. This analysis, with its accompanying analyses of rationality and modernity, is immensely complex, and cannot be pursued here. In kernel it states that as rationalisation takes place in society, it is accompanied by the dissolution of mythic worldviews. The consequences of rationalisation can be negative, and constitute what Habermas calls the pathologies of modernity, namely the reduction of rationality to instrumental rationality, the uncoupling of system and lifeworld, the colonisation of the lifeworld (including juridification), and the fragmentation of consciousness.

- 73 Baynes, *op. cit.*, p. 163.
- 74 Tracy, *op. cit.*, p. 26.
- 75 The history and development of critical theory cannot be treated here, but can be found in a number of useful introductions and studies: see, for example, *Introduction to Critical Theory: Horkheimer to Habermas*, by D. Held, Hutchinson, 1980; *The Idea of a Critical Theory: Habermas and the Frankfurt School*, by R. Geuss: Cambridge: Cambridge University Press, 1981; *Critique, Norm and Utopia: A Study of the Foundations of Critical Theory*, by S. Benhabib: Columbia University Press, New York, 1986; Max Horkheimer is credited with the classical statement of critical theory in his essay "Traditional and Critical Theory" in *Critical Theory: Selected Essays*, New York: Herder and Herder, 1972, pp. 188-243. See also *The Critical Theory of Jürgen Habermas*, by T. McCarthy, Cambridge, Massachusetts: MIT Press, 1978; and *Habermas and the Foundations of Critical Theory*, by R. Roderick, Basingstoke: Macmillan, 1986; R. Wuthnow, "Rationality and the Limits of Rational Theory: A Sociological Critique", in Browning and Fiorenza, Eds.: *Habermas, Modernity and Public Theology*, *op. cit.*, pp. 206-225. F. Dallmayr: "Critical Theory and Reconciliation", in Browning and Fiorenza, *ibid.*, pp. 119-151. cf. P. Lakeland: *Theology and Critical Theory*, Nashville: Abingdon Press, 1990.
- 76 H. Peukert: "Theology and the Enlightenment as Unfinished Projects", in Browning and Fiorenza, Eds.: *Habermas, Modernity and Public Theology*, *op. cit.*, p. 44.
- 77 cf. D. Forrester's remark about the phenomenon of the rise of the New Right in American and British politics, and its *expectation* of support and legitimation from the Church: "The Right in general claims Church legitimation, and is amazed and angry when it does not receive it ... Not only does the Right believe that it is entitled to such support, but it seems to feel that religion is the necessary grounding for its policies and regimes." *Theology and Politics*, Oxford: Blackwell, 1988, p. 145; further, see Forrester's remarks about the need for the Church [and theology] to be politically involved, and not to become "engrossed with its own inner institutional concerns and interests". [*ibid.*, pp. 153ff.]
- 78 Peukert, "Theology and the Enlightenment ... ", *op. cit.*, p. 45.
- 79 Lakeland has argued that Luther's challenge to the religio-cultural hegemony of the Catholic Church led to the collapse of the great synthesis of reason and revelation. Luther's effective privatisation of religion through his emphasis on individual salvation by faith diminished both the importance of the world and the control of the Church, thereby providing the impetus for human autonomy in history. As faith was sundered from reason, reason became the "operative human capacity in history", freeing the world to understand itself on its own terms. However, although external restraints on human reflection largely were removed, internal constraints persisted, in the form of deeply embedded cultural and intellectual presuppositions which established hidden limits to what could be thought. [*op. cit.*, pp. 17ff.]
- 80 *ibid.*, p. 14.
- 81 R. Geuss, *op. cit.*, pp. 4-26.
- 82 For an excellent account of the Frankfurt School, see M. Jay: *The Dialectical Imagination: A History of the Frankfurt School and the Institute of Social Research, 1923-1950*, Heinemann: 1973. See especially M. Horkheimer, *Eclipse of Reason*, New York: Seabury Press, 1974; and M. Horkheimer and T. Adorno: *Dialectic of Enlightenment*, New York, Herder and Herder, 1972.
- 83 cf. Hannah Arendt's remarks about "homo faber's ... instrumentalisation of the world" in *The Human Condition*, Chicago: Chicago University Press, 1958, p. 305.

- 84 This *necessary* two-fold analysis is to be found in volume two of Habermas's *The Theory of Communicative Action*, which seeks the formation and integration of society by balancing the claims of Lifeworld and System, and particularly by rejecting the instrumental, dominating rationality which is a consequence of Cartesian dualism and the philosophy of consciousness. Habermas draws upon a prodigious number of sources in his development of a communicative rationality and of a linguistic and dialogical paradigm to replace the solitary and monological Cartesian paradigm. This development is ably presented by Brand in *The Force of Reason*, op. cit.; and in a number of the essays in *Habermas, Modernity and Public Theology*, edited by Brown- ing and Fiorenza, op. cit.
- 85 cited by Brand, op. cit., p. 13.
- 86 TCA/1, p. 397.
- 87 Habermas: *Legitimation Crisis*, Boston: Beacon Press, 1975; hereafter referred to as LC. For a recent discussion and assessment of the concept, see chapter 7 - "From Stability to Crisis?" - in D. Held: *Models of Democracy*, Oxford: Polity Press/Black- well, 1987, esp. pp. 229-242.
- 88 in *Communication and the Evolution of Society*, Heinemann, 1979; hereafter referred to as CES.
- 89 LC, p. 40.
- 90 A. Brand, op. cit., p. 63.
- 91 LC, p. 36.
- 92 LC, pp. 47-48.
- 93 LC, p. 72.
- 94 LC, p. 37.
- 95 LC, p. 69.
- 96 LC, p. 37.
- 97 LC, p. 70.
- 98 At this point, because it is not directly relevant to the line of argument which I wish to pursue, I am passing over Habermas's complex argument about the connection between a legitimation crisis and a motivation crisis. This argument is elaborated in part II of chapter 7 of *Legitimation Crisis*, pp. 75ff., the core of which is the assertion that "a socio-cultural system changes in such a way that its output becomes dysfunc- tional for the state and for the system of social labour". [LC, p. 75.]
- 99 McCarthy: *The Critical Theory of Jürgen Habermas*, op. cit., p. 377.
- 100 *ibid.*
- 101 LC, p. 113.
- 102 *ibid.*
- 103 *ibid.*
- 104 McCarthy: *The Critical Theory of Jürgen Habermas*, op. cit., p. 380.
- 105 Habermas: *Toward a Rational Society: Student Protest, Science and Politics*, Heine- mann, 1971, p. 111.
- 106 *ibid.*, p. 113.
- 107 *ibid.*

- 108 Habermas's critical theory, according to D. Held, "aims to further the self-understanding of social groups capable of transforming society". [*Introduction to Critical Theory: Horkheimer to Habermas*, Hutchinson, 1980, p. 250.]
- 109 LC, pp. 47-48.
- 110 In his more recent work, as an explanation for the absence of such an agent, Habermas suggests that the reason why there is so little resistance from the rationalised lifeworld to its colonisation is because of the fragmentation of everyday consciousness. The intrusion of the system into the lifeworld prevents the necessary global interpretation of society which previous mythical worldviews had provided. The fragmentation of consciousness which results from this intrusion obstructs the synthetic power of such global interpretation. Habermas's argument is a development of Weber's sociology of religion and theory of the rationalisation of society; it is contained in his thesis of "the linguistification of the sacred" [Chapter V in volume 2 of TCA, especially pp. 77-111], and is developed further by the use of a number of wide-ranging sociological categories like juridification, the growth of expertise, cultural impoverishment, etc. [See chapter VIII in volume 2 of TCA].
- 111 Habermas: "A Reply to My Critics", in Thompson, J. B., and Held, D., Eds.: *Habermas: Critical Debates*, Macmillan Press, 1982, p. 281.
- 112 TCA/2, pp. 391-392.
- 113 J. L. Cohen: "Strategy or Identity: New Theoretical Paradigms and Contemporary Social Movements": *Social Research* 52/4 (1985), 664.
- 114 S. K. White: *The Recent Work of Jürgen Habermas*: Cambridge: Cambridge University Press, 1988, p. 123.
- 115 TCA/2, p. 341.
- 116 TCA/2, p. 342.
- 117 White, op. cit., p. 125.
- 118 *ibid.*
- 119 White suggests that religious fundamentalism should not be categorised as a new social movement, "because, although this fundamentalism is a reaction to the destruction of traditional life forms and big government ... , the articulation of this reaction is all too smoothly integrated into new modes of internal colonisation". [op. cit., pp. 124-125.]
- 120 F. S. Fiorenza: "The Church as a Community of Interpretation:" op. cit., p. 79.
- 121 *ibid.*
- 122 Habermas: CES, p. 200.
- 123 *ibid.*, pp. 202-203.
- 124 *ibid.*, p. 204.
- 125 *ibid.*, p. 205.

Introduction

Contemporary theology which engages in reflection on problems of the relation of Christian faith to the quest for justice in the modern world is characterised by rooting that reflection largely in the Bible rather than in other sources (such as natural law philosophy).¹ To a large extent, sacred scripture provides the basis for much of the Church's social teaching. This has been developed according to the needs of different ages.² My approach in this chapter is guided by the hermeneutics of socio-critical theory,³ whilst attempting to remain faithful in particular to the Jewish element in our heritage, which attaches prime importance to social justice. Epsztein refers to one of the greatest teachers in Judaism - Simon Gamaliel - who stressed that "justice is the first of the three pillars (alongside truth and peace) which ensure the continuity of human society".⁴

I argue that in the biblical material there are vital indicators to the principles and procedures of justice which later thinkers have developed. My approach is guided by the particular understanding of justice contained in my thesis, namely social justice, which concerns the creation, through participation in *public discourse*, of institutionalised patterns of societal and political organisation, mutual action, and interdependence. These patterns are essential for the creation of mutuality and for the formation of a society in which the demands of love can be met, among them the satisfaction of the needs of all living together. Social justice, which is rooted in the will of God and in the Christian moral norm of love, is more basic than distributive or commutative justice, for unless legitimate social and

political structures are established, the dimensions of the other modalities of justice⁵ cannot be realised.

The issue of 'publicity' is particularly important here, because the conditions necessary for the other forms of justice depend on concerted action by society as a whole through its public institutions. The legitimacy of the norms by which these institutions, especially government, form and steer society rests upon the public agreement and consensus of those interacting in society. It is this normative legitimacy and its achievement which I take to be the crux of the issue of social justice (i.e. that justice which forms society). In order to establish that God's justice can be interpreted in this way, it is necessary to establish the essentially social and relational nature of God's justice, which God uses as an instrument to form society. Thus in this chapter I begin by examining justice as a principle in creation, particularly in the creation of a benevolent social order and harmonious society. Section two is given to an exposition of the relational and social nature of the justice of God. It examines the theological bases of the Image of God and of the Trinity as the ground for asserting the intrinsic relationality of human beings and their need to live in a society which reflects the society of the Trinity. It argues for an intersubjective, dialogical (i.e., communicative) understanding of justice, derived from the Hebrew word *sedakah* as 'right relationship' and 'true sociality', which forms the guiding concept of justice for my argument. The question then arises as to how the conditions of justice as right relationship at a societal level can be conceived and secured for our times so that a just human society can be formed.

The third section discusses sin as the reason for the thwarting of God's intention for true sociality. This section also attempts to establish the connection

between redemption and creation, for once the wholeness of the created order and true sociality have been fractured, the chaos which ensues has to be re-ordered and redeemed: I suggest that this, too, is the role of justice. One of the consequences of distorted communication and fractured sociality (which follow in the wake of sin) is domination, which can be deconstructed by ideology-critique and the prophetic figures who engage in such critique. Section four examines the presence and use of ideology-critique in the biblical tradition as part of the critical, socio-political function of justice in its task of re-ordering and (re-forming) society. Section five deals with the synoptic and New Testament notion of Jesus as the justice of God, as the Servant figure of the Old Testament who will establish justice on earth in its properly social, i.e. relational and intersubjective, form. I suggest in this section that we should imitate Christ in his communicative action as a way of establishing social justice. This argument depends not only on a re-imagining of Jesus as the righteousness and justice of God, but (in section six) on an interpretation of Jesus' attempt to establish justice (a mark of the Kingdom of God) in terms of the theory of communicative action. My contention is that, in the search for theories of justice which will assist the task of forming a just society under modern conditions, Christians must examine the correlation between such theories and the normative traditions in the primary source of their faith.

2.1 The justice of God as a principle in the creation of social order and society

The ground for asserting that it is justice, and specifically the justice of God, which forms society is found in the creation theology of the Bible, in the central paradigm of Jewish faith - the Exodus and liberation from oppression, in the

theology of the classical Prophets, and in the parables of Jesus. That God created social order, in addition to physical and moral order, is well-attested in the Judeo-Christian scriptures.⁶ The creation theology of the Pentateuch reveals clearly that God's role as the source of all order in creation is to bring order out of chaos (Gen. 1:2), and to sustain that order continuously. Thus God's creative activity is not limited to the beginning of all things but continuous through history, in every generation, as his sustenance and renewal of the created order.⁷ The character of this order, whether physical or social, is that "it is good" (Gen. 1:10, 31): it is one of harmony, of peace, of well-being. Social life, as part of God's intended order, is to be as much a blessing as the rest of creation.

The idea that God is the source of blessing arises early in the scriptures (Gen. 1:22, 28, 2:3), in the context of the story of creation. The strong element of blessing in creation theology needs to be considered as a theology of blessing complementary to salvation theology, which has been the predominant focus of Old Testament theology.⁸ Birch notes that God's created order is the vehicle for blessing to all of God's creatures in all generations:

In this stress on God's trustworthy order (rather than God's intervening act) we find ethical warrant for systemic and structural efforts to discern and embody God's faithful order in our own societal patterns ... We are mandated to make the blessings of God's creation broadly and continuously available to all God's creatures as God intended.⁹

It is not only the creation tradition in the scriptures which speaks of the order which God provides in creation. The wisdom tradition, largely contained in Proverbs, Job, certain Psalms, and in the intertestamental texts of Sirach and Wisdom, has at its heart a belief in order "imbedded in the cosmos and discernible by human reason".¹⁰ Wisdom theology identifies human good with the order

intended by God in creation - an order which can be discovered in the natural or social world: wisdom consists in discovering and attuning oneself to the divinely intended and sustained order, and living in harmony with it. This divinely intended order, out of which all the good things in life flow, is described by Walter Brueggemann:

The order of life is characterised in wisdom in many ways. ... Whatever it is called, it is a remarkable confession of faith in the benevolence of life, in the staying power of our world, in the possibility of wholeness, in the health of right relations in right community, in the security every man may have without seizing what is his neighbour's. Moreover, in Israel's faith this orderliness to which a man may conform himself is not an accident, but is the knowing arrangement of a generous, benevolent God.¹¹

The wisdom tradition provides strong support for my contention that God and his justice are the source of social order and society. It is God's justice which, as part of the created order, sustains the social order. God imparts his justice to human beings to form society and maintain social order. Wisdom theology, which can be interpreted as creation theology,¹² understands God as responsible for the order built into creation, and as creating us with the capacity to discern that order and live in harmony with it: "wisdom is possessed of enormous confidence in the capacity of human reason to discover the truth of reality in productive patterns of personal and community life."¹³ That reality is God, whose Being is love and whose nature is justice: these form the fundamental principle inherent in the fabric of God's creation. Dianne Bergant has noted the intimate connection between creation and justice "both in regard to the primordial creation and in the continual victory over chaos within each person and within society as a whole".¹⁴ The task of wisdom is to aid the human search for the truth which God has built into creation,

and to choose life and live wisely, which means living in accord with the requirements of God's justice.

The wisdom tradition, which views the created world as good, points to the fact that creation is the medium in which God is experienced - "in the very order which God originated and sustains" - and in which we have potential as co-agents with God for maintaining his intended order through justice. Bruce Birch, in his discussion of wisdom and creation, points out that "belief in God's creation for wisdom is always tied to issues of God's justice and not a simple affirmation of divine ordering".¹⁵ In view of the constant threat of chaos behind creation, human action in harmony with God's created order helps to maintain the fabric of the world.¹⁶ Since justice is an essential aspect of that order, in so far as it effects social order and forms society, human action must also be guided by and in harmony with God's justice. Birch states that manifestations of chaos in human experience "make it all the more imperative that God's justice be undergirded by reasserting the fundamental creation theology behind wisdom".¹⁷

An appeal to the wisdom tradition for support for the contention that God creates social order and wills right sociality through justice is not unproblematic; for the character of wisdom morality is individualistic, and is based less on an understanding of covenant relationship to God and neighbour than on an appeal to a pious code of conduct which attempts to guide individuals in appropriate behaviour that makes life whole and harmonious. The predominant concern of the wisdom tradition with character formation, its perfectionist interest in the accomplishment of individual virtue rather than a deontological concern with the requisites of social existence, its mechanical rewarding or punishing of every act, and the

critical challenge directed at God's justice and the human capacity for knowledge and understanding by undeserved human suffering (i.e. the problem of theodicy) - all present difficulties for an attempt to establish a convergence between the creation, wisdom and prophetic traditions with regard to the social nature of creation.

Nevertheless, despite the difficulties in and tensions between these traditions, the social character of God's gracious nature and will, and of his graceful and benevolent intentions for society, is manifest in an overview of the biblical witness to creation. What emerges from this overview is a picture of the world and the universe as divinely and benevolently ordered for the harmonious existence of people (and all creatures) in God's creation. The *shalom* vision of people living together in society in unity, peace and harmony springs from an understanding of the social order which God intended in creation. This sociality is determined by justice. The nature of this justice needs examination before I can proceed to argue that it may be mediated through the work of those who attempt to establish true sociality in (sometimes unconscious) accordance with God's intention.

2.2 Justice, Relationality and Intersubjectivity

An examination of the biblical understanding of justice reveals that it is a concept much broader in scope and richer in meaning than it may have for us, given the more narrowly juridical meaning attached to it by the modern mind, with its Western presuppositions influenced by Roman legal thought.¹⁸

The main term for justice in the Old Testament, righteousness, cuts right across our narrow ideas of justice;¹⁹ in the Old Testament there is no idea of personified impartial Justice, "blindfoldedly holding the scales in just equality",²⁰

ensuring that each person receives his or her due, in the classical understanding of distributive justice. Whereas it cannot be denied that the forensic or juridical sense is distinctly present in the biblical understanding of justice (some scholars assert that it is fundamental and predominant²¹), the positive and salvific qualities which 'justice' signifies in the Bible are more consistent with the picture that emerges of God's acts and of His nature. An emphasis on law as basis of the view of God in the Old Testament fails to take account of the fact that "behind the detailed laws of Israel stands a more fundamental and ethical truth concerning the character of God himself - his justice".²² It is my contention that justice is the essence of God's nature, since no idea is more pervasive in the Old Testament than that God is a God of righteousness and justice.²³ The fundamental use of the term justice or righteousness in the Old Testament is to describe the nature of God: "Righteousness is God's name, the very essence of his nature, that which stands for the person himself."²⁴

The concept of justice in the Old Testament is not static, but dynamic. Justice in society and justice between humans and God was understood much more in terms of action than of a state. A. B. Davidson states that like the word 'holy', justice "once expressed a physical action",²⁵ and E. Jacob points out that "the prophets never exhort men to acquire righteousness as a quality or state, but they constantly ask that justice be practised".²⁶ The evidence in the biblical material regarding justice is to be understood in highly personal, relational and action terms; in the Old Testament, righteousness is always understood in terms of relationship, whether between humans and God, or between humans themselves in their inter-personal dealings.

There is no single Hebrew term for justice; rather, there are two major terms - *sedaqah* and *mishpat*, and a number of cognates which are frequently interchangeable and, in some cases, synonymous. For the greater part of its usage in the Old Testament, righteousness is synonymous with justice: "the term 'righteousness', which characterizes the sphere of divine justice, understood in Israel with special reference to Yahweh, becomes likewise the central term for human justice".²⁷ S. C. Mott believes that the presence of justice is often veiled from the English reader by the ambiguity of the terms righteousness and judgement; and he suggests that when one sees these two words in the context of social responsibility or oppression, one can assume that justice would be a better translation.²⁸

The two major terms reveal the essentially social and relational nature of God's justice, and connect with my focus on the question of how the conditions of justice as right relationship can be conceived and secured so that a just human society may be formed. These conditions need to be conceived of in dialogical and dialectical, i.e. communicative, terms. If the justice of God is relational, then the conception of the society which it forms is one in which people are inseparably bound together in a search for a mutuality of understanding. The basis of society formed by God's justice is true intersubjectivity, in which persons have unconditional mutual regard for each other as created by God in his image.

We have seen that the Genesis creation narratives refer to the intrinsic relationality of the whole creation. Our human creation together in the image of God means that no Christian theology should speak of individuals as isolated, individual entities. According to McFadyen, God's creating and sustaining activity generates the ontological structures of both personal and social existence, and

"indicates in outline the ideal form of and norm for personal and social life. The assertion that we are created in the divine image operates both as assertion of the way things are - an ontological given - and as an ideal regulating personal and social conduct. It is both an 'is' and an 'ought'".²⁹ McFadyen's discussion of personhood and the creation of individuality in God's image illuminates the issue of relationality, because it helps us to understand that the divine image designates a way of being in relation to God and others which is made possible by God addressing us and entering into relationship with us, thereby calling us in response to enter into (right) relationship and dialogue with others.

Our creation in the social image of the Trinitarian God means that there can be no 'pure' subjectivity, because humans, like the 'Persons' of the Trinity, are subjects in continuing and sustaining relationship, in dialogue, in communication. The important truth for a theory of justice analogously informed by the nature of God as Trinity is that the Persons of the Trinity are "neither simply modes of relation nor absolutely discrete and independent individuals, but Persons in relation and Persons only through relation. Persons exist only as they exist for others, not merely as they exist in and for themselves".³⁰ Justice as right relationship requires this sense of existing for others, of unconditional regard and respect for the freedom, dignity and equality of the other.

Right relationship at a societal level, or what I have called 'true sociality', requires acknowledgement and assimilation of the conception of personhood which springs from our creation in the image of God, namely that "being a person means existing-in-relationship".³¹ Correct individuality and sociality are thus achieved through the Trinitarian process of existing in and for others, through

non-coercive communication. The profound interpenetration of the Persons in the Trinity³² provides the model for an intersubjectivity of unconditional mutual regard, for orienting oneself towards others, and for understanding one another from the perspective of the other.³³ Justice as true sociality and right relationship requires intersubjectivity of the open, reciprocal, mutual and communicative kind present in the Triune life. The society which the justice of God forms ought to be a continuation of the 'society' in the Trinity - an outpouring and overflowing of the divine being.

The dialogical and intersubjective understanding of persons-in-society is derived from the social nature of our created being, and from the divine intention for us to live in right relationship (i.e. justice) in society. This understanding includes the recognition that we are who and what we are through our intrinsic relation to others, and that this relation is dependent on our capacity for genuinely open communication in reflection of the totally open, non-coercive communication of the Trinity.

My emphasis on open communication, and harmonisation of human action through consensus, does not imply a conflict-free model of either the Trinity, or of the human society which reflects the divine 'society' within the Trinity. Nicholls has rightly pointed to the danger of trying to deduce a harmonious social order from a (distorted) trinitarian theology which eliminates the idea of conflict from the internal life of the Godhead.³⁴ A conflict-free conception of the Trinity leads to a model of an integrated society devoid of conflict, achieved through totalitarianism and the denial of plurality. From a sociological point of view, Haferkamp (referring to the theories of conflict propounded by Lockwood and Dahrendorf)

argues that dissent and conflict are central elements of society, and are just as fundamental as consent and cooperation.³⁵

Nicholls, in his criticism of Leonardo Boff's adoption of this idealist model of the relation between theology and politics, argues that the "model of an integrated society free from conflict might possibly be fitting for a small Franciscan friary, but not for a modern state".³⁶ My endorsement of democratic consensus and harmony does not, however, preclude the notion of positive conflict. Nicholls is right to point out that conflict may be "a necessary and beneficent feature of human communities",³⁷ because without permitting the expression of conflicting interests and claims, a society could hardly be said to be free or just: "Conflicting claims ... may provide a healthy dynamism, a stimulus to progress and the elimination of specific evils."³⁸ My use of the communicative model of the Trinity to support my model of a harmonious and just society does not presuppose a simplistic or romantic understanding of the Trinity as bereft of conflict. Indeed, my emphasis on dialogue requires genuine differences, which are resolved ultimately through agreement and communication characterised by mutual regard.

2.3 Sin, distorted communication and fractured sociality

Creation theology presents a picture of the world not as pure chance but an "intentional fortuitousness"³⁹ - a free and benevolent creation for the purpose of the self-communication of God's goodness, with the ultimate goal of his glorification. Part of that freedom and benevolence was to bestow upon us the moral capacity and freedom to choose obedience or disobedience to God's will. To be obedient to God's will was, and is, to choose life and relationship; the freedom to make choices within the boundaries of duty makes genuine relationship possible,

to God and to others. The converse is also true: to abuse our freedom, to disobey God by rejecting his divinely intended sociality, is to disrupt God's ordered creation, which includes breaking relationship with him and with others. The scriptures recognise that creation did not stay as God intended it, but has been disturbed and broken by human sin. Whereas the Yahwist tradition in Genesis 3 focuses on the nature of human sin (pride, arrogance and disobedience), the priestly tradition in Genesis 6 concentrates on the consequences of sin (corruption, violence, moral collapse into a sub-human state that falls far short of what those created in God's image are to be).

The biblical narratives contain the recognition that disobedience to God breaks the harmony of creation and unleashes sin, evil and injustice which continue to escalate in the world, fracturing the wholeness of the created order, especially social relations. The Bible speaks not only of the reality of sin and its consequences, but also of grace and redemption in the form of liberation and salvation. Already in one of the earliest traditions in the Bible the creative work of God, in calling Israel into being through divine deliverance (Exodus 3), is tied to God's role as Redeemer. Genesis 6 records the virtual "uncreation" of the world in the flood, after which God renews and guarantees the creation (Genesis 9). The scriptures develop the role of God as both Creator and Redeemer as they record the history of the people of Israel, who were called into being to play an essential part in God's redemptive purpose for a broken creation.

The role of justice in redemption is to re-order the chaos created by human sin, and to set the creation free from its bondage (cf. Rom. 8:21) through the agency of one who would be the embodiment of God's justice. This agent is depicted in

the Suffering Servant passages of Isaiah, and is revealed most fully in the person of Jesus as the justice of God. The socio-political significance of Jesus' person, ministry, teaching and actions can be interpreted and cast in terms of communication and justice theory, as I propose to do. However, this argument must be preceded by a discussion of the deleterious effect of sin on the human capacity for communication, relation and sociality.

The Trinitarian God in whose image we are made is intrinsically social and therefore properly (i.e dialogically) communicative and relational. In creating us in his image, God structures our relationship with him as a dialogue. The paradigm for human existence in the image of God is relatedness, the image representing an ideal codification of relations which nonetheless require realisation in concrete form in society. The image is not an essence or a static substance, but a form of relation: it denotes the creation of all human beings for a life of relationship with God and with others. Relationship is essentially an encounter between distinct, different, autonomous yet interdependent partners who engage or communicate with each other on the basis of freedom rather than coercion. The essence of the partners' communication is mutuality and reciprocity, not out of self-interest but out of an unselfish orientation towards the other. Mutuality rather than domination is what is intended in God's creation of human beings. The structural openness and orientation towards the other are a social refraction of these qualities in our relation with God.

The communication between partners is (or should be) a reflection of the fundamentally non-coercive, open communication within the Trinity, and which overflows in God's communication of his goodness in creation. The import which

a dialogical understanding of relation has for justice as normative legitimacy is contained in the recognition that relationship, as a dialogical encounter with the aim of mutual understanding, has a structure of open question and answer, of discussion and argumentation. The open and mutual consideration by distinct, autonomous yet interrelated partners produces an open, mutual and respectful questioning of each by the other with regard to their needs and interests. The major characteristic of God's gracious communication is that it is genuinely dialogical: it respects our freedom, difference and independence, and permits us to respond freely, even if the precondition of our autonomy in relation contains the possibilities of misunderstanding and disobedience.⁴⁰

Our relational structure of freedom in God's image means that we are fulfilled personally and socially when we reciprocate the open address of God and of the other. A stance in relation based on anything else than openness and unconditional regard for the other assumes that relationship can be established by power, thus departing from the model of God's non-coercive communication and distorting communication and relation. Although God's address constitutes our ontological structure as relational and social, the freedom which is created with this structure may be distorted by rejection of dialogue-partnership, both with God and with others. McFadyen, in his analysis of our relational nature, claims that "human being is always in the image of God because it is constituted by God's prevenient, creative communication as a being-in-response. ... We live and breathe within the parameters set by the divine intention in communication of dialogue-partnership with God as a more or less distorted image of and response to God".⁴¹

The refusal to reciprocate the intention of God's communication is to distort his image in us.

This refusal is tantamount to disobedience, which the biblical tradition considers to be the cause of sin. The story of the Fall in Genesis 3 is about the choice between orienting oneself in obedience to God and faithfulness to values transcending oneself (otherness) or to oneself and one's own values and laws. The self-centred choice of self-constitution recognises as binding only those laws or values which are self-chosen, and "represents a reversal of creation since it is a rejection of the reality of God and the other as intrinsically related to oneself".⁴² The distortion of God's image which this sinful rejection causes has serious effects at societal level, where interpersonal relationships are transacted in the overarching structures of social relations. Right relationship or justice at this level forms a society in accordance with God's will; wrong relationships, i.e. those in which dialogue, mutuality, reciprocity and regard for the other are rejected, produce fractured sociality or injustice. Injustice in society is the result of sin having entered social structures, particularly in the form of the failure to engage in open communication with regard to socially formative norms, leading to the arbitrary use of power or domination. McFadyen suggests that the Christian doctrines of the Fall and Original Sin describe the distortions of human being through the fracture of relation with God and one another, and provide a way of talking about the accumulative effects of such distortions in subsequent generations.⁴³

The personal and structural effects of sin affect us all and distort the image of God in us, so that we relate to God and to one another in a distorted way. If social structures and social relations are distorted, the possibilities of enacting

justice to form and transform society appear to be severely limited. Distortions of God's image also prevent clear apprehension of the consequences of those very distortions; as I have already argued, historical circumstances have inhibited the range and depth of reflection, effectively permitting all kinds of injustice, exploitation, repression and domination to go unquestioned and unchallenged, resulting in people's entrapment in unjust structures and preventing the formation of a truly just society. However, there is to the creative justice of God another dimension which, like critical theory, is performative in its critical reflectivity: this dimension is operative within the redemption category of the creation-redemption continuum, seeking to liberate from injustice and to restore the right social order which God intended in creation. In this sense justice has a transformative, ideology-critical function in the interest of the formation of society.

The critique of ideology as a function of justice is an essential step toward the formation of society, because it exposes the illegitimate use of power and releases the imagination to achieve the alternative envisioned by those who perceive the truth, i.e. God's will for harmonious and true sociality. Ideology-critique is evident in the primal literature of the Old Testament - in the fundamentally critical narrative of the Exodus, which is the governing paradigm of biblical faith. It is also to be found in the thought of the classical prophets, and in the life, teaching and (communicative) action of Jesus. The parables of Jesus are significant critical-theoretical instances of God's society-forming justice, because in and through them Jesus unmask the oppressive ideology of the authorities, and engages in a particular form of communication with his antipathetic interlocutors to bring about an alternative perception of reality and a new understanding of living together in

society. I propose to examine this socio-political function of justice in some of these areas of biblical testimony because it is necessary for establishing my argument that the critical purpose of justice goes beyond the exposure of illegitimate social institutions and authority, and envisages and calls for an ethical procedure which will secure mutual understanding and agreement about the principles and norms which form and guide society.

2.4 Ideology-critique in the biblical tradition

Brueggemann has shown⁴⁴ that the text of Exodus 1-15 is both a concrete historical memory and a primal transformative memory, cast as a liturgical paradigm through which human experience is regularly and publicly processed. In the liturgical recital and enactment Israel constructs its own life and identity, beginning the process of forming its society anew.

Using the categories from Habermas's systems theory, Brueggemann asserts that the Exodus narrative offers a very particular reading of the public reality in which Israel is enmeshed. It speaks of a public world that is "a network of *technological instruments* which are legitimated if not absolutised by religious and *mythopoetic ideology*".⁴⁵ Israel concedes that it participates in this lifeworld, but does not accept that locus as proper or normative, and so practises a liturgy which intends to subvert that seemingly absolute shaping of social reality. In the face of this enmeshment in a negative reality the Israelites were taught to recite a creed within a liturgy which identified them as members of a community in which one was authoritatively summoned to break the enmeshment, and in which one could rely on God, the agent of dismantling, deconstruction and deligitimation of the unjust oppressor.⁴⁶ Brueggemann suggests that the whole liturgical life of Israel was an

act of "deconstruction".⁴⁷ The imperial arrangement which enslaved Israel and which was legitimated by imperial ideology was not to be accepted as normative, or deserving of respect or obedience. Although the Israelites knew themselves to be enmeshed they also knew that they were destined for freedom: the world in which they lived was under criticism and would not be the world that was meant to be or was sure to come. Because the technological-ideological lifeworld was a contrivance (and not a given), it could be undone and dismantled, in order to arrange the world in an alternative way.

The material of the critique of ideology in the Bible is not extensive, but it is central. It is contained in narrative literature, considered to be dangerous and subversive because it has transformative power to shatter old descriptions of reality and invite one into a differently described reality, thus contributing powerfully to the process of emancipation. Metz, following Marcuse, has further enriched our sense of the emancipatory potential of memory by suggesting that remembering is a way of mediation that can break through (even if momentarily) the fact of an oppressive situation.⁴⁸ Like critical theory, it proves to be personally and socially transformative, capable of changing reality because it is disjunctive and uncomfortable, and above all disclosive or revelatory: "The biblical text, because it is a classic which continues to reveal, intends not only to report on an ancient transformation but also to evoke and generate transformation in each new moment of its hearing."⁴⁹ Thus the Egyptian ideology and programme of oppression become a model for every social setting which is judged by God's people to fall short of the justice and humanity which God expects in society. The narrative in Exod. 1:2-14, 5:7-9, 17-19, is not intended to be scientific critique, but to unmask the ideology which

tries to conceal the oppression in Egypt: "Each new generation, as it participates in this narrative, learns how to make and engages in this social criticism of established power."⁵⁰

Brueggemann suggests that whereas we might wish for a more scientific analysis, the Israelite community did its serious critique in narrative form: "Israel knows that the dominant ideology will be destroyed by the proper telling of the story ... The mode of story is the only way to get at the concreteness of hurt that will lead to action. The story both discloses how Israel was enslaved and mediates the power to undertake transformative, liberating action."⁵¹ What the story does is to generate a context in which critical awareness and faith can develop; in this context, faith is an assertion against the prevailing injustice and oppression, and "a conviction of the freedom and justice to come which requires dismantling of the imperial world".⁵² Critical awareness is crucial, because without it there cannot be social criticism, whose purpose is to create a basis for challenging injustice and dismantling oppression, i.e. bringing about justice in order to liberate and form a new and genuine society.

While social criticism and ideology-critique are important, they are not sufficient to delegitimize an oppressive regime. According to Brueggemann, the power and authority to make a move of delegitimation in the face of imperial definitions of reality come from "the public processing of pain", by which he means "an intentional and communal act of expressing grievance which is unheard of and risky"⁵³ - the subversive, revolutionary move expressed in the phrase "and we cried out". He contends that it is not revolutionary to experience pain, nor does the pain go unnoticed by the regime; but noticing the pain is not the same as processing it

publicly: "As long as persons experience their pain privately and in isolation, no social power is generated. That is why every regime has a law against assembly. When there is a meeting, there is social anger which generates risky, passionate social power."⁵⁴

Brueggemann's understanding of the power of the public processing of pain is an extremely important insight into the way in which oppressive power can be delegitimated, but we cannot consider it fully here because it draws us into the theology of pain and lament.⁵⁵ For our purposes it is sufficient to stress the importance of the cry of pain, in that it proclaims a refusal to bow down before dominating ideology, and begins the formation of a counter-community around an alternative perception of reality. Metz, too, points to the capacity of a dangerous memory of a history of suffering to shatter unquestioning submissiveness to the past and thus to assist the process of liberation.⁵⁶ In Brueggemann's view, the Bible's most dangerous insight is the pivotal power of pain. This pain is the effect of sin; it is caused by distorted relationships, which follow the distortion of God's image through the rejection of dialogical relation and open, other-regarding communication, leading to fractured sociality, oppression and injustice. This insight tells against all ideologies which function by cover-up, whitewash and denial: "It is precisely the public processing of pain that permits and evokes redescription which gives a chance for newness."⁵⁷ The ideology-critical function of the Exodus narrative permits no ideology to cover up the pain and injustice which is the crucial element in the reality of the community.

Ideology-critique in the service of justice and the formation of a just society is present in the prophetic tradition as well. The prophetic tradition in the Bible is

not confined to the prophetic corpus in the Canon but is present wherever God is presented as opposing evil, bringing justice and seeking to redeem and restore; it is a fertile source for understanding the nature of God's justice. According to Muilenberg, the prophets served as covenant mediators in the tradition of Moses and other earlier figures, representing the covenant demands of God to the people and calling them to task when those demands were ignored or broken.⁵⁸ They courageously opposed all forces which might diminish the people's relational commitment to God and to one another. God is proclaimed as just throughout the Bible, but the ethical element in the understanding of justice is advanced pre-eminently by the classical prophets who are the major exponents of the concept. Although the sense of forensic right is present in their use of the terms for justice, they elevate the whole idea to a higher, moral plane, so that in its most developed form (in Deutero-Isaiah) it acquires a universal significance.

In a situation of injustice, corruption, exploitation and oppression, like that which prevailed in Israel in the 8th century B.C., there is an urgent need for a witness and call to God's righteousness (justice), based on the conviction that "social justice is the necessary and inexorable demand of [Yahweh's] moral nature".⁵⁹ This witness and call were provided by Amos primarily, but also by the other classical prophets who followed the same ideal of righteousness. The classical prophets recognised that God willed to make himself known in history, and that God manifested his holiness in justice and righteousness. According to Muilenberg, "Prophetic faith is faith in a singular, transcendent, holy, absolutely righteous God, *a God who wills to live in community and to create his community among [people]*".⁶⁰

Although the standard form of prophetic criticism is juridical, and is cast in the language of judgement and sentence, there is behind the prophetic compulsion to criticise a more basic critical awareness, based on a deep reflection on, and refined appreciation of, the multi-dimensional nature of God's righteousness and justice. For the prophets, righteousness is right relationship in society; it functions as a critical principle to expose and condemn unjust social practice which violates God's intentions, and the distorted faith of the religious establishment which reduces religion to an ideology that serves to legitimate their "crassest vested interests".⁶¹ If we adopt Brueggemann's motif of "history-making" to examine the function of God's justice in working through the historical process to form society, we can see how the Bible presents a very different characterisation of shaping the socio-political realm, i.e. of history-making.

This characterisation, for which there is a warrant in the prophetic tradition, includes an insight which is essential to my argument that society is formed by people entering some kind of public discourse about the legitimacy of norms and principles which determine the satisfaction of the needs and interests of all. The people who are prepared to use the ideal kind of communication which this requires are often those who live at the edge of society, where alternatives are thinkable and possible in terms of an imagination not yet co-opted by those in power. This insight indicates that history-making is done through "the voice of marginality"⁶², and can be seen as "the free give-and-take of parties over new sets of power settlements that are made possible through honest, risky communication. That, of course, is not a conventional understanding of history ... My urging is that, from its basic premises on, that history is the arena of the Holy One allied with the

marginal people to create newness".⁶³ Marginal voices are those who, like the prophet Jeremiah, engage in ideology-critique, who keep audible the cry of pain, who are not afraid to be labelled idealistic and visionary, who present to the world the possibility of forming a genuine society based on and achieved through the justice of God. The prophets, and prophetic figures in any generation, have the task of penetrating and disclosing official history and ideology which tries to cover up human hurt and suffering in the wake of injustice, which denies the existence of social justice⁶⁴ and even denies the existence of society⁶⁵. These voices do not succumb to the dominant definition of reality, to conventional epistemology, to accepted standards of duplicity, manipulation, and other forms of systematically distorted communication which prevent the formation of right relationship and true sociality.

These voices of marginality are the voices of the prophets, the real history-makers.⁶⁶ It is they who employ the critique of ideology to dismantle unjust and illegitimate structures, and find ways to form society anew, in accordance with the will and justice of God. Theirs is an unsettling kind of history-making, even unacceptable, because it destabilises (illegitimate) power. In a sense, their awkward questions provoke the equivalent of a legitimation crisis (see pp. 49ff. above). It is not fanciful to find in the consciousness of the prophets a sophisticated sense of social reality, or the ability to ask sophisticated socio-theoretical questions about the legitimacy of power; for example, Jeremiah 22:13-17 is a very radical text which asks what is the definition of kingship, and more generally what are the true marks of legitimate and just power.⁶⁷

The ideology-critical function of justice is to delegitimize those settled arrangements of power, for there is a tendency for such arrangements to become permanent and absolute, beyond all criticism, with virtually unlimited potential for injustice of every kind. The function of justice here is not simply a matter of asking that social resources be fairly distributed, because such requests do not penetrate the ideology of those who have the power to make such decisions; it is to penetrate and unmask illusion and the coercive and arbitrary use of power. The prophets understood that this meant engaging in a process of subverting institutional forms of power that have become absolutised in favour of some at the expense of others, but at the same time proclaiming a vision of how things ought to be in a society in accordance with God's intention. They understood the abiding truth of the moral social order which God intended, that harmony depends upon justice as right relationship in society, that right conduct matters decisively in determining true sociality.

In the prophetic consciousness, righteousness or justice refers to that host of cognate qualities like equity, humaneness, lovingkindness, mutuality, unconditional regard for the other, etc., which need to be *practised* in society. Isaiah 9:7 proclaims that the public order is ordained to justice and righteousness. It would be fair to say that the classical prophets of social justice shared Jeremiah's confidence in the moral coherence of the moral order, in spite of empirical evidence that the world is ordered in other ways, as though public life could be administered by might, technique, intimidation, self-interest, brutality and other manifestations of the abuse of power.

In recognition of the righteous character of God and the desired expression of that righteousness in society, the prophets engaged in social criticism, raising inescapable questions about the shapes of power, and employing ideology-critique to speak truth to power. They recognised that those who abuse power, who are "skilled in doing evil" and do not know how to do good (Jer. 4:22), will be crushed by the moral power and the rule of God in the historical process. They also recognised that those who abuse power set up devious structures to extenuate their grip on power, using religion to legitimate their rule, or, as Brueggemann puts it, "to melt the reality of God down into the system of governance, so that the present order comes to be an embodiment of God's will, i.e. the created order".⁶⁸

The same tendency is observable in modern times, where religion is reduced to "privatism, personalism and immanentism, so that God is remarkably congenial to the way things are".⁶⁹ In such situations, prophetic figures - "history-makers" - must use dangerous speech and subversive images to shake the theological indifference of those who believe that they can co-opt and domesticate God. The challenging of dominant ideology, and of the power which it seeks to legitimate, although grounded in discerning social criticism, extends beyond the desire to analyse what is going on in society, and beyond the critique of social malpractices and injustice. It mounts an alternative, articulates a hopeful vision of new life and seeks to implement it in the strength of God. Even in the apparently hopeless and bleak prophecy of Amos, or in the bewildered cries of those who raise the issue of theodicy, there is the presupposition that something better exists, or ought to exist.

In the case of Amos's condemnation of the injustice of the rulers of his time, behind the condemnation is an apprehension of a different set of norms, principles

and rules. Jeremiah's famous and subversive question⁷⁰ suggests that the system is not working in an acceptable way. The act of social criticism here implies that there is an alternative which is acceptable. Heller states a fundamental truth about social criticism in her remark that "one cannot criticise existing norms and rules without proposing alternative ones",⁷¹ or at least an alternative procedure for establishing a different social arrangement. Heller's point is based on the recognition that by declaring certain social arrangements (and their underlying norms) unjust, "we already form in our mind (in communication with certain others) the *idea* of different norms and rules which have the *telos*, or at least the potential, to constitute social clusters different from existing ones".⁷² In the same way, the function of social analysis is to discover what is going on around us in order to mount an alternative. This was the role of the prophets in their social criticism and demand for social justice.

Behind the prophets' condemnation of injustice, behind their warnings of the breakdown in the social order if God's righteousness and justice were not reflected in people's relationships and conduct (Hos. 4:1b-2, Isa. 5:7b), behind their announcement of the doom which would follow on God's necessary judgement of Israel's sin (Amos 5:18-20, Isa. 24: 5b-6a, etc.), is a deeper awareness of the Divine compassion (Isa. 54:7-8, 10) and of God's redemptive purposes for the world (Isa. 2:1-4, Mic. 4:1-4), to restore it through justice to what God had intended in creation. We can derive some idea of what God intends for all human society from eschatological pictures of what the restored Kingdom of God would be like (Isa. 32:16-18, 11:6-9, etc.). The prophets' radical notion of God's universal concern and love is closely connected with the notion of God as creator of a social order characterised

by his divine attributes of love, mercy, justice and peace, i.e, by the marks of his kingdom. The divine attributes of mercy and compassion, which are cognates of justice and integral components of God's nature, give us further insights into the nature of God's justice. The two most prominent characteristics of God's justice are that it is:

- a) relational, i.e social; it is concerned for the establishment of community and the formation of a societal order that values the worth of every person before God and seeks their right relationship (at every level - with God, with others, and in social systems or structures);
- b) concerned for the welfare of the marginal and vulnerable in society. God's justice, in the prophets' view, is not equal justice for all, but a special justice for the poor and weak.

As special concern for the vulnerable, the justice of God requires attention to the cases of the poor, the needy, the widow, the orphan, and the weak who in the face of a range of injustices were in need of advocates. The prophets became these advocates. However, concern for the vulnerable is not confined to the prophets, but is characteristic of the entire Judeo-Christian tradition. The Israelite understanding of God's justice was enshrined in its legal codes and legislation, whose aim was the protection of those at greatest disadvantage. Paul Hanson notes that Israel's laws articulate "a community ideal dedicated to justice embracing all members and emphasising compassion to those whose economic [and] social status make them vulnerable to abuse".⁷³ The social laws of the Pentateuch also provide evidence of codes which stress the need for justice, especially for the poor and

needy.⁷⁴ The Psalms indicate a strong consciousness of the duty of the Israelite king to protect the weak, the poor, widows and orphans.⁷⁵

The same understanding of God's justice is found in the teaching of Jesus in the Gospels, especially Matt. 25:31ff., where Jesus identifies himself with the poor and needy. The lesson in this famous parable of the Last Judgement is that those who concern themselves with the weak and suffering members of humanity are touched, even saved, by the justice of God, because they have served His Son who incarnates justice. The adoption of advocacy for the poor, weak and needy "suggested that these most vulnerable and their welfare are the most adequate measures of justice and righteousness in the community. It is the task of the covenant community to secure value and place for full life to those most unable to secure it for themselves".⁷⁶ The implication of the prophetic example is that the same task faces Christians, who must seek a social charter which will secure justice in similar terms.

The message of the prophets was not simply one of condemnation and the impending wrath of God; the prophetic message is of a piece with the overall biblical vision of hope,⁷⁷ and with the biblical presentation of God not merely as an abiding presence but as the speaker of a *kerygma*, a new Word who transforms reality by breaking open all that is settled, routine and conventional.⁷⁸ Brueggemann's analysis of the characteristic rhetorical pattern of prophetic utterance shows that the prophets proclaim a day when "the dominant order of things as we have known it will be terminated",⁷⁹ to be replaced by a wholly new order. This dreamed-of and promised order will be characterised by the vanquishing of fear, insecurity, inequality, oppression, injustice, and by all the qualities summed up in

the rich biblical concept of *shalom* (see, for example, Mic. 4:1-5, Isa. 2:1-5). Ezekiel's vision (Ezek. 34:25-31) indicates that it will be a restoration of the order which God intended in creation, in which "all relationships will be as they were envisioned in the uncontaminated anticipation of the creation narratives of Genesis 1".⁸⁰ The prophetic hope for this new order is not private, spiritual, romantic, or other-worldly: "It is always social, historical, political, economic. The dream of God and the hope of Israel are for the establishment of a new social order which will embody peace, justice, freedom, equity, and well-being."⁸¹

What will form this order, this new society, is justice. Although it cannot be established by human plans, human knowledge and human power alone, God brings about this order incarnationally through human agency, empowered by the Holy Spirit, who may be considered as the energy and life-force, organising and sustaining human society by justice in communicative terms. If the Holy Spirit is conceived of as organising life, and the Word as ordering *Logos* giving form to life, then where the Spirit and Word co-inhere they create undistorted and open structures of relatedness which are necessary for the formation of a just society. McFadyen's Christian theory of personhood has shown that life cannot be lived in isolation, as an internal and private process; an unrelated and separated being ultimately disintegrates and dies.⁸² The Holy Spirit, who breathes life into the world and with the Word creates relationships and organises social existence, is a Spirit of communication:

In the social world ... the Spirit's activity is normative for communication ... [and informs a social ethic]. In social terms the power of the Spirit is operative in breaking open hard structures of distorted communication in order to establish dialogue and community ...⁸³

God's choice to mediate his communicative, society-forming justice through human agency is, in a sense, a necessity, for it is dependent upon the related structure of human being and of his whole creation. His justice does not operate coercively by divine fiat, which would violate human freedom and responsibility. Although he both commands and demands justice, he respects the relational structure of our being to establish the just social order which he desires and intends through communication. Such an understanding of God's justice is consistent with his non-coercive and communicative nature, and helps us to see that the activity of the Holy Spirit in the social world is primarily to prompt us to an orientation toward others.

This understanding of justice is embodied in the teaching and communicative praxis of Jesus who, as the Incarnate Righteousness of God, is the ultimate mediation of God's justice, and who is the Justice of God (I Cor. 1:30, 2 Cor. 5:21). This conception of Jesus needs to be elaborated before we can continue our search for a modern theory of justice which can be interpreted as an explication, even a mediation, of God's justice as it appears in Christ.

2.5 Jesus as the Justice of God

To understand the call, the ministry, the mission and the person of Jesus as the justice of God requires an exercise of 're-imagining' Jesus in terms of justice.⁸⁴ The reason that this exercise is necessary is the continuing emphasis by most leaders and teachers in the Church on the other-worldly nature of Jesus' mission, and of Christianity in general. Contrary to the dominant and prevailing view that the Christian faith is concerned with the relationship of the individual soul to God (often summed up in the ignorant slogan "no politics in religion and no religion in

politics"), it needs to be asserted vigorously that the Christian faith is directly concerned with social and political matters, and should issue in conduct oriented toward achieving a just society which conforms to the kind of society which God desires and designs by his justice. The prevalence of the doctrine that Christian faith orients human beings toward achieving a personal and individual relationship with God is one of the principal causes for not recognising how much Jesus was concerned with social justice. It is also one of the main causes for the split between faith and the daily life of Christians, and is a serious error according to Vatican II.⁸⁵

To assert that Jesus was intensely concerned with justice may be surprising in view of the fact that there is little direct teaching about justice in the New Testament; certainly no comprehensive or systematic theory of justice is given by Jesus or any of the New Testament writers. Nevertheless, it is apparent from the teaching of Jesus, particularly in the parables of the Kingdom of God which are dominated by the theme of justice,⁸⁶ that he understood the justice of God in the full relational sense of the Old Testament, and for him God was the same God of justice as presented by the prophets of the Old Testament. Christians see him as embodying this justice, so Haughey's assessment of the power released by Jesus' life, death and resurrection supplies an important insight into the way in which justice is to be established:

The truth of his person was the only political "form" he used. This form released its power primarily through his death and resurrection. The price then for the establishment of justice was his own life. The primary medium of Christian justice after Jesus, one could argue, is still the person who, like Jesus, stands in the truth the Spirit gives one to see. This truth unmasks untruth even when that untruth is systematised and ensconced in political, social and religious power configurations that appear impregnable.⁸⁷

This insight points to the close connection between truth and justice, and to the way in which Jesus engaged in communicative action towards others, both in his teaching and in his argumentation with his opponents. It is my contention that it is possible to derive from the praxis of Jesus in the society of his time a model of interaction which would assist the search for a method or procedure to establish social justice. This contention depends on a new and different understanding of Jesus' life and justice-working actions in terms of a theological theory of communicative action. Peukert, Siebert and Arens have shown how it is possible to construct such a theology from Habermas's theory of communicative action.⁸⁸

2.6 Justice as communicative action in the teaching of Jesus

Edmund Arens, in particular, has interpreted the parables of Jesus as instances of communicative action, claiming that they incorporate ideology-critique, narrative argumentation, and metaphorical yet performative language, designed to bring about an altered perception of reality, a revised orientation of action, and agreement or consensus through practical discourse about the norms which create just society. His pragmatic parable theory is directed toward a paradigmatic understanding of Jesus' parables as speech acts; Arens asserts that this understanding has to be paradigmatic for theology, because in his view Christian speech about God can only take place if Jesus' narrative theology is comprehended in terms of action paradigms.⁸⁹

For the purposes of this section, the briefest explanation of communicative action⁹⁰ is that it is action which is oriented toward achieving mutual understanding, agreement and consensus. Arens, starting from the "theologically qualified actions"⁹¹ of Jesus, and from the fundamental insights of the modern

philosophical theory of communication and action, understands theology as a theory of action with practical intent, and not as a theory of religious knowledge with its traditional concentration on doctrine.⁹² He asserts that, in his view, "Christian theology ... has its origin in Jesus' communicative action".⁹³ He applies the theory of communicative action to the discourses of Jesus and his opponents, especially to the parables about the Kingdom of God; he sees Jesus both as a story-teller and as a partner in discourse, passionately engaged in the struggle for recognition of the Kingdom of God, which envisages the kind of society God intends.⁹⁴

A theological appropriation of communication theory, especially universal-pragmatic reflection on the double structure of everyday speech, produces the insight that almost every act of speech can be seen as communicative action between subjects about a certain subject matter. The communicative function of Jesus' parables can be clarified by recourse to these universal-pragmatic reflections. In standard speech-act theory, an utterance or speech-act consists of a) a sentence of propositional content and b) a performative sentence which establishes the illocutionary force of the utterance, i.e. the *doing* of something in saying something. Understanding between speaker and listener comes about only when they come to a consensus at the level of intersubjectivity about the interpersonal relationship established by the performative sentence, and at the level of experience and perception about the propositional content. They must connect these two dialectically, recognising that what is at stake is not only the truth of the propositional content, but the attempt, even struggle, to establish mutual regard and respect through language. Arens discerns this double structure and linguistically-

mediated struggle to establish right relationship in the New Testament texts, especially in Jesus' parables, which can be interpreted as parabolic speech acts⁹⁵ that aim at achieving mutual understanding and consensus about action orientation among his hearers.

The original illocutionary force of Jesus' parabolic speech acts is objectified because it is preserved (as far as it is possible to discern this) in the text. A theological analysis using universal pragmatics examines Jesus' parables, relating the content and relational aspects to each other by trying to reconstruct the original illocutive act, and asks what Jesus wanted to reach an understanding about with his listeners. This analysis discovers that Jesus' interactive behaviour is the self-explication of his speech acts: in his speech acts he offers to his listeners a genuinely intersubjective, non-coercive relationship, based on unconditional mutual regard; his non-verbal, interactive behaviour is a reflection and enactment of the right relationship he intends in his speech acts. The form and content of Jesus' parables are not separate, but dialectically one, in the sense that they require each other: the propositional content of his parables corresponds to his illocutive acts and thus appears in his interactive behaviour. Jesus' parabolic action is communicative action, because in the telling of his stories the illocutionary force of his statements is such as to produce a relationship, even if it is initially offered unilaterally and proleptically.

Although the reconstruction of the illocutionary force or illocutive act of Jesus' communication is contentious, an analysis of Jesus' parables as speech acts shows that he tries to come to an understanding with his opponents, mostly the Pharisees. The major conflict between Jesus and the Pharisees is, in a sense, a social

justice dispute: it is about his solidarity with sinners and particularly with the poor "who at the time were often enough identical".⁹⁶ The dispute between Jesus and the Pharisees concerns his and their different understandings of reality and the action-orientation based on them; Arens maintains that the dispute is one "over the question of how the reality of God and his reign was to be understood".⁹⁷ The way that Jesus tries to deal with this situation and settle the dispute is by attempting to come to an understanding with his opponents: he does so by telling plausible stories and parables, in which the propositional content has theological references comprehensible to his opponents,⁹⁸ for example about the Kingdom of God ("The Kingdom of God is like ..." - see Mk. 4:26ff., 30f.f; 10:14; Matt. 13:24ff.; Lk. 13:18ff.; 17:20f.; 18:16f.). The parables contain an offer of relationship, or an invitation to a discourse, in which Jesus' opponents are challenged to ratify the intersubjectivity he offers, by their own communicative action with him and with others. Arens says that we can define Jesus' illocutive acts as "communicating", "offering", "inviting".⁹⁹ Jesus offers his understanding of reality to his opponents, and invites them to enter a new form of action. Arens here speaks of the perlocutive act or effect, which is not entirely in the power of the speaker but is proleptically envisioned through the parable as "convincing" or, in theological terms, "converting".¹⁰⁰

The connection between the parable's propositional content and the illocutive act is vital for understanding Jesus' communicative action in bringing about justice: the matter [*Sache*] or propositional content which is mediated in the illustration of the parable, e.g., the Kingdom of God, is not separate from the Kingdom of God which Jesus inaugurates and *enacts* through the telling of the parable, with its illocutionary force. The parable simultaneously tells of the king-

dom (content) and in the telling brings it about (form); thus form and content are one. The semantic content of Jesus' parables requires the illocutionary form, from which it receives its pragmatic meaning; conversely, the form is made non-ambiguous through its content. The intersubjectivity which Jesus desires, including the dominion of God as the "co-thematised subject" [*mitthematisierte Sache der Gleichnisse Jesu*] of Jesus' parables, is realised through the interaction structure mediated through the close relation of the parable's propositional content and illocutive act.¹⁰¹ Jesus indirectly "linguifies" the reality of God and his dominion [*Gottesherrschaft*] which must be understood, according to Arens, from a linguistic perspective. The consequence of understanding parabolic speech about the Kingdom of God in pragmatic-linguistic terms is that it is mediated in the very act of communication: nothing can be said about the kingdom without it being enacted at the same time, and without people being invited into it and to participate in it.¹⁰²

If the parables of God's kingdom are formulated as "quasi-discursive speech" in terms of Habermas's universal-pragmatic categories, a problem arises with regard to two validity claims¹⁰³ of Jesus' communicative action: the truth of his verbal expressions, and the rightness of his actions (or of the norms underlying his praxis). Jesus' action, in Habermas's terminology, is characterised by an absence of background consensus between him and his Pharisaic opponents, because they doubt the truth of his assertions about God and the rightness of his actions. There is deep dissent about Jesus' praxis with regard to tax-collectors and other sinners; and about his violation of ritual and cultic commandments which constitute and stabilise the Pharisaic construction of reality.¹⁰⁴

The controversy about the legitimacy of Jesus' praxis is really about the truth of what he says about God, a controversy about the reality of God.¹⁰⁵ Arens notes that the disputed truth-claim of Jesus' speech and the rightness-claim of his praxis do not constitute two separate and independent validity claims, but (according to Habermas' thought on theoretical and practical discourse¹⁰⁶) converge at the point of the radicalisation of discursive engagement which fuses knowledge and action, theory and praxis: the truth of Jesus' speech cannot be asserted without rightful actions directly corresponding to that speech. This recalls the teaching of Jesus according to St. John, that the truth liberates only when it is done: Jn. 3:21, 8:32. Arens follows the Habermasian understanding of speech acts in order to show that in the parables of Jesus, the truth-claim of his speech acts is proved by their self-obligating character and by the actions which correspond to them.¹⁰⁷

The parables of Jesus do not provide knowledge in the form of a systematic set of propositions about God, but an indirect theology in which he tells stories that show the listeners that their behaviour toward God and others should be just and right, and in which they can see Jesus acting in accordance with the truth of these stories. The norm underlying this right behaviour recommended in the parable must, nevertheless, be justified, for a proposed course of action, even in a parable, cannot avoid the discursive grounding of theoretical religious truth-claims or practical rightness-claims. This discursive grounding occurs in discourse, which serves to achieve a consensus. As I show in chapter 4, the arguments in practical discourse take the form of suggestions for the justification of a norm which is recommended for acceptance and is regarded as universalisable. The norm finds a rationally motivated recognition when a universal interest is perceived in it, and

when it receives mutually confirmed, "illusion-free" validation.¹⁰⁸ Arens, following Habermas's advocatory model of "simulated discourse", contends strongly that Jesus' parables can be understood as narrative or quasi-discursive arguments which reflect Jesus' struggle for unconditional recognition by his opponents of the reign or Kingdom of God; the Kingdom of God includes the liberation of the people, leading to participation in establishing a just polity and a society in accordance with God's will. Through these narrative arguments Jesus tries to achieve agreement between himself and his opponents.

Arens claims that Jesus' parables can be understood as quasi-discursive speech since they serve the justification of the rightness of his action.¹⁰⁹ Jesus' illustrations can be compared, in certain features, with Habermas's mode of practical discourse, and their communicative function can be explicated within Habermas's paradigm. With his parables, Jesus pursues not only the apologetic aim of justifying his praxis, but also the aim of consensually settling the conflict between himself and the Pharisees. He tries to convince them of the rightness of his actions, or of the norms underlying them, by struggling in quasi-discursive speech which anticipates understanding. He does this through parables which are "*metaphorisch-ironisch-verfremdend*", showing his opponents the folly [*Unsinnigkeit*] of their behaviour, bound to particularistic interests and norms.¹¹⁰ Jesus does this, according to Habermasian categories of communicative action, in view of the universality, equality and reciprocity of human communication as condition and normative foundation of being human, in view of what Jesus calls the Kingdom of God which all should enter, and in view of what is systematically theologically called the universality of God's will to redeem [*der Universalität des Heilswillens Gottes*].¹¹¹

Arens is most insistent that a pragmatic theory of parables, which explicates the theologically relevant structure of action by action-theoretical means, does not reduce theology to the theory of communicative action.¹¹² Although he parallels the language of Habermas's theory of communicative action, of Jesus, and of systematic theology, there is in this exercise no identification of these languages. Arens's pragmatic theory of Jesus' parables is intended to clarify certain theological problems in the "fundamental-pragmatically grounded action-theoretical framework" with the help of categories worked out by pragmatics. The purpose of this approach, in contradistinction to linguistic-literary-scientific approaches to Jesus as a story-teller, is to focus on the public, i.e. political intention and effect of Jesus' communicative action. This approach permits the development of a political hermeneutics with regard to talk about Jesus' communicative praxis and his understanding of theology in terms of action.

According to Arens, the quasi-discursive speech of Jesus' parables is at the same time ideology-critical, argumentative and analogical. Jesus' parables expose the principle of the Pharisees' interpretation of reality as ideology for the purpose of legitimating their collective identity, which is based on the exclusion of fringe groups of marginalised and alien people. The Pharisees identify themselves over against the impure as the *Perushim*, the pure. Jesus' parables tear down "the fence of the Law" which sanctions the Pharisaic construction of reality, by "*fiktional-metaphorisch vermittelter narrativer Argumentation*".¹¹³ In both his speech acts and in his non-verbal action Jesus exposes the Pharisees' construction of reality as a lifeworld and social order built on the excommunication of people stigmatised as impure. He also exposes their ideological claim that God's will legitimates this

social order. On the basis of the reality of God and his dominion, Jesus presents God as prevenient, absolute goodness and love who excommunicates nobody. At the same time as Jesus questions the Pharisees' interpretation of reality, built on the antagonism between in-group and out-group, he questions their ideological image of God, which corresponds to their particularistic, ideological construction of social reality. Against their interpretation of reality Jesus sets up an understanding of the self and the world which is grounded in the principle of universal communication, which principle is itself grounded in God (as absolute love, freedom and spirit). According to Arens, this new understanding of self and world seeks to realise the principle of universal communication in practical engagement, as the communicative movement toward the other and in the other toward God. In this way Arens applies Habermas's atheistic theory of communicative action to Jesus' discourses and his struggle for unconditional mutual recognition, between humans and God, and between humans themselves.¹¹⁴ In this sense, Habermas's work illuminates the task of forming society, and may be interpreted as a medium of the justice of God.

The ideology-critical achievement of Jesus' parables consists in the fact that through them Jesus removes the 'legitimate' theological basis of the Pharisees' interpretation of reality and of their orientation of action. In Habermasian terms, he does this in his examples by not simply reclaiming their ultimate unity-producing principle - God - as the founding principle of another worldview, but by demonstrating the reality of God in communicative praxis as the Reality which breaks through all domination-determined [*herrschaftbestimmten*] relations and social order constructs.¹¹⁵ The social order which God desires and intends, and in which

he provides an example in the person of Jesus who inaugurates the kingdom, is not one which is based on domination, but on liberation, on unconditional mutual recognition and agreement about society-forming norms.

Arens argues that Jesus' parables are designed to enable his Pharisaic opponents to see, in the light of the imaginary circumstances of the story, the repressiveness of their previous interpretation of reality, their action-orientation, and the structures of power which they have created.¹¹⁶ Arens here uses Ricoeur's notion of the "scenic function of the parables" [*szenischen Funktion des Gleichnisses*] to show how the Pharisees might imaginatively entertain a different (and messianic) perspective of the "right life", paradigmatically presented by Jesus. Jesus intends this imaginative anticipation of successful communicative action to be a practically anticipated offer to his opponents, in order to change their previous structure of action (which has been distorted by force); this change should happen as a result of the liberating experience of domination-free communication, which is grounded in God's dominion and made possible for all through it.¹¹⁷ Jesus' ideology-critique is effective and proven in its truthfulness through his own domination-free communication, which is grounded in his experience of God's gentle dominion, and which is the ground for asserting that domination-free communication is possible in principle among all people.¹¹⁸

According to Arens, the consistency of Jesus' communicative action makes it clear how, i.e., in what direction, the ideologically-sanctioned power relations in his society are to be changed.¹¹⁹ Jesus' parables present the ideology-critical destruction of the Pharisaic interpretation of reality in metaphorical language; while unmasking the falseness of the Pharisaic worldview, they are oriented toward

a real consensus between him and his listeners, and become an offer and an invitation. Arens maintains that the illocutive and intentional perlocutive potential of Jesus' stories is a consequence of their specific combination of ideology-critique, argumentation and analogy. What makes Arens's approach unique and exciting is its synthesis of these two approaches with Habermas's theory of universal pragmatics and communicative action. His pragmatic parable theory contains both elements: 1) it recognises narrative arguments in Jesus' parabolic speech-acts, which are oriented toward achieving understanding and consensus with his opponents; 2) it also recognises that Jesus uses analogical or metaphorical speech forms in his narrative arguments. He does this in order to help his addressees perceive scenically (by means of interconnecting, estranging and revelatory imagination) their interpretation of reality and their action-orientation in the face of a praxis grounded in God's dominion.¹²⁰ Jesus' arguments are understanding-oriented elements of communication between himself and the Pharisees about the kingdom; they are a narrative struggle for consensus, which they anticipate in their quasi-discursive communication structure.

The combination of ideology-critique, argumentation and analogy in discourse makes the parables of Jesus into subversive stories; it helps to make the critique acceptable to the addressees, and to make it possible to continue the dialogue even if the intended agreement is not achieved.¹²¹ The parables as subversive stories invite his opponents and challenge them to modify their understanding of reality and their action-orientation. However, the result of Jesus' consensus-seeking discourses was failure and his execution, in which the priestly oligarchy colluded with the Roman occupying power. The question arises as to

whether Jesus' death refuted his assertion about the reality of God and his action; Arens asserts that Jesus' disciples, shortly after the Crucifixion, announced him as being alive and proclaimed that God raised him:

In Christian belief the Resurrection proves to be the definitive divine ratification of Jesus' action, his theology, and his person. It proves to be God's eschatological action in relation to his son and through it Jesus Christ proves to be the Living Parable of God. Confessing this invites and challenges us to act in following Christ. This is the attempt to take over the structure of his communicative action out of the experience of his and our Father, who seeks the lost and creates life out of death.¹²²

Our faith in and confession of the Resurrection provide the ground for imitating or taking over the subversive and revolutionary structure of Jesus' communicative action. The imitation of Jesus' communicative action can be understood as a faithful response both to the divine imperative to do justice, and a grateful response to the ultimate victory of the Resurrection, through and beyond which Jesus' attempt to seek justice in society continues after his death. The attempt to silence Jesus by executing him failed, just as all attempts to stifle the truth ultimately fail.

The pragmatic parable theory of Edmund Arens has implications for the present social and political situation in so far as the parables of Jesus contain potential for a new and different society, built on a deconstruction of oppressive ideology and on structures of action which will realise the non-coercive and domination-free communicative praxis demonstrated by Jesus.

Conclusion

Reflection on the biblical basis of the justice of God reveals that it operates as a principle in creation to produce right relationships and true sociality. When

human sin fractures this sociality and introduces distorted structures of human interaction, particularly domination, God inspires prophetic figures through his Holy Spirit to call people back to the demands of his justice in the interests of forming society anew. Not only do they call people back to the task of bringing justice to form a new and better society, but they employ justice in its ideology-critical mode - a mode which is finally transposed into communicative form by Jesus. The adoption by Jesus of a certain form of discourse to achieve agreement about the norms which guide people's actions in society, and which regulate their interaction, points to the need for an examination of theories of justice which use a discursive or procedural basis to achieve justice under modern conditions, thereby forming a society in accordance with God's will.

Footnotes

- 1 The Bible is not a blue-print for social order, but needs to be perceived as providing hints and clues for the contingencies of social and political life in modern times. As Christians struggle to follow the divine imperative to do justice, they must recognise that God's will has to be discovered and accomplished contextually and anew in every age, and that whatever arrangement they achieve or support will be provisional, and not necessarily capable of imposition as God's will for subsequent generations living under different conditions.
- 2 *Laborem Exercens*: Papal Encyclical, printed in *Proclaiming Justice and Peace - One Hundred Years of Catholic Social Teaching*, edited by M. Walsh and B. Davies, Flame/CAFOD/Collins, 1991, LE 3 (i.e., para. 3) (No page numbers printed).
- 3 For a fuller treatment of this approach, see A. C. Thiselton: "The Hermeneutics of Socio-Critical Theory: Its Relation to Socio-Pragmatic Hermeneutics and to Liberation Theologies" - Chapter XI of *New Horizons in Hermeneutics*, HarperCollins, 1992, pp. 379-409.
- 4 L. Epsztein: *Social Justice in the Ancient Near East and the People of the Bible*, SCM, 1986, p. xi.
- 5 Namely, equal claims to mutual freedom and fidelity to contracts in the case of commutative justice, and equal rights to mutual participation in primary social goods in the case of distributive justice.
- 6 God also *reverses* the existing order if it diverges from his will of justice: see, e.g., 1 Sam 2: 1-10, and Luke 1:46-55. [D. B. Forrester: *Theology and Politics*, Oxford: Blackwell, 1988, p. 10.]
- 7 cf. J. Moltmann's point that traditional approaches limited God's creative work to the original creation. God's creation is not merely *creatio continua* - a continuous

- sustaining of the original creation, but a *creatio nova* and *creatio anticipativa*, because his historical activity anticipates the salvation in which creation will be consummated. [*God in Creation*, SCM, 1985, pp. 207-209.]
- 8 C. Westermann: *Blessing in the Bible and the Life of the Church*, Philadelphia: Fortress Press, 1978; cf. W. Brueggemann, *Genesis*, Atlanta: John Knox Press, 1982, pp. 36-38.
 - 9 B. C. Birch: *Let Justice Roll Down*, Louisville, Kentucky: Westminster/John Knox Press, 1991, p. 80.
 - 10 *ibid.*, p. 324; cf. J. L. Crenshaw: *Old Testament Wisdom: An Introduction*, SCM, 1982, pp. 19-20; G. von Rad: *Wisdom in Israel*, London: SCM Press, 1972 pp. 74-96; W. Brueggemann: *In Man We Trust: The Neglected Side of Biblical Faith*, Richmond: John Knox Press, 1972, pp. 22-23.
 - 11 Brueggemann: *In Man We Trust*, p. 23.
 - 12 Zimmerli asserts that "wisdom thinks resolutely within the framework of a theology of creation": "The Place and Limit of the Wisdom in the Framework of Old Testament Theology" *SJT* 17/2 (1964), 148, 158.
 - 13 Birch, *op. cit.*, p. 330.
 - 14 D. Bergant: *What Are They Saying About Wisdom Literature?* New York: Paulist Press, 1984, p. 13.
 - 15 Birch, *op. cit.*, p. 327.
 - 16 R. E. Murphy, O. Carm.: "Wisdom and Creation", *JBL* 104/1 (1985), 3; J. L. Crenshaw: *Old Testament Wisdom*, *op. cit.*, pp. 19-25.
 - 17 Birch, *op. cit.*, p. 327.
 - 18 D. M. Crossan: "Justice of God", *New Catholic Encyclopaedia*, Washington D.C.: McGraw-Hill, 1967, p. 73; cf. N. Wolterstorff: "Justice as a Condition of Authentic Liturgy", *Theology Today* 48 (1991), 6-21 (here p. 8).
 - 19 J. N. Schofield: *Introducing Old Testament Theology*; SCM, 1964: p. 93.
 - 20 N. H. Snaith: *The Distinctive Ideas of the Old Testament*, Epworth Press, 1944, p. 71.
 - 21 e.g. J. Skinner in "Righteousness in OT", *Dictionary of the Bible*, edited by J. Hastings, volume IV, Edinburgh: T. & T. Clark, 1902, pp. 272-281; and *dikaïosune* in G. Kittel, Ed.: *Theological Dictionary of the New Testament*, Volume 2, translated by G. W. Bromiley, Grand Rapids, Michigan: William B. Eerdmans, 1964, p. 174.
 - 22 C. J. H. Wright: *Living as the People of God*, Leicester: Intervarsity Press, 1983; p. 133.
 - 23 *ibid.*
 - 24 J. A. Baird: *The Justice of God in the Teaching of Jesus*, SCM, 1963, p. 44.
 - 25 A. B. Davidson: *The Theology of The Old Testament*, Edinburgh, 1904, p. 129.
 - 26 E. Jacob: *Theology of the Old Testament*: Hodder and Stoughton, 1958, p. 95.
 - 27 W. Zimmerli: *Old Testament Theology in Outline*, Edinburgh: T. & T. Clark, 1978: p. 143; cf. J. A. Baird, *op. cit.*, p. 44.
 - 28 S. C. Mott: *Biblical Ethics and Social Change*, Oxford: Oxford University Press, 1982, p. 59. For fuller treatment of the terms *sedeq* and *sedeqah*, and their relational and normative significance, see G. von Rad: *Old Testament Theology*, Vol. I, Edinburgh: Oliver & Boyd 1975; p. 370; B. C. Birch and L. L. Rasmussen: *The Predicament of the Prosperous*, Philadelphia: Westminster Press, 1978, pp. 118-125; C. Wester-

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- 44 W. Brueggemann: *Hope Within History*, Atlanta: John Knox Press, 1987, pp. 10ff.
- 45 *ibid.*, p. 11.
- 46 Brueggemann notes that the "dismantling by Yahweh must be regularly and frequently replicated in liturgy, so that each new generation does not for a moment submit to the contrivance. As the liturgy legitimates a posture of refusal, so the posture results in various concrete acts of refusal, acts of freedom, which are derivative from the alternative paradigm offered in the liturgy on which the text is based". [*ibid.*, p. 13]
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- 64 F. A. Hayek: *The Mirage of Social Justice: Volume II of Law, Legislation and Liberty*, Routledge and Kegan Paul, 1976. For similar views about social justice see the various writings of authors on the New Right, e.g. K. Joseph and J. Sumption: *Equality*, John Murray, 1977; B. Griffiths: *Monetarism and Morality: A Reply to the Bishops*, Centre for Policy Studies, 1985. For a discussion of such views, see H. B. Acton: *The Morals of Markets: An Ethical Exploration*, Longman, 1971.
- 65 Margaret Thatcher, in an infamous remark while Prime Minister of the United Kingdom.
- 66 It is simplistic to suggest, as does Brueggemann (citing Karl Popper), that history is written only from underneath; [*ibid.*, p. 57-58] however, there is much truth in the recognition that it is often those who are underneath - the poor, the oppressed, the vulnerable, the weak, with whom God is allied (Jer. 2:34, 5:28, 22:16), who perceive the truth of historical reality and the direction of God's transformative justice. cf. part IV of G. Gutierrez's work *The Power of the Poor in History*, SCM, 1983, pp. 169-221.
- 67 For commentary on this passage see J. Miranda: *Marx and the Bible*, SCM, 1977, pp. 44-53; cf. the collection of articles on this and related issues in W. Schottroff and W. Stegemann, Eds.: *God of the Lowly*, Maryknoll, New York: Orbis, 1984.
- 68 Brueggemann: *Hope Within History*, *op. cit.*, p. 63.
- 69 *ibid.*
- 70 Jeremiah 12:1: "Righteous art thou, O Lord, when I complain to thee; yet I would plead my case before thee. Why does the way of the wicked prosper? Why do all who are treacherous thrive?" [RSV].
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- 82 McFadyen, *op. cit.*, pp. 63-65.
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Introduction

In this and the next chapter I propose to examine two leading modern theories of justice in order to discover whether they might provide the means, i.e. the methods or procedures, for forming a society through justice as discursively and publicly determined. There is wide agreement among sociologists, moral and political philosophers and other social theorists that societies cannot be created or sustained through force or strategic action, but must be formed through justice. The formation of a just society depends on mutual recognition of, and consensus about, principles, norms and values (or at least their *de facto* legitimacy).

Justice is a normative (ethical) question which addresses the legitimacy of basic social norms that govern or regulate social life; if these norms are not legitimated or justified through some kind of discursive procedure in the public sphere, the result may be domination (the arbitrary use of power), leading to an unjust arrangement of social life and unfair distribution of social goods and opportunities. A genuine society (and true sociality) will not have been formed, because it will not have obtained the consent of those living together in society, nor will it be in accordance with God's will for a just and harmonious society. Both Rawls and Habermas subscribe to the consensus principle of legitimacy, which asserts that the legitimacy of norms and of normative institutional arrangements can be justified only by the principle of rational consensus. Seyla Benhabib has noted that both Rawls and Habermas share the meta-theoretical premise of "methodological proceduralism", which contends that a rational consensus about social institutions and the norms underlying them is to be achieved only *proce-*

durably, "by specifying strategies and modes of argumentation".¹ In his later work, where Rawls moves to a position of "moral constructivism", he contends that he is not trying to find a conception of justice suitable for all societies, but "to settle a fundamental disagreement over the just form of basic institutions within a democratic society under modern conditions".²

The task before us in this chapter is two-fold: firstly to examine Rawls's theory of justice and to assess the adequacy of the discursive device of the "Original Position" in determining social justice; and secondly, to discover whether Christians could affirm Rawls's theory of justice, i.e, whether it might be considered to be a possible mediation of the justice of God for the formation of society. I shall begin with a section (3.1) containing a presentation of Rawls's theory as an attempt to provide a counterfactual procedure of justification through which (universally) valid and binding norms of social co-existence can be established; this will include sub-sections devoted to the main features of Rawls's theory relevant to our discussion, namely his assertion that the primary subject of justice is the basic structure of society (3.1.1.); the central device of the original position (with its subsidiary device of the veil of ignorance) as a means of selecting and justifying the principles of justice for the basic structure of society (3.1.2.); the idea of pure procedural justice (3.1.3.); and Rawls's two principles of justice, which he believes would be the principles that parties under the conditions of the original position would choose (3.1.4). In the second major section (3.2) I discuss the problematic nature and adequacy of Rawls's justificatory method. In this section I argue that Rawls's justification of his principles depends on the process of reflective equilibrium, and I explore this as an aspect of Rawls's moral constructivist approach to

establishing principles of justice. This section also includes a discussion of what I consider to be the most serious flaw in Rawls's theory - its monological nature. The final section (3.3), after a consideration of Rawls's notion of the self as antecedently individuated and therefore individualistic, examines how Rawls addresses the problem of competing conceptions of the good which might bias the choice of principles in the original position. This section concludes by asking whether certain conceptions (especially religious ones) might disadvantage those who hold them in the society which Rawls envisages and wants to form.

3.1 John Rawls's Theory of Justice

Rawls's theory of "justice as fairness"³ has become a major point of reference for all subsequent discussion about justice. Widely acclaimed as being of great significance for moral and political theory, it is a massive, complex and rigorously analytical work which has generated a vast amount of scholarly literature. It is not feasible to provide a comprehensive analysis and critique of Rawls's entire theory, and his many subsequent attempts to defend its Kantian roots;⁴ I shall concentrate on those aspects of his theory in which he discusses how society is to be formed and structured through attention to the fairness of its basic structure.

Rawls, in defence of the Kantian notion of the freedom, autonomy and rationality of individuals, argues that the principles of justice will be the outcome of people's rational choice, since some social arrangements are inherently more reasonable and hence more defensible than others. He argues that some principles of justice provide a reasonable foundation for the fair structure of society and others do not. As Karen Lebacqz puts it, "Rawls' aim is to use the concept of a social contract to give a procedural interpretation to Kant's notion of autonomous

choice as the basis for ethical principles".⁵ Rawls also claims that his theory of justice is a contrast with and superior alternative to utilitarian theory; the principles of justice which he proposes are not derived by assessing the utility of actions but by the rational choice of free, autonomous individuals in a fair setting.

Rawls's emphasis on the priority of individual rights and freedoms is part of his aim to construct a theory of "justice as fairness", which takes persons seriously and attempts to protect their well-being by offering a concrete method for making the most fundamental decisions about distributive justice, as well as establishing principles of justice with the moral authority to obligate all persons to a system of justice without ignoring their diverse moral beliefs. This method is the result of Rawls's device of a decision-making technique, obtained from economic game theory, which he calls the "Original Position"; Rawls creates restrictions within the original position in order to provide a common perspective from which a fair, unbiased and unanimous choice of principles can be made regarding justice and the formation of society. His initial justification for the original position is that it "serves to make vivid to ourselves the restrictions that it seems reasonable to impose on arguments for principles of justice, and therefore on the principles themselves".⁶ Although these principles do not directly address the problem of legitimation of a particular political system or regime, the assumption behind their provenance is that those in power are equally party to the rational discussion in the original position, and that they equally comply with the conception of justice adopted in it and legislate in accordance with the principles of justice chosen.

Thus in *A Theory of Justice* Rawls aims to articulate a small set of general principles which he believes would be chosen by the parties in the original position,

and which underlie and account for the various considered moral judgements which we make in particular cases. Rawls introduces the original position as a "purely hypothetical device" which represents certain conditions and moral ideals "that we do in fact accept", or can be persuaded to accept after due philosophical reflection.⁷ He states that the social contract idea of the original position may be viewed as a "procedural interpretation of Kant's conception of autonomy and the categorical imperative";⁸ its justification, and hence the justification of his two principles, depend on the notion of reflective equilibrium, which is an alternative to rational intuitionism (or the attempt to ground moral theory on self-evident first principles). The process of reflective equilibrium establishes our "considered moral judgements", which justify the original position if they are adequately represented in it. The concepts of reflective equilibrium and considered moral judgements, and their inseparable connection with the original position as an equitable device for reaching decisions about principles of social justice, will be elucidated when we come to assess Rawls's justification of the original position. However, first we must establish the connection between justice and the formation of society in Rawls's thought.

3.1.1 The basic structure of society as the primary subject of justice

Rawls states quite explicitly that the primary subject of justice is the basic structure of society.⁹ The principles which he seeks to formulate have to do with that macrolevel structure, rather than the microlevel of every act where justice is a concern. What Rawls means by the basic structure of society is the entire set of major social, political, legal and economic institutions, and the way in which they distribute fundamental rights and duties and determine the division of advantages

from social co-operation. In section 10 of *A Theory of Justice*, entitled "Institutions and Formal Justice", Rawls states that "by an institution I understand a public system of rules which defines offices and positions with their rights and duties, powers and immunities, and the like".¹⁰ The reason Rawls believes the basic structure of society to be the primary subject of justice, is because the basic structure exerts such a profound influence on people's life prospects from the start. Deep inequalities arise from the fact that people are born into different social positions in society; these inequalities also arise because the institutions of society favour certain starting places above others. Thus people's initial life-chances are affected, and in part determined, by the political system, as well as by economic and social circumstances. Rawls maintains that these pervasive inequalities cannot possibly be justified by an appeal to the notions of merit or desert:

It is these inequalities, presumably inevitable in the basic structure of any society, to which the principles of social justice must in the first instance apply. These principles, then, regulate the choice of a political constitution and the main elements of the economic and social system. The justice of a social scheme depends essentially on how fundamental rights and duties are assigned and on the economic opportunities and social conditions in the various sectors of society.¹¹

In view of the influences of the basic structure on people from birth, the primary problem of justice is to formulate and justify a set of principles which a basic structure must satisfy. These principles of social justice, Rawls asserts, "are to govern the assignment of rights and duties and to regulate the distribution of social and economic advantages";¹² further, they would specify how a just basic structure should properly distribute certain primary goods, which, according to Rawls, are things that every rational person is presumed to want, and which normally have a use whatever a person's rational plan of life.¹³ Rawls states that

"the chief [social] primary goods at the disposition of society are rights and liberties, powers and opportunities, income and wealth, ... [and] self-respect".¹⁴ However, the proper distribution of these primary goods necessarily entails taking into account conflicting interests and claims; Rawls, in considering the role of the principles of justice, recognises that conflicts, as well as identity, of interests are inevitable in any society:

There is an identity of interests since social cooperation makes possible a better life for all than any would have if each were to live solely by his own efforts. There is a conflict of interests since persons are not indifferent as to how the greater benefits produced by their greater collaboration are distributed, for in order to pursue their ends they each prefer a larger to a lesser share.¹⁵

He holds that "a society is a cooperative venture for mutual advantage",¹⁶ and asks us, in accordance with his belief that morality is a necessary regulative mechanism for dealing with and settling these conflicting interests and claims, to assume that a society is a more or less self-sufficient association of persons who in their relations to one another recognise certain rules of conduct as binding, and who for the most part act in accordance with them; he asks us to suppose further that these rules specify a system of co-operation designed to advance the good of those taking part in it. Any such system requires

a set of principles... for choosing among the various social arrangements which determine this division of advantages and for underwriting an agreement on the proper distributive shares. These principles are the principles of social justice: they provide a way of assigning the rights and duties in the basic institutions of society and they define the appropriate distribution of the benefits and burdens of social cooperation.¹⁷

These principles, which approximate to the Kantian categorical imperative, are the result of a rational choice by free and equal agents in an initially fair

situation, i.e. the original position. The original position is a mediating conception - a device of representation that mediates between the ideals contained in Rawls's vision of the well-ordered society and the definition of the principles of justice. Kenneth Baynes suggests that for the characterisation of the original position we need to look to the ideal of the well-ordered society, because the ideals in such a society yield the two principles of justice.¹⁸ It is important, therefore, to outline these ideals in order to gain a better understanding of the original position, and to obtain a picture of the well-ordered society (or at least Rawls's vision of it).

1. A well-ordered society is one that is "effectively regulated by a public conception of justice".¹⁹ It is a society where everyone accepts and knows that the others accept the same conception of justice. In this society the basic social institutions satisfy and are known to satisfy the principles of justice which all accept. This public acceptance points to a public conception of justice which does not need to invoke "theological or metaphysical doctrines"²⁰ to support its principles, but which is based on reasonable beliefs established by widely accepted methods of enquiry. This publicity condition therefore excludes conceptions of justice which cannot be publicly affirmed, or which rely on such devices as Plato's Royal (or Noble) Lie²¹ or the "advocacy of religion (when not believed) to buttress a social system that could not otherwise survive".²²

2. A well-ordered society, which is presumed to endure over time, has a second feature, namely stability (with regard to its conception of justice). The public conception of justice which regulates society implies that the members of society have a strong and normally effective desire to act as the principles of justice require; Rawls asserts that "one conception of justice is more stable than another

if the sense of justice it tends to generate is stronger and more likely to override disruptive inclinations and if the institutions it allows foster weaker impulses and temptations to act unjustly".²³ The criterion of stability, which Rawls recognises is not decisive by itself, is related to the issues of human motivation and moral psychology, which are crucial to arguing for the sense of justice cultivated by a stable conception of justice in society. Although the issue of the development of moral consciousness is important to a theory of justice, we cannot give it due consideration here because it would divert attention from our search for, and assessment of, a procedure which will establish justice and the formation of society.²⁴

3. However, the procedure of the original position cannot be adequately grasped if we do not have some characterisation of the moral status of citizens in a well-ordered society, i.e. of the very citizens who deliberate within the original position. Rawls notes that the general facts of moral psychology crucially affect the choice of principles in the original position.²⁵ Therefore, a third feature of the well-ordered society could be considered to be moral personality, or the model-conception of the person. This conception is present in *A Theory of Justice*, but is more prominent in Rawls's later writings. According to Rawls, the citizens in a well-ordered society are, and recognise themselves as being, free and equal moral persons.²⁶ They are distinguished by the possession of "two highest-order moral powers":

- a) The capacity to understand, to apply, to act from (and not merely in accordance with) the principles of justice.

- b) The capacity to form, revise and rationally to pursue a conception of the good.²⁷

The ascription of the first capacity assumes that citizens are capable of being effectively motivated by a stable conception of justice: their sense of justice means that they have a "normally effective desire to apply and act upon the principles of justice".²⁸ This consideration is related to the equality of citizens, which is based on their common status as moral beings, and is more fundamental than the ideals of equality that are institutionalised in the basic structure of society (e.g., formal equality before the law, or equality of opportunity, etc.). Their capacity for moral personality is a "sufficient condition for being entitled to equal justice"²⁹ and to "equal respect and consideration in determining the principles by which the basic arrangements of their society are to be regulated".³⁰

The second capacity or moral power is related to the freedom of citizens, because it suggests that citizens are free to form, revise and pursue a conception of the good which will motivate them and give them a sense of worth and purpose in life. The freedom to revise their conception(s) of the good is an important feature of moral personality, because it means that they are not permanently attached to one conception but can change their ends and ideals during the course of their lives. Baynes notes that the framing of this capacity "reflects Rawls's commitment to a plurality of conceptions of the good and his belief that principles of justice should not rely on any particular conception of the good, but upon a conception of the person (as a free and equal moral being)".³¹

4. The fourth feature of a well-ordered society is the constellation of conditions which Rawls, following Hume, describes as the "circumstances of justice".³²

The main implication here is that, although a society is a co-operative venture for mutual advantage, it is characterised by a conflict as well as an identity of interests. The role of justice is defined by the requirement and need to choose among the various social arrangements which determine the division of advantages; Rawls states that the background conditions that give rise to these necessities are the circumstances of justice.³³ He describes the circumstances of justice as the moral conditions under which human co-operation is both possible and necessary. These circumstances are of two kinds - objective and subjective. The latter concern aspects of co-operation, i.e. of persons working together. Persons have their own plans of life and hence their own conceptions of the good, which lead them to have different ends and purposes, and to make conflicting claims.³⁴ In brief, the circumstances of justice "obtain whenever mutually disinterested persons put forward conflicting claims to the division of social advantages under conditions of modern scarcity".³⁵ Here again Rawls's view emerges that in a well-ordered society there is a plurality of conflicting conceptions of the good, all of which are permissible as long as they are pursued within the limits of justice.

These features of the well-ordered society have been outlined in order to make clear their relation to the two principles which are chosen in the original position, which is the object of our investigation and to which we now turn.

3.1.2 "The Original Position" and Justice as fairness

In presenting the main idea of his theory of justice (based on social contract theory), Rawls asks us not to think of the original contract as one to enter a particular society or to set up a particular form of government:

Rather, the guiding idea is that the principles of justice for the basic structure of society are the object of the original agreement. They are

the principles that free and rational persons concerned to further their own interests would accept in an initial position of equality as defining the fundamental terms of their association. These principles are to regulate all further agreements; they specify the kinds of social cooperation that can be entered into, and the forms of government that can be established. This way of regarding the principles of justice I shall call justice as fairness.³⁶

Rawls invites us to imagine that those who engage in social co-operation choose together, in one joint act, the principles which are to assign basic rights and duties and to determine the division of social benefits. The parties in the original situation or position must decide in advance how they are to regulate their claims against one another and what is to be the foundation charter of their society.³⁷ As a group they must decide by rational reflection once and for all what is to count among them as just and unjust. Rawls argues that the choice which rational people would make in this hypothetical situation of equal liberty determines the principles of justice.³⁸ The idea of the original position is not intended to reflect any actual state of society, but is a fictive heuristic device for excluding "the knowledge of those contingencies which sets men at odds and allows them to be guided by their prejudices";³⁹ it is an invitation to diverse people with different beliefs and values to accept its restrictions in order to get beyond the subjective circumstances of justice which prevent agreement on principles of justice and which prohibit agreement on a full conception of the common good.

Thus the idea of the "original position" is a hypothetical situation in which people come together to form a social contract;⁴⁰ it is an initial situation of fairness where equal, rational, free and autonomous individuals must choose the principles which will regulate a just society. In Rawls's theory of justice as fairness the original position of equality corresponds to the state of nature in the traditional theory of

social contract;⁴¹ he asserts that it is not an actual historical state of affairs or a primitive condition of culture, but "a purely hypothetical situation characterised so as to lead to a certain conception of justice",⁴² but not necessarily a full or complete conception of justice.

To ensure that the circumstances of choice in the original position are fair, Rawls proposes that the representative persons in the original position must choose their principles of justice from behind a "veil of ignorance".⁴³ This is an essential feature of the original position. The purpose of this device is to ensure that the parties do not know anything which would distinguish one from another. In a later chapter, on the veil of ignorance,⁴⁴ Rawls elaborates the knowledge which the parties do not have: they do not know their place in society, their class position or social status, their fortune in the distribution of natural assets and abilities, their intelligence and strength, and the like (which presumably includes gender). They do not know their conception of the good, the particulars of their rational plan of life, or even the special features of their psychology (such as aversion to risk). They do not know the particular circumstances of their own society (i.e., its economic or political situation, or the achieved levels of civilisation and culture). They do not even have information as to which generation they belong; this is an important consideration because, as Rawls points out, "questions of social justice arise between generations as well as within them, for example, the question of the appropriate rate of capital saving and of the conservation of natural resources and the environment of nature".⁴⁵

Rawls believes that the veil of ignorance (the notion of which he thinks is implicit in Kant's ethics)⁴⁶

ensures that no one is advantaged or disadvantaged in the choice of principles by the outcome of natural chance or the contingency of natural circumstances. Since all are similarly situated and no one is able to design principles to favour his particular condition, the principles of justice are the result of a fair agreement or bargain. For given the circumstances of the original position, the symmetry of everyone's relations to each other, this initial situation is fair between individuals as moral persons, that is, as rational beings with their own ends and capable, I shall assume, of a sense of justice. The original position is ... the appropriate initial status quo, and thus the fundamental agreements reached in it are fair. This explains the propriety of the name "justice as fairness": it conveys the idea that the principles of justice are agreed to in an initial situation that is fair. The name does not mean that the concepts of justice and fairness are the same, any more than the phrase "poetry as metaphor" means that the concepts of poetry and metaphor are the same.⁴⁷

The symmetry of the parties in the original position follows from their being conceived of as citizens who are equal moral beings in a well-ordered society: "We simply describe all the parties in the same way and situate them equally, that is, symmetrically with respect to one another. Everyone has the same rights and powers in the procedure for reaching agreement. Now it is essential to justice as fairness that the original position be fair between equal moral persons so that this fairness can transfer to the principles adopted."⁴⁸

In some of his later writings⁴⁹ Rawls shows his awareness of the diversity of people's religious and philosophical beliefs, and he explicitly recognises the role of those (possibly conflicting) beliefs in formulating and choosing principles of justice. This awareness is tied to his admission that there exists a plurality of rational moralities where people, on the basis of their religious or other beliefs, may have different conceptions of the good. Rawls states very specifically that in his theory of justice as fairness "the concept of right is prior to that of the good",⁵⁰ and he says

that this priority of the right over the good, a central feature of Kant's ethics, turns out to be a central feature of his conception of justice.⁵¹

Since diverse moralities might conflict when people come together to determine the principles of justice, Rawls deems it necessary to have a device by which people's conceptions of morality may be abstracted, i.e. they do not know their particular conceptions of the good. The reason for Rawls's construction of the original position (a fair initial contract situation) is to find general agreement about principles of justice, since rational and morally conscientious persons who insist that justice promote their own particular (complete) conceptions of the good cannot necessarily agree on moral principles. In view of people's opposing religious and philosophical beliefs, Rawls suggests that the only possibility for moral agreement is for people to withdraw or abstract from their particular conceptions of the good and morality.

The process of abstraction required by Rawls's device of the original position is an attempt not to ignore particular moral traditions but to discover general beliefs, ends and principles which people with different beliefs and values can embrace; the purpose of the original position is not to impose a conception of justice from above, but to invite people to withdraw from their particular beliefs and judgements in order to achieve agreement on a conception of justice with others who hold different beliefs and judgements. It is important to point out that Rawls's theory is not neutral with regard to the conception of the good; indeed, he admits that it is not neutral but fair between persons.⁵² This admission indicates a shift from his position in *A Theory of Justice*, where Rawls claimed the assumptions behind the original position were weak and neutral. However, the strength and

non-neutrality of his assumptions were soon recognised by critics.⁵³ Further, Rawls himself admits that his theory "does presuppose a conception of the good, but within wide limits this does not prejudice the sort of persons that men want to be".⁵⁴

Later Rawls explains his "thin theory of the good":

Since these assumptions must not jeopardise the prior place of the concept of right, the theory of the good in arguing for the principles of justice is restricted to the bare essentials. This account of the good I call the thin theory: its purpose is to secure the premises about primary goods required to arrive at the principles of justice.⁵⁵

Rawls's partial conception of the good for a well-ordered society follows from his assumptions about the persons in the original position, and is a commitment of these free, rational and equal persons to the maximisation of primary goods on the basis of need. The conception of the good which ensues from his ideal of moral personality is bound to be biased, and may exclude certain other conceptions (as I shall argue later). A procedure to determine social justice should not impose prior constraints on the subject matter which the parties in the public discussion introduce, nor should conceptions of the good be ruled out in advance.

However, Rawls specifies that there have to be certain constraints on the parties as they choose the principles of justice in the original position. He recognises that they are controversial, but argues that constraints are necessary in any social contract; he calls them "the constraints of the concept of right since they hold for the choice of all ethical principles and not only for those of justice".⁵⁶ The formal constraints which Rawls believes it reasonable to impose on the parties' conceptions of justice are:

- i) the principles must be general, i.e. they should avoid references to the identity of individuals;
- ii) the principles are to be universal in application, i.e. they must hold for everyone in virtue of their being moral persons;
- iii) the principles must admit of 'publicity', i.e. the principles and the grounds of their justification must be known to all;
- iv) the principles must impose an ordering on conflicting claims;
- v) the principles must be final, i.e they are to be the final court of appeal in practical reasoning and disputes about justice.⁵⁷

Rawls also assumes the mutually disinterested rationality of the parties.⁵⁸ The rationality which Rawls attributes to them is the notion of rational choice found in game or decision theory. Since they do not know the details of their individual rational plans of life, the question arises as to how they can decide which conceptions of justice are most to their advantage. To meet this difficulty, Rawls postulates that they accept an account of the good which leads them to assume that they would prefer more primary social goods than less. They try to advance their particular conception of the good by trying to secure for themselves the greatest amount of primary goods possible.

Rawls builds into the original position the assumption that all the parties are motivated by the desire for certain primary goods; this desire is held to provide the motivation necessary to generate the problem of rational choice and to make possible a determinate choice for the principles of justice. The most reasonable

rule for the parties to employ in their choice of principles is Rawls's adaptation of the rational strategy of "maximin", a term which means the *maximum minimorum*. The "maximin rule" is an additional feature of (but distinct from) the Difference Principle - Rawls's second principle of justice. It stipulates that the parties in the original position would choose in such a way as to "maximise the minimum". The rule is to consider the worst that can happen under any proposed course of action, and to decide in the light of that. Rawls puts it as follows:

The maximin rule tells us to rank alternatives by their worst possible outcome: we are to adopt the alternative the worst outcome of which is superior to the worst outcomes of the others.⁵⁹

The strategy of maximin is intended to minimise risks in choosing under conditions of uncertainty. Parties in the original position operate under a veil of ignorance, and therefore cannot employ a rule based on probability outcomes or highest expected utility; they would, therefore, reasonably choose an action which promotes the highest minimum outcome. The maximin rule justifies a choice of principles which benefit the least advantaged in society, and thus protect against the risk of that stratum of society being deprived of primary social goods.

Before the hypothetical contract and the choice of principles can proceed, Rawls requires one further assumption to guarantee strict compliance.⁶⁰ The parties are presumed to be capable of a sense of justice and this fact is public knowledge among them. This condition is to ensure the integrity of the agreement made in the original position. It means that the parties can rely on each other to understand and to act in accordance with whatever principles are finally agreed to. The rationality of the parties consists in their capacity not to enter agreements

which they know they cannot keep, and in their strict compliance with the conception of justice which they finally adopt.

3.1.3 The Idea of "pure procedural justice"

There are two major considerations before Rawls as he contemplates the basic structure of society as the primary subject of justice. The first (distributive) problem is the assignment of fundamental rights and duties and the regulation of social and economic inequalities. The second is the basic structure of society as a public system of rules defining a scheme of activities that leads people to act together so as to produce a greater sum of benefits, and which assigns to each certain recognised claims to a share in the proceeds. Rawls states that these considerations "suggest the idea of treating the question of distributive shares as a matter of pure procedural justice".⁶¹

The intuitive idea here, according to Rawls, is to design the social system so that the outcome is just whatever it happens to be.⁶² It means that whatever principles the parties select from among alternative principles are just. In pure procedural justice there is no standard for deciding what is just apart from the procedure itself. "Pure procedural justice obtains where there is no independent criterion for the right result."⁶³ Rawls distinguishes "pure procedural justice" from "perfect" and "imperfect" procedural justice; he argues that in the latter cases there is an independent standard for assessing the justice of the outcome, the only question being whether a procedure exists to ensure a result that satisfies the standard.

Since there is no such independent standard in pure procedural justice, whatever results from the procedure is "just" by definition. As far as Rawls is

concerned, there must be "a correct or fair procedure such that the outcome is likewise correct or fair, whatever it is, provided that the procedure has been properly followed".⁶⁴ Therefore, whatever is chosen by the parties in the original position is just simply by virtue of being the outcome of the decision procedure. Lebacqz points out that if the parties do in fact choose Rawls's two principles, then these are the principles that provide justice.⁶⁵ And indeed this is precisely what Rawls claims - that the parties will choose his two principles of justice. He states that

the idea of the original position is to set up a procedure so that any principles agreed to will be just. The aim is to use the notion of pure procedural justice as a basis of theory.⁶⁶

From this quote it appears Rawls regards social justice as "purely procedural" in character. Since there are no independent criteria for judging whether an allocation of any particular good is just or unjust, such an allocation is deemed just if it has arisen through an operation of fair or just procedures. Rawls states that the main problem of distributive justice is the choice of a social system, which needs to be designed "so that the resulting distribution is just however things turn out";⁶⁷ he designs⁶⁸ a basically capitalistic institutional framework which will realise background justice, but he also allows for modifications for a socialist regime.⁶⁹ In either case, Rawls claims that once the institutions are working there will be no need to examine the precise distribution of goods to persons which follows, because its fairness will be guaranteed by the procedures which have produced it.

In a later essay, Rawls re-emphasises the point that whatever principles of justice the parties agree to will be just because the parties have no prior commitment to principles by which to judge the outcome of the contract.⁷⁰ The parties

"bracket" their commitments and agree to accept the final principles of justice when they agree to the restrictions of the veil of ignorance.

In Rawls's view, the principles that will be chosen will be the result of a fair bargain, because the original position nullifies the accidents of natural endowments and the contingencies of social circumstance which can be exploited by others to their own advantage.⁷¹ Since all parties will be similarly situated, no individual will be able to design principles which favour his or her own particular situation. Further, since all persons will consent, the principles of justice will be sufficiently objective and universal to obligate all parties in the original position to the system of justice which the principles entail. However, as I hope to show, Rawls's theory is flawed because, despite his claims about neutrality and impartiality, there is an independent standard in the original position. Further, a distinction becomes apparent between the original position as a principle or procedure of legitimation and substantive proposals for principles of social justice; as Baynes points out, "Rawls is unable to insist too strongly upon such a distinction since he designs the original position in such a way that only his two substantive principles of justice would be chosen in it".⁷² The problem with the original position is that if it is introduced to provide a neutral justification of substantive moral principles, it will not be able to yield the substantive principles which Rawls claims; on the other hand, if it does yield such principles, it must have stronger assumptions built into it.⁷³

3.1.4 Rawls's two principles of justice

It is Rawls's contention that under the conditions of the original position, the parties would choose the following two principles as a solution to the problem of

specifying what would count as a just basic structure: (I quote the final formulation from section 46, p. 302, since Rawls states them in a provisional form earlier in section 11, p. 60)

First Principle

Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all.

Second Principle

Social and economic inequalities are to be arranged so that they are both:

- a) to the greatest benefit of the least advantaged, consistent with the just savings principle, and
- b) attached to offices and positions open to all under fair equality of opportunity.

The first of these principles is sometimes called "the Principle of Greatest Equal Liberty". The second of Rawls's two principles really contains two principles in itself: (a) "The Difference Principle" - the core of Rawls's substantive theory of justice, which distributes the subset of primary goods of wealth, income, power and authority, and which permits some inequalities in distribution but states that those social and economic inequalities are to be so arranged that they are to the greatest benefit of the least advantaged; (b) The Principle of Fair Equality of Opportunity. To some extent the Principle of Equal Basic Liberty and the Principle of Fair Equality of Opportunity act as constraints on the Difference Principle.

Rawls further specifies that his two principles are to be arranged in a serial order with the first principle prior to the second, and he formulates rules of priority for this lexical ordering.⁷⁴

Rawls adds that his two principles are a special case of a more general conception of justice which may be expressed as follows:

General Conception (later formulation)

All primary social goods - liberty and opportunity, income and wealth, and the bases of self-respect - are to be distributed equally unless an unequal distribution of any or all of these goods is to the advantage of the least favoured.⁷⁵

With this general conception in mind, Rawls holds that injustice is simply inequalities that are not to the benefit of all.⁷⁶ While Rawls maintains that the principle of liberty is to have priority over the second principle - the Difference Principle - it is the latter which is really the core of his theory, and which I consider to be most fruitful as an index to the function of justice in forming a society under modern conditions. Rawls claims that his two principles seem to be a fair agreement on the basis of which those with greater natural endowment or a better social position, neither of which can be said to be deserved, could expect the willing co-operation of others when some workable scheme is a necessary condition for the welfare of all; and he contends that we are led to his two principles if, as I have already quoted, "we decide to look for a conception of justice that nullifies the accidents of natural endowment and the contingencies of social circumstances as counters in quest for political and economic advantage ..."⁷⁷

Rawls believes that his two principles express an egalitarian conception of justice.⁷⁸ He holds that the Difference Principle in part addresses or contains the principle of redress; the latter principle holds that inequalities of birth and endowment are undeserved and require compensation, or as Rawls puts it:

... in order to treat all persons equally, to provide genuine equality of opportunity, society must give more attention to those with fewer native assets and to those born into less favourable social positions. The idea is to redress the bias of contingencies in the direction of equality.⁷⁹

It is for this reason that Rawls's position is regarded as egalitarian, and admitted as such by himself in the section "The Tendency to Equality";⁸⁰ his theory requires society to reduce certain inequalities by pooling advantageous resources for everyone, especially the least advantaged. He points out, in a very important passage which needs to be quoted in full, that although the Difference Principle is not the principle of redress, it does achieve some of the intent of the latter principle:

It transforms the aims of the basic structure so that the total scheme of institutions no longer emphasises social efficiency and technocratic values. We see then that the difference principle represents, in effect, an agreement to regard the distribution of natural talents as a common asset and to share in the benefits of this distribution whatever it turns out to be. Those who have been favoured by nature, whoever they are, may gain from their good fortune only on terms that improve the situation of those who have lost out. The naturally advantaged are not to gain merely because they are more gifted, but only to cover the costs of training and for using their endowments in ways that help the less fortunate as well. No one deserves his greater natural capacity nor merits a more favourable starting place in society. But it does not follow that one should eliminate these distinctions. There is another way to deal with them. The basic structure can be arranged so that these contingencies work for the benefit of the least fortunate. Thus we are led to the difference principle if we wish to set up the social system so that no one gains or loses from his arbitrary place in the distribution of natural assets or his initial position in society without giving or receiving compensating advantages in return.⁸¹

Thus the Difference Principle is not a principle of pure redress nor a principle of equal outcome for all members of society. Rawls's intention is to establish processes for the distribution of society's resources so that the reasonable expectations and condition of the least advantaged are improved. It is Rawls's concern for the least advantaged which constitutes what is most congruent with God's

justice, and intuitively has most appeal from a theological perspective, since it accords with three basic affirmations in Christian tradition:

- i) the inviolable dignity of the human person
- ii) the essentially social nature of human beings
- iii) the belief that the abundance of nature and of social living is given for all people⁸²

More specifically, concern for the least advantaged is consistent with a Christian understanding of God's justice, because throughout scripture and Christian tradition there is concern for the plight of the poor, and a concern to secure their well-being and rights. This concern, based on Christ's incarnation among the humblest and on his identification with the poor (e.g. Matt. 25:40), culminates in what has become known as "God's preference for the poor" or "the option for the poor",⁸³ which is not purely a shibboleth of the left or of liberation theologians, but a fully substantiated argument from scripture, and particularly from an interpretation of justice as righteousness and right relationship in both Old and New Testaments.

The issue of the convergence between the Christian understanding of justice and one of Rawls's substantive principles of justice, however intuitively appealing, is less at issue here than the method or procedure used to justify principles and norms which establish justice and form society. For this reason we need to assess the adequacy of Rawls's justificatory method in order to discover whether Christians can confirm his conception of justice and whether it mediates the justice of God.

3.2 The Inconsistency of Rawls's Justificatory method with a theological understanding of God's Justice

This thesis is concerned to discover a means of justifying, and achieving agreement about, norms, values and interests which underlie the institutions we propose to form and regulate society. In order to determine whether Rawls provides a method which Christians can affirm, and which can be interpreted as mediating God's society-forming justice, we must examine his justification of that method, particularly the social contract device of the original position, and the problem of the conception of the good in the context of moral pluralism.

As we have seen, Rawls offers two closely connected types of justification for his principles of justice - the idea of the original position and the concept of reflective equilibrium. Rawls believes that the original position provides an independent justification for his two principles, because rational individuals, placed in a hypothetical situation in which they were ignorant of their personal attributes and qualities and place in society, would necessarily choose them. It is Rawls's view that "certain principles of justice are justified because they would be agreed to in an initial situation of equality",⁸⁴ and that "the conditions embodied in the description of the original position are ones that we do in fact accept ..." or can be persuaded to accept ... "by philosophical reflection".⁸⁵ This justification rests on the view that if a principle would be chosen under conditions which, according to our considered moral judgements, are appropriate conditions for choosing principles of justice, then this is a good reason for accepting that principle. From this we can see that the real burden of justification rests with the notion of reflective equilibrium. Rawls's entire project - the model conceptions of the person and the well-ordered society, their representation in the original position, and the formu-

lation of the two principles chosen there, all depend on the process of reflective equilibrium, because the process reflects our considered moral judgements and establishes their coherence.

Considered moral judgements are those intuitive moral judgements subjected to reflection, i.e. those moral judgements which we make reflectively, in circumstances conducive to impartiality and consistency, and under conditions favourable to the exercise of our sense of justice.⁸⁶ According to Rawls, "justice as fairness is the hypothesis that the principles which could be chosen in the original position are identical with those that match our considered judgments and so these principles describe our sense of justice".⁸⁷ The circularity in this statement is acknowledged by Rawls, who refers to it as "the notion of reflective equilibrium".⁸⁸ what Rawls is doing here is attempting to justify his general moral principles by showing that they conform with particular moral judgements that we actually do make and accept, and that the particular judgements themselves are in turn justified by being shown to be in accordance with the general principles of morality.

Rawls claims that by this circularity the general principles and the particular judgements are allowed to be brought into agreement or reflective equilibrium with one another. This technique of reflective equilibrium brings into play our considered moral judgements, and facilitates the task of moral theorising by providing a structure of general principles (a theory) which supports those considered moral judgements. He suggests that when we are presented with an intuitively appealing account of our sense of justice, we may well revise our judgements to conform to its principles even though the theory does not fit our existing judgements exactly; in the two-way process of reflective equilibrium we

move back and forth between adjustments to our moral judgements and adjustments to our general theoretical principles until we find a satisfactory fit between them. According to Rawls, from the stand-point of moral philosophy, "the best account of a person's sense of justice is not the one which fits his judgments prior to his examining any conception of justice, but rather the one which matches his judgments in reflective equilibrium".⁸⁹

The matching of someone's moral judgements to his higher-order moral principles here described is an implicitly conservative method; critics like Brandt⁹⁰ and Daniels⁹¹ suggest that it simply reshuffles or coherently organises our prejudices. However, Rawls recognises that the process of justification is not complete with the achievement of a state of "narrow reflective equilibrium". In *A Theory of Justice* he recognises that the notion of reflective equilibrium varies depending on whether we are to be presented with only those descriptions which more or less match one's existing judgements except for minor discrepancies, or whether we are to be presented with all possible descriptions to which we might plausibly conform all our judgements together with all relevant philosophical arguments against them. He says that it is clearly the second kind with which we are concerned in moral philosophy, and that it is doubtful whether we can ever reach this state, because we cannot examine all possible descriptions and all their philosophically relevant arguments. The most we can do, adds Rawls, is to study the conceptions of justice known to us through the tradition of moral philosophy and any further ones that occur to us, and then to consider these.⁹²

However, in a later essay he outlines a further step called "wide reflective equilibrium",⁹³ a condition in which someone's coherent set of considered moral

judgements and moral principles have been corrected and brought into harmony with a broader set of theories (moral psychology and philosophy, sociology, etc.) and various formal "conditions of rationality" (generality, publicity, universality, etc.).⁹⁴ The "independence constraint" proposed by Daniels requires that if these theories and conditions are to provide credibility for the principles obtained through narrow reflective equilibrium, they must be independent of such moral principles. Since justification is a multi-faceted process in which beliefs are exposed to critical reflection from various perspectives, it requires an understanding of reflective equilibrium in which we submit our moral conceptions to the widest array of philosophical argumentation and theoretical scrutiny.⁹⁵

Rawls's constructivist approach⁹⁶ to justification presented in his conception of reflective equilibrium is an attempt to avoid intuitionism, because his theory denies that there is a moral order prior to and independent of the public conception of ourselves as free and equal moral beings. In reply to those who charge him with a form of intuitionism (on the grounds that his considered judgements are nonetheless intuitions or "fixed" points of moral reference) Rawls suggests that none of his judgements is immune to revision. Unlike intuitionists who believe that moral intuitions are fixed and unchangeable, and that there is always a correct answer to a moral question, Rawls asserts that "there are no moral facts to which the principles [of justice] could approximate".⁹⁷ "Apart from the procedure of constructing the principles of justice, there are no moral facts. Whether certain facts are to be recognised as reasons of right and justice, or how much they are to count, can be ascertained only from within the constructivist approach ..."⁹⁸

However, the matter of justification is not so easily settled. There is a deeper circularity in Rawls's argument which he does not acknowledge, namely that the general moral principles to which he appeals rest on his particular judgements; the reason for claiming this is, as I shall argue more fully below, that Rawls does not have a genuine plurality of persons debating within the original position. The device of the thick veil of ignorance in the original position effectively removes differences to the point that the parties are conflated into one person, so that the original position becomes the monological thought-experiment of a single agent. Rawls cannot be allowed simply to take his considered judgements as given in his exercise of reflective equilibrium.

This is an echo of the criticism by Wolff and others⁹⁹ of Rawls's method of pure procedural justice, namely that if Rawls truly used this method he could not claim to know in advance what principles of justice would be chosen in the original position. Rawls's method of pure procedural justice, in which the procedure determines the result, professedly does not admit an independent standard, but the result of the choice in the original position clearly points to the operation of such a standard - the standard of fairness, which Rawls builds into the original position. This undermines Rawls's claim to pure procedural justice, for if Rawls is permitted to import a standard into the original position, others might wish to do the same, thereby negating Rawls's express aim of creating a situation in which might be removed those particular beliefs which might bias choices. Christians may support Rawls's laudable aim of proposing a theory of justice which would determine the fair distribution of society's benefits and burdens, and which would establish a society in which social and economic inequalities should work to the

benefit of the least advantaged as well as of the fortunate; however, they may not find it straightforward (and some may find it impossible) to agree with his method of justifying universal obligation to such a theory.

On the other hand, the answer to this objection (that the impartiality of Rawls's justification is undermined by the importation of an independent standard) may be found in the answer to another criticism, which relates to the status of Rawls's contractualism. The objection in this critique is that the contractarian element (i.e. a plurality of persons debating and voluntarily agreeing to be bound by the chosen outcome of their debate) is lost if the initial situation of choice relies too heavily on a prior set of moral constraints. If this reliance exists, the work of justifying principles of justice is performed by the moral constraints and not by the voluntary character of the agreement.¹⁰⁰ However, as Baynes points out, since only agreements between free and equal moral persons are fair, "the description of the contract situation must in some way exhibit these features of the contracting parties",¹⁰¹ i.e. it is legitimate to build them into the description of the original position.

It has to be conceded that certain assumptions are necessary to a theory of justice: the problem is gaining a sufficiently wide recognition and acceptance of them to offer the hope of a common ground for justice or, stated more strongly, for offering a basis for universal obligation to principles of justice. In proposing a theory one needs to be aware of the risk of building in one's assumptions into one's conclusions without the due process of rational justification.¹⁰² Rawls certainly uses strong (Kantian) assumptions in his process of rational justification, viz. that people are free, rational and equal. There are some who believe that these are

assumptions which are sufficiently widely shared today to offer the hope of a common grounding for justice.¹⁰³ Rawls holds that the restrictions of the original position mediate the moral beliefs that persons are free, rational and equal, and that persons with diverse particular beliefs can embrace those beliefs, implying that they express part of the common good which persons ought to affirm as a worthy end for their lives.

Christians may well embrace Rawls's (Kantian) idea of free, equal and rational persons, because it is morally appealing; but Christians confront a dilemma, according to Harlan Beckley,¹⁰⁴ when they propose or support a system of justice which society may need to impose on all its citizens, and at the same time try to remain faithful to Christian beliefs and values without forcing others to accept the distinctive moral implications of beliefs which they do not and should not be required to share; he believes that the dilemma can be resolved for Christians if, on the basis of their beliefs and values, they can embrace general or shared beliefs (including Rawls's Kantian belief that people are free, rational and equal) without ignoring their distinctive beliefs and moralities, and which justify obligating all persons to a system of justice.

Beckley claims that the dilemma which he discerns is potentially resolvable because, like Lebacqz, he thinks that there is sufficient continuity between Christian beliefs and the beliefs of others to justify shared principles of justice;¹⁰⁵ in a later essay,¹⁰⁶ Beckley argues that "Rawls's idea of justice as fairness and the original position which mediates it can provide the grounds for justifying a conception of justice that obligates all, including Christians, without compromising the distinctive features of Christian morality".¹⁰⁷ It is Beckley's contention that the

ethical implications of the ideal of Christian love, i.e. uncompromised to accommodate agreement with others, require Christians to affirm something like the perspective of justice as fairness.¹⁰⁸

While I agree strongly with this latter sentiment, and that there is certainly much in Rawls's theory of justice which is consonant with a Christian understanding of justice, I am inclined to look beyond it for another theory because if its justificatory method is both flawed and disadvantages certain comprehensive conceptions of the good, including Christian ones, it does not have the moral authority to justify universal obligation to it. That flaw exists in the inconsistency of Rawls's position on the assumptions behind the original position. On the one hand his assumptions about moral personality in the original position are acknowledged to be strong. On the other hand, he wishes to avoid strong assumptions in order to make possible the derivation of principles which do not presuppose any particular conception of the good. He is concerned that strong assumptions would threaten to impose a particular conception of the good, and so bias the choice of principles. I believe that the validity of his original position is diminished by the fact that his assumptions are not weak enough to avoid ruling out certain conceptions of the good in advance.

Among the more serious flaws in Rawls's theory is its monological rather than dialogical nature. This conclusion is derived from two charges: firstly, that Rawls's attempt to reconstruct Kantian ethical procedure fails to take into account the fact that Kant's maxims are the idiosyncratic generation of an isolated subject. According to McFadyen, "for Kant it was only necessary to carry out tests of universal acceptability of a maxim in the mind of the isolated subject".¹⁰⁹ Secondly, this

conclusion can be derived from the charge made by several critics who argue that the original position is not a genuine social-contractual (and therefore dialogical) situation, because the imposition of the veil of ignorance transforms it from a situation of agreement between separate individuals into a situation of rational choice by one subject.¹¹⁰ Having established an account of the moral subject as necessarily intersubjective, and a portrayal of the self as distinct with a specific identity, Rawls proceeds to create a situation - the original position - in which the plurality necessary for choice among different conceptions of the good and for agreement about principles of justice disappears. Behind the veil of ignorance (which is used to assure us that there are no differences in the characteristics and ends of the parties) the contract signified by the original position becomes a kind of individual rationality writ large. Rawls's removal from everyone in the original position of all characteristics which might distinguish one person from another not only renders distinct individuals invisible, but also leaves nothing that could possibly establish a plurality of persons.

Thus Rawls convicts himself of the fault with which he charged utilitarianism, namely that it uses an "ideal observer" approach which derives social principles as though they were equivalent to the choices made by a single person. The collapse of Rawls's original position into the perspective of a single person is made clear by Rawls's actual statement that the final choice is that of one person:

To begin with, it is clear that since the differences among the parties is unknown to them, and everyone is similarly situated, each is convinced by the same arguments. Therefore we can view the choice in the original position from the stand-point of one person selected at random. If anyone after due reflection prefers a conception of justice to another, then they all do, and a unanimous agreement can be reached.¹¹¹

From this passage in Rawls's section on the veil of ignorance, it is reasonable to argue that there is no plurality of persons discussing, deciding and choosing. The plurality which is essential to a proper discourse for determining justice is replaced here by a monism in which all other interlocutors are identified with a single, undifferentiated subject. There is no genuine relation and dialogue, no real *inter-subjectivity*; instead of relation and communication being based on the necessary prerequisite of difference, in the monological situation of Rawls's original position they are based on identity. As Phillips shows,¹¹² if they all have the same preference, there is no need at all for any discussion, choice or agreement. Instead of there being a plurality of persons, there is only a single subject, and the subject is Rawls. Phillips rather cruelly puts it thus:

Whatever his talk about discussions, bargaining, decisions, and choices in the original position, Rawls has developed an interesting and highly original way of showing which principles of justice ought to be preferred, i.e., those advanced and defended by Rawls himself. But this is something else than specifying a procedure under which the parties in the initial situation will choose the principles applying to the basic structure of society.¹¹³

In his later writings Rawls retreats from the stronger claims of his justificatory method, and begins to speak of justice (and justification) in practical political terms:

The essential point is this: as a practical political matter no general moral conceptions [i.e. comprehensive moral theories or metaphysical philosophical conceptions] can provide a publicly recognised basis for a conception of justice in a modern democratic state ... : such a conception must allow for a diversity of doctrines and the plurality of conflicting, and indeed incommensurable, conceptions of the good affirmed by members of existing democratic societies ... [S]ince justice as fairness is intended as a political conception of justice for a democratic society, it tries to draw solely upon basic intuitive ideas that are embedded in the political institutions of a constitutional democratic regime and the public traditions of their interpretation.¹¹⁴

Among the basic intuitive ideas "implicit in the public culture of a democratic society" is Rawls's conception of the person having two moral powers, and therefore as free and equal.¹¹⁵ In his essay "Justice as Fairness", Rawls is arguing that the defences of particular political philosophies, e.g. liberalism, which rest on "metaphysical" or "comprehensive" moral views not easily accessible to or publicly acknowledged by all members of society, violate the principle of toleration that must be observed in an attempt to justify principles of justice in a democratic society. Such comprehensive moral views are inappropriate because they will inevitably be controversial and conflicting in a pluralistic society. This means that any comprehensive conception, including religious ones, will be disadvantaged in a Rawlsian society. This also constitutes a reason for doubting the adequacy of Rawls's justificatory method, and for not adopting the procedural device of the original position to legitimate norms and justify principles for the formation and regulation of society.

3.3 The problem of competing conceptions of the good

If Rawls's aim was to create a fair initial contract situation and a device (the original position) in order to locate common grounds and construct a common perspective for the public justification of the principles of justice, he would need to ensure impartiality and neutrality among competing conceptions of the good. A fundamental question in trying to propose and establish a theory of justice is whether it is possible to do so without presuming a single good or end for humankind; Lebacqz points out that "Rawls's method is to derive principles for justice without asserting any single good and without making justice dependent upon that goal".¹¹⁶ Rawls's vision of society includes the belief that individuals

should be allowed the freedom and resources to affirm and pursue a wide variety of conceptions of the good life. As we have seen, his theory of justice as fairness provides a basic framework for society, in which concrete decisions can be reached in a just and equitable manner. The device for reaching these decisions is the original position, which in turn employs the device of the veil of ignorance, which acts as a screen to exclude the undesirable beliefs and practices of actual persons which might set them at odds.

What emerges from this device, however, is not a situation which is impartial to competing conceptions of the good, but a predetermined ideal of free, equal and rational moral persons, and a presupposed conception of the good (albeit partial) which follows from this ideal and is, as I have shown, a commitment of these free, rational and equal persons to the maximisation of primary goods on the basis of need. Sandel's critical analysis of Rawls's philosophical anthropology, and his charge of individualism regarding the person in the original position, are clear indicators of the disadvantaging of conceptions of the good other than Rawls's own. Sandel criticises Rawls's theory for depending on a notion of the self as constituted by an individual capacity for choosing diverse values rather than a constituent attachment to ends and communal values arrived at by knowledge of one's nature, which, Christians would hold, is intersubjective and social because it is made in God's image.

For Rawls, "the self is prior to the ends which are affirmed by it",¹¹⁷ this deontological understanding of the self as a "subject of possession", as Sandel calls it,¹¹⁸ i.e. where the self is distanced from its ends without being attached to them, can be located in Rawls's assumption of mutual disinterest. This assumption, that

parties take no interest in one another's claims, becomes an epistemological claim concerning the nature of the self, and for Rawls is "the main motivational condition of the original position"¹¹⁹ even though it "involves no particular theory of human motivation".¹²⁰ Further, this assumption is concerned with the nature of subjects who possess motivations, how they are constituted, rather than the nature of the self's interests, desires and aims. Rawls states that a person's interests are "as they always must be, interests of a self",¹²¹ a self which is an antecedently individuated subject, whose bounds are fixed prior to experience and where identity is given independently of the self's interests, ends and relations with others.

Sandel believes that it is in the assumption of mutual disinterest that "we find the key to Rawls's conception of the subject, the picture of the way we must be to be subjects for whom justice is primary".¹²² Sandel's analysis of Rawls's theory of the person finds that Rawls understands the moral subject as "distanced" from the values and ends it holds. Rawls's understanding of the circumstances of justice and his assumption of mutual disinterest render his theory liable to the charge of containing an individualistic bias and of devaluing such motives as benevolence, altruism and communitarian sentiments.¹²³

There has been much debate about whether the hypothetical selves in the original position constitute the real essence of moral agents (i.e. whether the original position is a description of our real selves). Although Sandel himself has been criticised for taking the description of the original position too literally, and even for distorting Rawls's position in *A Theory of Justice*,¹²⁴ his critique does indicate that there is a serious problem with the idea of the self and the ends it can or cannot affirm in the original position. The very process of abstracting ourselves

from our ends and conception of the good, or agreeing to the partial or minimum conception of the good which operates in the original position, is the function not of actual selves, but of hypothetical selves who are distanced from their ends and will choose ends on the basis of Rawls's postulate of mutual disinterest. This means that any "thick" conception of the good, which has a particular value such as community as constituent to the nature of the self, might be ruled out by Rawls's philosophical anthropology.

It would be unfair to suggest that Rawls would be opposed to the value of community: he is simply concerned that the subjective circumstances of justice prohibit agreement on a full conception of the common good, and therefore that in the original position there should be no dominant or strong or "thick" conception of the good.¹²⁵ Rawls is at pains to point out that while his theory has an individualist dimension, his assumption of mutual disinterest does not bias the choice of principles in favour of individualistic values at the expense of communitarian values. In *A Theory of Justice* Rawls argues that his theory of justice as fairness does not defend private society as an ideal,¹²⁶ presuppose selfish or egotistic motivation,¹²⁷ or oppose communitarian values.¹²⁸ Nonetheless, Rawls's apparent affirmation of communitarian ends does not permit him to escape Sandel's criticism of individualism. Sandel's analysis of the Rawlsian self as an antecedently individuated subject, standing always at a distance from the interests it has, leads to the conclusion that something as vital to true sociality as a sense of community becomes a possible aim of such a subject, and not constituent of her identity. Since community is thus one of a number of ends which an individual can choose within the framework defined by justice, it is not constitutive either of individual identities or

of society. Even if Christians were able to accept this unsatisfactory understanding of the self, we would have to ask whether a comprehensive good such as that of community would be permitted in the original position.

We have already seen that Rawls's assumptions are not weak enough to avoid ruling out certain conceptions in advance, and that Rawls already has his own conception of the good in the original position which may exclude other conceptions. In his essay *Fairness to Goodness*, Rawls says that some conceptions of the good, which presumably might include religious, philosophical and moral convictions, will be excluded if they conflict directly with the principles of justice; for example, conceptions of the good which "require the repression or degradation of certain groups on, say, racial or ethnic or perfectionist grounds" will be repressed.¹²⁹ Further, those conceptions of the good which require behaviour inconsistent with the social conditions of a well-ordered society, as may certain kinds of religion will eventually be excluded owing to a failure to gain adherents. Rawls argues that in neither case can we conclude that the original position is arbitrarily biased against those views:

On any theory at all some conceptions are bound to be eliminated and others assume a minor role. In itself this is no objection. But further, it seems that a well-ordered society defines a fair background within which ways of life have a reasonable opportunity to establish themselves.¹³⁰

Given that restraint is necessary in a just society, Rawls is clear that not all conceptions of the good can be tolerated. Rawls's belief that "everyone is assured an equal liberty to pursue whatever plan of life he pleases as long as it does not violate what justice demands"¹³¹ may appear fair and even relatively neutral; but, as Richard Fern reminds us, we should also remember that "for Rawls the notions

of justice and rationality have a particular, highly developed content which may or may not be in accord with our intuitions about what is or is not just or unreasonable ..."¹³² This is especially true if the criticism of Rawls's defective contractualism is accurate: the notion of justice which emerges from the original position, even after the process of reflective equilibrium, is not neutral and is the preferred perspective of a single agent, namely Rawls.

A result of Rawls's preferred perspective is that certain minimalist conceptions of the good are given special status and promoted by the very structure of society in a way that full conceptions of the good, like those found in religious faith, are not. Fern argues, rightly in my view, that some religious conceptions of the good are neither unjust or irrational, and would be placed at a serious disadvantage in a Rawlsian society:

Not only does justice as fairness incorporate a favoured perspective on reality, it actively discriminates against other perspectives, some of which are arguably neither less just nor plausible than that adopted by Rawls.¹³³

It is apparent, certainly in Rawls's earlier work, that some religious conceptions of the good are suspect from his perspective. An article entitled *Outline of a Decision Procedure for Ethics*¹³⁴ is an example of Rawls's suspicion of religious perspectives, and of his view that one cannot arrive at a justified belief in religious matters because there are no ascertainable facts about the existence of God; Rawls says that it is "generally recognised that the articles of religious faiths are not usually established by evidence acceptable to inductive criteria ..."¹³⁵ The imputed irrationality of norms and ethical insights derived from religious faith here must be challenged. Even if the status of Christian premises precludes the satisfaction of

certain philosophical criteria, e.g. that propositions must be accessible to reason and observation, Christians can still argue for the treatment of their premises as assumptions without initial justification, and which are not antithetical to others in a discourse. However, I am concerned here less with Rawls's attitude to the issue of faith and rationality than with his method or procedure for establishing justice. The fact that a secular theorist may be suspicious or antipathetic towards religious claims does not rule out the possibility that his theory may be a mediation of God's justice. But if the justificatory method of a theory of justice depends on the exclusion of certain ethical conceptions in advance, this would constitute a good reason for considering it flawed, inadequate and, ultimately, unacceptable.

In his later work, Rawls retreats from a position which may be interpreted as ruling out comprehensive conceptions in advance. Yet even though he draws back from saying that certain conceptions will be ruled out in advance, it is evident that they will be discouraged if they are at odds with his assumptions. Richard Fern gives two examples of conceptions which may conflict with Rawls's justice as fairness.¹³⁶ The first conception is based on a decision to follow the teaching of Jesus as found in St. Matthew 7: 25-26, which may be interpreted as requiring a life of radical dependence on the will and love of God; such an attitude of absolute trust in and dependence on God may bring Christians to hold a conception of the good according to which personal fulfilment is inconsistent with the assertion of legal rights.

The second conception may also be based on the teaching of Jesus as found in St. Luke 9:62, which may be interpreted as requiring absolute commitment. Such an attitude may follow from a belief that some good of great value can only be

realised by way of a loyalty beyond abandonment, and will lead many Christians to adopt a conception of the good which requires an absolute commitment for its realisation.

Fern points out that since neither conception conflicts directly with Rawls's principles of justice, their pursuit will not be directly repressed in a well-ordered (Rawlsian) society, nor will individuals be forbidden to adopt either or both. But this does not mean that they will not be discouraged; in fact, since both conceptions are formulated so as to reject basic features of the original position, their adoption will be discouraged in a Rawlsian society.

In some of his later essays Rawls tries to counter what he considers to be narrow interpretations of his thesis of justice as fairness, and he introduces arguments designed to demonstrate the diversity of views permitted in a Rawlsian society. Although he concedes that the justification of norms and principles for forming and regulating society is the result of using "free public reason",¹³⁷ he maintains that in a pluralistic society we cannot hope to reach agreement if we appeal to general and comprehensive moral doctrines. We should instead draw only on "fundamental intuitive ideas regarded as latent in the public culture".¹³⁸ Rawls hopes that by using what he calls the "method of avoidance" existing differences between contending political views can be moderated (if not removed), "so that social cooperation on the basis of mutual respect can be maintained".¹³⁹

In his essay "Justice as Fairness" Rawls appeals not so much to the original position as to the idea of an "overlapping consensus"; he points out¹⁴⁰ that justice as fairness is not a comprehensive moral doctrine but a specific political conception, and that the members of the overlapping consensus each adopt justice as

fairness from their own point of view because they regard "its concepts, principles, and virtues as theorems..." at which their diverse comprehensive religious and moral doctrines coincide; however diverse these doctrines may be, all citizens will agree as a matter of conviction that for the purposes of political and social order they are all free and equal moral persons. According to his own constraints, although we cannot appeal to this comprehensive (Kantian) conception in order to justify the principles of justice, we are entitled to do so on the basis of its being a widely shared notion in our public culture. This strategy is successful only if Rawls can distinguish between comprehensive conceptions and the common-sense or fundamental intuitive ideas embedded in the public culture. In order to do this, he suggests that there is "lots of slippage" between the beliefs individuals hold and comprehensive doctrines, so that it becomes possible to appeal to the former without invoking the latter.¹⁴¹

Rawls can argue along these lines only by constructing a moral epistemology in which he distinguishes between the public and non-public identity of citizens. The public identity is "a matter of basic law"¹⁴² and, because it is part of the moral conception of justice as fairness, it helps to regulate political and social life.¹⁴³ The non-public identity encompasses comprehensive moral doctrines as found in philosophical and religious beliefs, which may be quite different from those associated with the basic structure of society. Rawls contends¹⁴⁴ that while citizens may firmly hold certain religious, philosophical and moral convictions, they may not be committed to these ideals in their non-public lives if they regulate their social and political life in accord with the liberal ideals of justice as fairness. Rawls thus avoids questions about any disadvantaging of religious conceptions by appealing to the

bifurcation of identity; but this distinction, which involves a claim that the two identities may incorporate radically different values and beliefs, is both dubious and implausible.

Apart from assuming that citizens are able and willing to set aside their comprehensive conceptions and personal points of view to justify principles of justice, the implication of members of the overlapping consensus adopting Rawls's idea of justice as fairness is that public identity will always appear as a sub-component of the non-public identity. According to Fern, this means that no matter how divergent, the non-public identity of citizens will incorporate the ideal of free and equal persons engaged in social co-operation:

Assuming, as we must, that the citizens of a well-ordered society are rational, it is difficult to see how ... they could both affirm a Rawlsian public identity and, at the same time, adopt a comprehensive conception of the good which explicitly rejects or runs contrary to the Rawlsian ideal of moral personality.¹⁴⁵

Fern concludes that anyone who adopts a conception of the human good which conflicts with the common (Rawlsian) ideal of free and equal moral persons will encounter strong institutional pressure to the contrary; any commitment to a non-conforming (though arguably just and rational) conception "will be strongly discouraged by the very structures of society",¹⁴⁶ because the society will not be stable unless citizens realise the underlying Rawlsian ideal of a moral personality in terms of pursuing a rational life plan in a context of legal entitlements. On the strength of this argument it is hard not to conclude that the pursuit of comprehensive religious (moral) conceptions will be seriously disadvantaged in a Rawlsian society.

Conclusion

Having examined John Rawls's theory of justice to discover whether it provides a procedure for justifying the norms and principles of justice to form society and regulate its basic structure, I conclude that despite its great merits it is inadequate and deficient in terms of the provision we have sought. Besides containing a dubious epistemology, it is flawed by a circularity in its own internal logic, i.e. by a dialectic between the procedure and substantive norms and principles. The latter are assumed by the theory rather than justified by the procedure.¹⁴⁷

Rawls's claim to pure procedural justice is partially undermined by the importation of an independent standard into a situation which, by his own definition, ought to have no independent standard operating within it (because it might bias the choice of principles). If we concede that this assumption or importation is permissible (since theories of justice require minimal but justifiable assumptions),¹⁴⁸ we still find Rawls's theory wanting, because the further assumptions upon which his independent standard of fairness depends, namely those relating to his model-conception of the person, are so strong as to disadvantage, if not exclude, certain conceptions of the good which are no less just or rational than his own partial theory of the good. Indeed, Rawls's self-interested, thin theory of the good contains assumptions which not all Christians would readily endorse, namely that all parties in the original position advance their conceptions of the good by trying to secure for themselves the greatest amount of primary goods possible. We have seen that not only the non-endorsement of Rawls's theory, but also the holding of comprehensive theories of the good would seriously disadvantage some people in a Rawlsian society.

Of all the many criticisms which have been levelled against Rawls's theory, the most telling against considering it an adequate mediation of God's justice are its individualism and its monological nature (i.e. the thought-experiment of a single agent detached from his or her ends). Rawls, as a Kantian philosopher who believes that the original position is a procedural interpretation of Kant's categorical imperative, seems not to have taken account of the charge that the categorical imperative is a subjective and monological principle, rather than an intersubjective and dialogical one. If we are to discover the justice of God in modern procedural understandings of justice, we must, without prejudging the outcome, be assured that the procedure is itself consonant with the intersubjective model of the Trinity and with the genuinely discursive model presented by Jesus' communicative action.

Rawls's later work shows awareness that justification of norms and principles is tied to the idea of a public discourse among free and equal persons. If we seek to develop that awareness, we find ourselves pushed in the direction of a discourse ethics, in which the basic idea is that a norm is justified only if it could be agreed to by all concerned as participants in a practical discourse where no force but that of the better argument prevails.¹⁴⁹ Such a universal or discourse ethics has been developed by Habermas who, with Karl-Otto Apel, has reformulated Kant's categorical imperative in terms of a discursive procedure for moral argumentation.¹⁵⁰ This procedure does not impose prior constraints on the subject matter that can be introduced in practical discourse, but permits all participants freedom to introduce any argument or consideration they deem to be relevant. Habermas's procedure, which we shall consider next, is constructed so as not to exclude in advance any conception of the good or interpretation of specific needs, but to ask

whether there are good reasons, i.e. reasons which could not reasonably be rejected by any of the participants, for excluding some conceptions from affecting the selection of principles of justice.

The flaws which we have discovered in Rawls's theory of justice do not entirely vitiate it, in my view. If Christians are not able to affirm Rawls's theory because its proposed procedure is too restrictive and therefore deficient, they can still find much within it that is worthwhile, and even consonant with a biblical understanding of justice. At very least, Rawls's thesis is worthwhile because, in his own words, "it singles out with greater sharpness the graver wrongs a society should avoid".¹⁵¹ Even though Rawls's contractual procedure may be the idealised thought experiment of a single agent, it still yields "an interesting perspective on actual society"¹⁵² which may provide a critical standpoint on existing social arrangements, and thereby the basis for acting to change them. Further, in his contractual procedure Rawls recognises a crucial aspect of justice, namely that the political principles which guide the choice of the optimal social policy must not discriminate arbitrarily between people in society. Rawls's egalitarian vision of society, despite its individualistic bias, may be sufficiently continuous with a Christian vision to permit continued dialogue between Christian and Rawlsian thinkers interested in the formation of a more just society, and even to permit the pragmatic adoption of much of Rawls's substantive practical advice about just institutional formation in order to establish background justice, and maintain a just basic structure.

Footnotes

- 1 S. Benhabib: "The Methodological Illusions of Modern Political Theory: The Case of Rawls and Habermas", *Neue Hefte für Philosophie* 21 (1982), 49.
- 2 J. Rawls: "Kantian Constructivism in Moral Theory", *The Journal of Philosophy* Volume 77/9 (1980), 518; hereafter referred to as KC.
- 3 J. Rawls: *A Theory of Justice*, Oxford: Oxford University Press, 1972, hereafter referred to as TJ.
- 4 The Kantian aspects of his theory which Rawls has sought to clarify are: the social contract tradition of his theory; the basic structure as the subject of justice (which, although not a purely Kantian assertion, can be derived from Kant's awareness that the principles arising from the original social contract are of a different nature from contracts in private law); the distinction between the right and the good (or questions of justice and questions of the good life); the development of a model-conception of the person (or moral agency); and the normative grounding of substantive principles of justice with reference to the Kantian notion of pure practical reason. [For a sustained and systematic attempt to strengthen the Kantian interpretation of Rawls's theory, see K. Baynes, *The Normative Grounds of Social Criticism*, Albany, State University of New York Press, 1992, chapter 2 - "Justice as Fairness: Rawls's Kantian Interpretation", which includes a useful survey of recent critical discussions of the Kantian roots of Rawls's theory.]
- 5 K. Lebacqz: *Six Theories of Justice*, Minneapolis: Augsburg Publishing House, 1986, p. 33.
- 6 TJ, p. 18.
- 7 TJ, p. 21.
- 8 TJ, p. 256.
- 9 TJ, p. 7.
- 10 TJ, p. 55.
- 11 TJ, p. 7
- 12 TJ, p. 61.
- 13 TJ, p. 62.
- 14 TJ, p. 62.
- 15 TJ, p. 4.
- 16 TJ, p. 4.
- 17 TJ, p. 4.
- 18 Baynes, op. cit., p. 53.
- 19 TJ, pp. 453-462; KC, pp. 521ff.
- 20 TJ, p. 454.
- 21 Plato: *The Republic*, Book III, 414-415; in *The Dialogues of Plato*, Volume II, translated by B. Jowett, Oxford: Clarendon Press, 1953, pp. 265-267.
- 22 TJ, p. 454, n. 1.
- 23 TJ, 454.
- 24 Both Rawls and Habermas emphasise the dependence of a sense of justice on the principles of moral psychology, and on the need for a full understanding of the

development of moral consciousness and of the processes of moral learning. See TJ, pp. 455-512; and J. Habermas: "Moral Development and Ego Identity" in *Communication and the Evolution of Society*, Heinemann, 1979, pp. 69-94, hereafter referred to as CES; also *Moral Consciousness and Communicative Action*, Cambridge: MIT/Polity Press, 1990, hereafter referred to as MCCA; see especially the essay "Morality and Ethical Life" in this volume.

- 25 TJ, p. 462.
- 26 TJ, p. 505; KC, p. 525.
- 27 KC, p. 525.
- 28 TJ, p. 505.
- 29 TJ, p. 505.
- 30 J. Rawls: "A Kantian Conception of Equality", *Cambridge Review* 96/2225 (28-2-1975), 94.
- 31 Baynes, op. cit., p. 56.
- 32 TJ, pp. 126-128.
- 33 TJ, p. 126.
- 34 TJ, p. 127.
- 35 TJ, p. 128.
- 36 TJ, p. 11.
- 37 TJ, p. 11.
- 38 TJ, p. 12.
- 39 TJ, p. 19.
- 40 Rawls appeals to Kant's *Metaphysics of Morals* for support, maintaining that Kant is clear that the original agreement is hypothetical: see footnote 5, TJ, p. 12.
- 41 TJ, p. 12.
- 42 TJ, p. 12.
- 43 TJ, P. 12.
- 44 TJ, Section 24, especially pp. 136-137.
- 45 TJ, p. 137.
- 46 TJ, p. 140.
- 47 TJ, pp. 12-13.
- 48 KC, p. 550.
- 49 KC; "Fairness to Goodness", *The Philosophical Review* 84/4 (1975), 536-554; and *Political Liberalism*, New York: Columbia University Press, 1993.
- 50 TJ, p. 31.
- 51 TJ, pp. 31-32.
- 52 Rawls: *Fairness to Goodness*, op. cit., p. 539.
- 53 R. Fern: "Religious Belief in a Rawlsian Society", *The Journal of Religious Ethics* 15/1 (1987), 42; T. Nagel: "Rawls on Justice", pp. 1-16 in N. Daniels, Ed.: *Reading Rawls*, Oxford: Blackwell, 1975; A. Schwartz: "Moral Neutrality and Primary Goods", *Ethics* 83/4 (1973), 294-307.

- 54 TJ, p. 260.
- 55 TJ, p. 396.
- 56 TJ, p. 130.
- 57 TJ, p. 131-135.
- 58 TJ, pp. 142-150.
- 59 TJ, pp. 152-153.
- 60 TJ, p. 145.
- 61 TJ, pp. 84-85.
- 62 TJ, p. 85.
- 63 TJ, p. 86.
- 64 TJ, p. 86.
- 65 K. Lebacqz, *op. cit.*, p. 39.
- 66 TJ, p. 136.
- 67 TJ, p. 275.
- 68 TJ, Section 43, pp. 274-284.
- 69 TJ, pp. 280ff.
- 70 KC, pp. 523-524.
- 71 TJ, p. 15; cf. KC, p. 523.
- 72 K. Baynes, *op. cit.*, p. 51.
- 73 M. Gibson: "Rationality", *Philosophy and Public Affairs* 6/3 (1977), 193-225; S. Benhabib: "The Methodological Illusions ... ", *op. cit.*, 47-74.
- 74 TJ, pp. 302-303.
- 75 TJ, p. 303
- 76 TJ, p. 62.
- 77 TJ, p. 15.
- 78 TJ, p. 100.
- 79 TJ, pp. 100-101.
- 80 TJ, pp. 100-108.
- 81 TJ, pp. 101-102.
- 82 C. E. Curran: *American Catholic Social Ethics: Twentieth Century Approaches*; Notre Dame, Indiana: University of Notre Dame Press, 1982, p. 61.
- 83 *Justice in the World*, Part II, Sections 30-31: Papal Encyclical, in Walsh, M. and Davies, B., Eds.: *Proclaiming Justice and Peace - One Hundred Years of Catholic Social Teaching*, Flame/CAFOD/Collins, 1991; see also, e.g., J. Pixley and C. Boff: *The Bible, the Church and the Poor*, Burns and Oates, 1989; "The Church, Theology and the Poor" in D. B. Forrester: *Theology and Politics*, Oxford: Blackwell, 1988, pp. 128-149.
- 84 TJ, p. 21.
- 85 TJ, p. 21.
- 86 TJ, pp. 47-48.

- 87 TJ, p. 48.
- 88 TJ, p. 48.
- 89 TJ, p. 48.
- 90 R. Brandt: *A Theory of the Good and the Right*, Oxford: Clarendon Press, 1979, p. 20.
- 91 N. Daniels: "Wide Reflective Equilibrium and Theory Acceptance in Ethics", *Journal of Philosophy* 76/5 (1979), 269.
- 92 TJ, p. 49.
- 93 J. Rawls: "The Independence of Moral Theory", *Proceedings and Addresses of the American Philosophical Association* 48 (1975), 8.
- 94 For a summary of the conditions of wide reflective equilibrium, see N. Daniels: "Reflective Equilibrium and Archimedean Points", *Canadian Journal of Philosophy* 10/1 (1980), pp. 85-86.
- 95 K. Baynes, op. cit., p. 70.
- 96 This approach is presented mainly in his essay "Kantian Constructivism in Moral Theory", op. cit.
- 97 KC, p. 564.
- 98 KC, p. 519.
- 99 R. P. Wolff: *Understanding Rawls: a Reconstruction and Critique of A Theory of Justice*, Princeton: Princeton University Press, 1977; D. Lyons: *Forms and Limits of Utilitarianism*, Oxford: Clarendon, 1965; M. J. Sandel: *Liberalism and the Limits of Justice*, Cambridge: Cambridge University Press, 1982.
- 100 A. McLeod: "Distributive Justice, Contract and Equality", *Journal of Philosophy* 81/11 (1984), 709-718.
- 101 K. Baynes, op. cit., p. 64.
- 102 S. Benhabib has made the important point that procedures of normative justification, which begin by counterfactually abstracting from known social and historical conditions, "must justify this abstraction in light of some principles of inclusion and exclusion" (about certain aspects of identity, capacity and quality): "As theories of rational consent become more *universalistic* in the substantive sense, as they consider all and not only some group of humans to be entitled to consent, they must also become increasingly formal in their methodological assumptions. For, if it is assumed that all humans are entitled to consent, then the theory must proceed from a sufficiently general and minimal conception of the empirical and normative identity to be ascribed to human beings. If this conception were not sufficiently minimal and general, then the theory would contradict the principle of rational consent for all, for it would have restricted this principle only to certain groups of humans, who are such and such, and have the capacity to act in such and such ways. This would be carried out on the basis of strong normative assumptions the validity of which would have been presupposed, but not justified. But the more minimal and general the conception of the empirical and normative identity of persons from which the theory proceeds, the more unlikely that this will prove sufficient to yield normative principles of social and institutional arrangements." [Benhabib, "The Methodological Illusions ...", op. cit., 50-51.]
- 103 K. Lebacqz, op. cit., p. 50; H. Beckley: "A Christian Affirmation of Rawls's Idea of Justice as Fairness: Part I", *The Journal of Religious Ethics* 13/2 (1985), 215; hereafter referred to as Beckley, 1985.

- 104 Beckley, 1985, op. cit.
- 105 *ibid.*, p. 215.
- 106 "A Christian Affirmation of Rawls's Idea of Justice as Fairness: Part III", *The Journal of Religious Ethics* 14/2, (1986), 229-246.
- 107 *ibid.*, p. 229.
- 108 *ibid.*
- 109 A. McFadyen: *The Call to Personhood: A Christian Theory of the Individual in Social Relationships*, Cambridge: Cambridge University Press, 1990, p. 183.
- 110 W. Galston: *Justice and the Human Good*, Chicago: University of Chicago Press, 1980, p. 115; K. Lebacqz, op. cit., p. 42; D. Phillips, *Towards a Just Social Order*, Princeton, New Jersey: Princeton University Press, 1986, pp. 64ff; M. Sandel, op. cit., pp. 53ff.; K. Baynes, op. cit., p. 65; S. Benhabib: "The Methodological Illusions ...", op. cit., p. 63 .
- 111 TJ, p. 139.
- 112 op. cit., p. 65.
- 113 *ibid.* (For a perceptive analysis of monological communication and its implication for the effective control of the "other" (or the effective disappearance of a real "other"), see McFadyen: *The Call to Personhood*, op. cit., pp. 122-124).
114. J. Rawls: "Justice as Fairness: Political not Metaphysical", in *Philosophy and Public Affairs* 14/3 (1985), 225.
115. *ibid.*, p. 234.
- 116 K. Lebacqz, op. cit. p. 50.
- 117 TJ, p. 560.
- 118 M. Sandel, op. cit., p. 54.
- 119 TJ, p. 189.
- 120 TJ, p. 130.
- 121 TJ, p. 129.
- 122 M. Sandel, op. cit., p. 55.
- 123 T. Nagel has also noticed that the original position contains "a strong individualistic bias, which is further strengthened by the motivational assumptions of mutual disinterest and absence of envy ... The original position seems to presuppose not just a neutral theory of the good, but a liberal, individualistic conception according to which the best that can be wished for someone is the unimpeded pursuit of his own path, provided it does not interfere with the rights of others". This criticism appears in Nagel's essay "Rawls on Justice", in *Reading Rawls*, op. cit., pp. 9-10.
- 124 Baynes, op. cit., p. 65.
- 125 TJ, p. 129.
- 126 TJ, p. 522.
- 127 TJ, p. 125.
- 128 TJ, p. 192.
- 129 Rawls: *Fairness to Goodness*, op. cit., p. 549.
- 130 *ibid.*

- 131 TJ, p. 94.
- 132 R. Fern, op. cit., p. 41.
- 133 *ibid.*, p. 42.
- 134 *The Philosophical Review* 60/2 (1951), 177-197.
- 135 *ibid.*, p. 195.
- 136 R. Fern, op. cit., pp. 46-52.
- 137 "The Idea of an Overlapping Consensus", *Oxford Journal of Legal Studies* 7 (1987), p. 8.; cf. a revised version of the same title in Lecture IV of *Political Liberalism*, op. cit., pp. 133-172.
- 138 Rawls: "The Idea of an Overlapping Consensus", p. 8.
- 139 "Justice as Fairness: Political not Metaphysical", op. cit., p. 231; cf. "The Idea of an Overlapping Consensus", *OJLS*, 8. Baynes finds a parallel between Rawls's method of avoidance and C. Larmore's "universal norm of rational dialogue" in *Patterns of Moral Complexity*, Cambridge: Cambridge University Press, 1987, p. 53: "When two people disagree about some specific point, but wish to continue talking about the more general problem they wish to solve, each should prescind from the beliefs that the other rejects, (1) in order to construct an argument on the basis of his other beliefs that will convince the other of the truth of the disputed belief, or (2) in order to shift to another aspect of the problem, where the possibilities of agreement seem greater". cf. B. Ackerman's model of "conversational restraint" in *Social Justice in the Liberal State*, New Haven: Yale University Press, 1980, p. 9 and "What is Neutral about Neutrality?" in *Ethics* 93/2 (1983), 375.
- 140 "Justice as Fairness: Political not Metaphysical", op. cit., p. 247. L. G. Jones believes that Rawls has shifted from his position in *A Theory of Justice*, in which the original position is crucial to Rawls's presumption of using rational agreement to secure an overlapping consensus. Jones suggests that in Rawls's later work, particularly in *Justice as Fairness: Political not Metaphysical*, the key idea in the interpretation of justice as fairness is no longer the original position, but the idea of the overlapping consensus which secures rational agreement and therefore obviates the need for the original position: see Jones's essay "Should Christians Affirm Rawls' Justice as Fairness? A Response to Professor Beckley", in *The Journal of Religious Ethics* 16/2 (1988), 251-271. My understanding of Rawls's position is that there is indeed a tension in his thought, but that his project, even in the later essays, is dependent upon the original position, which cannot be eliminated in Rawls's theory of justice; I find no compelling evidence to suggest that the overlapping consensus is meant to replace the function of the original position; rather, Rawls hopes that his political conception of justice "may at least be supported by what we may call an 'overlapping consensus', that is, by a consensus that includes all the philosophical and religious doctrines likely to persist and to gain adherents in a more or less just constitutional democratic society". ["Justice as Fairness", op. cit., pp. 225-226.]
- 141 "The Idea of an Overlapping Consensus", *OJLS*, op. cit., p. 19.
- 142 "Justice as Fairness: Political not Metaphysical", op. cit., p. 241.
- 143 *ibid.*, p. 247.
- 144 *ibid.*
- 145 Fern, op. cit., p. 51.
- 146 *ibid.*, p. 52.

- 147 This is a criticism made by Benhabib: "The initial counterfactual abstraction does not serve as justification, but rather, as an illustration of normative principles presupposed by the theory." ["The Methodological Illusions ...", op. cit., p. 49.]
- 148 See p. 141 and p. 151 above.
- 149 J. Habermas: "Discourse Ethics", in *MCCA*, op. cit., p. 66; *Legitimation Crisis*, Heinemann, 1976, p. 108; "Wahrheitstheorien", in Helmut Fahrenbach: *Wirklichkeit und Reflexion: zum sechzigsten Geburtstag für Walter Schulz*, Pfullingen: Neske, 1973, pp. 251-256.
- 150 In addition to the works noted immediately above, see Habermas's essay "Morality in Ethical Life" in *MCCA*, op. cit.; K. Apel: "The *a priori* of the communication community and the foundation of ethics: the problem of a rational foundation of ethics in the scientific age", in *Towards a Transformation of Philosophy*, Routledge and Kegan Paul, 1980, pp. 225-300; S. Benhabib and F. Dallmayr, Eds.: *The Communicative Ethics Controversy*, Cambridge: MIT Press, 1990.
- 151 TJ, p. 201.
- 152 P. Pettit: "The Importance of Reading Rawls", in *Cambridge Review* 96/2225 (28-2-1975), 101.

Chapter 4 Jürgen Habermas's Theory of Justice

Introduction

In our search for a modern theory of justice which may be considered a mediation of God's society-forming justice, we have noted the inadequacy of Rawls's theory mainly on account of the monological procedure it advocates, and we concluded that the need for a more participatory and dialogical model pushes us in the direction of a discourse ethics.¹ The virtue of Habermas's discourse or communication ethics is that, unlike Rawls's theory of justice which is ambivalent towards the public sphere and democratic participation, it contains an implicit theory of justice which is developed in the form of a discursive legitimation procedure.²

This procedure, which is a procedure for rationally evaluating the legitimacy³ of a political order and for justifying proposed social norms of action, provides a method of moral argumentation among citizens in civil society.⁴ We have also noted that a society cannot be formed or maintained through force, but relies on a mutual recognition of, and agreement about, norms and values. Habermas asserts that such agreement is achieved only communicatively, through a special kind of linguistically mediated interaction which is both ideology-critical (unmasking the illegitimate and arbitrary use of power) and domination-free, in the sense that it prefers a system of justice in which happiness and harmony do not consist of the triumph of one over the repressed needs of others.

Habermas understands society as designating "that symbolically prestructured segment of reality that the adult subject can understand in a nonconformative attitude, that is ... as a participant in a system of communication".⁵ At the heart of his conception of civil society, in which citizens integrate or co-ordinate their

actions communicatively, is the notion of a pluralist public sphere in which people argue rationally about norms, policies and institutions that form society. A constitutive rule of their argumentation is the principle of universalisability (U), which Habermas proposes as a reformulation of Kant's categorical imperative:

Every valid norm has to fulfil the following condition: (U) *All affected can accept the consequences and the side-effects its general observance can be anticipated to have for the satisfaction of everyone's interests (and these consequences are preferred to those of known alternative possibilities for regulation).*⁶

Habermas's position is that this principle, and the norm of discursive will-formation on generalisable interests, can be derived from the unavoidable and universal pragmatic presuppositions of argumentation and everyday communication. They are also derivable from the notion (implicit in communicative action) of what it means to justify a norm of action. The theory of communicative action and the theory of universal pragmatics form the basis of Habermas's justification of his discourse ethics, in which his theory of justice is to be discerned.

Although Habermas's various theories are avowedly atheistic, and propose a rational procedure through which socially formative norms can be generated without what he calls regressing to mythological, religious and cosmological forms of thought,⁷ there is much in these theories which Christians can affirm: not least are Habermas's major aim of anticipating and justifying a better world society, which would afford greater opportunities for happiness, peace, justice and community, and his recognition that the value of justice (right, not might) is the basis of all political society. It is to be my contention in the next chapter that a theological assessment of the idea of communicative action will find that not only is it congruent with the justice of God understood in terms of right relationship and

true sociality, but that there is a theological dimension to it, in the sense that the reality underlying it is God (whose nature is justice).

However, before we can proceed to justify this claim, we must examine the connection between Habermas's communicative understanding of justice and the formation of society, which is to be found in certain categories in his social theory. Thus I begin with a section (4.1) which explicates the connection between social rationalisation and the linguistic requirement of normative justification. In this section I refer to the fact that when people propose certain norms for social action they raise various validity claims. As competent subjects of communication they are aware of what it means to justify their beliefs and actions to another with reasons. This notion of communicative competence requires development, which Habermas carries out in his theory of universal pragmatics. The next section (4.2) is devoted to this theory, which argues that the validity claims raised by one's actions and utterances require "discursive redemption". The task of universal pragmatics is the achievement of communicative competence, i.e the theoretical reconstruction of the implicit knowledge of every speaker to justify actions and norms of action.⁸

Justice resides in the quality of universality attaching to the norms which people propose in forming society through the co-ordination of their social actions. People's actions are bound together by reason expressed communicatively or dialogically (rather than monologically). Justice as normative legitimacy is dependent upon rational consensus, which is the outcome of a particular kind of argumentative discourse. Habermas's theory of justice can be constructed on the basis of the close parallels between justice and truth as these are established in distinct

types of discourse. Thus in the next section (4.3) I consider Habermas's theory of truth, which is the model for his theory of justice. In his theory of truth, Habermas sets out the steps of argumentation and the conditions for achieving a rational consensus (i.e., "the ideal speech situation"). Having set out Habermas's theories of universal pragmatics and of truth as the foundation for his theory of justice, I proceed in the next section (4.4) to explicate his theory of justice. This section concentrates on the notions of universalisability and discursive will-formation, since these provide the link between justice and the formation of society. I conclude with an endorsement of Habermas's theory because, although it does not provide substantive principles of justice, it does provide a genuinely dialogical procedure for establishing true sociality in accordance with our social, relational and linguistic constitution by God.

4.1 The linguistic co-ordination of social action

Habermas's reconstruction of Weber's thought in his *Theory of Communicative Action*,⁹ and especially his social-theoretical analysis of social rationalisation from the dual perspective of a society as system and lifeworld, have generated two valuable insights into the way in which a society is formed through social actions which are linguistically mediated and co-ordinated:¹⁰

- i) social rationalisation means an increased differentiation between social subsystems and the expansion of instrumental reason;¹¹
- ii) the possibility of new forms of communicative rationalisation within a lifeworld freed from the functional imperatives of social subsystems.

Habermas's re-working of the Weberian connection between social action and rationality releases the emancipatory and transformative potential of rationalisation which is not tied purely to humankind's technical interests, and thus is not positivistically reduced to instrumental rationality and technological and economic processes. Habermas is critical of the tendency in Western societies to suppress the distinction between the practical (i.e. the normative) and the technical (i.e. those processes by which material means are fitted to material ends).¹² In Habermas's epistemology (contained in his theory of "knowledge-constitutive interests"¹³) every speaking and acting subject constitutes knowledge in the light of three universally given a priori "cognitive interests",¹⁴ which correspond to three different processes of inquiry.¹⁵

The first of these interests is a universal interest in the technical control of nature that "constitutes the meaning of possible statements" and "establishes rules both for the construction of theories and for their critical testing".¹⁶ In this view, the validity of scientific theories cannot be separated from the underlying technical interest of humankind in the domination of nature which allows the material production of species. Habermas's critique of "scientism" (positivistic science) reveals that an unreflective cognitive attitude in the theoretical sciences toward the domain of nature causes it to be fundamentally instrumental: the implicit objective of all scientific enquiry based on this technical cognitive interest is to control and dominate.

The consequence of this cognitive attitude is that the tendency to control "objective" nature is transferred to the political sphere, with the result that political action is reduced to technical control and instrumental manipulation. It is in

response to humankind's technical interest in the domination of nature that science constitutes the world as one of potentially manipulable bodies. The expansion of technical control is accompanied by the technological manipulation of citizens, a manipulation which is normalised in order to maintain the system as it is. While technological development is important for the development of the human species and their society, it cannot proceed without due regard for progress in the fields of social institution and culture. Technical progress does not imply social and political progress, and cannot be identified with political emancipation and a more just social order. It does not follow that progress in the field of technical control implies improvement in the area of social interaction.

To retain the cognitive attitude of technical interest alone is to walk into the dangerous trap of asking science (or, more accurately, scientific theory justifying instrumental action) to provide absolute and authoritative answers in the practical or communicative domain.¹⁷ Habermas, in his criticism of Stalinist praxis, suggests that scientism in theory is authoritarianism in practice.¹⁸ Dermot Lane notes that "the history of the world, especially in the twentieth century, is surely adequate warning against the devastating results that this expectation can bring".¹⁹ Lane points out the value of Habermas's theory of knowledge-constitutive interests is a valuable epistemological tool for understanding the cultural crisis of the west; in particular, Habermas's analysis of the supremacy of technical reason in modern society helps us to understand some of the grave injustices and "extraordinary anomalies"²⁰ that beset the latter half of the twentieth century. Lane sums up Habermas's thought in noting the strange paradox which arises from the fact the advances of technology "have become in many instances more of a menace to

society than a source of genuine progress".²¹ That menace consists in the identification of instrumental reason with social reality and its divorce from practical and emancipatory interests.

There is yet a more subtle and pernicious danger in technical rationality, because "it severs the criteria for justifying the organisation of social life from any normative regulation of interaction ..."²² Habermas adds that "technocratic consciousness reflects not the sundering of an ethical situation but the repression of 'ethics' as such as a category of life".²³ The consequence of reducing knowledge to technique is the debasement of the public sphere. Habermas's thought on this phenomenon points to the devastating effect it has on the contemporary political process where, instead of decisions being made through the forum of public debate, "the decision-making process of democracy is taken over by a new breed of technical 'experts' who decide priorities on the basis of instrumental reason, with little or no reference to the legitimate demands of practical reason".²⁴

Against the mistrust of reason and rationality in some theological quarters, Habermas's understanding of rationality is far removed from the unreflective technical and instrumental understanding with which rationality is often associated. It needs to be stated that Habermas's enlargement of the concept of reason was designed to bring about emancipation from oppression and the improvement of human society and social relationships; this aim is consonant with the Christian vision of justice. The thrust of Habermas's thought has been to demonstrate the inadequacy of an exclusively instrumental or strategic rationality. Habermas's predecessors in the Frankfurt School, Horkheimer and Adorno, were unsuccessful in their attempts through their critique of instrumental reason²⁵ to bring about a

rational society in which reason, freedom and justice could be harmoniously linked for emancipation from a wide range of constraints, because they were not successful in developing a coherent account of reason.²⁶ Habermas wants to introduce and defend a wider, more comprehensive account of rationality (which he understands as "connected with ancient conceptions of *logos*"²⁷).

In developing his account of communicative rationality, Habermas distinguishes between understanding-oriented action (communicative action) and success-oriented action (purposive-rational or instrumental action).²⁸ He makes a further distinction between strategic and instrumental action.²⁹ Communicative action is an altogether different type of social action. Habermas points out that concepts of social action are distinguished according to how they specify the co-ordination among the goal-directed actions of different participants.³⁰ Communicative action, for Habermas, designates a type of interaction that is co-ordinated through language, specifically through speech acts.³¹ It refers to "the interpretation of at least two subjects capable of speech and action who establish interpersonal relations (whether by verbal or by extra-verbal means). The actors seek to reach an understanding about the action situation and their plans of action in order to coordinate their actions by way of agreement. The central concept of interpretation refers in the first instance to negotiating definitions of the situation which admit of consensus".³²

Habermas's wider conception of rationality does not jettison technical rationality. Habermas recognises that social systems expand their control over outer nature with the help of the forces of production:

A society owes emancipation from the external forces of nature to labour processes, that is to the production of technically exploitable

knowledge (including "the transformation of the natural sciences into machinery"). Emancipation from the compulsion of internal nature succeeds to the degree that institutions based on force are replaced by an organisation of social relations that is bound only to communication free from domination.³³

In order to exercise technical control over outer nature social systems require technically utilisable knowledge incorporating empirical assumptions with a claim to truth. "Inner nature" is adapted to society with the help of normative structures in which needs are interpreted and actions are variously sanctioned; this transpires in the medium of norms that have need of justification. Habermas's distinction between instrumental action, or work according to technical rules, and communicative action, or social interaction according to valid norms, is crucial to his understanding of a just social order, because only by it can we reconstruct the development of the human species as a historical process of technological and, interdependently, institutional and cultural development:

The processes of natural history are mediated by the productive activity of individuals and the organisation of their interrelations. These relations are subject to norms that decide, with the force of institutions, how responsibilities and rewards, obligations and charges to the social budget are distributed among members. It forms the linguistic communication structure on the basis of which subjects interpret both nature and themselves in their environment.³⁴

Habermas's analytic distinction between instrumental and communicative action at the level of social evolution, in which he distinguishes the growth in technical control from the extension of communication free from domination, provides the framework for his theory of *legitimation crisis*, which we considered earlier.

As we have seen, the burden of Habermas's book *Legitimation Crisis*³⁵ is that behavioural norms which govern social and political life derive their ultimate authority from their rational justifiability and their consequent capacity to command rational consensus. It is in the notion of *rational consensus* that we discern the contours of Habermas's theory of justice. Habermas does not have an explicit, fully developed theory of justice. However, justice (and truth) play an indispensable part in his thought on the political constitution of modern society and social evolution, in which he explores the origins, correlates and expressions of his standard of communicative rationality. This normative standard measures the course of development of the rationalisation process which Habermas reconstructs in his social theory. His thoughts on truth and justice can be gathered together to form a theory which is aimed at rationally grounding successful challenges to the stubbornly resistant "scientism" (false science) embedded in modern economics, philosophy, history, sociology, psychology, anthropology, politics and the humanities. I believe that theology can incorporate this theory, and draw support from Habermas's rejection of positivism and his attempt to achieve a theoretical understanding, using the categories of communicative competence and communicative rationality, to transform society and establish justice. Habermas's theory suggests that our hopes for a free and just society are the expression of the rationality of communicative action.

It is clear from Habermas's social theory, and from his communication theory, that society is formed as a consequence of the co-ordination of social action, which is a function of communicative action. Communicative action is action which is

oriented to reaching an understanding - the thesis he puts forward at the beginning of his important essay "What is Universal Pragmatics?".³⁶ It is clear from this thesis that Habermas focuses on *language* as a medium for co-ordinating action, i.e., for producing situations and subsequent patterns of interaction that depend for their legitimacy or justness on the rationally binding force of norms justified consensually³⁷ in particular kinds of linguistic acts. Our everyday communication practices contain linguistic (illocutive) acts which have rationally binding force. This force is constitutive for communicative action, and is a condition for social action in general.³⁸ It is the result of people acting communicatively, i.e. of trying to co-ordinate their social interaction linguistically.

When people act communicatively, they draw on mutually shared interpretations of their lifeworld.³⁹ In the utterance of their interpretations and their proposed social actions, they raise various related validity claims, and they mutually suppose that they each are ready to provide reasons if the validity of these claims should be contested. According to Habermas, competently speaking and acting subjects are aware, at least intuitively, of what it means to justify their beliefs and actions to another with reasons.⁴⁰ The readiness to provide such a justification is counterfactual, but Habermas believes that any subject capable of speech and action has the intuitive knowledge and interpretive accomplishments to redeem normative validity claims discursively, i.e. to justify action linguistically. The linguistic dimension is absolutely crucial to Habermas's thought on justice, and is carefully integrated with his systems-theoretical concept of legitimation crisis.

The problem of legitimacy has received very considerable attention in the fields of political and economic philosophy⁴¹ because it has always been central to social and political theory. A study of social justice which attempts to connect justice with the formation of society cannot avoid the central issue of legitimacy, and how that legitimacy is to be achieved. My study is less concerned with justice as an assessment of alternative forms of government, substantive political principles, ideals and patterns of organisation than with the method of assessment or justification. For this reason we turn to Habermas's theory of communicative action, which focuses on language as the medium for co-ordinating the actions and justifying the norms which form society.

It is clear from Habermas's many works that communication and language, which are central to social theory, are essential vehicles for achieving a just society:

Language behaviour is seen as the intervening variable between social institutions, the class system, and the state, on the one side, and, on the other, persons' capacity to interpret the social world rationally and to do something with others to change it.⁴²

Even before his "linguistic turn" in the 1970s,⁴³ Habermas (as early as his inaugural lecture at Frankfurt University in 1965) adverted to the central importance of language:

What raises us out of nature is the only thing whose nature we can know: *language*. Through its structure autonomy and responsibility are posited for us. Our first sentence expresses unequivocally the intention of universal and unconstrained consensus.⁴⁴

Justice is closely related to truth, and truth can be discerned and established only by a deep and proper understanding of language, i.e. by those who are "communicatively competent". This necessarily involves paying close attention to

language, linguistics and communication theory, especially the rational reconstruction of the conditions of speech and action (which is the task of formal or universal pragmatics). These considerations are all part of Habermas's theory of communicative competence, which deals with our ability to embed language in a network of relations to different orders of reality (see pp.194-195). It provides a unifying framework for his various disparate concerns and theoretical endeavours, from his theories of knowledge and action to his theories of socialisation and ideology. For Habermas, the theory of communication is the foundational study for the human sciences because speech is the distinctive and pervasive medium of life at the human level, disclosing the universal infrastructure of socio-cultural life. Habermas sees language as a kind of transformer, which transforms inner experiences into intentional contents, thereby producing intersubjective structures which regulate the processes of adapting to society "that, by virtue of the competencies of socially related individuals, operate through the peculiar media of utterances that admit of truth and norms that require justification".⁴⁵ Habermas's theory of communicative competence is not a theoretical luxury in the context of critical social theory but, as his main translator sees it, part of the goal of his critical theory - a form of life free from unnecessary domination in all its forms - which is "inherent in the notion of truth; it is anticipated in every act of communication".⁴⁶

Habermas's shift of focus to language and action includes an explication of universal pragmatics, in which he develops his notions of communicative rationality and communicative competence; it is from these conceptions that he derives his communicative ethics, because for him they constitute a universalistic perspective on normative legitimacy. In his theory of universal pragmatics Habermas

maintains that the fundamental norms of rational speech are implicit in ongoing linguistic interaction, a 'fact' which can be demonstrated by reconstructing what is intuitively known by every competent speaker. The theory of universal pragmatics is essential for a grasp of both his theory of truth and his theory of justice, because it provides the basis for his discourse ethics in which justice is determined, and thus warrants our investigation.

4.2 Habermas's theory of universal pragmatics

The connection between universal pragmatics, justice and the formation of society consists in the quasi-transcendental or speech-immanent obligation to justify norms of social action. We have noted that social action is co-ordinated through linguistically mediated interaction, in which the utterances of citizens raise validity claims which require justification, and toward which a hearer can take a rationally motivated "yes/no" position. Such justification implies at least an intuitive grasp of what it means to justify one's actions by discursive redemption of the validity claims they raise. The task of universal or formal pragmatics⁴⁷ is "to identify and reconstruct universal conditions of possible understanding",⁴⁸ i.e., the theoretical reconstruction of what it is that competent speakers implicitly know when they understand the utterance of a sentence in their language.⁴⁹ Universal pragmatics analyses the deep structure of the possibility of human communication, and establishes the conditions of linguistic interaction in a quasi-transcendental (i.e. unavoidable) sense.

The theory of universal pragmatics, thus, is an extension of formal semantics. Formal semantics, in its pursuit of a theory of meaning, can be divided into two basic theories: truth-conditional theories and communication-intentional theories.

The former state that to understand the meaning of a sentence in a language is to know the conditions under which it would be true.⁵⁰ The latter, to which Habermas is much closer, assert that a complete theory of sentence-meaning must also include an account of what speakers characteristically do with sentences. According to P. F. Strawson, this can best be achieved with reference to the communicative or audience-directed intentions of speakers.⁵¹ Strawson contends that the meaning of a sentence is (in part) dependent on the conventional rules governing the use a speaker makes of a sentence of a particular type (e.g., stating or asserting). These rules are themselves determined by the pragmatic considerations a speaker standardly intends to do with such sentences. Thus the goal of a theory of meaning, according to communication-intention theorists, is the theoretical reconstruction of the practical ability possessed by competent speakers of a language.⁵²

Habermas is critical of those approaches originating with Carnap which restrict rational reconstruction⁵³ to the syntactic and semantic features of language in abstraction from its pragmatic dimension. He is also critical of mainstream linguistics which relegates the pragmatic dimension to the domain of empirical investigations like psycholinguistics and sociolinguistics.⁵⁴ Although he insists that it is legitimate to draw an abstractive distinction between language as structure and speaking as process (i.e. an abstraction of language from the use of language in speech), he also believes that this methodological step does not warrant the view that the pragmatic dimension of language from which one abstracts is beyond formal analysis (i.e. inaccessible to a logical or linguistic analysis):

The separation of the two analytical levels, language and speech, should not be made in such a way that the pragmatic dimension of language is left to exclusively empirical analysis ... I would like to defend the thesis

that not only language but speech too - that is, the employment of sentences in utterances - is accessible to formal analysis.⁵⁵

In his essay "What is Universal Pragmatics?" Habermas reacts⁵⁶ to Chomsky's distinction between linguistic competence and linguistic performance. Generative grammar is concerned with the former to the exclusion of the latter.⁵⁷ Habermas believes that universal pragmatics permits the rational and universal reconstruction not only of linguistic competence (with its associated phonetic, syntactic and semantic features of sentences), but also of communicative competence (with its associated pragmatic features of utterances):

[Universal pragmatics] thematises the elementary units of speech (utterances) in an attitude similar to that in which linguistics does the units of language (sentences). The goal of reconstructive linguistic analysis is an explicit description of the rules that a competent speaker must master in order to form grammatical sentences and to utter them in an acceptable way. The theory of speech acts shares this task with linguistics. Whereas the latter starts from the assumption that every adult speaker possesses an implicit, reconstructible knowledge, in which is expressed his linguistic rule competence (to produce sentences), speech act theory postulates a corresponding communicative rule competence, namely the competence to employ sentences in speech acts. It is further assumed that communicative competence has just as universal a core as linguistic competence. A general theory of speech actions would thus describe exactly that fundamental system of rules that adult subjects master to the extent that they can fulfil *the conditions for a happy employment of sentences in utterances*, no matter to which particular language the sentences belong and in which accidental contexts the utterances may be embedded.⁵⁸

This excerpt demonstrates Habermas's belief that the speech acts of communicatively competent actors conform to a set of rules, some of which establish the criteria of communicative rationality. Habermas's theory of communicative competence is an attempt to make good the claim that communication oriented to understanding has as its goal the attainment of agreement or consensus;⁵⁹ he does

this by reconstructing the normative basis of speech as a system of universal and necessary validity claims (see p. 195 below). The rationale behind this approach is that language cannot be comprehended apart from the understanding that is achieved in it. For Habermas the rational reconstruction process in universal pragmatics is the task of rendering implicit know-how (universal or fundamental competence) into a set of explicit, "formal-pragmatic" rules. The pragmatic concept of performance is crucial to Habermas's proposal of investigating language in competence-theoretic terms, and of reconstructing speakers' intuitive linguistic knowledge in terms of a theory of communicative competence.

In developing a theory of "communicative competence", and after considering numerous linguistic approaches from Wittgenstein onwards, Habermas adopts the theory of speech acts, based on the work of Austin and Searle,⁶⁰ as the most promising approach for his own theory. The reason that Habermas is drawn to speech act theory is that "it clarifies the performative status of linguistic utterances".⁶¹ J. L. Austin is credited with initiating this theory, which has been developed by Searle, Strawson and others (including Habermas and Apel). In this theory, the basic linguistic unit is not the sentence, but the speech act. According to Searle, speech acts are a species of constitutive (rather than regulative) rule, and to understand a speech act is to know the rules that are constitutive for the use of acts of that type.⁶² Searle claims that there are four main rules constitutive for the type of speech act performed: the propositional content rule, the preparatory rule, the sincerity rule, and the essential rule (which is the most important, because it specifies an act's illocutionary point or aim).⁶³ The thesis of Austin's famous work *How To Do Things With Words* is that speakers, in saying something, also *do*

something. He introduced a distinction between locutionary and illocutionary acts:⁶⁴ the former are acts *of* saying something, while the latter are acts one performs *in* saying something. Whereas locutionary acts refer to the sense and reference of the utterance, and bear truth and falsity, illocutionary acts indicate the force of the utterance and are determined not by conditions of truth or falsity, but of felicity or infelicity.

Austin also distinguished between illocutionary and perlocutionary acts.⁶⁵ The former are aimed at "securing uptake" or "bringing about an understanding of the meaning and of the force of the locution",⁶⁶ while the latter aim at producing an effect in the audience.⁶⁷ Searle clarified Austin's distinction by reformulating it not as a difference between two kinds of speech acts, but as a difference between the two basic components of any speech act.⁶⁸ While the locutionary component, or propositional content, refers to the sense of the utterance, and can be true or false, the illocutionary component specifies the force with which the propositional content is uttered. For example, in the utterances "I assert that *p*", "I promise that *p*", or "I command that *p*", the same propositional content *p* appears with varying illocutionary force. Each speech act consists, at the level of deep structure, of two sentences: a dominating or performative sentence, as in the examples above ("I assert, promise, command, that ..."); and a sentence of propositional content. The *doing* of something in saying something is Austin's "illocutionary force" of an utterance.

The double structure, which is a feature of everyday communication, helps us to understand how a speaker and hearer can communicate simultaneously at two levels: 1) the level of intersubjectivity on which they are able to establish the

relations that permit them to come to an understanding with one another; and 2) the level of propositional content which is communicated.⁶⁹ Participants thus combine communication of a content with communication about the role in which the communicated content is used. The dominating sentence establishes the illocutionary force of the utterance, the mode of communication between speaker and hearer, and thus the pragmatic situation of the dependent sentence; the latter consists in general of an identifying or referring phrase and an indicative phrase, and establishes the connection of the communication with the world of objects.

Habermas argues that the competence of the ideal speaker must be regarded as including not only the ability to produce and understand grammatical sentences but also the ability to establish and understand those modes of communication and connections with the external world through which speech in ordinary language becomes possible. External structures are not the only ones which are referred to or produced (performatively) in the double structure of speech; universal pragmatics undertakes the systematic reconstruction of general structures that appear in every possible speech situation. These structures serve to situate pragmatically the expressions generated by the linguistically competent speaker.

Pragmatic rules for situating sentences in speech situations concern three basic relations to reality that accrue to a grammatically well-formed sentence in being uttered. According to Habermas, such a sentence is placed in relation to

- a) an external reality, or objective world of states of affairs;
- b) a normative reality of intersubjectively recognised legitimate interpersonal relationships, i.e. a social world of interpersonal norms and values, roles and

rules, that a speech act can fit or fail to fit. (These norms are either right - legitimate, justifiable - or wrong.)

- c) an internal reality of intentionality and expressivity, i.e. a subjective world of experience.⁷⁰

Habermas also introduces these relations to reality as three possible world-relations which social actors can adopt; as they seek to reach an understanding with one another about something in the world, they orient themselves to these worlds. Further, the utterances of speakers oriented toward understanding necessarily (but usually only implicitly) make validity claims of different types. According to Habermas, the claims are:

- i) that the utterance is *comprehensible* (grammatical in the linguistic sense);⁷¹
- ii) that the utterance or statement is *true* (or, if no statement is made, that the existential presuppositions of his utterance's propositional content are fulfilled);
- iii) that the speaker's manifest expression of intentions is *truthful* (or veracious);
- iv) and that his utterance (his *speech act*) itself is *right* or appropriate in relation to a recognised normative context (or that the normative context it satisfies is itself legitimate).⁷²

A speaker has to be able to convince her hearers that her validity claims are rational and thus worthy of recognition for there to be a rationally motivated argument or consensus on how to co-ordinate future actions.⁷³ Habermas argues that from the perspective of communicative action, utterances can be assessed as

rational or irrational because they raise criticisable validity claims.⁷⁴ Someone is considered rational not only by providing grounds for an assertion by pointing to appropriate evidence, but also if he is following an established norm and is able to justify his action by explicating the given situation in the light of legitimate expectations.⁷⁵ Habermas holds that while genuine communicative utterances aim to bring about the understanding which has as its goal the attainment of consensus, some utterances are non-communicative, i.e. not every actual instance of speech is oriented to reaching understanding. Habermas regards these as "strategic" forms of communication (like lying, misleading, deceiving, manipulating, etc.), which are parasitic on speech oriented to genuine understanding, because they involve the suspension of certain validity claims, especially truthfulness.⁷⁶

From the point of view of a theory of justice, the centre of the theory of speech acts is an explanation of the illocutionary force proper to performative utterances, that is, of their power to generate the interpersonal relations intended by the speaker. Habermas limits his analysis of speech acts to those carried out under standard conditions⁷⁷ (i.e. those which are meant sincerely and are not employed strategically). It is these speech acts which have a constitutive meaning for communicative action. As we have seen, communicative action is aimed at agreement that will provide the basis for a "consensual coordination"⁷⁸ of social action, which is simultaneously the basis for the justice which forms society. The point of the concept of speech acts, for Habermas, lies in their "peculiarly generative power", which can cause a speech act to succeed or to fail.⁷⁹ A speech act succeeds if it establishes the intended relation by a speaker between him and his hearer, and if the hearer can understand and accept the content uttered by the speaker in the

sense indicated (e.g., a promise, assertion, suggestion, etc.): "Thus the generative power consists in the fact that the speaker, in performing a speech act, can influence the hearer in such a way that the latter can take up an interpersonal relation with him."⁸⁰ It is this performative aspect which receives most emphasis in Habermas's development of the necessary conditions for a successful speech act.

Following Austin and Searle's analysis of illocutionary force, Habermas recognises that the success or failure of a speech act is not merely a question of comprehensibility but of "acceptability": "With an illocutionary act a speaker makes an offer that can be accepted or rejected."⁸¹ Habermas insists that a speech act counts as acceptable only if the speaker not merely feigns but sincerely makes a serious offer: "A serious offer demands a certain engagement on the part of the speaker."⁸² Although he follows Searle closely, Habermas believes previous analyses of speech acts to be unsatisfactory, "as they have not clarified the engagement of the speaker, on which the acceptability of his utterance depends".⁸³ Thus, for Habermas, the essential presupposition for the success of an illocutionary act consists in the speaker's entering sincerely into a specific *engagement*, so that the hearer can rely on him:

An utterance can count as a promise, assertion, request, question, or avowal, if and only if the speaker makes an offer that he is ready to make good insofar as it is accepted by the hearer. The speaker must engage himself, that is, indicate that in certain situations he will draw certain consequences for action. The *content* of the engagement is to be distinguished from the *sincerity* of the engagement ... This condition, introduced by Searle as the "sincerity rule", must *always* be fulfilled in the case of communicative action that is oriented to reaching understanding.⁸⁴

Habermas argues that the illocutionary force of an acceptable speech act consists in the fact that it can move a hearer to rely on the "speech-act-typical

commitments" (or speech-act-immanent obligations) of the speaker.⁸⁵ The question arises, if illocutionary force is to have more than suggestive influence, as to what could motivate the hearer to accept the speaker's sincerely intended engagement. According to Habermas, in the case of "institutionally bound" speech acts (such as baptising and marrying), the illocutionary force can be traced back directly to the rationally binding force of established norms of action. In the case of institutionally unbound speech acts (which do not presuppose particular institutional settings), the speaker can develop this force by inducing recognition of the universal validity claims raised by her speech act:

With their illocutionary acts, speaker and hearer raise validity claims and demand they be recognised. But this recognition need not follow irrationally, since the validity claims have a cognitive character and can be checked. I would like, therefore, to defend the following thesis: *in the final analysis, the speaker can illocutionarily influence the hearer and vice versa, because the speech-act-typical commitments are connected with cognitively testable validity claims* - that is, because the reciprocal bonds have a rational basis. The engaged speaker normally connects the specific sense in which he would like to take up an interpersonal relation with a thematically stressed validity claim and thereby chooses a specific mode of communication.⁸⁶

Thus the engagement or performative attitude of the speaker is defined in terms of the validity claims which correspond to each type of illocutionary act, and which are built into the structure of acts of that type. Habermas argues that in different speech acts, in addition to the general conditions of intelligibility or comprehensibility, three universal validity claims are raised (truth, rightness, and truthfulness). The priority of the respective claim determines the basic type of speech act performed. In *The Theory of Communicative Action*, Habermas states that in analytic philosophy, there is an extended literature on each of the three *pure cases of speech acts*, which has developed instruments to explain the universal

validity claims to which speakers are oriented in their different types of speech act.

The three types are:

constative speech acts in which elementary propositional (assertoric) sentences are used;

regulative speech acts in which either elementary imperative sentences (as in commands) or elementary intentional sentences (as in promises) appear;

expressive speech acts in which elementary experiential sentences (in the first person present) appear.⁸⁷

In *constative* or assertive illocutionary acts (such as asserting, reporting, narrating, predicting, denying, contesting), it is the claim to *truth* which is constitutive and is thematically stressed. "In the cognitive use of language the speaker proffers a speech-act-immanent *obligation to provide grounds*. Constative speech acts contain the offer to recur if necessary to the *experiential source* from which the speaker draws the *certainty* that his statement is true. If this immediate grounding does not dispel an *ad hoc* doubt, the persisting problematic truth can become the subject of a theoretical discourse."⁸⁸

In regulative illocutionary acts (such as commands, requests, warnings, excuses, recommendations, advice, through which we mark the distinction between what is and what ought to be), the claim to rightness or appropriateness is thematically stressed. "In the interactive use of language the speaker proffers a speech-act-immanent *obligation to provide justification*. Of course, regulative speech acts contain only the offer to indicate, if necessary, the *normative context* which gives the speaker the *conviction* that his utterance is right. Again, if this immediate justification does not dispel an *ad hoc* doubt, we can pass over to the level of discourse, in this case a practical discourse. In such a discourse, however, the

subject of discursive examination is not the rightness claim directly connected with the speech act, but the *validity claim of the underlying norm*.⁸⁹

In expressive or representative illocutionary acts (such as to admit, reveal, hope, fear, love, hate, want, desire, etc.), the claim to truthfulness is thematised. "In the expressive use of language the speaker also enters into a speech-act-immanent obligation, namely the *obligation to prove trustworthy*, to show in the consequences of his action that he has expressed just that intention which actually guides his behaviour. In case the immediate *assurance* expressing what is *evident* to the speaker himself cannot dispel *ad hoc* doubts, the truthfulness of the utterance can only be checked against the consistency of his subsequent behaviour."⁹⁰

The point of Habermas's universal pragmatics for people living together who are trying to achieve justice (which is primarily relational or, in Habermas's language, "interactive"), and to form society, is that they must have mastered a whole set of distinctions between performatives, modes of language and validity claims if they are to be able to use their utterances to generate the kind of understanding necessary for co-ordinating their social actions. His notion of universal pragmatics demarcates a certain sort of language use as "fundamental" or paradigmatic for understanding.⁹¹ Only speech acts which clearly exhibit the mastery of the formal pragmatic rules fall into this category, for they alone have the full capacity to sustain understanding-oriented [communicative] action.

In response to critics who allege that Habermas is privileging serious, straightforward unambiguous language usage,⁹² Habermas's defence⁹³ of his classificatory scheme refers to its ultimate purpose. He privileges certain kinds of usage in order to clarify how it is possible for ordinary language to play its distinctive

co-ordinating role in human interaction: "We can explain the concept of reaching understanding only if we specify what it means to use sentences with a communicative intent."⁹⁴

In Habermas's *A Reply to My Critics* he argues that his "selectivity is harmless, since such expressions [e.g., verbal and non-verbal symbolic forms like fiction, poetry, dance, music, painting, etc.] do not as a rule take over functions of co-ordinating action".⁹⁵ The reason that Habermas considers it so important to adhere to his classificatory scheme of speech is that the usage which he calls standard (i.e., normal) performs a direct co-ordinating role in a way which aesthetic expression does not. The basic question here for Habermas is what precisely the contribution of language is to the co-ordination of action necessary to the very possibility of social life; it is evident that justice is a crucial part of such action, since justice is primarily a relational and social virtue or quality making social life possible.

Our study of universal pragmatics has been necessary, because it provides the linguistic basis of the principle of universalisability which is at the heart of Habermas's theory of justice. As I have pointed out already, Habermas does not have an explicit theory of justice, but a discourse or communicative ethics which is part of his theory of communicative action, and is oriented toward social justice in terms of political legitimacy as the domain of morality (rather than the more limited area of personal choices and specific conceptions of the good life). According to Baynes, the central question in communicative ethics is "What norms should govern our common life?" rather than "What sort of person do I want to become?"⁹⁶ The reason that discourse ethics is valuable for our exploration of justice and the formation of

society is that it is concerned with the specification of a procedure⁹⁷ to determine the impartial and public regulation of conflicts of social action.⁹⁸

The universalism of Habermas's discourse ethics, I believe, makes it congruent with the justice of God.⁹⁹ The objection that Habermas's basically Kantian moral theory establishes its universality by deriving its principle of universalisability from the quasi-transcendental¹⁰⁰ and unavoidable presuppositions of argumentation, and hence not from any other 'metaphysical' or transcendental source,¹⁰¹ can be countered by pointing to the universal presence of God in the very structures of language by which we are constituted as social beings (or individuals-in-society). Since society is formed by the co-ordination of social interaction,¹⁰² and since language is the primary medium through which such divinely willed co-ordination is achieved, God is present in the socially connecting structures of language to produce the right relationship or true sociality he intends in creation.

Habermas's theory of universal pragmatics helps us to see that anyone who seriously enters discursive argumentation with another presupposes certain universal pragmatic rules from which the principle of universalisability can be inferred. Habermas's theory of communicative action asserts that humans reproduce their social and cultural life through the medium of speech in which validity claims are necessarily raised and in which subjects make the reciprocal supposition of accountability. Our study of universal pragmatics revealed that Habermas's concept of communicative action implies a structure of intersubjectivity from which we can derive a mutual "speech-act-immanent obligation to provide justification"¹⁰³ for the different sorts of claims which are continually raised in under-

standing-oriented actions. Every subject recognises his or her obligation implicitly, simply by virtue of having engaged in communicative action. The rationality of anyone who refuses to acknowledge this normative obligation (including the supposition of accountability and the minimal demand for universalisation) is called into question.¹⁰⁴

As we have seen, the social systems of society are integrated "through the medium of *norms that have need of justification*",¹⁰⁵ norms which imply a validity claim that can be redeemed discursively. To the truth claims raised in empirical statements there correspond claims of correctness or appropriateness advanced with norms of action.¹⁰⁶ It is in the linguistic basis of his theory of communicative action that we find the roots of his discourse ethics which, according to Seyla Benhabib, is "first and foremost a philosophical theory of *moral justification*";¹⁰⁷ the basic insight of this ethics is that the validity of norms and the integrity of moral values can be established only through a process of practical discourse or argumentation. Three things distinguish Habermas's theory from other neo-Kantian theories like Rawls's:

- 1) It does not predefine the set of issues which can be legitimately raised in the conversation. The agenda of moral conversation or discourse is radically open, being defined by the agents themselves rather than by the theorist.
- 2) The only constraint upon the moral discourse, apart from the procedural rules, is the constraint to seek intersubjective validation or justification from others.

- 3) In such a discourse, "individuals do not have to think of themselves as 'unencumbered' selves. It is neither necessary for individuals to define themselves independently of the ends they cherish nor of the constitutive attachments that make them what they are. In entering practical discourses, individuals are not entering an 'original position'; they are not being asked to think of themselves in ways which are radically counterfactual to their everyday identities".¹⁰⁸

When individuals in society propose norms of action which affect their individual and social welfare, they raise normative claims which stand in need of legitimation. The test of legitimation requires a suspension of normal constraints of action and the initiation of a mode of communication which Habermas, in an excursus on the theory of argumentation,¹⁰⁹ refers to as discourse in either its theoretical and practical form. In a table outlining the types of argumentation he suggests that controversial validity claims tested in theoretical discourse have to do with the truth of propositions and the efficacy of teleological action, while practical discourse tests the rightness of norms of action.¹¹⁰ According to Habermas discourse is

a communicative practice which is oriented to achieving, sustaining, and renewing consensus - and indeed a consensus that rests on intersubjective recognition of criticisable validity claims. The rationality inherent in this practice is seen in the fact that a communicatively achieved agreement must be based *in the end* on reasons. And the rationality of those who participate in this communicative practice is determined by whether, if necessary, they could, *under suitable circumstances*, provide reasons for their expressions. Thus the rationality proper to the communicative practice of everyday life points to the practice of argumentation as a court of appeal that makes it possible to continue communicative action with other means when disagreements can no longer be repaired with everyday routines and yet are not settled by the direct or strategic use of force. For this reason I believe that the concept of communicative rationality, which refers to an unclarified

systematic interconnection of universal validity claims, can be adequately explicated only in terms of a theory of argumentation.¹¹¹

Communicative rationality is Habermas's vision of how reason binds actions together; it carries with it "connotations based ultimately on the central experience of the unconstrained, unifying, consensus-bringing force of argumentative speech, in which different participants overcome their merely subjective views and, owing to the mutuality of rationally motivated conviction, assure themselves of both the unity of the objective world and the intersubjectivity of their lifeworld".¹¹²

4.3 Habermas's theory of truth as a model for his theory of justice

The contours of Habermas's theory of justice become evident from his disparate remarks on discourse, argumentation, consensus, truth and justice. Habermas's theory of truth, articulated in his essay *Wahrheitstheorien*,¹¹³ is the model for his theory of justice. The notions of discourse and consensus are central components of both theories. Truth and justice both require consideration and testing in argumentative discourse. For truth, the forum for consideration is theoretical discourse, whereas for justice it is practical discourse. The nature of the discourse is determined by its subject. There are close parallels between the way in which propositions in his truth theory and norms in his justice theory obtain redemption in and through discourse. The parallel between justice and truth is in the validity claims raised in the speech acts of those debating justice in society, i.e. those disputing legitimacy norms. These validity claims are revealed by a universal pragmatic analysis of the conditions of consensual speech, and include claims to be intelligible, truthful, sincere, and correct or appropriate.

Habermas argues that any answer to the question "what does truth consist in?" must take truth to be something operational, something that can be decided among partners in discourse: "We call those statements true for which we are able to argue."¹¹⁴ Pettit points out that on the basis of this consideration, Habermas rejects the assimilation of truth either to subjective experience of certainty or to correspondence with objective fact.¹¹⁵ He states that truth claims can ultimately be decided through critical discussion. Habermas's theory of truth is a revised version of C. S. Peirce's consensus theory: "The opinion which is fated to be agreed upon by all who investigate is what we mean by truth."¹¹⁶ Habermas's version is:

I may ascribe a predicate to an object if and only if every other person who could enter into a dialogue with me would ascribe the same predicate to the same object. In order to distinguish true from false statements, I make reference to the judgment of others - in fact to the judgment of all others with whom I could ever hold a dialogue (among whom I counterfactually include all the dialogue partners I could find if my life history were co-extensive with the history of mankind). The condition of the truth of statements is the potential agreement of all others ... Truth means the promise of attaining a rational consensus.¹¹⁷

It is evident from this position that Habermas maintains the operational character of truth; as Pettit points out,¹¹⁸ Habermas chooses a sociological approach rather than a methodological approach to truth; the latter, like logical positivism, identifies the property of truth by reference to the procedure of verification, i.e., by identifying truth with that property which belongs to propositions and theories that satisfy certain confirmation tests; whereas the former identifies truth as that property which belongs to propositions and theories that are capable of commanding consensus. The ultimate criterion of truth for Habermas is rational consensus. The settlement of truth (and justice) claims depends on argumentative reasoning in a rational discourse. In a rational discourse, which

achieves a rationally motivated consensus, what is claimed is that the evidence and the arguments are such that any rational, competent judge would be persuaded solely by the cogency of the arguments employed and come to the same conclusion; that if anyone should disagree, we could - if only she would be guided by the force of the better argument - bring her to agree with us. The criterion of truth is "not the fact that some consensus has been reached, but rather that at all times and all places, if only we enter into a discourse, a consensus can be arrived at under conditions which show the consensus to be grounded".¹¹⁹

In Habermas's understanding, truth is something which a speaker implicitly claims for any assertion that he makes. Habermas argues that whenever a speaker makes an assertion, that speaker must expect to be taken to believe, and thus implicitly claim, that his assertion is true. Further, it is a feature of communication that a speaker must be prepared to back up the claims which he implicitly makes if challenged; the attempt to redeem the truth claim of an assertion gives rise to what Habermas calls *theoretical discourse*, in which arguments are advanced for and against the truth of the assertion. For the achievement of a rational consensus in theoretical discourse, arguments have to be advanced for and against the truth claim in any assertion. The model on which Habermas bases¹²⁰ his description of the structure of the argument is derived from Toulmin's *The Uses of Argument*;¹²¹ this model provides a series of supporting steps for any proposition or assertion:

- i) Firstly, a contention will be traced to some *evidence* or data;
- ii) secondly, if the force of the evidence is questioned, a *warrant* will be provided for the connection;

iii) thirdly, under further pressure, a warrant will be supplied with a *backing*.

This kind of argumentation occurs in the raised level of discourse, which is necessary when the background or *de facto* consensus, represented by the four validity claims,¹²² breaks down. In his introduction to *Theory and Practice*¹²³, Habermas makes the distinction between communicative action (interaction) and discourse. In the normal context of communicative action, there exists a background or *de facto* consensus. The validity claims which are raised with every speech act are more or less naively accepted in ordinary interaction; in this kind of interaction speaker and hearer implicitly know that each raises validity claims, supposing that these are rightly made and can be redeemed. When the background or merely accepted consensus breaks down, the participants are faced with the alternatives of breaking off communication altogether, resorting to strategic forms of interaction such as competition, conflict and even physical force; or raising communication to the level of argumentative discourse in order to test the problematic claims and come to a rational consensus.¹²⁴

In discourse claims to truth and, in the case of justice, norms and opinions which are taken for granted in communicative action become problematical, and their validity (now regarded as hypothetical) can be ascertained consensually only through the procedure of discourse; thus discourse represents a break with the normal context of interaction. Habermas holds that the presuppositions and procedures of discourse are the basis for establishing both the truth of assertions (statements, propositions) and the correctness of norms.¹²⁵ There is in normal interaction a mutual supposition of responsibility, in the sense that each believes the other's intentions, and that the other can support his beliefs with reasons.

When fundamental differences in beliefs and values prevent communicative relations, the possibility of resolving them discursively becomes particularly significant, not only to people generally, but especially to those dedicated to bringing about understanding and reconciliation. For this reason Christians should give particular attention to this aspect of Habermas's work, which lies at the heart of his theory of justice. As McCarthy correctly observes, it "represents the possibility of instituting a consensual basis for interaction without resorting to force in any of its forms from open violence to latent manipulation; it represents the possibility of reaching agreement through the use of reason and thus by recourse to, rather than violation of, the humanity of those involved".¹²⁶

The way that Habermas understands discourse is as

That form of communication that is removed from contexts of experience and action and whose structure assures us: that the bracketed validity claims of assertions, recommendations, or warnings are the exclusive object of discussion; that participants, themes, and contributions are not restricted except with reference to the goal of testing the validity claims in questions; that no force except that of the better argument is exercised; and that, as a result, all motives except that of the co-operative search for truth are excluded.¹²⁷

Thus Habermas requires an exclusion of all motives except that of a willingness to come to a rationally grounded agreement, and a willingness to suspend judgement as to the existence of certain states of affairs (truth) or as to the rightness of certain norms (justice). For Habermas, discourse is that form of communication in which the participants subject themselves to the unforced force of the better argument, with the aim of coming to an agreement about the validity or invalidity of problematic claims. The aim of discourse is to achieve a rational consensus; the agreement which ensues represents a rational consensus, which is the result not of

the peculiarities of the participants or their situation but simply of their subjecting themselves to the weight of evidence and the force of argument. The agreement is regarded as valid not merely for the participants but as "objectively" valid - valid for all rational subjects as potential participants.

Habermas realises that this description of argumentative discourse is idealised, but as he argues in *Theory and Practice*,¹²⁸ it represents an ideal that has been operative in the course of social formation in the western tradition from early Athenian philosophy to modern (bourgeois) democracy. McCarthy notes that it is the institutionalisation of practico-political discourse, found in modern democracy, which is the guiding ideal of Habermas's critical social theory.¹²⁹

Habermas is aware that if the agreement achieved in critical discussion is to provide a warrant for truth claims, there must be some way of distinguishing between a rational consensus and a merely *de facto* consensus. When we participate in a discourse we suppose that genuine discourse is possible and that it can be distinguished from false consensus. Without this supposition, discourse would have little or no meaning. The attempt to come to a rational decision about truth claims entails the supposition that the outcome of our discussion will be, or at least can be, the result simply of the force of the better argument and not of accidental or systematic constraints on communication. Habermas realises that a rational consensus-producing discourse, in which truth claims are disputed and need stronger justification than a matter-of-fact agreement, requires the normative sense of being well grounded, i.e. rationally motivated. Habermas's characterisation of a rationally motivated consensus is an answer to another objection that is often raised against consensus theories of truth, viz. that "truth" is a normative concept and thus

cannot be tied to the *de facto* achievement of consensus: not just any agreement that comes to pass can serve as a warrant for truth. McCarthy says that this objection has to be taken especially seriously by Habermas in the light of his theory of systematically distorted communication:

How can a discursively realised, "rational" agreement be distinguished from the mere appearance of rationality? Which are the criteria of a "true" as opposed to a "false" consensus? If there are no reliable criteria for deciding this question, then Habermas's discourse theory would simply have relocated the problem of truth without contributing substantially to its clarification. Furthermore if the criteria that serve to distinguish a "grounded" from an illusory consensus themselves require discursive justification, we are moving in a circle; if not, we have transcended the consensus framework in establishing it.¹³⁰

Phillips raises a similar point when he says that if decisions about the rationality of consensus themselves rest on argument, the criteria of argumentation need to be given, and he puts the following questions:

Since argumentation presupposes a consensus, how are we to distinguish between good and bad, sound and unsound arguments? Isn't there a danger here of an infinite regress?¹³¹

The only way out of this dilemma, according to Habermas, is through a characterisation of a rationally motivated consensus, which is achieved solely through the force of better argumentation and is not due to contingent, extraneous factors (like external constraints on the discourse, or internal constraints built into the discourse). This also means that none of the constitutive elements of the argument can be systematically excepted from critical examination. As McCarthy points out, for a consensus ideally to be perfectly rational - and thus a sufficient warrant for truth - "it must be able to withstand meta-theoretical and epistemological scrutiny. The supporting discourse must be structured in such a way as to allow

for freedom of movement to and from even the most reflective levels of argument".¹³² Thus the rationality of the parties is to be defined as their capacity and willingness to be bound by the conditions and rules for discourse.

The conditions under which such a consensus can be achieved are to be found in the "ideal speech situation",¹³³ which is implicitly presupposed in discourse, and which is an ideal underlying all subjectivity and intersubjectivity. The ideal speech situation will allow a rationally motivated agreement or consensus to be attained if certain conditions regarding the absence of constraints are met, and if the rules of discourse are observed. Habermas's rules for discourse and the ideal speech situation thus represent the formal pragmatic conditions necessary for reaching understanding, agreement and a rational consensus, and thus they express the normative core of the modern idea of argumentation. These rules, which describe what it means to be in a speech situation in which a conflict would be resolved by the "force of the better argument", and which aim at achieving a constraint-free, properly grounded, rational consensus, may be formulated as follows:

1. Every speaker with the competence to speak and act is allowed to take part in discourse.
2. (a) Everyone is allowed to question any assertion whatever.
(b) Everyone is allowed to introduce any assertion whatever into the discourse.
(c) Everyone is allowed to express his attitudes, desires, and needs.

3. No speaker may be prevented, by internal or external coercion, from exercising his rights as laid down in 1 and 2.¹³⁴

As we have seen, if the agreement reached in a rational discourse is to be the product of a rational will, then the only permissible force is the unforced force of the better argument, and the only permissible motive is the co-operative search for truth. Admittedly, Habermas's rules do not give guide-lines or criteria as to how we are to judge the force of the better argument; but his theory assumes that those who participate in a practical discourse are communicatively competent, i.e. they know what it means to be involved in the rational justification a norm of action. This in turn assumes that they would be aware of what constitutes a rational argument, and that they would be able to assess the merits of the argument on the basis of the supporting evidence, warrant and backing. A more serious objection is the general one that Habermas's theory presupposes an immense capacity for rationality among people in society. It could be argued that Habermas's theory militates against the educationally and mentally disadvantaged in society, who may not have the degree of articulacy or education or natural ability necessary to engage in radical argumentation; for, as Phillips correctly indicates, "while participants in an ideal speech situation are bound only by the power of argument, the ability to argue is also a power: it is difficult to see how this power could ever be distributed equally".¹³⁵ However, this objection does not invalidate Habermas' theory, because presumably those who lack communicative competence in Habermas's terms could be represented by someone who had their interests at heart.

The third rule of the ideal speech situation structurally excludes all constraints on argumentative reasoning. This freedom from constraint, whether exter-

nal (such as force or the threat of force) or internal (such as neurotic or ideological distortions) can be given a universal-pragmatic characterisation, which can be summed up in the "general symmetry requirement", which ensures an effective equality of opportunities to assume dialogue roles. As McCarthy notes, in his explication of Habermas's *Wahrheitstheorien*, "the ideal speech situation must ensure not only unlimited discussion but discussion that is free from distorting influences, whether their source be open domination, conscious strategic behaviour, or the more subtle barriers to communication deriving from self-deception".¹³⁶ To the objection that it is difficult to believe that the general symmetry requirement would guarantee interrogative space in a dialogue,¹³⁷ the answer is that the participants themselves would recognise if they had not had equal time or opportunity to speak or argue, and could appeal to their initial willingness to be bound by the rules of discourse to rectify any imbalance.

If the elements of the general symmetry requirement, contained in Habermas's first two rules, are not met in the ideal speech situation, the resulting agreement is open to the charge of being less than rational, i.e. of being the result of distorting influences rather than purely the force of the better argument. Further, truth will not be established where conditions of domination and other distorting influences are not structurally ruled out. For this reason, the idea of truth in Habermas's theory points to a form of interaction free from all distorting influences, and ultimately to an ideal form of life achieved through pure communicative action. It is worth noting here that the speech acts of Jesus are an instance of pure communicative action, and as such are a manifestation of that ideal form of life which he called the Kingdom of God, characterised by the connected values

of truth, justice and freedom. McCarthy argues that the notion of truth cannot be conceived apart from the conditions of "pure" communicative action: "in this sense, the requirements of the ideal speech situation, in which discourse can lead to genuine consensus, include communication-theoretic conceptualisations of the traditional ideas of freedom and justice."¹³⁸ The good and true life, which is anticipated in every speech act that contains the four dimensions of validity,¹³⁹ is inherent in the notion of truth. For this reason Habermas contends, as he did at the end of *Knowledge and Human Interests*, that "the truth of statements is linked in the last analysis to the intention of the good and true life".¹⁴⁰

Habermas is conscious that his idea of an ideal speech situation might appear wildly unrealistic, because actual situations of theoretical discourse rarely, if ever, even approximate to this purity: "The ideal speech situation is neither an empirical phenomenon nor a mere construct, but rather an unavoidable supposition reciprocally made in discourse."¹⁴¹ He recognises that this supposition is counterfactual, and that "no historical reality matches the form of life that we can in principle characterise by reference to the ideal speech situation".¹⁴² Even if it is made counterfactually, according to Habermas, "it is a fiction that is operatively effective in the process of communication. Therefore I prefer to speak of an anticipation of an ideal speech situation ..."¹⁴³ Habermas is aware that the many limitations of actual discourse seem to preclude a perfect realisation of the conditions of the ideal speech situation:

The ideal speech situation would best be compared with a transcendental illusion were it not for the fact that ... this illusion is also the constitutive condition of rational speech. The anticipation of the ideal speech situation has ... the significance of a constitutive illusion which is at the same time the appearance of a form of life. Of course, we cannot know *a priori* whether that appearance is a mere delusion -

however unavoidable the suppositions from which it springs - or whether the empirical conditions for the realisation (if only approximate) of the supposed life form can practically be brought about.¹⁴⁴

To the objection that the conditions of the ideal speech situation cannot be perfectly realised, McCarthy makes the correct reply that this does not render the ideal illegitimate, because it can serve as a guide for the institutionalisation of discourse and as a critical standard against which every actual achieved consensus can be measured:

Our history is replete with ideals - religious, ethical, political, cognitive, artistic - that we know to be incapable of complete realisation but that are no less effective in shaping social life.¹⁴⁵

4.4 Habermas's theory of justice

As we have seen, both truth and justice require consideration in a discourse: for truth, the forum for consideration is theoretical discourse, whereas for justice it is practical discourse. The parallel between justice and truth is in the validity claims raised in the speech acts of those debating justice in society, i.e. those disputing legitimacy norms. The parallel is also to be seen in Habermas's communicative or discourse ethics, which is an advanced formalistic ethics that "consistently works out ... the independent logic ... of normative questions, i.e. that works out the idea of justice".¹⁴⁶ Habermas makes strong claims for his communicative ethics in his work *Legitimation Crisis*, where he states (*inter alia*) that

only *communicative ethics* guarantees the generality of admissible norms and the autonomy of acting subjects solely through the discursive redeemability of validity claims with which norms appear. That is, generality is guaranteed in that the only norms that may claim generality are those on which everyone affected agrees (or would agree) without constraint if they enter into (or were to enter into) a process of discursive will-formation.¹⁴⁷

The two major tenets of Habermas's communicative ethics are his assertions that a) normative validity claims have a cognitive meaning and can be treated *like* truth claims - to be redeemed discursively, and b) the justification of norms "requires that real discourse be carried out and thus cannot occur in a strictly monological form, i.e. in the form of a hypothetical process of argumentation occurring in the individual mind".¹⁴⁸ Habermas speaks of the problem of what it means to redeem validity-claims discursively; he says that it calls for "an investigation of the communicative presuppositions of argumentative speech (discourse theory of truth) and an analysis of the general procedural rules of argumentation (logic of discourse). It is in the framework of a practical discourse - that is, of argumentation keyed to dealing with questions of practice (in contrast to questions of truth) - that we encounter basic questions of ethics, not only questions concerning the meaning of normative statements but questions concerning the possibility of grounding them".¹⁴⁹ Habermas refers to the works of Karl-Otto Apel, which are concerned above all with two problems:

with the mode of grounding that relies on rational reconstruction of universal and unavoidable presuppositions of knowledge, action and understanding in language; and with the normative content of the formal structure of rational speech. His central thesis is that the fundamental principle of universalisation can be 'derived', in the sense of 'transcendental-pragmatic' grounding, from general presuppositions of communication.¹⁵⁰

It is Habermas's position that practical questions, like those concerning justice and social policy, can be decided rationally in a practical discourse,¹⁵¹ i.e. that moral-political questions can be determined with reason, through the force of the better argument. In his work on the development of moral consciousness (particularly in relation to the thought of Lawrence Kohlberg), Habermas states

that "*moral questions*, which can in principle be decided rationally in terms of criteria of *justice* or the universalisability of interests are now distinguished from *evaluative questions*, which fall into the general category of the *good life* and are accessible only *within* the horizon of a concrete historical form of life or an individual life style".¹⁵²

Thus Habermas retains a procedural distinction between questions of justice and questions of the good life; this distinction must be drawn within a discourse itself, and depends on whether or not a conflict involves a generalisable interest.¹⁵³ The function of actual practical discourses with reference to fundamental disputes in the public arena is to help differentiate between generalisable and non-generalisable interests. At the same time, they will expose injustice in so far as they identify areas where real generalisable interests have been suppressed. As Baynes points out, "since it is likely (and desirable) that some reasonable disagreement even about generalisable interests or the common good will persist in a liberal democratic regime, the most useful task for the model of suppressed generalisable interests may be to emphasise the need for strengthening those institutions of the public sphere where debate and deliberation about the common good and collective need interpretation take place".¹⁵⁴

Habermas also believes that the outcome of a practical discourse can be rationally motivated - the expression of a rational will, a justified, warranted, or grounded consensus; and thus that practical questions can admit of "truth" in an expanded sense of that term.¹⁵⁵ Those who participate in a discourse about justice (which has to do with normative legitimacy) are motivated to seek a rational consensus by virtue of the fact that they are communicatively competent; i.e, they

have an intuitive sense of the foundations of rational consensus, and this constitutes for Habermas the ultimate source from which any norm derives its legitimacy for a group or a society. For Habermas, the capacity of a norm to provide agreement and co-ordinated action must come from a conviction on the part of those subject to that norm that it is legitimate or valid. A just society is formed through the intersubjective recognition of the binding force or validity of norms.

In the process of forming a society, people put forward different ideas about the ultimate sources of legitimacy for basic norms, especially norms relating to justice. Where Christians would disagree with Habermas is his view that such variation could be explained either as having an ideological basis or as indicating differences on the level of social evolution. White explains that "Habermas wants to interpret much of this variation as the result of different types of constraints on the capacity of given historical agents to put their intuitive knowledge to a thorough-going use in assessing the legitimacy of norms to which they are subject".¹⁵⁶ Whether or not one accepts this interpretation, there is much to be gained for theology and ethics from Habermas's notion that the processes of modernity have expanded the degree to which individuals can test the norms to which they conform by the criteria learnt in becoming communicatively competent. Theological endorsement of this notion follows from a discernment and recognition of God's presence in the linguistic structures of human intersubjectivity,¹⁵⁷ and particularly in the mutual speech-act-immanent obligation to provide justification for the different claims which are continually raised in understanding-oriented actions.¹⁵⁸

The effect of Habermas's claim that the rightness or legitimacy of norms (i.e., justice) is assessed in practical discourse is to supply a consensus theory of justice

parallel to his consensus theory of truth, for all the considerations which motivate the latter theory are taken by Habermas to apply in the case of justice. The consequence of this thesis is that justice is the property which belongs to norms that would rationally command anyone's assent. This criterion, like Habermas's sociological criterion of truth, is also to be understood non-analytically, i.e., the justice of the norms explains their ability to attract assent, rather than being defined by it: the norms are not just because they secure a rational consensus; rather, they secure a rational consensus because they are just.

The link between Habermas's theory of justice and the formation of society consists in the notions of universalisability and democratic will-formation. Both these notions are grounded not in an appeal to the Kantian idea of the Fact of Reason but in an appeal to the universal and unavoidable ("transcendent") presuppositions of argumentation. These presuppositions refer to the pragmatic conditions which speakers implicitly assume whenever they enter serious argumentation, and which are necessary for successful or felicitous communication. As we have seen, their unavoidability consists in the sense that sceptical critics must presuppose them in the very attempt to deny their existence: anyone who denies them and yet wants to argue is guilty of a performative contradiction.¹⁵⁹

The formation of society depends, as I have argued above, on consensual validation of existing and proposed norms, i.e. on justice as right relationship achieved by free and equal persons who, in a spirit of genuine reciprocity, aim at agreement and consensus through argumentation in practical discourse open to all.¹⁶⁰ In practical discourse, claims to the rightness or appropriateness of a norm are claims to justice, and require discursive redemption. Claims to rightness or

justice are redeemed when they can be backed up by a norm which itself proves to be justifiable on the basis of the *generalisability of the interests* which underlie it. The formation of society also depends on how far this kind of democratic will-formation can be made the organisational principle of society, and to what extent it can be institutionalised.¹⁶¹ We shall return to this point later, after we have examined Habermas's principle of universalisability.

As we have seen, Habermas proposes certain rules of argumentation which represent the formal pragmatic conditions necessary for reaching understanding, agreement and consensus, and which thus represent the *ideal speech situation*; he argues that as a representation of the unavoidable presuppositions of argumentation, this ideal is actually assumed whenever anyone argues seriously.¹⁶² Basing political legitimacy on the achievement of consensus through a procedure approximating to the ideal of the ideal speech situation establishes the universality of justice as the principle of political legitimation. McFadyen, in comparing the ideal speech situation with the Kingdom of God, states that "it is not the actual achievement of consensus which establishes the generalisability of a political norm ... and thereby legitimates it, but the extent to which such a consensus, and the [discourse] ... used to reach it, anticipate the ideal communication situation. It therefore functions as a critical ideal against which present structures of communication may be judged and legitimated".¹⁶³

A theological critique of Habermas's optimistic view of the possibility of a rational consensus needs to point out that any actual consensus pertaining to justice will be partially distorted (because of our fallen nature), and will not be universally extensive (because communication does not include as subjects those who are

dead¹⁶⁴). Habermas admits that nothing makes him more nervous than the imputation of proposing an impossible ideal ("a rationalistic utopian society").¹⁶⁵ He is aware of the limitations of practical discourse,¹⁶⁶ and he recognises that no single discourse can fulfil the conditions of the ideal speech situation. He also recognises the fallibility of our discursive practices, in that agreements reached today may be invalidated by new circumstances, perceptions, insights and information tomorrow. Habermas knows that a consensus which is reached in actual discourse will be false if it is based on error or deception (including self-deception), or on strategic motives by the participants: "The pseudo-consensus that depends on an inconspicuous (for the participants) violation of necessary conditions for processes of consensus formation is characteristic of systematically distorted communication."¹⁶⁷ We need to be very wary about claiming a consensus to be rational and therefore normative for social action, because it could be based on significant distortions in communication. McFadyen rightly points out, however, that this does not mean that the norm for political interaction remains a lofty ideal; rather, it is a concrete norm, "for it refers to the relatively undistorted consensus which *would* result in the here and now if significant distortions in and impediments to communication were removed".¹⁶⁸

A just society is formed when the norms proposed or defended by participants in argumentative, practical discourse are legitimated or shown to be fair, a quality which can be expressed by the principle of universalisation. Habermas argues that this principle can itself be rationally justified.¹⁶⁹

The first step of Habermas's derivation of the principle of universalisability is dependent, as we have seen, on the universal pragmatic presuppositions of

argumentation, although it cannot be derived solely from an analysis of these presuppositions. Habermas argues that the derivation of a distinctively moral principle of universalisability requires the combination of these presuppositions with the idea of what it means to justify a norm of action.¹⁷⁰ Baynes, citing Wellmer's point that the rules of argumentation are not *moral* norms, suggests that such rules "possess a normative content, but ... do not yet constitute a specifically *moral* principle, where this is understood as defining a category of moral oughtness or obligation".¹⁷¹ Among the reasons that Habermas offers for the requirement of a second step in justifying his principle of universalisability is his association of moral phenomena with forms of communicative action in general, rather than with its more demanding form as argumentation. Recognising that our moral intuitions centre around the ideas of individual well-being and compassion for others, Habermas seeks to clarify these ideas with reference to the suppositions of mutual reciprocity that is already contained or built into in our communicative interactions, and that is so crucial for the formation of both individual and group identities.¹⁷²

The second step of Habermas's derivation of his principle of universalisability is dependent on two further claims:

- (i) that every speaker who believes she is engaging in argumentation must presuppose the conditions of discourse as adequately fulfilled;¹⁷³ and
- (ii) that "every person who accepts the universal and necessary communicative presuppositions of argumentative speech and who knows what it means to

justify a norm of action implicitly presupposes as valid the principle of universalisation".¹⁷⁴

The universalisation of norms of justice takes place in practical discourse, which does not require the type of observational and experimental evidence used inductively to support hypothetical general laws. The relevant evidence is the expected effect of the application of a proposed norm with regard to the satisfaction or non-satisfaction of generally accepted needs. As intersubjectively binding reciprocal expectations of behaviour, "norms regulate legitimate chances for the satisfaction of needs".¹⁷⁵ Thus what has to be agreed upon in practical discourse is the social justice issue of the justifiability of a recommended regulation of such chances.

The crucial difference between theoretical and practical discourse is that whereas in the former the bridge between evidence and hypothesis is usually inductive, the bridge in the latter is provided by the principle of universalisation.

Induction serves as a bridge principle for justifying the logically discontinuous passage from a finite number of singular statements (data) to a universal statement (hypothesis). Universalisation serves as a bridge for justifying the passage to a norm from descriptive comments (on the consequences and side-effects of the application of norms for the fulfilment of commonly accepted needs).¹⁷⁶

Habermas understands universalisation as the universalisability or generalisability of interests which underlie norms. The principle of universalisability proposes that "only those norms are permitted which can find general recognition in their domain of application. The principle serves to exclude, as not admitting of consensus, all norms whose content and range of validity are particular".¹⁷⁷ Thus a practical backing consists in an account of the interests served by the norm which

constitutes a practical warrant, and of how the interests support the norm in so far as they are impartially served by it, i.e. in so far as the norm would be chosen by someone who took those interests universally into account, and did not look only to his own welfare.

Habermas considers various interpretations of universalisation, but finds them to be inadequate. In his reply to his critics he refers to the status that the principle of universalisation assumes in his discourse ethics, in that it signifies

a procedure that is both open to hypothetical anticipation and susceptible of being actually carried out, a procedure that is meant to secure the impartiality of moral judgement. The exchange of arguments - unlimited in principle and unconstrained - among all those involved functions as a touchstone of whether a norm can be counted on to meet with grounded approval, that is, whether its claim to validity rightfully stands. A norm of action has validity only if all those possibly affected by it (and by the side-effects of its application) would, as participants in a practical discourse, arrive at a (rationally motivated) agreement that the norm should come into (or remain in) force, that is, that it should obtain (retain) social validity.¹⁷⁸

Thus, in the same way that truth is that which attracts rational assent, so justice is that which attracts the agreement and consensus of all who are potentially affected by a recommended norm.¹⁷⁹ In this way Habermas establishes his principle of universalisability: consensus achieved argumentatively in a practical discourse is a procedural realisation of universalisability.

For Habermas, the point of discourse ethical universalisation consists rather in this, "that only through the communicative structure of a moral argumentation involving all those affected is the *exchange of roles* of each with every other forced upon us".¹⁸⁰ It is important to establish the point that Habermas's universalisation principle is essentially dialogical, in contradistinction to Kant's monological version. For Kant, the categorical imperative is a test which each individual can carry

out monologically, i.e. by asking herself if she can will a proposed norm to be a universal law. For Habermas the test is whether or not a proposed norm is acceptable in an actual argumentation to all who are potentially affected by that norm; acceptable here means that the norm satisfies the interests of each participant in the argument. Justifiable norms are those which incorporate "generalisable interests".¹⁸¹

At this point it is necessary to clarify Habermas's apparently confusing use of the terms needs and interests in relation to normative claims; sometimes Habermas defines normative claims as claims about the alternative orderings of the satisfaction of the *interests* of everyone, and at other times he speaks of norms as regulating legitimate chances for the satisfaction of *needs*. This is not a distinction for, as White points out, "it seems fair to assume that Habermas would say that one has an interest in something if it satisfies one's needs".¹⁸² The relationship between the satisfaction of needs and the legitimacy of norms does not imply that determinate principles of justice can be derived from a discovery of individuals' genuine needs in practical discourse. Habermas has no substantive conception of needs or principles of justice. For Habermas, the core values of a culture structure what constitutes a need; and generally he refers to "need interpretations",¹⁸³ a locution which expresses the cultural variability of needs. White interprets Habermas here to be implying that "what is taken to be a 'need' in a given society will be a function of what that culture defines as necessary to the flourishing of human life".¹⁸⁴

It may be objected that it is incorrect to call the relation between normative validity and consensus as the agreed satisfaction of needs "rational". Such an objection may be based on an argument which contends that if all needs and

interests are irremediably subjective, any agreement concerning them could at best be a contingent compromise among competing, ultimately irreconcilable self-interests. Pettit advances arguments against Habermas's claim that the justification of a norm can be pursued only by reference to interests that it fairly serves or needs that it impartially fulfils.¹⁸⁵ However, Habermas can answer these arguments by contending that there are not only particular interests but common or "generalisable" interests; it is the function of practical discourse to test which interests are capable of being "communicatively shared" (i.e., those which admit of consensus), and which are not (i.e., those which admit at best of a negotiated compromise). McCarthy points out that in the case of generalisable interests, "the normative or evaluative judgements that give expression to 'reciprocally expected intentions' can claim a kind of objectivity; it is precisely this claim that is embedded in socially binding norms and standards".¹⁸⁶

Participants in a practical discourse can discover a generalisable interest on matters where they can envisage common need interpretations. Norms which incorporate such interests will be acceptable to all those involved in the discourse. The justification and demonstration of the generalisability of the interests underlying a proposed normative claim may be unproblematic; but this is not always the case. Need interpretations can no longer be assumed as given, but must be drawn into discursive will-formation.¹⁸⁷ White understands Habermas here to mean that "the rules of discourse require that agents sincerely reflect upon the different need interpretations which underlie their respective but conflicting concepts of what interests are generalisable".¹⁸⁸ This requires a continuing critical flexibility - a willingness to reconsider and modify their need interpretations when they appear

to manifest weaker claims to universality than alternatives. The demand for flexibility does not guarantee that agents will produce generalisable interests. When interests continue to conflict, and agents fail to come to consensus on their interests, Habermas's communicative ethics requires compromise.¹⁸⁹

Habermas's thought on interests and need interpretation does not imply a claim about the needs and interests all would have in the good society, and which everyone could discover if she merely subjected herself to the rules of discourse. Such a universalistic claim about the shape of the good society is always unwarranted, since it tries to settle once and for all what must be left open, if the requirement of reciprocity is to take into account voices which may not have been evident in any discourse. According to White, Habermas's notion that interests, and the needs on which they are based, ought to be taken into account in a formulation of universalisability runs contrary to Kant:

Like Rawls, Habermas finds the Kantian formula (i.e the categorical imperative) unacceptable because it cannot account for why anyone would be motivated to follow just norms and partly because he wishes to argue that there are criteria in accordance with which some interests and needs can be rationalised in a non-strategic sense and others cannot. Habermas differs from Rawls on the questions of exactly how interests can be rationalised and how this rationalisation connects up with determinate principles of justice.¹⁹⁰

I argued in the previous chapter that Rawls's framework for structuring the choice of two principles of justice is partial in its incorporation of a theory of primary goods, and that it represents not a collective choice but a monological process - the thought experiment of a single agent. Habermas's opinion is that these problems will accompany any attempt to derive determinate, universal norms of justice. Rawls's theory represents the kind of problem Habermas finds inherent in any

attempt to explicate the idea of justice in terms which are both universalistic and substantively determinate. In Rawls's theory, parties in the original position are assumed to value certain primary goods which will be beneficial after the veil of ignorance is lifted. In Habermas's terms, this account of primary goods is also implicitly an account of universalisable needs.

We have seen that Rawls considers a determinate choice of principles emerging from the original position to be a major advance on the formalism of Kant while at the same time retaining a Kantian moral status.¹⁹¹ However, we have also seen that Rawls has accepted contextualist criticism that his list of primary goods is biased toward the kinds of needs fostered in specific types of society (i.e., modern democratic societies),¹⁹² and therefore that a substantive account of justice such as his cannot claim universality.¹⁹³

In the light of Habermas's theory, the incorporation of any substantive set of needs invariably violates the discursively interpreted requirement of reciprocity, in the sense that it declares once and for all that some potential voices, and the needs they express, will not be given an adequate hearing. Pettit most accurately sums up Habermas's theory of justice when he says it may supply a criterion of justice which tells us what justice is while leaving us in an agnostic position as to what justice demands.¹⁹⁴ For Habermas, this is the most that can be expected from a philosophical ethics: it can elucidate what justice is, in the sense of universally valid procedural criteria appropriate to judging the justice of proposed norms, but it is unable to clarify what justice demands, in the sense of choosing determinate norms for judging action. For Habermas, the function of just norms is to provide some legitimate ordering of the satisfaction of interests.

Habermas still thinks that a universalist account of justice or normative legitimacy is a possibility. But the universalism of a postconventionally interpreted principle of reciprocity can be saved only if it is disconnected from the monological conceptualisation it has received in the formalist tradition from Kant to Rawls, with its attendant particularist problems. Rather, universalisation or the generalisability of norms has to be understood as dialogical or procedural: "the principle of justification of norms is no longer the monologically applicable principle of generalisability but the communally followed *procedure* of redeeming normative validity claims discursively."¹⁹⁵ The great advance which Habermas has made in the Kantian tradition is shifting the frame of reference from the solitary reflecting moral consciousness to the community of subjects in dialogue.¹⁹⁶ Habermas understands his discourse model to represent a procedural re-interpretation of Kant's categorical imperative:

Rather than ascribing as valid to all others any maxim that I can will to be a universal law, I must submit my maxim to all others for purposes of discursively testing its claim to universality. The emphasis shifts from what each can will without contradiction to be a general law, to what all can will in agreement to be a universal norm.¹⁹⁷

"What all can will" is not something that can be determined monologically, but has to be discovered and formed through communication processes. However, as we have seen above, if agents, through pressing their particular interests dialogically in a practical discourse, fail to reach a consensus, resort must be had to compromise. Although Habermas's view of compromise is considered suspect by some critics¹⁹⁸ (because of Habermas's apparently contradictory claim in *Legitimation Crisis*¹⁹⁹ that it is possible to overcome the "impenetrable pluralism of ... ultimate value orientations" by his principle of universalisation), he has shown that

compromise has to be seen in the same light as discourse and its concomitant emphases on procedural equality, participation, non-deception and non-manipulation; i.e., the basic guide-lines for compromise construction must themselves be justified in discursive terms, for this alone can supply a standard for separating legitimate from illegitimate compromises.²⁰⁰

Habermas states that the universality (or generality) of norms is guaranteed only through non-distorted, domination-free communication leading to agreement by all who are potentially affected by proposed norms. Universality is equally dependent upon the willingness of those affected to enter into a process of discursive or democratic will-formation. The concept of discursive will-formation provides what I consider to be the best principle for the formation of society, because the communicative ethics from which it stems alone seems to guarantee the universality of admissible norms through the discursive redeemability of the validity with which norms appear.²⁰¹

Habermas's formalistic discourse ethics does not specify particular norms of action but only a principle of the justification of principles. His theory of justice, with its totally open, dialogical procedure, seems to me to be the best available means of addressing the long-standing problem of the formation of a just society. His dialogical procedure, which is eminently consonant with the relational justice of God, appears to be a solution to the problem of arranging the powers of each selfish opposing inclination so that one moderates or destroys the ruinous effect of the other. Habermas's discourse model, which requires that valid social norms incorporate generalisable interests, also appears to narrow the gap between legality and morality.²⁰² Instead of requiring obedience to social norms by law, it estab-

lishes their binding character in terms of their capacity to be shared communicatively in rational dialogue. Norms thus established do not merely delimit compatible scopes of action in which individuals can pursue their selfish inclinations in such a way that one moderates or destroys the ruinous effect of the other, but rather enjoin certain positive ends as being in the common interest. Habermas believes that in the discourse model for morality and politics "the opposition between morally and legally regulated areas is relativised, and the validity of *all* norms is tied to discursive will-formation".²⁰³

Habermas recognises that in any political order not all interests (and the norms to which they give rise) are generalisable, and therefore that there will be need for compromise and for spheres of action in which individuals may pursue their particular interests freely: "the question of which sectors should, if necessary, be regulated through compromise or formal norms of action can also be made subject to discussion."²⁰⁴ The question of which interests are really particular and which are generalisable can be rationally decided only in a practical discourse: it is this procedure of discourse or democratic formation of the common will which should take precedence as the principle of the formation of society, i.e. as the organisational principle of political order. In his later essay "Legitimation Problems in the Modern State",²⁰⁵ Habermas recognises that democracy cannot mean an *a priori* preference for a specific type of organisation of society, nor can it exclude *a priori* any specific arrangement; rather, "it is a question of finding arrangements that can ground the presumption that the basic institutions of the society and the basic political decisions would meet with the unforced agreement of all those

involved, if they could participate, as free and equal, in discursive will-formation".²⁰⁶

Conclusion

The path to establishing Habermas's theory of justice is immensely complex, and relies upon the validity of the structures on which he builds it, viz. his expanded and connected theories of communicative rationality and communicative competence, universal pragmatics and truth. These notions admittedly contain controversial claims. Although the many criticisms of his various theories are important and have a bearing on any ultimate judgement of Habermas's project, it is not feasible to marshal them here;²⁰⁷ rather, I intend to focus on a few important considerations which have significance for my contention that Habermas's theory can be regarded as a mediation of God's justice.

We have seen that Habermas tries to provide a normative theory of justice without substantive principles of justice: it is a philosophical theory that rationally evaluates the quality of social and political life, and aims to achieve a society in which practical discourse, i.e., unlimited, domination-free and distortion-free communication, can be concretely realised. We have also noted that just as his theory of truth tells us what truth is but does not enable us unproblematically to distinguish true theories²⁰⁸ from false, so Habermas's theory of justice may supply a criterion of justice which tells us what justice is while leaving us in an agnostic position as to what justice demands. Habermas's project of a minimal discourse ethics restricts evaluative questions to questions of justice, and does not pretend to provide unambiguous, substantive norms of justice; however, his communicative

ethics directs us to a way of thinking about fair procedures for adjudicating between normative claims which I believe to be crucial for the formation of a just society.

It seems to me that Habermas's communicative ethics, as a universal justice project, has not only plausibility but benefits for modern society and those contributing to its formation (and re-formation). Its core ideas and concepts of intersubjective recognition, equal accountability, emphasis on real discourse, the connection of the criterion of generalisable interests to compromise, and the requirements of a mature, autonomous ego are all "other-regarding", and convey an attitude of openness to the "other". Habermas's insights into what communication really means and entails can be deepened by drawing upon resources which place less emphasis on the purely rational activity of contending normative validity claims, than on a more comprehensive approach to the relationality by which we are constituted. Among those resources is the ethics of care of feminist writers like Carol Gilligan, who values qualities like compassion, connectedness and interdependence above the rational balancing of validity claims.²⁰⁹ Also among those resources are those forms of other-regarding behaviour reflected in the Judeo-Christian prophetic tradition, especially the selfless love, compassion and caring revealed in the person and teaching of Christ.

Some might consider it a serious weakness in Habermas's theory that it does not specify principles of justice which would characterize a just society, like Rawls's theory attempts to do. Habermas prefers an indeterminate or minimal ethics, hence he is critical of Rawls's position and of others who try to articulate a general yet substantive set of principles of justice. Habermas's consensus theory of justice provides a procedural criterion of justice, identifying the just social scheme as that

which would attract rational assent and produce a rational consensus. His minimal ethics proposes that practical questions, like the selection of principles of justice, can be decided through a consensus between all those concerned and all those potentially affected. To a critic like Phillips, this would severely restrict attempts by individuals to work out on their own the principles that would govern the just society.²¹⁰ In Phillips's view, Habermas appears to require that, because "we cannot trust our own judgements about justice", we wait and see what happens under ideal conditions of communication, rather than formulate and define substantive principles of justice in advance.²¹¹

This understanding of Habermas might alarm some Christians, who might think that their concept of justice would be excluded *ab initio* in a Habermasian practical discourse; but this would be a mis-reading of Habermas's intention. The charge that Habermas's theory secures an agnostic result with regard to what justice demands does not provide a warrant for rejecting it, or seeing it as inimical to a Christian understanding of justice. It is true that Christians may be uncomfortable about Habermas's socio-theoretic claim that in modern societies, religions which previously had an identity-securing function have lost their claim to cognitive significance. They may also be discomforted by his suggestion of discursive will-formation through which norms and values that secure individual and collective identities can be generated without regressing to mythological, religious or cosmological forms of thought. The norm of discursive will-formation appears to exclude these alternatives, just as it aims at excluding other alternatives like apathetic socialisation patterns encouraged by a state in order to eliminate questioning the legitimacy of power.

However, this norm excludes the former only in so far as they attempt to dominate or establish themselves arbitrarily, without intersubjective testing and justification of their claims.²¹² Pettit points out that, unlike Habermas's theory of truth (which does not provide a standard of reference by which we judge theories true or false, because the condition of supplying all the relevant empirical data is unfulfillable), his theory of justice does not preclude people using or setting up a standard of reference by which to judge rival criteria of justice, "since the arguments by which we are moved to make our judgements, and by which we think anyone should be moved, are not vulnerable in the same way to the effect of novel empirical discovery".²¹³ This consideration, while it has positive implications for a Christian contribution in any discourse, was brought to meet the Marxist requirement that a social theory should meet the constraint of securing an agnostic position on questions of justice. Habermas's theory "licences a variety of speculation which Marxists have traditionally dismissed as ideological",²¹⁴ but which may favourably allow the consideration of a Christian understanding of justice in any discourse.

Pettit's point is pertinent here:

By parity of argument there is no reason why the consensus view of justice should inhibit anyone from speculating and arguing about questions of political right, laying down that this norm is compelling, the other objectionable, and so on.²¹⁵

Habermas's recognition of Gilligan's work, and of that of many other critics, obliges him to listen to other voices in the conversation, and that any proposal of a norm needs to be examined not only from a strictly linguistically and logically analytical point of view, but with a preparedness to imagine and to discuss what the proposed norm would mean if it (or its underlying need interpretations) were to

be universalised. If this openness is entailed by Habermas's theory, a Christian understanding of justice ought not to be disadvantaged in a discourse in which a more just social order is being determined.

There is nothing threatening to a Christian understanding of justice in Habermas's idea that we should submit our judgements about justice to intersubjective testing in ideal speech conditions, which we do know and under which our collective judgements (including those affecting all potential interlocutors) would be trustworthy. On the contrary, our social, relational and linguistic constitution by God requires that we establish justice as right relationship or true sociality collectively and dialogically: Habermas offers us a theory of justice containing a procedure which, although ideal, provides a means of legitimating social norms in order to form a just society. However, before we can claim that his theory of justice may be regarded as a mediation of God's society-forming justice, we need to consider a major aporia in Habermas's theory of communicative action and discourse ethics, viz. the limitation of solidarity entailed by Habermas's universalism or "transcendence from within". Habermas does not recognise that the problems of transcendent universal solidarity, and of the unlimited communication community implied in all communicative action, can be answered only by theology. In the next chapter I shall argue that not only can Habermas's theory of justice as communicative action be appropriated and transformed from a theological perspective, but that it has a theological dimension in that the reality at the heart of his theory is the just and saving reality of God.

Footnotes

- 1 Habermas states that his principle of universalisability (U) "precludes a monological application of the principle", and he contrasts it explicitly with Rawls's position. ["Discourse Ethics" (hereafter DE), in *Moral Consciousness and Communicative Action* (hereafter MCCA), Cambridge: MIT/Polity Press, 1990, p. 66.] Habermas acknowledges that his theory bears similarities to that of Rawls: both are concerned with an ideal situation and ideal conditions under which agreements take place about the principles of justice that form society. Since they believe that there is no independent criterion of justice, they both use the notion of pure procedural justice: what is just is defined by the outcome of a consensus under certain specified conditions. In the case of Habermas, he focuses on the formal conditions that would have to be realized in order for any set of moral principles to be justifiable: "Only the rules and communicative presuppositions that make it possible to distinguish an accord or agreement among free and equals from a contingent or forced consensus have legitimating force today". ["Legitimation Problems in the Modern State", in *Communication and the Evolution of Society* (hereafter CES), Heinemann, 1979, p. 188.]
- 2 Benhabib applies her criticism of the circularity of methodological proceduralism to Habermas just as much as she does to Rawls, insisting that his "initial counterfactual abstraction" (i.e. his ideal speech situation, as the counterpart to Rawls's Original Position) does not serve as a justification but as an illustration of the normative principles presupposed by the theory. ["The Methodological Illusions of Modern Political Theory: The Case of Rawls and Habermas", *Neue Hefte für Philosophie* 21 (1982), pp. 49, 57, 58.] The problem with Benhabib's critique is that it presupposes absolute value-neutrality for any justification process, something which is virtually impossible to achieve. The advantage of Habermas's theory is that the ideal speech situation which he advocates as the condition for argumentation functions as a regulative idea that can be used to criticise the normative assumptions operating in actual discourses.
- 3 By legitimacy Habermas means "the worthiness of a political order to be recognised". ["Legitimation Problems in the Modern State", CES, p. 182.]
- 4 Some critics have expressed doubt about the moral status of Habermas's discourse ethics (e.g. D. Phillips: *Toward a Just Social Order*, Princeton, New Jersey: Princeton University Press, 1986. p. 83; and A. Wellmer: *Ethik und Dialog: Elemente des moralischen Urteil bei Kant und in der Diskursethik*, Frankfurt: Suhrkamp, 1986, pp. 102-113, 144-145), but this is largely the result of confusing Habermas's rules of argumentation with specific moral principles, and of making a distinction between rationality and moral rationality in Habermas's thought - a distinction which Habermas himself does not make. However, Phillips recognises that Habermas, like Rawls, holds that "a moral principle is valid only to the extent that it would be mutually acknowledged under certain ideal conditions - freedom, rationality, equality, knowledge - by all agents to whom it applies. Those moral principles about which there is publicly acknowledged consensus under the specified conditions are *valid* moral principles". [Phillips, op. cit., p. 83.]
- 5 Habermas: "What is Universal Pragmatics?" in CES, pp. 1-68. Hereafter UP/CES.
- 6 Habermas: DE, p. 65.
- 7 Habermas: *The Theory of Communicative Action*, volume 2, Chapter 3 - "The Rational Structure of the Linguisticification of the Sacred"; Boston: Beacon Press, 1987.
- 8 The concept of communicative competence serves as the basis of Habermas's conception of moral autonomy.

- 9 Habermas: *The Theory of Communicative Action*, in two volumes: Volume 1: *Reason and the Rationalisation of Society*, Boston: Beacon Press, 1984 (hereafter TCA/1); Volume 2: *Lifeworld and System: A Critique of Functionalist Reason*, Boston: Beacon Press, 1987 (hereafter TCA/2). Habermas's references to and reliance upon Weber occur frequently throughout both volumes, but are concentrated in Volume 1, Chapter 2 - "Max Weber's Theory of Rationalisation"; see also Chapter 4, part 1.
- 10 E. Tugendhat charges Habermas with a questionable conception of what the contribution of the philosophy of language to social theory should be, because Habermas does not adequately analyse the function of language for social action ["Habermas on Communicative Action", in Seebass, G., and Tuomela, R., Eds.: *Social Action*, Dordrecht/Boston/Lancaster: Reidel, 1985, p. 182]. Although there may be some substance in this charge, I think that the insight produced by Habermas's foray into linguistic philosophy, namely that the defining property of communicative actions is that they contain criticisable normative validity claims, far outweighs the alleged ambiguity in his work between a structural analysis of language and the interest in a specific social attitude (i.e., the achievement of understanding).
- 11 This insight is also generated by Habermas's reconstruction of Marx's distinction between the material base and the ideological superstructure of society.
- 12 In view of the rise of technocratic consciousness, with its disintegrative effect on the public sphere, Habermas is critical of the tendency to define practical problems as technical issues.
- 13 The theory of "knowledge-constitutive interests" appeared in Habermas's first major work *Knowledge and Human Interests*, Heinemann, 1972 (hereafter referred to as KHI). This work, in which he attempted the task of enlarging the concept of reason, is a comprehensive study of epistemology, conceived as a systematic history of ideas with a practical intention - "a historically oriented attempt to reconstruct the prehistory of modern positivism with the systematic intention of analysing the connections between knowledge and human interests". [ibid., Preface. p. vii.] Habermas goes beyond a mere analysis, and attempts to establish new epistemological groundings in the service of truth, justice and freedom; he deems these new groundings necessary because ideology - i.e. all ideas that hide or legitimate arbitrary power - reaches back into the very constitution of knowledge in society. In *Knowledge and Human Interests*, Habermas criticises modern (positivistic) epistemology which has ruled over every branch of learning from natural sciences to the humanities; although it is a specific critique of scientism - modern positivism's tendency to mutilate human reason and force upon us a limited but dominant empirical theory and practice of science, its task is to justify a more comprehensive and more rigorous epistemology which can rehabilitate the claims of reason in human affairs.
- 14 i.e., "knowledge-constitutive interests".
- 15 KHI, p. 308: The first or *technical* cognitive interest is incorporated by the empirical-analytical sciences. The second interest is contrasted with the technical, and is a *practical* cognitive interest, i.e. a universal interest in mutual understanding in the everyday conduct of life, which is incorporated by the historical-hermeneutical sciences (i.e., those which gain knowledge in the sphere of human intersubjectivity). This is the interest held by the human species to maintain that level of intersubjectivity which is achieved in ordinary language communication and is necessary for the reproduction of human beings as social-cultural beings. Human beings share a universal interest in the mutual self-understanding which underpins all social action. According to Habermas, "hermeneutic inquiry discloses reality subject to a constitutive interest in the preservation and expansion of the intersubjectivity of possible action-orienting mutual understanding. The understanding of meaning is directed in its very structure toward the attainment of possible consensus among actors in the

- framework of a self-understanding derived from tradition". [KHI, p. 310] The third interest, incorporated by the critically oriented sciences, is the *emancipatory* cognitive interest, which gives rise to the critique of ideology.
- 16 *ibid.*
- 17 Habermas: *Theory and Practice*, Heinemann, 1974, pp. 33ff.: Habermas here argues that theory (understood in scientific terms) cannot play the role of legitimising and justifying what should be done politically: "Decisions for the political struggle cannot at the outset be justified theoretically and then be carried out organisationally. The sole possible justification at this level is consensus aimed at in practical discourse, among the participants, who, in the consciousness of their common interests and their knowledge of the circumstances, of the predictable consequences and secondary consequences, are the only ones who can know what risks they are willing to undergo, and with what expectations." [*ibid.*, p. 33] See R. J. Bernstein's discussion of this point in *The Restructuring of Social and Political Theory*, Oxford: Blackwell, 1976, pp. 216-217.
- 18 Habermas: *Theory and Practice*, *op. cit.*, p. 39.
- 19 D. A. Lane: *Foundations for a Social Theology: Praxis, Process and Salvation*, New York/Ramsey: Paulist Press, 1984, p. 54.
- 20 These anomalies, which are the result of the all-pervading technocratic consciousness and instrumental rationalisation of society, include "the spending of more on militarism than on people, the build-up of nuclear arms ... in the name of peace, the 'management' of news in the name of truth, the indiscriminate crossing of geographical boundaries for the sake of security, and the muffling of truth by government news agencies". [*ibid.*, p. 62.]
- 21 *ibid.*
- 22 Habermas: *Toward a Rational Society*, Boston: Beacon Press, 1970, p. 64.
- 23 *ibid.*, p. 112.
- 24 Lane, *op. cit.*, p. 62.
- 25 Max Horkheimer and Theodor W. Adorno: *Dialectic of Enlightenment*, New York: Seabury Press, 1947; Horkheimer: *Critique of Instrumental Reason*, New York: Seabury Press, 1974.
- 26 Habermas, TCA/1, pp. 366-399.
- 27 TCA/1, p. 10; cf. LC, p. 121.
- 28 TCA/1, p. 286.
- 29 In his reply to Anthony Giddens, Habermas attempts to clarify his typology of action: "Actions oriented to success are termed *instrumental* when they are understood as following technical rules and can be appraised from the standpoint of the efficiency of goal-oriented intervention in the physical world. Actions oriented to success are termed *strategic* only if they are understood as following rules of rational choice and can be appraised from the standpoint of the efficiency of influencing the decisions of rational opponents." ["A Reply to My Critics", in J. B. Thompson and D. Held, Eds.: *Habermas: Critical Debates*, Macmillan Press, 1982, pp. 263-264 - hereafter referred to as REPLY.] A useful critique of Habermas's distinction between understanding or consent-oriented action and success-oriented action is to be found in E. Tugendhat's essay "Habermas on Communicative Action", in *Social Action*, edited by G. Seebass and R. Tuomela, *op. cit.*, pp. 179-186. On this distinction, see also M. Baurmann's essay "Understanding as an Aim and Aims of Understanding" in Seebass and Tuomela, *op. cit.*, pp. 187-196.

- 30 Habermas mentions the following different specifications of goal-directed actions: "as the interlacing of egocentric calculations of utility (whereby the degree of conflict and cooperation varies with the given interest positions); as a socially integrating agreement about values and norms instilled through cultural tradition and socialisation; as a consensual relation between players and their publics; or as reaching understanding in the sense of a cooperative process of interpretation." [TCA/1, p. 101.]
- 31 *ibid.*
- 32 TCA/1, p. 86.
- 33 KHI, p. 53. Because Habermas stands partially in the humanistic stream of Marxist interpretation, he anticipates a world in which the forces of production (i.e. technology and technologically useful instrumental knowledge) and social organisation are combined rationally to serve human needs rather than geared irrationally to capital accumulation. He considers Marx's theory of social evolution to be inadequate, because "Marx wanted to capture the embodiments of unreason". [REPLY, p. 221.] Habermas, in his attempt to reconstruct Marx's theory of social evolution, intends to recover "a potential for reason encapsulated in the very forms of social reproduction". [*ibid.*] He wants to incorporate into the Marxist heritage a theory of culture that is not positivistically reduced to economic processes. To Habermas labour is an epistemological category, and means instrumental and technical knowledge that is socially co-ordinated and thus rooted in culture and bound up with forms of symbolic interaction that characterise each stage of social evolution. He believes that we must reconstruct social evolution as a process with expanded possibilities for learning, and so for the creation of culture with an emancipatory potential, as the progressive institutionalisation of the claims of reason against arbitrary power. [For a fuller discussion of Habermas's Marxian roots, and his interaction with the Marxian tradition, see REPLY, pp. 220-229.]
- 34 KHI, p. 53.
- 35 *Legitimation Crisis*, Heinemann, 1976. Hereafter referred to as LC.
- 36 in *Communication and the Evolution of Society*, *op. cit.*, pp. 1-68.
- 37 For Habermas, rational consensus is the ultimate criterion of the correctness of norms (and of the truth of statements) - see pp. 210ff. of this chapter. His position is that the very structure of speech anticipates a form of life in which truth, freedom and justice are possible. In language there is an inherent, non-arbitrary (i.e. justifiable) normative standard, namely the possibility of an ideal speech situation which operates as a critique of the systematically distorted communication that produces domination and injustice. His critical theory of society advocates critical reflection in order to unmask domination; it also advocates the use of discourse to transcend systematically distorted communication, thereby bringing about emancipation from domination. Crucial to this project is the development of the capacity to engage in discourse: this critically reflective capacity requires the reconstruction of communicative competence, which is the task of universal pragmatics (see pp. 189ff.).
- 38 J. Habermas: "Remarks on the Concept of Communicative Action", in *Social Action*, Ed. G. Seebass and R. Tuomela, *op. cit.*, p. 170.
- 39 Habermas claims that "in communicative action, participants ... harmonise their plans of action on the basis of common situation definitions. In this respect the negotiation of definitions of the situation is an essential element of the interpretive accomplishments required for communicative action". [TCA/1, p. 286]
- 40 *ibid.*

- 41 D. Bell: *The Cultural Contradictions of Capitalism* (New York: Basic Books, 1976); H. Pitkin: "Obligation and Consent" in P. Laslett, W. G. Runciman, and Q. Skinner, Eds., *Philosophy and Society*, fourth series, Oxford: Blackwell, 1972; J. Schaar: "Legitimacy in the Modern State", in P. Green and S. Levinson, Eds., *Power and Community*, New York: Random House, 1970, pp. 276-327; A. J. Simmons: *Moral Principles and Political Obligations*, Princeton, New Jersey: Princeton, 1979; M. Stanley: *The Technological Conscience*, New York: Free Press, 1978; A. Wolfe: *The Limits of Legitimacy*, New York: Free Press, 1977.
- 42 A. W. Gouldner: *The Dialectics of Ideology and Technology*: Macmillan Press, 1976, p. 146.
- 43 S. K. White says that Habermas's "linguistic turn" occurred around 1970. [*The Recent Work of Jürgen Habermas*: Cambridge: Cambridge University Press, 1988, p. 25.]
- 44 J. Habermas: *Knowledge and Human Interests*, p. 314.
- 45 LC, pp. 10-11.
- 46 T. McCarthy: *The Critical Theory of Jürgen Habermas*, op. cit., p. 273.
- 47 Habermas remarks that although he introduced the term "universal" pragmatics to refer to the reconstruction of universal features of using language in contradistinction to empirical pragmatics (which analyse the particular contexts of language), he is no longer happy with the term, and believes that the term "formal" pragmatics would serve better. [UP/CES, p. 208.]
- 48 UP/CES, p. 1.
- 49 TCA/1, p. 297.
- 50 Baynes, op. cit., p. 88.
- 51 P. F. Strawson: "Meaning and Truth", in *Logico-Linguistic Papers*, Methuen, 1971, pp. 172-173; cf. C. Peacocke: "Truth Definitions and Actual Languages", in G. Evans and J. McDowell, Eds.: *Truth and Meaning: Essays in Semantics*, Oxford: Clarendon, 1976, pp. 162-188; and S. Blackburn: *Spreading the Word*, Oxford: Clarendon, 1984, chapter 4, pp. 110-142.
- 52 M. Dummett: "What is a Theory of Meaning?" in "What is a Theory of Meaning?" in Guttenplan, S., Ed.: *Mind and Language*, Oxford: Clarendon, 1975, p. 121; and "What Does the Appeal to Use Do for a Theory of Meaning?" in *Meaning and Use*, Ed. A. Margalit, Dordrecht/Boston/London: Reidel, 1979, p. 134.
- 53 By rational reconstruction Habermas means those procedures characteristic of science "which systematically reconstruct the intuitive knowledge of competent subjects". [UP/CES, p. 9.]
- 54 UP/CES, pp. 5-6.
- 55 UP/CES, p. 6.
- 56 UP/CES, p. 26.
- 57 Noam Chomsky: *Aspects of the Theory of Syntax*, Cambridge, Massachusetts: MIT Press, 1965, pp. 3-4.
- 58 UP/CES, p. 26.
- 59 For Habermas, reaching understanding is the inherent *telos* of speech. [TCA/1, p. 287.]
- 60 J. L. Austin: *How to do Things with Words*, Oxford: Clarendon, 2nd Edition, 1975 (first ed. 1963); also "Performative Utterances", in *Philosophical Papers*, Oxford: Oxford University Press, 1961, pp. 220-239; also "Performative-Constatative", in C. E.

Caton, Ed., *Philosophy and Ordinary Language*, Urbana, Ill.: University of Illinois Press, 1963, pp. 22-54; J. R. Searle, *Speech Acts: an Essay in the Philosophy of Language*, Cambridge: Cambridge University Press, 1969; also by Searle: "Austin on Locutionary and Illocutionary Acts", *Philosophical Review* 77 (1968), 405-424.

- 61 UP/CES, p. 34. [My emphasis]
- 62 Searle's hypothesis is that speaking a language is performing acts according to rules: he asserts that "the semantic structure of a language may be regarded as a conventional realisation of a series of sets of underlying constitutive rules, and that speech acts are characteristically performed by uttering expressions in accordance with sets of constitutive rules". [J. R. Searle, *Speech Acts*, op. cit., p. 37.]
- 63 *ibid.*, ch. 3, especially pp. 62ff.
- 64 J. L. Austin: *How to do Things with Words*, op. cit., pp. 98ff.
- 65 *ibid.*, p. 101.
- 66 *ibid.*, p. 117.
- 67 *ibid.*, p. 118; cf. Habermas's treatment of this distinction in TCA/1, pp. 288-295.
- 68 J. R. Searle: "Austin on Locutionary and Illocutionary Acts", op. cit., pp. 405ff.
- 69 UP/CES, p. 42.
- 70 UP/CES, p. 29; cf. TCA/1, pp. 100, 236, 278.
- 71 The claim to comprehensibility is the only one of the four basic validity claims that is "language-immanent"; the others place the speaker's utterance in relation to extralinguistic orders of reality.
- 72 UP/CES, pp. 2-3, 28; TCA/1, p. 99, p. 307.
- 73 UP/CES, p. 3; cf. TCA/1, pp. 69-70; cf. REPLY, pp. 236-237.
- 74 TCA/1, pp. 8, 9, 15.
- 75 TCA/1, p. 15.
- 76 McCarthy, op. cit., p. 287.
- 77 TCA/1, p. 297.
- 78 TCA/1, p. 295.
- 79 UP/CES, pp. 34-35.
- 80 UP/CES, p. 35.
- 81 UP/CES, p. 59.
- 82 UP/CES, pp. 59-60.
- 83 UP/CES, p. 61.
- 84 *ibid.*
- 85 UP/CES, p. 62.
- 86 UP/CES, p. 63.
- 87 TCA/1, p. 309.
- 88 UP/CES, pp. 63-64.
- 89 UP/CES, p. 64.
- 90 *ibid.*

- 91 UP/CES, p. 1.
- 92 J. B. Thompson: "Universal Pragmatics", in J. B. Thompson and D. Held, Eds., *Habermas: Critical Debates*, op. cit., pp. 125-128; S. K. White: *The Recent Work of Jürgen Habermas*, op. cit., pp. 30-31. White claims that by privileging this kind of usage, Habermas diverts "our attention away from precisely those aspects of language which have the capacity of sensitising us to the oppressiveness of whatever categorial distinctions are dominating our thought and social interaction. ... Humour, irony, metaphor, and aesthetic expression in general are what give us breathing space and weapons in this ongoing struggle to prevent closure in the way we see ourselves, others and the world". [ibid., p. 31.]
- 93 REPLY, p. 270-271.
- 94 TCA/1, p. 287 (my emphasis); cf. REPLY, pp. 270-271.
- 95 REPLY, p. 270.
- 96 Baynes, op. cit., p. 118. Habermas's theory, like Rawls's stands in the deontological tradition of Kant's moral theory. Where Habermas's theory departs from the stricter deontology of the tradition (which insists that moral obligations do not depend upon the presence of desires and interests other than the interest of reason) is in his reconstruction of the notions of reason and autonomy. In this reconstruction Habermas insists that reason should not stand in opposition to needs and interests, but should be defined procedurally in terms of the structure of argumentation and process of communication; the question becomes what interpretation of needs can best withstand discursive vindication. Similarly, as Baynes explains it, "autonomy no longer signals the exclusion or repression of interests and desires, but rather the capacity to reflect critically upon them and the willingness to redeem them discursively if their interpretation is contested". [ibid., p. 111.] Habermas also differs from Rawls in his claim that moral theory can only be deontological and must focus on questions of justice, because judgements of justice (unlike the amorphous judgements of the good life) possess a clearly discernible formal structure along the lines of the model of Kohlberg's development of moral consciousness. [CES, pp. 74ff.] Rawls, by contrast, distinguishes between justice as the basic virtue of a social system and the domain of moral theory at large, in which a full theory of good is present. [*A Theory of Justice*, Oxford: OUP, 1972, pp. 398ff.] Habermas's claims that his communicative ethics "stylises questions of the good life, and of the good life together, into *questions of justice*, in order to render practical questions accessible to a cognitive processing by way of this abstraction". [REPLY, p. 246]
- 97 In this sense Habermas's theory, like Kant's is formalistic. Kant did not intend his categorical imperative to generate any substantive moral norms, but to specify a procedure for testing existing maxims of action. In a similar way, Habermas's discourse ethics assumes the existence of a social world of norms, the validity of which can be established only in actual discourses.
- 98 MCCA, p. 116; in his essay "Morality and Ethical Life" [in MCCA, pp. 195-215], Habermas contends that his idea of practical discourse differs from the constructs of Rawls and Mead (the "original position" and "ideal role taking" respectively). He argues that it is not necessary to resort to Rawls's original position with its "veil of ignorance", because "the idealised, partly counterfactual presuppositions [in his model of discourse] are precisely those that participants in argumentation do in fact make". [ME, p. 198.] Where he differs from Mead is in his emphasis on actual discourse: "... practical discourse transforms what Mead viewed as *individual, privately enacted* role taking into a *public* affair, practised intersubjectively by all involved". [ibid.]
- 99 I take up this point more fully in the final chapter.

- 100 Habermas recognises that his discourse ethics is fallibilistic, and depends on the empirical validity of its reconstruction of specific human competencies; for this reason it rejects the stronger claim to *a priori* status. [Baynes, op. cit., p. 109.]
- 101 Habermas argues that since "ultimate" grounds of norms can no longer be made plausible, it is the formal conditions of possible consensus formation which possess legitimating force; in "Legitimation Problems in the Modern State", CES, p. 184.
- 102 cf. A. Gouldner's remark about language behaviour, above (p. 187).
- 103 UP/CES, p. 64.
- 104 Anyone who believes that he or she can opt out of the immanent obligation to justify a proposed norm (of justice, for example) is guilty of a performative contradiction, because this obligation is inherent in argumentation itself. [DE, pp. 81-82, 88-90, 94-95, 129- 130.] Hence any who cynically ride on contextual or communicative norms (thus deriving private benefit without demonstrating any intersubjectively normative motivation or orientation) must reveal the irrationality of their position when they try to justify it, or they must systematically avoid any understanding-oriented action. A significant normative implication of the obligation to provide justification is that it resolves the problem of the systematic free-rider, i.e. that it is not rational for an agent to ride freely on collective arrangements (whenever he can get away with it), which even he would endorse as legitimate. [White, op. cit., pp. 53-54]
- 105 LC, p. 10.
- 106 The linguistic basis of Habermas's theory of justice is set out in an important passage from his work *Legitimation Crisis*: "Linguistic communication has a double structure, for communication about propositional content may take place only with simultaneous metacommunication about interpersonal relations. This is an expression of the specifically human interlacing of cognitive performances and motives for action with linguistic intersubjectivity. Language functions as a kind of transformer; because psychic processes such as sensations, needs and feelings are fitted into structures of linguistic intersubjectivity, inner episodes or experiences are transformed into intentional contents - that is, cognitions into statements, needs and feelings into normative expectations (precepts and values). This transformation produces the distinction, rich in consequences, between the subjectivity of opinion, wanting, pleasure and pain, on the one hand, and the utterances and norms that appear with a *claim to generality* [*Allgemeinheitsanspruch*] on the other. Generality means objectivity of knowledge and legitimacy of valid norms. Both insure the *community or shared meaning* [*Gemeinsamkeit*] that is constitutive for the socio-cultural life-world. The structures of intersubjectivity are just as constitutive for experiences and instrumental action as they are for attitudes and communicative action. These same structures regulate, at the systems level, the control of outer and the integration of inner nature - that is, the processes of adapting to society that, by virtue of the competencies of socially related individuals, operate through the peculiar media of utterances that admit of truth and norms that require justification." [LC, pp. 10-11.]
- 107 S. Benhabib: "Autonomy, Modernity and Community. Communitarianism and Critical Social Theory in Dialogue", in *Zwischenbetrachtungen im Prozess der Aufklärung: Jürgen Habermas zum 60. Geburtstag*, edited by Axel Honneth, Thomas McCarthy, Claus Offe and Albrecht Wellmer, Frankfurt: Suhrkamp Verlag, 1989, p. 378.
- 108 *ibid.*, p. 379.
- 109 TCA/1, pp. 22-42.
- 110 *ibid.*, p. 23.

- 111 *ibid.*, pp. 17-18.
- 112 *ibid.*, p. 10.
- 113 Habermas: "Wahrheitstheorien", in Helmut Fahrenbach: *Wirklichkeit und Reflexion: zum sechzigsten Geburtstag für Walter Schulz*, Pfullingen: Neske, 1973; hereafter referred to as WAHR.
- 114 WAHR, p. 219.
- 115 Pettit: "Habermas on Truth and Justice" in "Marx and Marxism", G. H. R. Parkinson, Ed.: *Royal Institute of Philosophy Lecture Series: 14*, Cambridge: Cambridge University Press, 1982, p. 212.
- 116 C. S. Peirce: "How to Make Our Ideas Clear", in P. Wiener, Ed.: *Values in a Universe of Chance: Selected Writings of Charles S. Peirce*: Stanford: Stanford University Press, 1958, p. 133.
- 117 WAHR, p. 219.
- 118 Pettit, *op. cit.*, p. 212.
- 119 WAHR, p. 239.
- 120 WAHR, pp. 241ff.
- 121 S. Toulmin: *The Uses of Argument*, Cambridge: Cambridge University Press, 1958, pp. 94-107.
- 122 See p. 195 for an exposition of these claims.
- 123 J. Habermas, *op. cit.*, pp. 25ff.
- 124 A rational consensus is the kind of consensus in which the validity of norms would be established. Habermas introduces the notion of a rational consensus [LC, p. 111] because it is a consensus which is concerned with the relation of legitimation to truth. D. Phillips explains that the notion of rational consensus can be viewed as an alternative to the widely accepted distinction between a *pragmatic* and a *normative* consensus. [See, e.g., M. Mann: "The Social Cohesion of Liberal Democracy", *American Sociological Review* 35 (1970), 423-439]. In the case of a pragmatic consensus, people accept a political order as legitimate because they see no realistic alternative to it, or because it would be dangerous not to lend it their support; in the case of a normative consensus people accept, or give their allegiance to, the political order. The reason why Habermas finds it necessary to introduce a third type of consensus - a rational consensus - is that the first two may be forced - the result of coercion or threat, whereas a rational consensus, being concerned with the relation of legitimation to truth, is a consensus arrived at by people who are free and equal. Habermas thus argues against a view that authorises decisions on the basis of people's "belief" in their legitimacy or on the fact that such decisions have legal standing. He recognises that people's obedience may be the result of habit, coercion, insufficient knowledge, or lack of understanding. His attempt is to locate rational grounds for distinguishing between the "ought" of false beliefs, or the fear of the consequences of not obeying, and the "ought" of intersubjectively acceptable justifiability of the alternative standards in question. Habermas concludes that legitimate authority is, in principle, rationally justifiable authority. [Habermas: CES, p. 202.]
- 125 LC, p. 107.
- 126 McCarthy, *op. cit.*, p. 291.
- 127 LC, pp. 107-108.
- 128 *op. cit.*, pp. 25ff.

- 129 McCarthy, *op. cit.*, p. 292.
- 130 *ibid.*, p. 304.
- 131 D. Phillips, *op. cit.*, p. 78.
- 132 McCarthy, *op. cit.*, p. 308.
- 133 WAHR, p. 255.
- 134 DE, p. 89; an earlier formulation can be found in WAHR, pp. 255-257. K. Baynes, commenting on the second of Habermas's rules, points out that "no relevant information can be excluded from a discourse and, more importantly, ... only an actual discourse can ultimately determine what information is relevant. Further, no interests, needs, or desires are in principle excluded from the outset. The point is rather that the process of discourse itself will clarify their status (e.g., whether they are generalisable or not, etc.) Agreement is not achieved by excluding particular needs and desires from the discourse, but on the assumption that particular needs and desires can be discursively or communicatively transformed". [Baynes, *op. cit.*, p. 113.]
- 135 Phillips, *op. cit.*, p. 85.
- 136 McCarthy, *op. cit.*, p. 306.
- 137 Phillips, *op. cit.*, p. 85.
- 138 McCarthy, *op. cit.*, p. 307.
- 139 The good and true life is also the goal of Habermas's critical theory.
- 140 KHI, *op. cit.*, p. 317.
- 141 WAHR, p. 258.
- 142 WAHR, p. 259.
- 143 WAHR, p. 258.
- 144 WAHR, p. 259.
- 145 McCarthy, *op. cit.*, pp. 309-310.
- 146 REPLY, p. 25.
- 147 LC, p. 89.
- 148 DE, p. 68.
- 149 REPLY, p. 256.
- 150 *ibid.*
- 151 Practical discourse will be characterized, like theoretical discourse, by a freedom to move from level to level of discourse - a freedom following from an absence of all constraints; thus the conditions of practical discourse must allow for a progressive radicalisation of the argument.
- 152 Habermas: MCCA, p. 178; DE, p. 108.
- 153 Baynes argues that the general social conditions necessary for realising the possibility of practical discourse, including communicative competence, should be considered a matter of justice. [*op. cit.*, pp. 142-143.]
- 154 *ibid.*, p. 151.
- 155 McCarthy, *op. cit.*, p. 311.
- 156 S. White, *op. cit.*, p. 43.

- 157 In making the supposition of an ideal speech situation (a supposition which is unavoidable since it constitutes the very meaning of rational argumentation), we anticipate a form of life which reflects the pure, i.e. unconstrained and undistorted, intersubjectivity of the Trinity.
- 158 In an important passage in *Wahrheitstheorien*, Habermas explains why the justification of norms has equal status to the justification of assertions: "If rightness as well as truth can qualify as a discursively redeemable validity claim, it follows that right norms must be capable of being grounded in a way similar to true statements. In the philosophical tradition two views (among others) stand opposed. One was developed in classical natural law theory and says that normative statements admit of truth *in the same sense* as descriptive statements; the other has with nominalism and empiricism become the dominant view of today and says that normative statements do not admit of truth at all. In my view, the assumptions underlying both views are false. I suspect that the justification of the validity claims contained in the recommendation of norms and of evaluation can be just as discursively tested as the justification of the validity claims implied in assertions. Of course the grounding of right commands and evaluations differs in the structure of argumentation from the grounding of true statements; the logical conditions under which a rationally motivated consensus can be attained in practical discourse are different from those in theoretical discourse." [WAHR, pp. 226-227.]
- 159 Habermas, DE, pp. 94-95.
- 160 In justifying contested validity claims, the practical discourse will use Toulmin's model of argument outlined above (see pp. 207-208), i.e. it will provide evidence, warrant and backing. In the case of practical discourse the evidence will take the form of a legitimating ground (i.e. the features of the situation and the reasons that make this the "right" or "appropriate" thing to do or say); the warrant which establishes the connection between the proffered reasons and the problematic action or evaluation is in this case not a general law but a general norm or principle of action; and the backing takes the form of an excursus on the benefits of the norm. [WAHR, pp. 242-244.]
- 161 R. Bernstein notes that the thought of Hans Georg Gadamer is very close to Habermas's here. While it would be wrong to claim that Gadamer's idea of dialogical rationality could serve as the organisational principle of society, it does serve as a guide and sets before us a task "to attempt to realise that type of society in which the *idea* of an open authentic dialogue and conversation becomes a concrete reality in which all have the real opportunity to participate". [*Philosophical Profiles: Essays in a Pragmatic Mode*, Cambridge: Polity Press, 1986, p. 66.]
- 162 DE, pp. 92-93.
- 163 A. McFadyen: *The Call to Personhood: A Christian Theory of the Individual in Social Relationships*, Cambridge: Cambridge University Press, 1990, p. 209.
- 164 This limit situation in Habermas's theory of communicative action is discussed more fully in the next chapter.
- 165 REPLY, p. 235.
- 166 *ibid.*, and DE, p. 106.
- 167 REPLY, pp. 236.
- 168 McFadyen, *op. cit.*, p. 210.
- 169 LC, p. 109. S. K. White notes (*op. cit.*, pp. 48-49) that non-cognitivists like J. L. Mackie would contest this, on the grounds that an individual choice to abide by any fundamental moral principle has the logical status of a decision. Reason, on this view,

- may be used only to justify particular judgements or actions chosen *after* this initial decision.
- 170 DE, pp. 86, 92, 97.
- 171 Baynes, op. cit., p. 114. The reference is to Wellmer: *Ethik und Dialog: Elemente des moralischen Urteil bei Kant und in der Diskursethik*, Frankfurt: Suhrkamp, 1986, pp. 102-113, 144-145.
- 172 CES, p. 66; ME, pp. 199-200; MCCA, p. 170; "Justice and Solidarity" in *The Philosophical Forum* 21/1-2 (1989-90), 47-48.
- 173 DE, p. 88.
- 174 *ibid.*, p. 86; what this means is that when argumentation concerns normative claims, the participants must admit that universalisation is the only rule under which norms will be taken to be legitimate.
- 175 WAHR, p. 251.
- 176 WAHR., p. 245.
- 177 WAHR, p. 251.
- 178 REPLY, pp. 256-257.
- 179 McCarthy points out that the since factually existing norms can prove unjustifiable, "the relation of practical discourse to social reality can be critical in a way that the relation of theoretical discourse to natural reality cannot. In one way, this makes the discourse model of rightness easier to establish than the discourse model of truth. Since we are not dealing here with an objectively existing external nature but with a mode of existence (normative validity) dependent on intersubjective recognition, the connection between consensus and rightness is initially more plausible than was that between consensus and truth". [McCarthy, op. cit., p. 314.]
- 180 REPLY, p. 257.
- 181 LC, pp. 111-116.
- 182 S. K. White, op. cit., p. 69.
- 183 LC, p. 113; and CES, p. 93.
- 184 S. K. White, op. cit., p. 70.
- 185 P. Pettit, op. cit., pp. 218-219; see also P. Pettit, *Judging Justice: An Introduction to Contemporary Political Philosophy*, Routledge and Kegan Paul, 1980, chapters 8 - 10.
- 186 McCarthy, op. cit., p. 315.
- 187 CES, p. 93.
- 188 White, op. cit., p. 75. A fuller discussion of what the criteria of sincere reflection on needs actually entail is to be found in White, op. cit., pp. 77-83.
- 189 REPLY, pp. 257-258.
- 190 White, p. 49; cf. LC, pp. 89, 108; Rawls, *A Theory of Justice*, op. cit., pp. 18, 130-135; and "Kantian Constructivism in Moral Theory", *Journal of Philosophy* 77/9 (1980), 515-572.
- 191 Rawls: *A Theory of Justice*, op. cit., pp. 254-256.
- 192 Rawls: "Kantian Constructivism in Moral Theory", op. cit., pp. 525-527, 554.

- 193 M. Walzer, a leading contextualist writer on justice, notes that "every substantive account of distributive justice is a local account". [*Spheres of Justice: A Defence of Pluralism and Equality*, Oxford: Blackwell, 1983, p. 314.]
- 194 P. Pettit, "Habermas on Truth and Justice", op. cit., p. 217.
- 195 CES, p. 90.
- 196 In a passage in *Theory and Practice*, Habermas refers to Kant's definition of moral action with the principle of the categorical imperative (act only according to the maxim by which you can at the same time will that it should become a universal law): "Every single subject must *attribute* its maxims for action to every other subject as equally obligating maxims of action, doing so as it examines their suitability as principles of a universal legislation ... The moral laws are abstractly universal in the sense that, as they are valid as universal for me, *eo ipso* they must also be considered as valid for all rational beings. Therefore, under such laws interaction is dissolved into the actions of solitary and self-sufficient subjects, each of [whom] must act as though [he] were the sole existing consciousness; at the same time, each subject can still have the certainty that all [his] actions under moral laws are necessarily and from the outset in harmony with the moral actions of all other possible subjects. ["Labour and Interaction: Remarks on Hegel's Jena *Philosophy of Mind*", in *Theory and Practice*, op. cit., pp. 150-151.]
- 197 Habermas, DE, p. 67.
- 198 R. Keat: *The Politics of Social Theory: Habermas, Freud and the Critique of Positivism*, University of Chicago Press, 1981, pp. 197-198; S. Lukes: "Of Gods and Demons: Habermas and Practical Discourse", in Thompson and Held, Eds., *Habermas: Critical Debates*, op. cit., pp. 136-137; and J. Elster, "Sour Grapes", in A. Sen and B. Williams, Eds., *Utilitarianism and Beyond*, Cambridge: Cambridge University Press, 1982, p. 237.
- 199 LC, p. 108.
- 200 For a fuller discussion of Habermas's thoughts about compromise, see LC, pp. 111-113.
- 201 Habermas, LC, p. 89.
- 202 See Habermas's remarks about the legality-morality dichotomy in the section on "universalistic morality" in *Legitimation Crisis*, op. cit., pp. 86ff.
- 203 *ibid.*, p. 87.
- 204 *ibid.*, p. 89.
- 205 CES, p. 186.
- 206 *ibid.*
- 207 See, for example, the essays in Thompson, J. B., and Held, D., Eds.: *Habermas: Critical Debates*, London: Macmillan Press, 1982; Browning, D. S. and Fiorenza, F. S., Eds.: *Habermas, Modernity, and Public Theology*, Crossroad, New York, 1992; S. Benhabib: "Communicative Ethics and Current Controversies in Practical Philosophy" in Benhabib, S. and Dallmayr, F. Eds.: *The Communicative Ethics Controversy*, Cambridge: MIT Press, 1990; see also S. Benhabib's essay "The Methodological Illusions of Modern Political Theory: The Case of Rawls and Habermas", op. cit., pp. 47-74; and the criticisms, *passim*, in D. Phillips's *Toward a Just Social Order* (op. cit.), and P. Pettit's essay "Habermas on Truth and Justice" (op. cit.).
- 208 Pettit points out, ["Habermas on Truth and Justice", op. cit., p. 217] that the difficulty of applying the criterion to identify true theories is that the theories in question are empirical ones and identification must await the presentation of all relevant evidence.

- 209 C. Gilligan: *In a Different Voice: Psychological Theory and Women's Development*, Cambridge, Massachusetts: Harvard University Press, 1982.
- 210 Phillips, op. cit., p. 87.
- 211 *ibid.*
- 212 Habermas's socio-theoretical analysis of modernity as the dissolution of mythological world-views, together with his own view that the authority of a rationally achieved consensus replaces the authority of the sacred, fails to take into account the significant transformations of religion and theology which have occurred in the course of their development in modernity. This transformation includes the increasing uncoupling of theology from mythological world-views, the move of theology away from its traditional reliance upon principles of authority, the awareness of the historically-conditioned nature of religion, and the increased awareness of the anthropological and ethical dimensions of religious beliefs. [F. S. Fiorenza: "The Church as a Community of Interpretation: Political Theology between Discourse Ethics and Hermeneutical Reconstruction", in Browning, D. and Fiorenza, F. S., Eds.: *Habermas, Modernity and Public Theology*, Crossroad, New York, 1992, pp. 74-77.] Fiorenza argues that "the development of modern theology exhibits traits that fit the conception of modernity outlined by a theory of communicative action". [*ibid.*, p. 67.] Reflective political theology and religion have normative traditions of justice which can be entered into the arena of public debate and practical discourse, and which can address the problems of the colonisation of the lifeworld exposed by Habermas's theory of society.
- 213 P. Pettit: "Habermas on Truth and Justice", op. cit., p. 221.
- 214 *ibid.*
- 215 *ibid.*

Chapter 5 The Divine Reality Underlying Justice as Communicative Action

Introduction

Habermas's theory of justice, situated within his larger theory of communicative action, is theologically significant for my thesis, which proposes that it is specifically divine justice that forms society and provides the impulse continually to transform society. Habermas's theory of justice is crucial for illuminating the kind of emancipatory communicative action in which the mutual recognition of the other's unconditional equality occurs, in which the other is defended against humiliation and destruction, and in which the good and the freedom of the other is sought and promoted. This kind of other-regarding action, or justice, is necessary for the formation of a society which is not to be characterised by the degeneracy of strategic action in one's own interest as a result of surrendering the principle of solidarity, and by the nightmare of persons who conceive of themselves as limited natural beings in a gruesome struggle for mutual destruction.

It is impossible to maintain the dimensions of that action - equality, reciprocity and solidarity - without referring to their ultimate theological context. It is the task of theology, especially a radical political theology, to uphold the moral principle of unconditional, mutual recognition and respect among human beings as free subjects, and to develop this principle further towards a theory of action which can gain universal validity. Rudolf Siebert, a political theologian steeped in the critical theory of the Frankfurt School, states that such a moral principle is impossible without theology.¹ It is the theological context of "other-regarding" action which supplies the explicitly theological categories of crucifixion

and resurrection, understood in Christian theology to comprise the historically significant saving event, which empower human action to work toward the formation of a just society; it is only when communicative action, and the theory of justice contained in it, are seen in a theological context, specifically in terms of the Judeo-Christian tradition, that it is possible to discern the saving, just reality that is presupposed and experienced in communicative action, namely God whose nature is justice.

Since Habermas's theory of justice is inseparable from his theory of communicative action, I shall at different points refer to the former in terms of the latter, on the understanding that when I refer to the theory of communicative action I am assuming the interdependence of the two theories. A theological analysis of communicative action may reveal that it is necessary to speak of justice as communicative action. I intend to argue that this theory can not only be appropriated (critically) and transformed from a theological perspective, but that it has a theological dimension. I do this in the light of the work of two major theologians who have developed Habermas's thought, especially his theory of communicative action, namely Helmut Peukert² and Rudolf Siebert. Although Habermas's various writings tend to disavow theology, the contradictions and central aporia which his theory of communicative action in universal solidarity produces can only be answered by reference to theology. The theory of communicative action, when confronted with the biblical tradition, needs to render an account of the saving reality, asserted for all others, implicit in the very structure of communicative action.

We have seen that justice is the primary subject of society, and that the formation of a just society depends partially upon an analysis of social interaction and its normative foundations, and partially on the establishment of a common normative foundation; the theological path to this foundation is to be found in the theory of communicative action, because the reality at the heart of this theory is the just and saving reality of God. The theory of communicative action, with its normative core and its fundamental demand for universal solidarity, is, in the view of Peukert, the best candidate in modern times for the transformation of theology: "The central realm of a fundamental theology consists of a mode of interaction in which the partners mutually recognise each other as unconditioned and in which they do so in temporal interaction, approaching death."³ Peukert's reconstruction⁴ of a foundational theology from the theory of communicative action, while it is not the subject of this investigation, contains some crucial insights which assist my task of examining the role of justice in the formation of society. My contention is that this justice is none other than the justice of God in its practical expression to achieve God's purposes of his people living selflessly, for each other, in order to form a society beneficial to all. The action denoted in living selflessly is not only selfless, solidaristic and affirming of the other, but also reconciling. The theological category of reconciliation through the Cross can be determined as a vital dimension of action issuing from the ideal speech situation.

A theological analysis of Habermas's theory of justice involves an examination of the limit situation and the contradictions that arise if the universalism which is central to communicative ethics is extended to the dimensions of historical and social action. This analysis leads to the necessary assertion of a reality which

is implicit in enduring communicative action. We have seen that Habermas employs a quasi-transcendental approach to his theory of communicative action, an approach which partially draws on Karl-Otto Apel's transcendental-pragmatic transformation of philosophy.⁵ Apel proposes the Peircean concept of the *unlimited communication community* which he believes to be implicit in all communicative understanding, and to be an existential commitment forced on every speaker who engages in genuine communication. The concept of the unlimited communication community is fundamental to rational identity, because the identity of the subject, the constitution of the self, the possibility of the partner in interaction finding his or her identity, depends on the reciprocal solidarity which is a normative dimension of communicative action; this solidarity includes all dimensions of existence in intersubjectivity and, in principle, all possible subjects of communicative action. Thus the identity of the subject is established through interaction of a specific kind - true intersubjectivity or communicative action. This kind of interaction is the basis for asserting that the reality at the heart of communicative action is theological. Whereas Apel proposes the unlimited communication community, Habermas puts forward the concept of the *ideal speech situation*, which supposes the implicit suspension of force and equality of chances in every act of communication aimed at mutual understanding, i.e. communicative action. Also implied in the very structure of communicative action are three normative claims: equality, reciprocity, and universal solidarity (which Peukert claims to be "the utmost ideal achievable in modern times"⁶).

The transcendental conceptions of a rational, unlimited communication community and the normative dimensions of communicative action require trans-

lation into practice. The problem is that when they are given a historical dimension, the relation to the past, with all its set-backs, catastrophes and injustice, becomes fundamentally problematical for an otherwise thoroughgoing universalism. This aporetic aspect of Habermas's theory of communicative action consists mainly in his neglecting the diachronical character of the historical struggle of people against injustice in society. Siebert contrasts Hegel's awareness of "the massive destruction of individuals and whole nations and civilisations" with Habermas's apparent ignoring of the "gigantic annihilation of action systems and of the people interacting in them";⁷ and he contends that political theology is able to resolve the aporia in the theory of communicative action by not being merely another form of that theory, but "by referring to essential truths in the Judeo-Christian and other religious world-views ..."⁸

What Peukert has done is to uncover the necessary and implicit reference to a theological dimension in the aporia of Habermas's secular universalism. Peukert's pushing of Habermas's universalism one step further into the dimension of history and concrete social praxis is the step that entails the admission of theological concepts, and the question about the conditions of possibility of existence in solidarity with others in the situation of historical and social injustice.

The step that admits theology in the development of the theory of communicative action is the uncovering of the main problem of its normative basis, namely its fundamental demand for universal solidarity (in genuine intersubjective communication) toward freedom and justice. It is in response to this problem that theology claims its modern sphere of validity, because the theory of communicative action, as I intend to argue, falls into aporia when the concept of a unified humanity

is penetrated.⁹ Theology alone can supply a full conception of communicative action in universal solidarity because at its heart resides a reality and a power which enable this action; on the other hand, a theology of justice as communicative action is possible only insofar as this praxis follows from an integration of the biblical concept of justice with the theory of communicative action. The theoretical contradictions of the theory of communicative action occur in the utmost possibility of a life lived in accord with the normative demand for universal solidarity, namely the death of the innocent who has struggled for justice and freedom for others.

The paradox emerges when the ideal of universal solidarity is incorporated in the emancipatory philosophy of history that is central to a theory of society and its formation. When this ideal is historicised in the context of the struggle for justice and freedom, the community to which this solidarity extends must include past generations, to whom we owe the creation of the possibilities to live ever more humanely in justice, harmony and peace. This sort of solidarity is unthinkable in modernity, because modern secular thinkers like Horkheimer and Adorno hold that solidarity cannot be extended to a past which is closed, in which the dead are irrevocably dead, and for whom there can be no justice. Those who presently, and those who in the future will, enjoy the fruits of the emancipatory struggle for liberation and justice, are faced with the "paradox of anamnestic solidarity", a phrase which Peukert borrows from Christian Lenhardt's generational typology of relations to the past in the struggle for emancipation¹⁰: they can be happy only at the cost of the wholesale erasure of memory and denial of the past. If they recall the terrible sufferings of those who were and are annihilated in trying to bring

justice and liberation, they cannot but live in "the most extreme despair and inconsolable grief".¹¹

This paradox can be resolved by a Christian response grounded primarily in a theology of the resurrection, but also in a theology of the Cross. I hope to argue that the explicitly theological and Christian categories of the Cross and the Resurrection not only resolve¹² a theoretical paradox, but more importantly are an expression or demonstration of God's justice, which also empower human action to achieve reconciliation and universal solidarity in history, and thereby to establish justice in the social dimension. This argument now requires development, in three successive stages:

1. A theological analysis of communicative action (section 5.1);
2. the paradox of anamnestic solidarity (section 5.2);
3. the empowering capacity of the Resurrection, and the adoption of a radical political theology and its praxis (section 5.3).

5.1 A theological analysis of communicative action

A theological analysis of communicative action which attempts to establish its significance for justice in the social dimension must begin by identifying the theological theme of communicative action, namely intersubjectivity, for communicative action is concerned with the constitution of subjects and of society in interaction. The identity of subjects is established through intersubjectivity, which, by definition, takes place in the realm of society: it depends on the basic structure of socially constitutive interaction. The mode of interaction which occurs between subjects is regulated by a number of factors, including the organisation of produc-

tion, distribution and consumption, and the accepted rules and norms of a society, thereby deciding the very possibility of achieving identity for the subjects who take part in and constitute social relations. If these relations are distorted, subjects in such a society may suffer domination; such deformed relations require transformation through justice as communicative action.

The question of identity, and particularly of the modern identity crisis, cannot be ignored by political theology. The concept of an identity crisis signifies the modern experience of not being able to understand oneself or being able to make oneself understood to others. According to Siebert,¹³ this breakdown of the ability to engage in intersubjectively reflected self-understanding is like a modern Babel with its confusion of languages, and can happen to individuals, groups, whole societies and action systems (i.e., ideologically-driven forms of government). An analysis of the modern identity crisis leads one to conclude that it has its roots in an uncritical conformity to power; Siebert claims that "our action is determined by systemically petrified mechanisms of accumulation of power", whether economic or administrative, which colonise all aspects of our life-world by "money power or bureaucratic power".¹⁴

It is the function of a theologically-based understanding of justice as communicative action to consider the overcoming of the identity crisis, which threatens our existence, by breaking through the systemically ossified mechanisms of power-accumulation by which the social world is formed and steered, and also by breaking through the mechanisms of material reproduction and money-accumulation which generate situations of inequity and injustice. Siebert claims, correctly in my view, that this can be achieved only when action or praxis "orients itself according to the

principles of practical, communicative rationality and intersubjectivity";¹⁵ such principles, namely the right to life, equality, freedom, and their unconditional mutual recognition are consonant with Judeo-Christian tenets and precepts, and should guide all action. Such action is necessarily communicative action; its normative principle consists not only in the intersubjective recognition of the other, but much more in the will to secure and broaden the life possibility of the other. Theologically, this action, this intersubjective creativity, is empowered by the Holy Spirit to become a life-form which forms the kind of society willed and demanded by God. In this sense, a political theological understanding of justice radicalises the theory of communicative action, and shows how it is much more than a mere theory of communicative action.

The need for genuine intersubjective communication in establishing consensus and finding a new level of orientation of action, and thus normative legitimacy in society, can be seen as an interpretation of the demand arising from a biblical concept of justice, and is a problem largely unresolved by modern theology. Against a history in which ethical norms have been subordinated to socially-politically mediated religious claims for the upholding of the status quo, theology needs to recognise the protest of a radicalised consciousness of freedom which has come from the social sciences, especially critical theory. As Siebert points out, "for this mode of consciousness of freedom only the consensus of free subjects, equipped with inalienable human rights, can provide the basis for the binding power of rules and action".¹⁶ The Judeo-Christian tradition's understanding of justice as right relationship or true sociality is of constitutive meaning for the subject. Intersubjec-

tivity, in the communicative terms set out above, is an understanding of right relationship.

Owing to the extraordinarily creative way in which Habermas integrates the results of research in many diverse disciplines, his theory of communicative action reveals an important aspect of intersubjectivity, namely the ability of the subject to acquire and preserve identity in interaction determined by social and historical norms. This insight is derived from his work on the development of moral consciousness, in which he found that the ability to make judgments in situations of ethical conflict refers to insight into principles that make possible the preservation and achievement of identity for a subject through the recognition and maintenance of the identity of the interaction partner.¹⁷

A theological analysis of this aspect of Habermas's thought must at the same time pay attention to the systematic deformations of identity, and ask for a praxis which can overcome these deformations. The nature of this praxis will become clearer as our analysis proceeds, but it is sufficient to say here that in the light of Peukert's theological development of Habermas's theory of communicative action, it is a new notion of praxis: it means to act in a transforming way, directed toward a non-alienated form of life, while in the midst of an alienating world with all its systemic contradictions and identity-deforming capacity. This non-alienated form of life assists subjects to find their identities together, and thus to change themselves and unjust conditions through justice as communicative action. This kind of communicative action (which is in itself a learning process), seeks and asserts an unconditional, eternal God at its heart, and helps people to free their perception of God from the economic and political increase of power which threatens their

existence. Lawrence Kohlberg's work on the development of moral consciousness¹⁸ shows that interactive behaviour is oriented, through an ordered, successive series of stages, toward increasingly higher forms of reciprocity. Peukert notes, with regard to Kohlberg's work, that "the only binding mode of discovering norms is that in which all interaction partners are recognised as having equal rights and standing".¹⁹ He also notes that the development of reciprocity demands (since it is always socially mediated) an environment where full reciprocity, and thus the autonomy of the subject, is permitted and practised.

Full reciprocity is a sacrificial and a deeply Christian virtue, and is a developed understanding of the Christian teaching of "love thy neighbour". Genuine reciprocity has nothing to do with the bourgeois relation of exchange in late capitalistic societies. What characterises these exchange relations in most civil societies, from Roman times to the present, is the bourgeois principle *do ut des* (I give to you that you may give to me). Some thinkers are tied to this principle as an understanding of reciprocity,²⁰ but I do not find this in Habermas's thought. Indeed, in a recent essay Habermas displays a full understanding of reciprocity as "a relationship in which a subject is associated to another without being submitted to the degrading violence of exchange - a derisive violence that allows for the happiness and power of the one only at the price of the unhappiness and powerlessness of the other".²¹

Reciprocity means the recognition of the other for his or her own sake, and for my sake. It means recognition of the other as equal and equally needy, who depends on love and understanding as I do. Genuine reciprocity springs from intrinsic common knowledge that we are unconditionally dependent on each

other.²² For this reason, we must come to a consensus with each other about what we do, what we want, what we should do, and what we should want to do in the interests of our common humanity and before God.²³ As a consequence of this recognition, love of the neighbour as reciprocal solidarity seeks discourse; it moves from recognition to language; it struggles for understanding and mutual recognition. It does this not only for the neighbour as friend, but also the neighbour as enemy. Siebert notes that reciprocity in this sense is not merely a Christian virtue: "it is rather a deeply humane form of communicative action",²⁴ in that it desires the transformation of the enemy. The importance of reciprocity as one of the core values of communicative action points to a fundamental principle in Hegelian thought, namely the mutual constitution of subjects in interaction. This suggests that the mutual recognition and affirmation of the other as unconditionally equal is the condition of self-existence.²⁵

The structure of communicative action can be characterised by the reciprocal mutual recognition of the communication partners in the binding equality of their rights through all the dimensions of communication. G. H. Mead's thought is important for establishing the concept of the conversation or community which, in principle, incorporates all possible subjects of communicative action. The notion of a universal communication community is derived from the thought of C. S. Pierce and K. Apel, as well as from Mead's idea that the universal conversation or discourse is the formal ideal of communication,²⁶ and receives further attention below.

The importance of intersubjectivity and the authentic constitution of individuals *through their existence for others* is established in Karl Rahner's theology.²⁷

Rahner's assertion that the experience of the reality of God (with his attributes of love and justice) is mediated through others is an important corroboration of the assertion that the theological theme of communicative action is intersubjectivity (which is also a theme of justice). This intersubjectivity is of a peculiar and specific kind, involving the affirmation of the other, the turning toward the other, which is summed up in the Christian category of love of the neighbour. (In this sense it differs from the kind of intersubjectivity implied by Rawls's theory of justice, which seeks co-operation for mutual advantage, but essentially from the motive of self-interest).

In Rahner's theology of the unity of the love of God and the love of neighbour, the experience of God is present only in the communication with a human "Thou".²⁸ "The act of love of neighbour is, therefore, the single categorial and primordial act in which man attains the whole of reality given to us in categories, with regard to which he properly fulfils himself perfectly and in which he always already has transcendental and direct experience of God by grace."²⁹ The affirmation of the other in interaction is achieved through the experience of the nearness of the absolute mystery, toward which human existence transcends in turning concretely to the other:

The categorially explicit love of neighbour is the primary act of the love of God, which in the love of neighbour as such really and always intends God in supernatural transcendental in an unthematic way, and even the explicit love of God is still borne by that opening in trusting love to the whole of reality which takes place in the love of neighbour.³⁰

The affirmation of the other, the turning toward the other, is vital to an understanding of justice which involves action on behalf of the other, even at the cost of death. This kind of action looks to a future brought about by individuals

who, in accordance with the ethic of a Christology which asserts the possibility of the unconditional affirmative self-manifestation of God in one man for others, mediate God's justice in their action to form a just society, free from domination and oppression and characterised by freedom. This mode of interaction, to the limit of one's own death, asserts the absolute affirmation of the other, for his or her freedom, through the reality inhering in communicative action. This interaction, in which the unconditional recognition of the other takes place, is made possible by the experience of the unconditional affirmation by God; Christian faith in this is the ground for the possibility and obligation for individuals in interaction to affirm the other unconditionally.

This interaction is also made possible by the experience of being summoned by absolute freedom and absolute justice, categories attributable only to God; therefore only God, out of pure, free self-communication and as a gift of grace, can enable free self-communication among humans in communicative action. According to Siebert, a theologian like Peukert (who speaks of God, as Hegel before, as absolute love and freedom) "can speak of God as liberating freedom only insofar as he can speak of man's freedom, as it is liberated by God's freedom".³¹ Human praxis, true communicative action, is the movement towards God as absolute freedom, who initiates and makes possible human existence in the first place. One of the problems with Habermas's understanding of human freedom is that he is unable to thematise, let alone answer, the question of absolute freedom as the presupposition of finite historical freedom. It is God alone who can be and is experienced as the one who makes possible and fulfils absolute freedom, and therefore absolute meaning, mediated through relative, finite, temporal freedom.

For Peukert "this freedom of man liberated by God as absolute freedom has, as praxis of love, a non-limitable horizon of universal solidarity".³² Thus, while human autonomous freedom and human identity are constituted intersubjectively, these depend for their completion on orientation toward universal communication and solidarity. At the centre of such orientation is communicative action, in which God is mediated through intersubjectivity, directed toward universal solidarity.

A theological analysis of communicative action also needs to examine Habermas's basic thesis that language is the medium of social formation and transformation in communicative practice. Because language is rooted in the communicative and reflexive practice of individuals in creative interaction, it can mediate between objectivating (reifying) constructions and self-reflection in order to unlock reified, rigid structures. Our analysis needs to ask whether, by incorporating the vital linguistic aspects of the theory of communicative action (the unlimited communication community, the ideal speech situation and the notion of undistorted communication intended to bring about a society free from domination and oppression), a Christian understanding of justice and its theological statements have the innovative and critical power to uncover and break through the injustice in society, i.e. the context of interaction. A Christian understanding of justice which apprehends and emphasises the importance of language in the formation of society can show how the linguistic aspects of the theory of communicative action could become, in a theological context, a theory of socially rectifying speech.

We have seen, in our examination of Habermas's universal pragmatics, that speech act theory and the theory of *performative* speech point to the constitutive significance of the partners for each other and for the referential structure of their

communication, insofar as their speech represents *effective action* on each other. In communication, because finite freedom can be expressed and experienced, partners can provoke each other to ever greater reciprocally granted and received freedom. A theological appropriation of the speech-act theory in Habermas's theory of communicative action could point to the benefit to be gained from understanding the capacity of language (speech) to open up the communication situation to new dimensions, experiences and possibilities, namely the revelation of access to the categories of the reality disclosing itself for subjects who enter into commitments in linguistic action. If Peukert is right in believing that the reality that discloses itself in communicative action is God, then the theory of communicative action is of immense significance for a Christian understanding of justice, because it is precisely this reality which provides, through language (i.e. performative speech or correctly mediated, creative linguistic action in a process of reciprocal reflectivity), the new possibilities for overcoming injustice.

In our earlier discussion of the ideal speech situation, which is the normative core of theoretical and practical discourse, we saw that in the course of communicative action mutual, normative suppositions are proffered and accepted as binding the communication partners from the moment they enter communication. We saw that the structure of communicative action consists of the communication partners mutually accepting each other as having equal standing and rights in all the dimensions of communicative action and recognising the obligation to justify their mutual claims. However, the necessary transcendental presupposition³³ of the ideal speech situation in the practice of communication implies an unlimited communication community, because the conversation in which validity claims are

tested argumentatively cannot in principle be limited; anyone who in any way enters discourse with the intention of argumentatively contesting validity claims must be accepted as a partner:³⁴ "Hence, in principle, in any communicative act the entire human species is implied as the final horizon of the communication community. Communicative action is thus bound to normative, ideal criteria. In it we receive insight into what should be."³⁵

The norm in discourse that makes possible the reciprocal recognition of communication partners, and indeed makes possible the justification of all other norms, is the norm of transsubjectivity. It leads to the view that the communication partners within the framework of an unlimited communication community must "always already" be recognised as having equal standing if communication is to succeed at all in all its dimensions, and if argumentation is to be possible.³⁶ The idea of an ideal communication community provides a useful analytical tool for the judgement of the state of communication in society. Apel's notion of the dialectic between the real and the ideal communication community has helped to make it possible to view the evolution of society, and to transform society:

Communicative action is always played out in a concrete society, with all its contradictions and reifying mechanisms. In its factual implications, concrete communicative action already points to the ideal communication community, if such action is not to become self-contradictory. The ideal implications of any socially constitutive action are the concrete impulses to change existing situations and to transform society as a whole.³⁷

From a theological perspective, in the context of justice, communicative action is constituted by a specific form of action, namely language-mediated struggle for unconditional mutual recognition at every level of human activity. A theology of communicative action thematises this specific form of action, which

makes possible personal and social identity under modern conditions and contributes toward the formation of a just society. According to Siebert, "this identity owes itself to God's unconditionally turning toward the partners in communicative praxis and mutual recognition. This turning of God toward the interacting partners must always be presupposed and practically realised in action for the other".³⁸ Siebert argues that it is God who makes it possible for the interacting partners to overcome dominance in all its forms and to move toward unconditional mutual recognition of each other as free subjects.³⁹ Further, such communicative praxis between partners aims in its societal dimension at the formation of a common social world and of institutions, in which the overcoming of dominance and the consequent unconditional mutual recognition among people are the condition of the self's identity, and the location for the experience of that absolute liberating freedom, which in the Christian tradition is called God - absolute truth, justice, love.⁴⁰

From the foregoing discussion it is possible to distinguish the elementary determinations of communicative action exercised in the dimensions of history and society: equality, reciprocity and solidarity.⁴¹ These determinations are at the same time the determinations of justice, as liberating action characterised by them for others. According to Peukert, who contends that the thesis of the egalitarian and solidaristic basic structure of communicative action is at the same time the cultural thesis of the whole of theology,⁴² the opening up of immediate interaction to an unlimited community is built into the structure of communicative action, which is posited and accepted as normative for one's own action: "This also gives us exigencies and criteria for the overcoming of untruth, injustice, deception, and

self-deception."⁴³ The innovative actions of subjects in communicative action are mutually constitutive performances, disclosing new possibilities for others and for themselves. Such actions not only represent a reciprocal constitution of meaning but also are a "disclosive provocation"⁴⁴ for others, making possible and realising their freedom. In the course of communicative action these actions, accomplished in the horizon of an unlimited communication community, change an existing (unjust) situation by calling into question existing (disputed) norms and disclosing new dimensions of action about which agreement can be reached. This kind of action, in freedom, is demanded of, and is binding on, everyone. According to Peukert, "the community disclosed in this universal solidarity that elaborates its possible self-understanding throughout history is the utmost horizon of action and the condition of possibility that action can contain in this horizon a moment of the unconditioned".⁴⁵ This structure of communicative action formulates the utmost limit of what is conceivable - the limit idea implied in communicative action itself: the unlimited, universal communication community, the realisation of freedom in solidarity through historical action.⁴⁶

A serious challenge to this conclusion is brought by Simpson, who argues that Peukert's failure to engage in a theological analysis of the ideal speech situation and its resulting empirical limit situation, leads him to jettison the transcendental criterion of the ideal speech situation and "to change the venue to another transcendental presupposition for communicative action",⁴⁷ namely Apel's more strongly transcendental concept of the unlimited communication community, which he goes on to privilege throughout his thesis. We need to consider the empirical conundrum which results from a privileged focus on the unlimited

communication community, namely how those in the past are to be included as partners in communication within the unlimited communication community.

If the normative core of the theory of communicative action is equality, reflective reciprocity, and universal solidarity, it needs to be established whether these determinations can be achieved in the historical dimension of society. The evolution of society, seen from a theory of history reconstructed in terms of communicative action, can be viewed as the factual development of the human species from material need and social injustice toward a condition of uncoerced, communicative agreement of subjects to overcome injustice through common practice. Such a theory of history conceives of the historical process as a history of emancipation, i.e. as the ever-increasing realisation of human freedom:

The past that is supposed to be reconstructed in a theory of history is certainly primarily the historical, communicative practice of subjects who in concretely coming to terms with nature and with the contradictions of their own society have also disclosed new orientations for their own action and for their progeny. This achievement of new orientations does not simply have the character of a theoretical debate; rather, it consists in the effective action of concrete subjects on themselves and others; that is, they may freely settle in mutual dependence what they want to be and finally what they can be. In this concrete action they disclose their possibilities for action and for existence.⁴⁸

The problem for such a view is how universal solidarity and the unlimited communication community, which are among the constitutive conditions for being human, can be extended to those in the past, if the past is past and closed.

This problem was given prominence in a debate between two members of the Frankfurt School, Walter Benjamin and Max Horkheimer, which Peukert considers to be "one of the most theologically significant controversies of our century".⁴⁹ In this debate Benjamin, who was concerned to develop a way of

treating history that did not renounce solidarity with the generations of the down-trodden and oppressed, claimed that the past is not closed. Horkheimer's response was that in the past injustice had occurred, people who had been slain were "truly slain", and that nothing could be done to correct past injustice:

What happened to those human beings who have perished does not have any part in the future. They will never be called forth to be blessed in eternity. Nature and society have done their work on them, and the idea of the Last Judgement in which the infinite yearning of the oppressed and the dead is taken up once again is only a remnant of the primitive thought which denied the negligible role of the human species in natural history and humanised the universe. ... All these desires for eternity and above all for the entry of universal justice and goodness are what is common between the materialist thinker and the religious point of view, as opposed to the indifference of the positivist view. However, while the religious thinker is comforted by the thought that this desire is fulfilled all the same, the materialist is permeated with the feeling of the limitless abandonment of humanity, the single true answer to the hope for the impossible.⁵⁰

In tracing the influence of Hegel's thought on the Frankfurt School (and also on Habermas and Peukert), Siebert points to Hegel's adherence to the *a priori* principle that God's providence governs history, and that all that happens in history is ultimately sublated into God's absolute spirit, love and freedom. This is Hegel's solution to the theodicy problem: "he transforms the negative into a positive completeness of history. The historical process is open in principle. Hegel's philosophy of history is indeed a theology."⁵¹ God's providence is powerful enough to assert itself against the negativity not only of nature, but of society and history as well.⁵² According to Siebert, "Hegel's political theology contains the promise that the moments of God's providence, plan and purpose - human freedom, agents of change, social system, course of action - will contain the essential determinations

for the answer to the question which arises from the dark picture of history: the theodicy problem".⁵³

At one point in their correspondence, Horkheimer wrote to Benjamin suggesting that Benjamin's statements ultimately were theological. Benjamin commented: "The corrective for this sort of thinking lies in the reflection that history is not simply a science but a form of empathetic memory. What science has 'settled', empathetic memory can modify. It can transform the unclosed (happiness) into something closed and the closed (suffering) into something unclosed. That is theology, certainly, but in empathetic memory we have an experience that prohibits us from conceiving history completely non-theologically, as little as we may want to try to write about history in immediate theological concepts."⁵⁴ The depth structure which Peukert perceives in Benjamin's thought and in his debate with Horkheimer he designates as "anamnestic solidarity" - a phrase which he borrows from Christian Lenhardt to mean "solidarity confirmed in an empathetic memory, in the recollection of the dead and downtrodden".⁵⁵ Using Lenhardt's concept, Peukert proposes that the dead - especially the oppressed and "innocently annihilated" - have been denied partnership and subjectivity and must therefore, as a constitutive group of the unlimited communication community, be rescued in a preferential way so that they can be subjects in community rather than refuse in history.⁵⁶

5.2 The paradox of anamnestic solidarity

Thus there is a paradox at the heart of this form of solidarity-motivated communicative action, and it is brought to light by the generational typology of Christian Lenhardt,⁵⁷ which fits any emancipatory theory of history and even any

conception that the labour of historical action is for the greater happiness of others. Lenhardt distinguishes three generations in history: a pre-world, a co-world, and a post-world. The first is a past generation of oppressed, enslaved, unhappy ancestors, the second is a present generation of living, oppressed subjects which struggles for liberation, and the third is a future generation that achieves this liberation and enjoys the fruits of the efforts of others to establish justice.

Difficulties and even contradictions arise when the concepts of universal solidarity and the unlimited communication community are tested in respect of Lenhardt's typology. The place of the oppressed ancestors (the pre-world) is apparently least problematic because they do not owe anything to the next generation (the co-world) for whose liberation they have struggled. The co-world, conscious of the historical dimension of its task, struggles for its own liberation and that of its children, and in so doing satisfies its debt to the pre-world by working for the happiness of the post-world. The problem becomes acute when the position of the post-world and its relation to previous generations is considered: according to the logic of Lenhardt's (simplistic) typology, the post-world is by definition liberated, its members living in perfect solidarity and having achieved the end state of happiness.

However, a paradox begins to emerge when their relation to previous generations is considered, in so far as they must live with the consciousness that they owe everything to the oppressed, downtrodden, the victims of exploitation and a range of injustices⁵⁸ during the prior process of liberation. The questions which arise from this terrible consciousness that the happiness of the living exists in the expropriation of the dead are trenchantly framed by Peukert:

Is happiness at all conceivable under these presuppositions? Is it not the presupposition of happiness that the unhappiness of those who went before is simply forgotten? Is amnesia, the utter loss of historical memory, the presupposition of happy consciousness? If the unconsciousness of world history is the presupposition of living happily, then is not the life of these human beings in this future inhuman? ... How can one retain the memory of the conclusive, irretrievable loss of the victims of the historical process, to whom one owes one's entire happiness, and still be happy, still find one's identity? If for the sake of one's own happiness and one's own identity this memory is banished from consciousness, is this not tantamount to the betrayal of the very solidarity by which alone one is able to discover oneself?⁵⁹

Thus the extreme counter-experience which radically calls into question the normative structure of communicative action is the experience that those who have sought to act out of justice, in solidarity, to achieve the freedom of others have been destroyed. We become aware that such action contains the experience of indebtedness, insofar as one person can give to or take away from another the possibilities of life; if such a person is irrevocably taken from us, so that there is no possibility of making good his or her presence, the possibility of *reciprocal* presence is destroyed.

Thus the basic normative structure of communicative action is destroyed as a possibility of action; and since this structure assures the possibility of the identity of others, its destruction threatens the destruction of every subject at the core of his or her being. The survivor is threatened with inner destruction by the death of the other in his or her own inner centre of self. This follows from the core concept of communicative action, namely universal solidarity, which is the condition for individual identity. The possibilities available after this counter-experience (of the destruction of the other) are grim: the attempt to exclude the memory of the (innocent) other would be identical to the attempt to deny reality. Siebert has

pointed to the possibility that the price for the ego's being able to remain itself may be the repression of a catastrophic experience, in which case the ego would be imposing on itself an amnesia "of world historical proportion".⁶⁰ Such amnesia would cripple the consciousness of the individual and would end an attempt to regain its identity. The ego which represses any catastrophic experience through amnesia betrays the solidarity which is the condition for ego-identity and ultimately for the individual's freedom; in which case human existence becomes a self-contradiction.

Another possibility is cynically to conclude from the experience of the sacrifice of others who have attempted to act in solidarity that one "should simply use all possibilities of action optimally for oneself alone; solidarity too would then be surrendered as the basic principle of the achievement of one's own identity; communicative action would then degenerate into purely strategic action in one's own interest".⁶¹

Lenhardt's concept of anamnestic solidarity, when used in an analysis of the theory of communicative action, marks the paradox of a historically and communicatively acting entity: "one's own existence becomes a self-contradiction by means of the solidarity to which it is indebted. The condition of its very possibility becomes its destruction. The idea of 'perfect justice' can only then become a nightmare."⁶² Faced with such a paradox, it is not difficult to sympathise with Horkheimer's suspicion that this nightmare might shed light on the real situation:

The thought is monstrous that the prayers of the persecuted in their hour of greatest need, that the innocent who must die without explanation of their situation, that the last hopes of a supernatural court of appeals, fall on deaf ears and that the night unilluminated by any human light is also not penetrated by any divine one. The eternal truth without God has as little ground and footing as infinite love; indeed, it becomes

an unthinkable concept. But is the monstrosity of any idea any more a cogent argument against the assertion or denial of a state of affairs than does logic contain a law which says that a judgement is simply false that has despair as its consequence?⁶³

Peukert notes that "here the most extreme point of despair is reached, and, if despair does not kill, the point of inconsolable grief".⁶⁴ (This is, of course, a re-statement of the problem of theodicy - the justification of the all-loving, all-powerful, all-merciful, totally just God in the face of the horrors and barbarous injustices in history and society. In the view of Siebert, Peukert's theology of communicative action provides a plausible and theoretical answer to the problem of theodicy.⁶⁵) In response to Horkheimer's remark concerning Benjamin's refusal to declare the past to be finally closed - "Your statements are ultimately theological" - Peukert is right to ask: "What sort of theology is this?"⁶⁶

The paradox of anamnestic solidarity and the aporia it uncovers in the theory of communicative action indicate the theory's necessary theological dimension, and the theological reality it reveals. Through the paradox of anamnestic solidarity we approach the limits of the theory of communicative action, and also of Habermas's theory of justice. It seems necessary to postulate absolute freedom and absolute justice as the reality at the root of communicative action, because they are the ground for free subjects working acts of justice in solidarity for others; at least, the paradox raises the question about the relation between the normative structure of intersubjective, reciprocally oriented communicative action in unconditional solidarity and absolute freedom.

Other limit questions are uncovered by the paradox: what sort of conception of communicative action can still be held good after undergoing the crisis of the

destruction of the innocent who attempt, in the historical dimension, to act in accordance with the basic normative structure of communicative action? Does not their experience contradict the core structure of egalitarian and solidaristic action, thereby making the theory of communicative action self-contradictory? It is hard to avoid the conclusion that the normative implications of a theory of communicative action end in aporia "at the point where the attempt is made to conceive of the historical constitution of humanity united in solidarity".⁶⁷ However, we have seen that this very aporia which poses the question of the reality that is the subject matter of theology, also poses the question of a reality witnessed for the other in the face of his death by acting in solidarity with him.⁶⁸ It is my contention that such action in solidarity is the work of justice, and further that it is enabled and empowered by the nature of the reality nameable in the aporia of the theory of communicative action - God, whose nature is justice, and who by the ultimate act of justice saves and resurrects the innocent who have struggled for justice.

Our investigation of biblical justice as true intersubjective action, i.e. communicative action, supports Peukert's assertion that the "the Judeo-Christian tradition is concerned with the reality experienced in the foundational and limit experiences of communicative action and with the modes of communicative action still possible in response to these experiences".⁶⁹ In the biblical tradition, the basic experience of God's liberation, with its normative demand for justice and its normative claim of the recognition of the unconditional equality of the other being the condition of access to and acceptance of God, is called into question at the point where someone is destroyed precisely because he allows this claim to enter into his actions.

The experience of the prophets to that of Jesus and his disciples is the experience of the failure of the just, who is pursued and destroyed on account of his solidarity with others - primarily the poor, the oppressed and victims of social injustice. Support for this is found, e.g., in Pss. 22; 25:2,3; 31:1; 41:1; 55: 16, 17, 22; 72:12; 91:14; 106:44; Lk. 18:7, where God is affirmed for the one praying as the reality who saves those who are threatened with death because of their attempts to live a just life; and in the Suffering Servant passages in Isaiah, where one who lives in unconditional solidarity to the point of annihilation is simply and finally annihilated. Peukert, in his exegesis of Isa. 52:13-53:12, notes that the assertion that God will save and lift up the suffering servant in his downfall is put in the mouth of God himself: "By letting God himself speak in this way, the text affirms God as the reality for the other, for one who suffers in solidarity; the reality of God proves itself as a reality, inasmuch as God saves those who live in solidarity unto death in death."⁷⁰

This salvation by God is an instance of his unconditional will to justice, and is also the underlying motive of the apocalyptic tradition, which, in the face of terrible persecution, posed the question whether justice would ever be done to those murdered despite their innocence. Peukert observes that

at first, this was restricted to the particularistic hope that the innocent dead of Israel would be resurrected to participate in the future salvation at the end time. (See Dan. 12:2, Isa. 25:8; 26:19; cf. 2 Mac. 7:9ff.) Later this idea was extended universally to the expectation of the resurrection to Judgment and to the addressing of the balance of justice for all. ... In the explosive development of the apocalyptic tradition, hope is placed in a God who will make the dead alive again, who will transform the entire existing order of the world in a cataclysm and thereby inaugurate a kingdom of justice.⁷¹

The thesis that God's justice saves those who live (and die) in accordance with that justice is embodied in the life, death and resurrection of Jesus.⁷² Siebert claims that Jesus's discourse and communicative action are obviously concerned with making the beginning of God's dominion experienced for people as the event which liberates them into freedom, and which creates for them the possibility of recognising and accepting each other, since everyone "is already recognised and accepted by the redeeming Reality called God".⁷³ In his yearning for the fulfilment of the Kingdom of God, Jesus asserts the reality of God and his salvation for others. Jesus makes this assertion not merely in theory but in his preaching and acting; in the performance of his factual existence as communicative practice he asserts that God is the saving reality - primarily for the poor and all who are disadvantaged in society. For Peukert, Jesus is this assertion for others:

In this way Jesus exists radically for God, by asserting this God for others practically and by making this God experienceable in his action as a healing, forgiving, saving reality. By acting in solidarity for others, he asserts God as the saving reality distinct from himself. It must be assumed that Jesus understands himself precisely in terms of this reality, which he asserts and makes present for others in his actions - that is, he understands himself in terms of others.⁷⁴

The problem raised by the execution and death of Jesus is an even more acute instance of the contradiction found in communicative action, and brings about a change of perspective which radicalises the question of the reality of God: Jesus asserted the reality of God for others: does not this assertion hold for Jesus himself in his own death? Peukert believes that this is an elementary question which must have faced the followers of Jesus.⁷⁵ It is also a question which concerns every human being confronted with death as a consequence of just action on behalf of another. It must have seemed that Jesus's assertion was not valid for himself, and

that his execution was a factual refutation of God as the saving Reality.⁷⁶ With the death of Jesus any attempt toward a good life, which asserts in the existence for others an Unconditional, is led towards absurdity. In St. Mark's representation of Jesus as the just man dying with the cry of why God has forsaken him the question of the reality of God is posed. Other equally sharp questions follow:

If the one who in his existence asserts God for others is himself annihilated, is this assertion then not refuted? How can we still talk about God at all? Does not the attempt at an existence that asserts an unconditional reality for others lead to absurdity? If one does not simply extinguish this fate from consciousness, how can one still exist without despair?⁷⁷

5.3 The empowering capacity of the Resurrection, and the adoption of a radical political theology and its praxis

There is an answer to the questions posed above. It is provided by the Gospels and the entire Christian proclamation which profess unequivocally that God resurrected Jesus from the dead and showed him to be saved, living, and not annihilated. God rescued Jesus from destruction through the resurrection, thereby affirming and justifying him "before the establishment that murdered him in the framework of power conformity and, thus, of systematically distorted communication".⁷⁸

The Resurrection reveals God as the divine power who saved Jesus - the one who existed for others and actualised the saving reality of God for them. Faith arises from the experience of Jesus' resurrection, and makes possible an existence which asserts God as the saving reality and which anticipates the completion of salvation for all. Faith is a remembering assertion of the saving reality for Jesus, who existed for others; therefore faith is a remembering assertion of God as the saving reality for *all* others. Peukert argues that faith is a practice in practical, anamnestic

solidarity with all others which "asserts God for others in communicative action and attempts to confirm this assertion in action".⁷⁹ The Resurrection empowers one to witness to this faith, which is the anamnesis of Jesus's death and his being saved in death; it also empowers one to live a Christ-like existence for others, i.e., to "manifest the possibility of such an existence through the manner of one's own existence, through one's own communicative action".⁸⁰

In the face of great injustice, before the victim who has suffered injustice or before the survivor of one who has been killed unjustly, all language and theory fails. Solidarity in intersubjectivity, i.e. love, may be the most humane and Christian praxis. In view of the serious injustices which confront most of humankind (as they are reported daily in the media), a theology of justice must consider the kind of praxis through which people may try to secure a humane survival out of crises and other oppressive exigencies, and to determine the meaning of their existence. Siebert points out that global economic and political crises are also crises of consciousness and culture: they demand "elementary transformations of subjective interpretation of reality and orientation, i.e. anthropological revolutions, as well as qualitative changes of the social and cultural structures in modern action systems".⁸¹

The Church has a necessary role to play in such transformations and changes. It should encourage both those within and those outside it to adopt new paradigms of action, and should educate in such a way that partners in action are seen as equal, autonomous, free yet inter-connected. The underlying principle in this paradigm of action, which is also one of the essential norms of communicative action, is unconditional mutual recognition of partners as ends in themselves. The "other",

however weak or disadvantaged, is regarded as one who can enter the ideal speech situation, as one who can contradict the other with good reasons, who can dispute norms and require their justification; thus parties can find, through interaction and practical discourse, a common orientation of praxis, thereby gaining their personal identity and forming the kind of society they desire. The Church will assist others to exist in right relationships, i.e. to do justice, when it eschews instrumental rationality, subtle manipulation, domination and other distorted forms of communication and interaction.⁸²

However, if the Church subscribes to paradigms of action in which instrumental rationality is upheld (as, for example by the New Right and libertarian types of government); if the Church's own form of organisation contradicts the very cause to which it is called to witness, namely the Kingdom of God - in which there is no domination of one by another, because among the norms which operate there is the one which states that the greatest shall be least, will be humble, will be the servant of others (Mt. 18:4; 23:11-12; Lk.. 9:48; 22:26); if fundamental civic and ecclesiastical structures are not oriented toward unconditional mutual recognition of the other, then genuine social and personal formation is endangered and even destroyed.

Siebert's trenchant remarks about first-world Christianity are apposite here: following Metz he says that Christians of the first world, especially those supporting right-wing regimes and ideologies, cannot receive the messianic and socialistic impulses sent by the poor churches of the third world because they are subordinated to obsolete patterns of theological images and thoughts.⁸³ They are unable to accept the new unity of experiences of redemption and liberation; or to appre-

hend a church community which "enfolds in itself a new relationship of religion and politics and which understands its fundamental Christian experience of grace as political mystique of resistance against the idolatry of an unjust world, which holds its people in utter contempt".⁸⁴ It is in the Basic Christian Communities which began in Latin America in the 70s that political theology sees the *kerygma* of liberation intervene positively in the situation of continuing oppression. Siebert contends that Christians in these real Christian communities

look for the historical Jesus as the Messiah and for his cross in and through the Evangelium rather than for the dogmatic Jesus of the churches. They are engaged in a meta-dogmatic interpretation of what is essentially Christian. In the midst of the present world crisis, these Christians are committed to a communicative, universal ethics of brotherhood and sisterhood, very much like the one envisioned by Habermas. But they are at the same time conscious of its roots in the New Testament. They are living out of this messianic ethics.⁸⁵

The political hermeneutics of their situation, which points to the longing for justice, throws Christianity back to its essence, to what is specifically Christian. The Basic Christian Communities to which Siebert refers originate from the experience of the bourgeois Church's deficiencies, like its lack of eucharistic community, lack of liberating praxis, and lack of solidarity with the oppressed and disadvantaged. It is in these alternative forms of community that solidarity can be practised. Siebert suggests that the Basic Christian Community movement is part of the praxis theology intends as theology of communicative action;⁸⁶ that it is a provocation to a hierarchical Church too well adjusted to the bourgeois action system of which it is part; and that it warns and acts in the name of the biblical prophets against the Church's "overadaptation to capitalistic society".⁸⁷

There is no doubt that such radical alternative Christian communities reclaim the prophetic power of the biblical message, and that they are a critical force in powerful, bureaucratic ecclesiastical institutions. In many ways they provide an example of the kind of praxis which the biblical tradition and Habermas's theory envisage. For them, faith is an inspiration and a source of energy for political engagement on the side of the oppressed. In a sense, they exist wherever Christians are committed to justice, and wherever Christians associate themselves freely with believers and non-believers in the attempt to form a more just society.

The Church must go further, as political theology does, and radicalise the fundamental ethical norm of recognising the freedom of the other. This is so, as Siebert points out, "since political theology has to be the witness to and must preserve the liberating and life-giving power of God for the other in the structure of its action".⁸⁸ The *telos* of such action or praxis is communication without domination, universal dignity and freedom in universal solidarity. Siebert states that it is most important that the determination of Christian and ecclesiastical action through political theology corresponds to the demands found in [Habermas's notion of] communicative action, in which the central concern is "communicative, liberating, innovative action, which enables people to accomplish common self-knowledge and self-determination and thus to overcome systemic resistances and contradictions".⁸⁹ Such a political theology, following Metz, Peukert, Arens, Siebert, Moltmann, etc., requires an interdisciplinary approach, which correlates historical, systematic and practical problem positions. This is so, since such a theology of praxis must work out its fundamental concern of a practical and political hermeneutic of Christianity, and which must pursue its task in continuous interdis-

ciplinary discourse with those disciplines in the human sciences and philosophy which deal with action-theoretical problems.⁹⁰

The essential intent of a critical political theology is to achieve a new conjugation of faith and reason, of grace and freedom; Hegel's reconciliation of faith and reason is the basis from which secular theorists like Habermas and political theologians search for solutions to the conditions of utter misery in late capitalistic and socialistic action systems. According to Siebert, "the theology of praxis will start from the foundation of the practical, political hermeneutic of Christianity, which is to be derived historically-exegetically. This foundation is rooted in Jesus's language-mediated communicative action. The development of the theology of praxis will start in the face of the systematic-theological questions concerning the Christological, ecclesiological and ethical consequences of Jesus's communicative-practical explications of the reality of God and the self-explication of this reality in Jesus's life, suffering, death and resurrection".⁹¹

Siebert, following Peukert, notes that political theology must be ready and willing to participate in this horizon in interdisciplinary discourse and co-operation, not only with the social, but also with the natural sciences, which should also be bound to a humane concept of action.⁹² Such interdisciplinary discourse and co-operation produces and develops the categories and principles for a critical political theology which can have foundational-theoretical significance for the whole of human praxis directed toward justice and the formation of a better society. Metz, Peukert, Arens and Siebert are examples of theologians who have attempted to develop such a theology from critical theory, and who agree with the fundamental thesis of critical theory, "that the mechanism of modern action systems which

aim at an accumulation of money and administrative power and are ultimately destructive, increasingly endanger the construction of a communicative life-world, in which human consciousness, spirit, can awaken and find itself, be at home with itself, and be free in solidarity with others".⁹³ Such a theology must seek that kind of innovative praxis which breaks open and can transform the systematically distorted and petrified psychic and social mechanisms of modern action systems, and can open up a life-world "for intersubjectively reflected self-knowledge and self-determination".⁹⁴

Whereas members of the Frankfurt School attributed this kind of innovative liberating praxis to art or the metaphorical language movement, political theologians, following Habermas, need to demonstrate that this praxis is a fundamental characteristic of human, intersubjectively-oriented action in all action systems throughout history. Siebert notes⁹⁵ that political theologians like Metz, Peukert, Arens, etc., are helping many Christians to face the dilemma of injustice, by communicating a new solution to the theodicy problem. As theologians of communicative action, following the example of Jesus, they take the case of the innocent victims of history very seriously because they think from the perspective of these victims. From this perspective they develop, with the help of the theory of communicative action, a salvation-historical perspective of the world. They go further, not only appropriating Habermas's theory, but like Arens (as we have seen) they apply this theory to the historical Jesus and his parables and discourses.

We have seen that Arens's application of the theory of communicative action, especially the dialectic of language and recognition, to the historical Jesus, to his parables and stories about the Kingdom of God, and to his discourses with

his friends and opponents, produces a notion of praxis which demonstrates how God's justice forms society: namely through the language-mediated struggle to achieve domination-free communication, agreement, consensus and freedom. The insights of Habermas's universal pragmatics into the double structure of everyday communication help us to see that the performative components are vital in Jesus' parabolic speech acts and his other forms of communicative action, which are oriented toward mutual understanding. Jesus' interactive behaviour is the real framework of his *kerygma*. The performative effect of the speech act, in the case of the parables, does not lie wholly in the power of the speaker: just as, in the parable of the sower and the seed (Mark 4: 1-20), the seed is partly in the power of the soil, so the Gospel or *Kerygma* is partly in the power of the hearer, the communicative partner. Jesus is responsible for the propositional content of the parables, but only partly responsible for the success of its relational aspect. Whereas a speech act's illocutionary force has the power to generate an interpersonal relationship, this is not coercive or even guaranteed, and takes the form of an invitation, an offer. Jesus offers his opponents his interpretation of reality, and invites them to enter a new form of action. The effect of the offer is envisaged proleptically through the parable, as convincing or converting.

The fruit for this understanding of justice (and a Christian praxis to achieve justice) is the insight that there must be, in our speech and our action for justice, in mimesis of Jesus' parabolic speech acts and interactive behaviour, a correlation between the truth of our verbal expressions and the rightfulness of the norms underlying our praxis. Just as in the case of Jesus' communicative action, so what is at stake for his followers is a self-obligating assertion of truth and rightfulness.

Of course, the grounding of truth and rightfulness claims continuously need to take place through discourse, demonstrated in Jesus' own life. We have seen (p. 109) that Jesus' parables could be understood as narrative argumentation, i.e. discursive arguments in the framework of his practical discourse with friends and opponents, intended to bring about unconditional recognition of the Kingdom of God and the emancipation of the people. It is this 'quasi-discursive' character of Jesus' parabolic action which leads Siebert to contend that the parables constitute political theology foundationally.⁹⁶ Jesus grounds the truth claims raised in his speech acts about God and his rule by demonstrating these claims, as the foundation of his action, in his interactive behaviour toward the disadvantaged of every kind in society.

By referring to the redemptive Reality in communicative action, Jesus is pointing to the justice of God as it is mediated through the linguistic interaction of subjects. What characterises Jesus' communicative action is his disclosure, for his friends and his opponents, of God as Abba - providential, loving and liberating. Jesus makes these actions or qualities of God a matter of immediate experience through his own discourse and intersubjective action; he explicates this God in the interconnectedness of language and struggle for mutual, unconditional recognition. As Siebert boldly puts it, Jesus "linguifies" God in his interaction-embedded discourse;⁹⁷ Jesus' speech and interaction interpret each other mutually and mediate the reality of God, so that He is experienced in language and in the struggle for recognition through communicative action.

A theology of justice as communicative action makes it possible to enfold the political implications of speaking about Jesus's intersubjective action and, after his

death and resurrection, of praxis in imitation of him which is central to Christianity. Christians concerned about justice and who work to mediate God's justice through their own communicative action, must advert constantly to the ideological-critical and understanding-enabling function of Jesus' parables, in order to pursue the innovative intent of changing oppressive situations as well as the participants and the various power-relations in those situations, i.e. to move them to a new interpretation of self and reality, and thus to a new orientation of action. This involves adopting a political hermeneutics which understands the aim of Jesus' parables to expose the repressiveness of his opponents' world-view, by presenting a view of the "true" life, and to achieve consensus between himself and his opponents in order to invite them into the Kingdom of God. Siebert, following Arens, advocates the replacement of the old images and metaphors used by Jesus with new ones owing to the changes in historical situations:

The old illustrations and stories must rather be re-interpreted through new ones, which today can take over their former critical function. The theologian of communicative praxis intends to realise the communicative, i.e. ideology-critical, argumentative and analogical potential of Jesus' parables in a new, personal, economic, social, political, historical and cultural situation with new opponents, e.g., in the present worldwide class struggle between the multinational corporations and the fascist military or civilian dictators who protect their interests and the neo-conservative religious ideologists who try to legitimate both, on one hand, and the exploited masses and the exploited masses, who produce their surplus labour and value and accomplish the maximisation of their profit on the other.⁹⁸

Thus Christians must seek new interpretations, and must actualise in speech acts the structure of communicative action through the localisation of communicative models in present, concrete situations. The tendency of Arens's thought on the parables of Jesus is that they are relevant only to the extent to which equivalents

can be found or invented in contemporary historical situations into which the Kingdom of God has broken.⁹⁹ These present-day equivalents of Jesus' communicative action, which show the actuality of biblical texts in the present economic, political and social situation, are also oriented, through the inter-connection of ideology-critique, discursive argumentation, and analogy, toward understanding and consensus.

This new political theology nevertheless rests entirely on faith - the type of Kiekegaardian leap of faith in the Resurrection which answers the apparent absurdity of the triumph of murder and all kinds of injustice. Jesus, out of his resurrection, became a living parable of the providential, eschatological action of God: the one who had communicated the providential God in story and action had himself turned into a story of the providential God.¹⁰⁰ Hegel's insights¹⁰¹ into the death and resurrection of Jesus represent the theological significance of these events. For Hegel, the death of Jesus is the centre around which Christianity turns: with it begins the transformation of consciousness. The death of Jesus is the highest proof of humanity, since it is the fate which all humans must suffer. But for Hegel the death of Jesus has a further meaning, for in it God has died; this could point to nihilism but it does not, because God maintains his identity in the non-identity of Christ's (and His own) death - a process which is the death of death, the negation of negation. In Hegel's thought, things turn into their opposite: non-being into being. Jürgen Moltmann is the theologian who most closely follows this understanding of politically liberating Christology,¹⁰² in which human nature receives, through resurrection as the death of death, elevation to and identity with Divine nature.

Whoever recognises this is challenged to act in imitation of Christ. Siebert maintains that "the following of Christ means the attempt to take over the structure of his communicative action out of the experience of the reality of God".¹⁰³ This tendential following of the pattern of Christ's life is part of a political theology which concentrates on the fundamental questions concerning Christian speech about God in relation to what happens in, with and through Jesus.

One of the other essential norms of communicative action is solidarity. As anamnestic solidarity with Jesus, made possible through his life and the action of God in saving him, faith in the Resurrection is also universal solidarity, which asserts God as the saving reality who unconditionally affirms the other and stands on his side. This solidarity anticipates the completion of salvation for everyone. Peukert is right to stress that this universal solidarity must be realised in concrete actions of individuals in relation to each other.¹⁰⁴ It means never forgetting those innocent victims who died after lives of great difficulty in working for justice; for what society has done to these people, after unimaginable cruelty, can never be cancelled out. This is true not only for victims of the past, but for those in the present and in the future. If the dead, the unjustly destroyed, are forgotten, it is a very easy step toward forgetting those who presently are hungry, oppressed, alienated, tortured and killed (or who will be in the future).

A theology of resurrection concerned with anamnestic and proleptic solidarity can approach the solution of the theodicy problem with greater hope of success, because it is rooted in the hope and faith that ultimately justice will be done. From this it can be seen that how important solidarity, both anamnestic and proleptic, is for a political theology of communicative action. Just as critical theory

before it, critical political theology intends to be nothing else than the mouthpiece for the innocent victims of history who can no longer speak for themselves, or indeed for the weak, the poor, the oppressed, the marginalised today whose voices are not heard, either by the civil establishment, or by bourgeois Christendom robed in privilege in contradistinction to the robing in humility by God in the Incarnation. Siebert, following Kierkegaard, makes the powerful point that "God's reality, love, providence and the consequent rescue of the innocent victim in death is comprehended by the survivor only if such comprehension proves itself *in the unconditional recognition of the suffering other here and now*".¹⁰⁵

The assertion of God as the reality that unconditionally stands on the side of the other, which follows from interacting in terms of the experience of possible solidarity with the crucified Jesus, while entirely a matter of faith, remains connected with communicative reason. As a matter of faith in the resurrection, such faith is in itself a praxis, i.e. communicative action, which asserts the prophetic and messianic God for others and "which tries to express Him in intersubjectivity and interaction and in granting unconditional recognition",¹⁰⁶ particularly to the weak, the poor, the oppressed, the exploited, the marginalised, the betrayed, the tortured and the murdered.

The understanding of justice which emerges in our investigation emphasises, *inter alia*, the importance of affirming the other. The measure of the state of justice in any society is the radicality with which the other is affirmed, particularly the disadvantaged other. According to Peukert

the affirming of the other in the manner of asserting God as absolute reality for the other in death excludes oppression. Jesus' assertion that God is there for the other as unconditional goodness and love is confirmed conclusively in his resurrection. It becomes the normative

core of communicative action in the dimensions of society and thus implies the demand of social freedom and solidarity. This solidarity proves to be the condition of one's own identity: one can break with this solidarity of all finite beings only at the price of the loss of one's own identity.¹⁰⁷

The normative dimensions of communicative action, namely equality and unconditional mutual recognition, reciprocity and solidarity, may also be seen as the demands of a radical revolutionary Christian praxis which stems from a radical political theology developed in intersubjective dialogue between the biblical tradition and modern theories of justice and society, particularly the critical theory of Habermas. It is my contention that this praxis or communicative action is justice, and is aimed at forming a just society. The normative dimensions mentioned above are evident in the praxis of those who continually call and work for unconditional mutual recognition; who help people living under various kinds of modern ideological action systems to attack the global problems of war, hunger, political oppression, ecological destruction and alienation; and who refuse to compromise with the unconsciousness with which bourgeois society allows thinking to be reified and to become ossified.

True revolutionary praxis depends on a theory which does not close itself to the knowledge of the Absolute, i.e. to theology.¹⁰⁸ At the heart of such a theory is the theological reality - the resurrecting God who saves the poor, the unjustly treated, the innocent victims, who is able to inspire anamnestic and proleptic solidarity, and thus the action which brings about justice in society. A political theology, which springs from the theory of communicative action and is centred in the Absolute, can help people who live in advanced capitalist systems to mitigate what Siebert, following Hegel, calls "Future I" - the totally monetarised and

bureaucratized society; to resist "Future II" - wars; and to promote passionately "Future III" - the reconciled society, the realm of freedom, the domination-free communication, the victimless society, the society characterized by unconditional mutual recognition.¹⁰⁹

Conclusion

What emerges from a theory of justice as communicative action in the light of a theological analysis is the thesis, inconceivable without the biblical tradition of the destruction of the communicatively active innocent, that temporal communicative action in solidarity unto death anticipates a reality which, by one's own practical performance, reaches beyond itself and can and does actually save others: "The performance of one's own existence in communicative action is then factually the assertion, in this action itself, of a reality that does not simply allow others to become an already superceded fact of the past."¹¹⁰ The assertion of the resurrection of Jesus is real as practical anamnestic solidarity with all innocent victims of history, and as faith in God who himself died on the Cross, thereby making possible, through the negation of negation, the death of death, the Resurrection and the Ascension. Unlike the false assertion of existentialist philosophy found in the analysis of death from Kierkegaard to Heidegger, namely that the experience of the death of the other is secondary to the existential accomplishment of the anticipation of one's own death, communicative action asserts a reality that does not allow the other simply to be annihilated. What is aimed at in the anticipation of one's own death "discloses itself as a reality in the experience of solidarity in the death of the other".¹¹¹ Peukert states that

communicative action in remembering solidarity with the innocent victim seems then to be the assertion of a reality which saves the other

who acts in history from annihilation. Only in this sort of interaction and in terms of the reality disclosed in it do I obtain the possibility of my own identity in an existence approaching unto death. ... This reality disclosed in communicative action, asserted as the saving reality for others and at the same time as the reality that through this salvation makes possible one's own temporal existence unto death, must be called "God". Within a situation of communicative action, which is ultimately inevitable, the reality of God becomes *identifiable* and *nameable* through the communicative action itself.¹¹²

Siebert comments¹¹³ that the political theologian can and must introduce the word "God" - God as absolute love, providence, freedom, justice, truth - when referring to the saving reality which underlies true communicative action; and further, that God, as the saving Reality, can only be called by his name out of communicative action, i.e. the intersubjective mode of existence in which one lives a life for others, thereby asserting God as the saving Reality: "Thereby, all talking of theology is bound back to a certain communicative praxis. That excludes a reifying understanding of the reality of God, since God is experienced as a liberating Reality, who as absolute liberating freedom puts into motion transformations in the one and the other."¹¹⁴

The resurrection thus provides the theological category by which communicative action is rescued from self-contradiction. Since Jesus, in his own communicative action, demonstrated the saving reality of one acting, up to and through his own death, to save others as the basic and universal structure of communicative action, the assertion of the presence of God as the saving reality for others can no longer be limited. Peukert shows that the reality within communicative action is universal:

The experience of the Kingdom of God, the reality of God for all, can no longer be historically separated in its universality from this specific person. Only as practised solidarity with all others is the assertion of the resurrection real. J. B. Metz set forth this inseparable connection

between the hope in the resurrection and universal solidarity, which is to say the eschatological dimension of solidarity. The word of the resurrection of the dead "is a word of justice, a word of resistance against any attempt simply to truncate the ever-renewed desire and search for the meaning of human life and to reserve this meaning for those who are ever to come, who have already somehow managed through it all, to a certain extent for those lucky ones who are the final winners and who enjoy the benefits of our history".¹¹⁵

Peukert has shown how theology can assimilate modern theories of action, particularly Habermas's theory of communicative action with its theory of justice arising from universal pragmatics; theology needs to do this in order to explicate what it means to exist as a Christian in the face of the demand for justice, and how that existence is enabled from the eschatological perspective of the Resurrection. The Resurrection of Jesus makes possible a kind of existence which, through communicative action and a life lived in universal solidarity, asserts God as the redeeming Reality for Jesus and, in anticipation of the eschatological completion, for all innocent victims of the past, present and future. Faith in the Resurrection is practical solidarity - genuine universal solidarity - with *all* those who have been, are, or will be victims of injustice; it is therefore an act of *justice*. Such faithful communicative action helps those who survive to find a new identity, which develops out of the experience of liberation into an unlimited, universal solidarity. Siebert asserts that this identity does prove itself practically in modern, highly differentiated action systems:

In this case, religion is not obsolete! While such faith-directed communicative action disproves Habermas's thesis of the obsolescence of religion, it at the same time strengthens his theory of communicative praxis by breaking through its aporetic aspect.¹¹⁶

Peukert's theological radicalisation of Habermas's theory of communicative action provides the basis for a political theology which takes its inspiration and its enabling power from the Resurrection. We have seen that this radicalisation defines, not naively, the Judeo-Christian tradition of faith as hope for justice, thereby permitting a new interpretation of this tradition in the contemporary phase of the world historical struggle for recognition on the level of subject, society and history. This hope for justice is not confined exclusively to those who innocents who have been killed unjustly, but to all who have suffered or who presently suffer injustice in the apocalyptic conflict between north and south, between rich and poor, luxury and misery, abundance and scarcity, owners and workers, producers and consumers.

This hope, based on the Resurrection, means the reversal of the triumph not only of the murderers but of all who oppress or are engaged in acts of injustice.¹¹⁷ Simpson's corrective emphasis on the Cross is important for understanding how it is possible to overcome present injustice through radical critique and communicative action in the form of argumentation in practical discourse, i.e. by the inclusion of *all* in the disputing of norms and the continuing effort to achieve consensus and normative legitimacy. But the Resurrection stands as the ultimate sign that injustice, especially in its extreme forms of the annihilation of the innocent, will not triumph.¹¹⁸

Siebert, while admiring Peukert's achievement, states that a future political theology can and must overcome the deficiency of Peukert's fundamental theology; he believes this deficiency to consist in the merely "assertive" character of Peukert's own aporia solution - "the Kierkegaardian leap of a faith to which dialectical reason

is not reconciled".¹¹⁹ What Siebert believes is necessary is the kind of reconciliation which Hegel achieved between faith and dialectical reason. I concur with Siebert's view that political theology "must develop a post-Hegelian conjugation of faith and dialectical reason and thus build a bridge to non-ideological enlightenment";¹²⁰ and further that, if like Hegel, we try to reconcile reason with religion, then it is communicative reason we want to reconcile with Christianity, especially faith in the resurrection.

However, I cannot see the deficiency in Peukert's leap of faith or in his assertion of faith in the Resurrection;¹²¹ for it is precisely this assertion which answers the aporia in Habermas's theory, and which reconciles communicative reason with the central truth of Christianity. We have seen that the necessary theological reality at the core of communicative action is what rescues Habermas's theory of justice and communicative action; Siebert himself rather confusingly admits that Peukert has discovered this, thereby nullifying his criticism of alleged deficiency:

If the political theologians [Peukert and Arens] intend, like Hegel, to know religion in its manifold formations as internally necessary, then they mean the necessity of that Reality in Judaism and Christianity and other world religions, which rescues men in their annihilation and thus makes possible communicative praxis and mutual unconditional recognition and reciprocity among the one and the other. When the political theologians intend to rediscover, like Hegel, in Christianity, the truth and the idea, then it is once more the truth that God did not let his just one rot in the grave; death of death; negation of negation; and that such resurrection is promised to all innocent victims destroyed in history.¹²²

Siebert, like Peukert, rightly claims that in the Resurrection the innocent victim receives the highest recognition: the murderers do not triumph over their innocent victims ultimately.¹²³ God rescues the innocent victims, justifying them

before their murderers, thereby justifying Himself. According to Siebert, this is the Christian theodicy: God's justice consists in the ultimate triumph of the victim over the murderer.¹²⁴ Siebert has argued passionately that the Resurrection gives hope to us who are living now that we can successfully resist and conquer the murderers (at least ultimately), and that we can act justly in the face of massive injustice.¹²⁵

The basis for this action is a synthesis of the Biblical understanding of justice as right relationship and Habermas's theory of justice as part of his theory of communicative action, which provides a paradigm for understanding anew the Biblical texts about justice and intersubjectivity as forms of communicative action in terms of the dialectic of language and interaction. The reason that such a synthesis is possible is that Habermas's theory of communicative action (even though he may be unaware of it) has a specifically Christian core: its dimensions are congruent with those of Christian action, and may be regarded as an incarnational medium for the expression of those dimensions in modern times for modern conditions.

Footnotes

- 1 *The Critical Theory of Religion: The Frankfurt School: From Universal Pragmatic to Political Theology*, Berlin: Mouton Publishers, 1985, p. 401.
- 2 H. Peukert: *Science, Action and Fundamental Theology: Toward a Theology of Communicative Action*, Cambridge, Massachusetts: MIT Press, 1984. Peukert's book is an attempt to reconstruct the foundations of theology in the light of Habermas's theory of communicative action, and on the basis of contemporary conceptions of rationality found in modern theories of science and action. Peukert is convinced that fundamental (i.e. foundational) theology can today be carried out only by pursuing the logic of Apel's and Habermas's transformation of philosophy into the theory of the subject, of society, and history. Peukert believes that these are not simply secular theories to which theological statements may be appended, but stand in need of a theological foundation. Further, Peukert sees the Christian tradition as no less than the theory of communicative action challenged by the question of how human interaction is possible in the face of human limit experiences, constituted by personal, social, political and historical catastrophes. Peukert, among other political theologians, like Siebert and Arens, considers it legitimate and necessary from a Christian perspective to inquire into the origin of this communicative action in the speech acts and communicative interaction of the historical Jesus.

- 3 *ibid.*, p. 241.
- 4 Peukert's theology is a synthesis of the work of Habermas, and the theologies of Rahner, Metz and Bultmann. According to D. Rasmussen (on the dust-jacket), Peukert's book is almost the first "serious application of Jürgen Habermas's theory of communicative action to recent developments in theology".
- 5 K.-O. Apel: *Towards a Transformation of Philosophy*, Routledge and Kegan Paul, 1980.
- 6 Peukert, *op. cit.* p. 202.
- 7 *ibid.*
- 8 *ibid.*, p. 372.
- 9 *ibid.*, p. 345; Siebert asks whether theology itself does not have its own aporia, one which must be faced squarely if it is not to be overtaken by Habermas's indictment of alleged obsolescence, namely the issue of theodicy. In Siebert's view, the greatness of Peukert's theology of communicative action consists precisely in his willingness to face courageously (as well as "sufficiently, plausibly and convincingly") up to the theodicy issue.
- 10 C. Lenhardt: "Anamnestic Solidarity: The Proletariat and its *Manes*", *Telos* 25 (1975), 133-154.
- 11 A phrase from Horkheimer: see Translator's Introduction to Peukert, *op. cit.*, p. xxi.
- 12 G. M. Simpson, in an article entitled "*Theologia Crucis* and the Forensically Fraught World - Engaging Helmut Peukert and Jürgen Habermas", *Journal of the American Academy of Religion*, LVII/3 (1989), 509-541, has pointed out that Peukert does not entertain "solution" language with reference to the paradox of anamnestic solidarity but asserts that the resurrection "saves" from the paradox. [Footnote 11, p. 516] He also makes the point that, since Peukert views the paradox not only as a theoretical paradox but also as experienced, practical and historical, if the resurrection were to be understood as a "solution", it too would have to be understood as an experienced, practical, historical "solution". This remark, however, raises complex hermeneutical questions about the resurrection and other basic concepts of theology.
- 13 Siebert, *op. cit.*, p. 387.
- 14 *ibid.*
- 15 *ibid.*
- 16 *ibid.*, p. 399.
- 17 Peukert, *op. cit.*, pp. 174-175.
- 18 Lawrence Kohlberg: "From Is to Ought: How to Commit the Naturalistic Fallacy and Get Away With It in the Study of Moral Development", in *Cognitive Development and Epistemology*, edited by T. Mischel, New York: Academic Press, 1971, pp. 151-236; "Stages of Moral Development as a Basis for Moral Education", in C. Beck, B. Crittenden, and E. Sullivan, Eds.: *Moral Education: Interdisciplinary Approaches*, Toronto: University of Toronto Press, 1971, pp. 23-92; *Essays in Moral Development*, vol. I: *The Philosophy of Moral Development*, San Francisco: Harper and Row, 1981; cf. D. M. Joy, Ed.: *Moral Development Foundations: Judeo-Christian Alternatives to Piaget/Kohlberg*, Nashville: Abingdon, 1983.
- 19 Peukert, *op. cit.*, p. 181.
- 20 Metz makes this criticism, suggesting that the notions of reciprocity and universal solidarity in the work of Habermas and others have the tendential character of a

- bourgeois relation of exchange, and are a reflection of the late capitalistic exchange society: *Faith in History and Society*, Burns and Oates, 1980, p. 231.
- 21 Habermas: "Transcendence from Within, Transcendence in This World", in Browning, D. S. and Fiorenza, F. S., Eds.: *Habermas, Modernity, and Public Theology*, New York: Crossroad, 1992, pp. 232-233.
 - 22 cf. B. Barry: "Justice as Reciprocity", chapter 17 of *Democracy, Power and Justice: Essays in Political Theory*, Oxford: Clarendon Press, 1989, pp. 463-493.
 - 23 Siebert, op. cit., p. 468.
 - 24 *ibid.*
 - 25 In this regard, Peukert refers to the work primarily of Hegel, but also of George Herbert Mead and Talcott Parsons: op. cit., pp. 178-179.
 - 26 G. H. Mead: *Mind, Self, and Society From the Standpoint of a Social Behaviourist*, Chicago, University of Chicago Press, 1934, p. 327.
 - 27 See K. Rahner: "Reflections on the Unity of the Love of Neighbour and the Love of God", *Theological Investigations* 6, pp. 231-249; "The 'Commandment' of Love in Relation to the Other Commandments", *Investigations* 5, pp. 439-459; "One Mediator and Many Mediations", *Investigations* 9, pp. 169-184; "The Church's Commission to Bring Salvation and the Humanisation of the World", *Investigations* 14, pp. 295-313.
 - 28 "Reflections on the Unity of the Love of Neighbour and the Love of God", *Investigations* 6, p. 245.
 - 29 *ibid.*, p. 246.
 - 30 *ibid.*, p. 247.
 - 31 Siebert, op. cit., p. 370.
 - 32 *ibid.*
 - 33 Habermas's contention is that the very possibility of discourse and thus of communicative action is built into the transcendental character of ordinary language and rests on the presupposition of the ideal speech situation and the unlimited communication community.
 - 34 The supposition of the ideal or unlimited communication situation is already anticipated in direct interaction and is binding for those participating in the interaction. The idea of the unlimited communication community was developed by Apel from a study of American social psychology, and suggests that every argument, every human word, and every action that is supposed to be understandable makes the claim of being understandable by anyone, even beyond the actual situation in which it arises; in this way, as Peukert explains, "the community of those who are immediately in interaction expands to the ideal communication community of all who could participate in communication or have participated at any time". [op. cit., p. 191].
 - 35 *ibid.*, p. 187.
 - 36 *ibid.*, p. 190.
 - 37 *ibid.*, pp. 192-193.
 - 38 Siebert, op. cit., p. 378.
 - 39 *ibid.*
 - 40 *ibid.*

- 41 Peukert states that "the basic tendency of linguistically mediated action is a movement toward reflective reciprocity in equal standing and solidarity": op. cit., p. 201.
- 42 *ibid.*, p. 171.
- 43 *ibid.*, p. 201.
- 44 *ibid.*, p. 202.
- 45 *ibid.*, p. 202.
- 46 *ibid.*, p. 211.
- 47 Simpson, op. cit., p. 513.
- 48 Peukert, op. cit., p. 205.
- 49 See Peukert, *ibid.*, p. 206, who provides details of the correspondence between these two figures.
- 50 quoted by Peukert, *ibid.*, pp. 206-207.
- 51 Siebert, op. cit., p. 364.
- 52 *ibid.*, p. 365.
- 53 *ibid.*
- 54 Peukert, op. cit. pp. 206-207.
- 55 *ibid.*
- 56 *ibid.*, p. 206.
- 57 C. Lenhardt: "Anamnestic Solidarity ... ", op. cit., pp. 133-154.
- 58 Injustice here includes the serious truncation of people's life chances, in terms of employment for example, when they have acted with integrity to expose the truth, or to defend victims of injustice through simple acts of justice like protesting, campaigning, letter-writing, etc., or simply being aligned with philosophical or faith stances which support justice. In some countries this may easily lead to death, as was the case for Chico Mendez, the Brazilian farmer who protested against the rape of the forests in his country; in countries with a veneer of civilisation, people who oppose injustice may find themselves excluded from promotion or may be deprived of their livelihoods, as was the case for many in the former Eastern Bloc countries prior to 1989; or in institutions, as have been the cases of H. Küng and C. Curran, after the Roman Catholic Church withdrew the *venia legendi* from them.
- 59 Peukert, op. cit., p. 209.
- 60 Siebert, op. cit., p. 374.
- 61 Peukert, op. cit., p. 232.
- 62 *ibid.*, p. 209.
- 63 M. Horkheimer: *Kritische Theorie I*, p. 372; cited by Peukert, pp. 209-210.
- 64 Peukert, op. cit., p. 210; Peukert also notes that the paradox of an existence that refuses to extinguish the memory of the victims of history in order to be happy is nonetheless the point at which the Jewish tradition most explicitly penetrates into this sort of thought. [*ibid.*] By radicalising theology on the basis of a theory of communicative action and by an exposure of its aporia in the face of crises, contingencies, and catastrophes, Peukert has produced a political theology and a radical theory of religion (much in line with that of J. B. Metz, one of his mentors) which defines the Judeo-Christian prophetic and messianic religion as hope for absolute justice.

- 65 Siebert, *op. cit.*, p. 337.
- 66 *ibid.*
- 67 Peukert, *op. cit.*, p. 211.
- 68 Peukert's main thesis is that "a fundamental theology can and must be developed as a theory of this communicative action of approaching death in anamnestic solidarity and of the reality experienced and disclosed in it". [*ibid.*, p. 215.]
- 69 *ibid.*, p. 215.
- 70 *ibid.*, p. 220.
- 71 *ibid.*, p. 221.
- 72 Peukert, *ibid.*, observes that a hermeneutics of the life and proclamation of Jesus "demands a comprehensive concept of communicative action".
- 73 Siebert, *op. cit.*, p. 379.
- 74 Peukert, *ibid.*, p. 223. In a footnote (No. 26, p. 313), he says that reference to a reality in communicative action occurs "not in purely verbal assertion but in the fact that a human being, in the temporally structured, mortal-finite performance of his existence, is directed to God as a reality for others and thus as a reality for himself, and in this way 'asserts' God's reality. This excludes any reified understanding of the reality of God. The question of the 'refutation' of God then arises in the annihilation of this form of existence".
- 75 *ibid.*, p. 225.
- 76 cf. Pss. 69:19,20; 71:11; Isa. 53:3; Mk. 15:30-31; Mt. 27:43; Lk.. 23:35.
- 77 Peukert, *op. cit.*, p. 225.
- 78 Siebert, *op. cit.*, p. 341.
- 79 Peukert, *op. cit.* p. 226.
- 80 *ibid.*, pp. 226-227.
- 81 Siebert, *op. cit.*, p. 383.
- 82 Siebert notes that the Church, as institution, can submit, even in exaggerated forms, to the pathologies arising from the one-sided instrumental-rational orientations of different modern action systems: "In terms of these pathologies, structural-functional requirements and mechanisms can not only disturb a Christian praxis, they can even prevent such Christian action. A Church can turn from an ecclesia of brotherly-sisterly communio and communication, a communication community into a church of administratively ordered and ... factually executed excommunications ..." [Siebert, *op. cit.*, p. 385] The rule which is valid for the case of a church participating in the pathologies of modern action systems, thereby endangering people because of systemic reasons, is formulated and expressed clearly in the New Testament text from St. Mark 2:22: "The Sabbath was made for man, not man for the Sabbath." Siebert also notes that "liberal theologians like Küng, and political theologians like Metz and Peukert, have suffered very personally and intensely from these ecclesiastical pathologies in the 1970s and 1980s alone". [*ibid.*, p. 386]
- 83 Siebert, pp. 478-479.
- 84 *ibid.*, p. 479.
- 85 *ibid.*, p. 480.
- 86 *ibid.*, p. 486.

- 87 *ibid.*, p. 487.
- 88 *ibid.*, p. 384.
- 89 *ibid.*, p. 386.
- 90 Especially the work of sociologists like Weber, Durkheim, Mead and Parsons.
- 91 Siebert, *op. cit.*, p. 461.
- 92 *ibid.*
- 93 *ibid.*, p. 407.
- 94 *ibid.*
- 95 *ibid.*, pp. 411-412.
- 96 *ibid.*, p. 420.
- 97 *ibid.*, p. 454.
- 98 *ibid.*, pp. 431-432.
- 99 Siebert gives (*ibid.*, pp. 433-438) as examples of present-day equivalents of Jesus's parabolic communication (which requires repentance and an application of his teaching to the social situation) Ernesto Cardenal's revolutionary adaptation of the Psalms - *Psalms*, New York: Crossroad, 1981, and Daniel Berrigan's *Uncommon Prayer*, New York: Seabury Press, 1978.
- 100 *ibid.*, p. 457.
- 101 I am indebted to Siebert for his statement of these insights; *ibid.*
- 102 J. Moltmann: *The Crucified God*, SCM, 1974.
- 103 Siebert, *op. cit.*, p. 459.
- 104 Peukert, *op. cit.* p. 227.
- 105 Siebert, *op. cit.*, p. 377. [My emphasis]
- 106 *ibid.*, p. 382.
- 107 Peukert, *op. cit.*, p. 227.
- 108 *ibid.*
- 109 Siebert, *op. cit.*, pp. 332-334.
- 110 Peukert, *op. cit.*, p. 234.
- 111 *ibid.*, p. 235.
- 112 *ibid.*
- 113 Siebert, *op. cit.*, p. 377.
- 114 *ibid.*, p. 380.
- 115 Peukert, *op. cit.*, p. 237.
- 116 Siebert, *op. cit.*, p. 382.
- 117 G. M. Simpson's corrective emphasis on the Cross is important for understanding how it is possible to overcome present injustice through radical critique and communicative action in the form of argumentation in practical discourse, i.e. the disputing of norms and the continuing effort to achieve consensus and normative legitimacy. [*op. cit.*] The achievement of consensus may also be interpreted in terms of reconciliation.

- 118 Siebert argues that in the perspective of radical political theology neither "hell" nor "heaven" must be interpreted away: hell, demythologised, "means that the life of the murderer will ultimately not go well, in spite of the present impressions to the contrary. Heaven, demythologised, means that the life of the innocent victim will ultimately go well, in spite of all present appearances to the contrary." [op. cit., p. 394.] The New Testament leaves us in no doubt as to who the unjust are, who the murderers and the innocent victims are: Herod and John the Baptist - Mark 6; Pilate, the Pharisees and Jesus - Mark 15, Matt. 27, Luke 23, John 18-19, Acts 4; Saul the persecutor - Acts 9:4; etc. According to Siebert, the struggle for recognition between murderers and victims described in the New Testament throws light upon present recognition-conflicts in society and the world [he lists a number of situations in contemporary history - Vietnam, El Salvador, Nicaragua, Honduras, Guatemala, Argentina, Brazil, Lebanon, Grenada, Ethiopia - op. cit., p. 395.], and gives rise to a universal communicative ethics as part of a radical political theology [ibid., p. 396]. The fundamental norm of this ethic is that Christians must never side with injustice. Christians must always identify with the innocent, those who are abused, oppressed, marginalised, tortured, murdered, in present or in anamnestic or in anticipatory solidarity: "Through its communicative ethics radical political theology advises Christians to engage always in those political parties which by their actions fight against the murderers in high places and for their innocent victims. This radical political theology helps Christians today to interpret personal, social, economic, political, historical and cultural reality and to orient their praxis in this reality here and now, as well as in the immediate and more distant future. Thus radical political theology can help to overcome the terrible indictment against Christianity by critical theorists that it has sided again and again with the murderers." [ibid.]
- 119 *ibid.*, p. 472.
- 120 *ibid.*
- 121 J. Milbank makes a related charge against Peukert in his argument that Peukert's position is a new version of the Kantian idea that practical reason must postulate God's existence in order for injustice to be redressed ultimately. [*Theology and Social Theory: Beyond Secular Reason*, Oxford: Blackwell, 1990, pp. 239-240.] Milbank says that he cannot see the imperative necessity to turn the wish for ultimate harmonisation into a postulation. However, Peukert is not attempting a Kantian postulation: as a theologian he is asserting that the Resurrection and its true universality alone and necessarily can answer the apparent absurdity of the triumph of injustice. Reason supports but cannot prove this answer: faith, following reason, accepts it, and proceeds to incorporate the voices of the (resurrected) dead in present attempts to establish justice.
- 122 Siebert, p. 473.
- 123 *ibid.*, p. 394.
- 124 *ibid.*
- 125 *ibid.*

Chapter 6 Consonance with the Justice of God and Deliberative Democracy

Introduction

The aim of this thesis has been to investigate whether modern theories of justice might be understood as mediations of the justice of God to form the kind of harmonious society which not only God wills but humans desire.¹ Both Rawls's and Habermas's theories are in the tradition of the Enlightenment attempt to determine the kind of rationality that would make a universal discourse possible, in which a consensus of all as the basis for transformative action to form a just society could be achieved.² One of the problems raised by contextualist rationality is its apparent preclusion of a universalist moral perspective, particularly one which links reason with justice. Modern thinkers like MacIntyre³ and Walzer⁴ are pointing to the increasingly serious difficulty which lies before anyone trying to defend universalism in moral and political philosophy. However, justice, *because of its connection with the universal human capacity for reason, transcends any particular cultural conception of it, in so far as it is the outcome of a consensus about norms of action to which all who are potentially affected could rationally agree in the universal communication community. In this sense it may be included in the category of transcendental universals ("necessary notes of being", like unity, truth, goodness and beauty), which may be conceived of as "forms through which being displays itself".*⁵ Claims of justice, according to Stuart Hampshire, "have always been the preferred examples of moral claims that are to be recognised by *reason* ...",⁶ and which are not contingent upon any particular social order or ideology.

An understanding of the justice of God as right relationship, a concept which is not tied to any particular socio-cultural matrix, reveals that there is in the Judeo-Christian tradition a thrust toward a universal rationality and ethic but which is not systematically articulated in scripture. It is my contention that this rationality and ethic find their articulation, not without remainder, in the theories which we have considered.

In this final chapter I want to pursue the claim that the justice of God is operative incarnationally in secular theories which aim at the formation of a more just and humane society. This is followed by a section in which I offer reasons for considering Habermas's theory of justice to be a mediation of God's justice, owing to its truly social rather than monistic character, and because to a greater degree than Rawls's theory it meets the criterion of congruence or consonance with a theological understanding developed from the biblical notion of justice. I realise that this may appear to be privileging a theological concept as an unassailable criterion for assessing other concepts and theories. This is not the case, however; the interdisciplinary method I am using advocates a mutually correlated critique, in which the various interacting traditions are self-critical and mutually critical.

Among the useful insights gained from Habermas's critical theory and his foray into linguistic philosophy is the way in which the conditions of validity specified by a normative theory must be raised to a higher level of abstraction, where validity claims and their supporting arguments can be thematised, justified, and agreed. The theological establishment of consonance or congruence is not an end in itself: it serves only to assert that a secular theory and its method or procedure may be a good (if not the best possible) way to establish the social justice

of God and to form the inclusive, participatory society God intends. Formation of the kind of domination-free society intended by God depends on participation and dialogue: therefore a theory which emphasises these, and provides a procedure within a framework of an ethics which is consonant with the social and dialogical nature of God's creative Word, i.e. a communicative ethics, is more likely to be considered a mediation of God's justice (because of its congruence with the primary (i.e. biblical) source of our understanding of God's justice).

Finally, I assert that the dialogical insights which such a theory generates about the public nature of justice impel us toward a twofold task: 1) to develop a theory of justice in closer connection with a model of properly deliberative democracy (toward which Habermas's theory tends);⁷ 2) to commit the Church to a spirited defence of the public sphere, in which all participants, whatever their differences, can meet and discuss any claim that is rationally redeemable.

6.1 The Incarnational presence of God In secular theories of justice

What emerges from a study of the biblical exposition of God's justice is that we are required to reflect his righteousness: what God requires is grounded in what God is. What are the implications of the biblical divine imperative to do justice? Does it imply that we are to proclaim a unique (orthodox) understanding of justice and use that alone to work toward the formation or transformation of society? Or does it obligate Christians to discern the justice of God in those systems and theories which aim to bring about what is effectively congruent with the justice of God, and thus to affirm such theories? The tendency in "orthodoxy" to absolutise and make exclusive its point of reference in dogmatic assertions is responsible,

according to McCann and Strain, for its decline and increasing unpopularity in modern theology.⁸ An unreflective assertion of an unreconstructed biblical justice (i.e. one which fails to correlate its understanding critically with the use of reason and with other interpretations and theories) as the only understanding of justice falls foul of McCann and Strain's critique of both "orthodoxy" and "orthopraxis".

The strictures in this critique are based on the analysis in Charles Davis's important study of the theory-praxis dialectic in *Theology and Political Society*,⁹ which suggests that "a religious community's attempt to immunise its traditional form of life against historical change is practically vicious and theoretically absurd. The artificial exclusion of theory from the flux of experience betrays the deformed modernity of orthodoxy and illuminates alienation from anything authentically traditional".¹⁰ In a modern pluralistic society any ideology or praxis, secular or religious, which absolutises its normative claims without dialectical reflection¹¹ and without submitting them to public discourse and justification is rightly liable to the charge of domination, which, as we have noted, is a major source of injustice.

A narrow biblical view is insufficient to provide the answer to what justice demands under modern conditions. It may be that God's justice finds expression in systems or theories of justice other than those which claim dogmatically to encapsulate it. To suggest this is not to confer a quasi-religious status on secular theories; nor is it to be unaware of the possible charge of the reductionist exercise of dissolving God into a dimension of human existence, or what Pannenberg calls "assimilation to the secularism" of the modern world.¹² I do not believe that this is a danger in my thesis because I am aware that we cannot contain God in any of our categories and theories,¹³ and because I have advocated a mutually critical corre-

lation of theology with secular thought. Pannenberg's caveat is aimed at "uncritical" assimilation to secularism, and at those who would give up the central elements of God's transcendence of the world.¹⁴

My point has not been to replace the biblical view, but to suggest that modern secular theories might articulate systematically, thus mediating and developing, what already exists in inchoate form in the biblical text. God is the divine reality underlying the human desire for justice and harmonious society, just as God is that reality impelling humans to devise means to achieve them. The task for theology is to discern the divine reality in advanced and systematic modern theories which coincide with God's will. Pannenberg, who acknowledges that it was Karl Rahner in this century who perceived this task "with great mastery", believes that "the opportunity for Christian faith and its theology is to integrate the reduced understanding of reality on the part of secular culture and its picture of human nature into a greater whole, to offer the reduced rationality of secular culture a greater breadth of reason, which would also include the horizon of the bond between humankind and God".¹⁵ Pannenberg's use of the word "reduced" here is unfortunate, because the concept of rationality which we have seen developed in the course of this investigation is tantamount to the communicative rationality which Jesus himself employed.

Nonetheless, we can affirm Pannenberg's remark if we modify it to include the rider that the "greater breadth of reason" depends on an openness, humility and preparedness on the part of theology and secular thought to correlate their insights and understandings. Habermas, while still rejecting the ontological-metaphysical basis of religion, has admitted that he too readily classified world religions as

functioning to legitimate governmental authority.¹⁶ He acknowledges the example of theologians like Gollwitzer and Irwand in Germany while he was a student, who attempted to free the church from its comfortable alliance with the power of the State and the existing social conditions:

They sought renewal instead of restoration and to establish universal standards of judgment in the public political realm. With this exemplary witness and widely effective change of mentality there arose the model of a religious engagement which broke away from the conventionality and interiority of a merely private confession. With an undogmatic understanding of transcendence and faith, this engagement took seriously this-worldly goals of human dignity and social emancipation. It joined in a multivoiced arena with other forces pressing for radical democratisation.¹⁷

It has been my contention that the locus of justice rests in God himself, specifically in the righteousness or justice which is the essence of his nature. In adopting an incarnational approach to justice, I offer the view that the final revelation of justice is to be found in the person of Jesus Christ. Since, in Christian tradition, Jesus is seen as the mediation of God himself, and since God's nature is justice, in the human person of Jesus justice has become incarnate. In the incarnation, the divine presence is completely manifested in human form; this is the ground for affirming that God's justice (righteousness) is known in his action through human forms. This intrinsic or incarnational theology asserts that God is in the world and the world is in God, without reducing God to the world or the world to God. This perspective helps us to perceive God as that gracious reality which is continuously co-present to humans in everything they do, including politics and action for justice. The Incarnation means that "there is no area in life that the Christian can a priori decide falls outside the gracious action of God".¹⁸

Justice is mediated not only in the single human person of Jesus, but potentially in all humanity whose condition God assumed in Christ and for whom Jesus is the pattern. I am conscious that there is a danger in making this assertion, which may appear to assert that all human systems of justice are mediations of God's justice. For this reason I emphasise that justice is God's righteousness mediated through human agency and activity in society, including some secular social theories, in so far as they can be recognised to be consonant with the ethic of God's justice in scripture and tradition interpreted through a socio-political hermeneutic, and in so far as they can be affirmed by the public use of human reason.

The traditional suspicion of human reason, allied with a virulent anti-rationalism, in many tracts of Christian history is as responsible for some of the injustices and horrors of human history as the abuse of reason has been in secular thought in modernity.¹⁹ The subjection of social norms of action to some form of communicative praxis in which reason is employed dialogically in a public forum is much to be preferred to a dogmatic adherence to, and assertion of, codes and rules whose underlying norms have not been determined by consensus, but by a form of arbitrary decisionism. Anti-rationalism in Christianity is an aberration. Flight into irrationality on account of suspicion of secular culture is an abrogation of the Christian duty to witness to the central truth of the Incarnation (and indeed to God as the Creator and Reconciler of this world). Lamb, commenting on Lonergan's articulation of the questioning dynamism of human intelligence, refers to Augustine and Aquinas's understanding of their faith in Jesus Christ as the incarnate Son of God "as a healing intensification of their intelligence and reason".²⁰ Together

with love, this positive reason, employed communicatively, could overcome the hatred, domination and barbarity caused by the abuse of reason.

Theology and secular thought together are indebted to Habermas's demonstration of the possibility of reclaiming the positive aspect of the Enlightenment commitment to the role of reason, particularly in the exercise of human rationality (in and through the communication community) to resist the negative intrusion by the system into the lifeworld.²¹ This resistance against the use of instrumental reason is a vital task for theology and the Church, and is part of the work of justice, understood in terms of normative legitimacy achieved through public discourse and communicative action. One of Habermas's great contributions to modern thought, particularly in his work *The Philosophical Discourse of Modernity*,²² is to advocate the abandonment of subject-centred reason in favour of a radically intersubjective, communicative reason. In this paradigm, reason is tied to the linguisticity of the intersubjective process rather than to the power of the subject over what there is to be known,²³ i.e. the paradigm of communicative action and rationality, with its emphasis on consensus, replaces the paradigm of consciousness, with its use of instrumental reason and tendency toward domination.

This optimistic affirmation of human reason and Habermas's theory of justice should not blind us to the possible blighting effects of individual and social sin on human reason and action. On the other hand, propensity to personal sin should not deter us from struggling to overcome the social, political and economic consequences of this sinfulness, nor from seeking to form a better society through justice. Rather, the promise that sin is *overcome* through the abundant forgiveness, grace and love of God through Christ, should encourage and strengthen us in the struggle

for justice. Excessive concentration on human sinfulness, quite often related to the use of eschatology as a category for interpreting political struggle, has produced cynicism, despair and resignation, thus thwarting sustained participation in the work of justice.²⁴ Sharon Welch states the problem thus: "While a denial of the fragility of our political struggles and structures is undoubtedly dangerous, the evasion of the resiliency of our work for justice is equally devastating".²⁵ Welch notes that liberal and conservative theologians alike have criticised liberation theologians for not abiding by the "eschatological reservation", which is a theological concept or principle reminding us that all our good works are partial, and that they cannot be directly identified as the work of God, nor identified as the Kingdom of God, even though they may be inspired and guided by God.²⁶

Theologians like J. B. Metz and A. McFadyen believe that the dialectical nature of theological commitment - transcendent and "determinate" (i.e. particular, concrete) - places an eschatological reserve against the distortions of the present, as well as against its own commitment. Both believe that the Kingdom of God and its universals of freedom, justice, peace, truth, etc., cannot be identified with any political situation,²⁷ and both argue that the eschatological proviso prevents the Church's political commitment from slipping into idolatrous forms. Welch cites J. L. Segundo, who criticises Metz's position as reactionary²⁸ because it is too concerned with absolute purity of intent, actualisation and consequences, causing political theologians to avoid activism. Their example in turn "legitimises that avoidance in others".²⁹ Segundo's criticism of this turning away from real-life history is even more biting:

Hope is paradoxically translated into a radically pessimistic view of the whole process of change, even when the latter is not violent, precisely

because any and every change prompted by man cannot but help lose out to world-dominating sin. The Kingdom of God can only be fashioned by someone who is free from sin, and that comes down to God alone.³⁰

This debate raises an issue which is central to my assertion that the justice of God operates incarnationally secular theories, namely the presence of the universal in the particular. Although I acknowledge that a human political commitment, whether following the biblical divine imperative or a secular theory exhorting social justice, is *penultimate* and fallible, I am concerned that a fully incarnational theology should uphold the principle that the ultimate operates in and through the penultimate. The will for political commitment and action is undermined, if not destroyed, by a view which fails to apprehend that God is graciously active through human agency in his creation. The problem here is the criterion for recognition of the presence or activity of the transcendent in the particular. If distorted determinate circumstances (including the social form) inform our consciousness, what status is to be attributed to a critical process in which the understanding of a transcendent point, from which present social norms of interaction may be judged, has itself determinate social form?

McFadyen discusses this problem in his attempt to preserve the transcendence of theology and faith over their present positive socio-political commitment.³¹ He is aware that a positive political commitment to a greater justice in the present, rather than the full justice of the eschatological Kingdom of God, implies that "the mind of faith has a direct intuition of the kingdom alongside a complete understanding of the determination and distortion of the present".³² What this means is that "a new norm has been apprehended as an *a priori* by members of a determinate situation and is then, in the determinate dialogical moment, referred for confirma-

tion to those who might have no access to its cognitive base".³³ McFadyen claims that the problem of legitimating a socially critical socio-political commitment with socially transcendent criteria can be satisfactorily resolved only if it is recognised as a religious question, because "religion is the only sphere within which a critique of the present ... is possible".³⁴

This claim needs to be challenged, because it undercuts the incarnational principle. The answer is not to be sought by an exclusivist referral to the Church,³⁵ as McFadyen does, but in an affirmation of critical human reason, and in a spirit of repentance and humility to remain constantly self-critical³⁶ and socially critical about social norms and the traditions from which they originate. By "socially critical" I mean engaging in criticism dialogically with others in order to submit ethico-political questions, programmes and actions to a mutually correlated critique, i.e. to a broad reflective equilibrium between the normative traditions of the Christian faith and the insights and interpretations of secular thought. F. S. Fiorenza believes it is the role of the churches as "communities of interpretation" to function within the dialectic between (secular) attempts (like Habermas's discourse ethics) to achieve a discursive consensus with regard to the principles of justice, and the reconstruction of the normative potential of the Christian ethical tradition.³⁷ It is Fiorenza's proposal that political theology use a "broad reflective equilibrium" between what is normative in a (religious) tradition and with what is publicly normative through principles of justice, where mutual and reciprocal criticism takes place.³⁸

An awareness of the distorted and fallible circumstances which affect human consciousness, and an awareness of the need for social criticism, should prevent us

from the disastrous consequences of identifying any secular theory or political programme with God's justice and God's will. However, even with a penitent recognition of the provisional and penultimate nature of all human endeavour, it remains possible for Christians to affirm the presence of God in forms which do not have scriptural or ecclesiastical provenance.

6.2 Consonance with the Justice of God: Rawls or Habermas?

The emphasis on the communicative nature of reason and rationality in Habermas's theory of justice compels us to conclude that his, rather than Rawls's theory of justice, is more worthy of consideration as a mediation of God's justice. As we have seen, Rawls's theory attempts to provide a procedure for justifying the norms and principles which might form a just society and regulate its basic structure; it is to Rawls's credit that his theory distinctively regards the basic structure of society as the primary subject of justice. However, if his concept of society is tied to the monological nature of the procedure by which Rawls proposes to form his society, true sociality cannot be considered to be the outcome of the procedure by which he attempts to determine the principles of justice. As we have noted, the most telling criticism against his theory being considered a mediation of God's justice is its virtual monism, in the sense that there is at the centre of his device of the original position a single agent, rather than a genuine plurality of agents determining the principles of justice and norms of action which will form and steer society. The monism in Rawls's theory is also a consequence of his atomistic conception of the person, in contrast to Habermas's socially interactive conception of the person. In this sense, Habermas's communicative theory is consonant with the social and relational conception of the person in the Judeo-Christian tradition,

with the dimensions of God's other-regarding action in Christ, and with the Christian teaching of the love of the neighbour.

The individualism in Rawls's theory is incompatible with a Christian understanding of sociality derived from the intersubjective model of the Trinity, and its processes of argumentative or communicative mutuality. Although Rawls avers that there is a plurality in the original position, it is an individualistic pluralism in which individuals are bearers of a universal substance which is identical in each person. It is possible to elucidate the monological nature of Rawls's original position by reference to McFadyen's explanation of individualist epistemology and anthropology:

Knowledge of another is then tantamount to knowing oneself, and what may be known of one another is only that which confirms the knower's individual perspective. Individualist epistemology and anthropology may only know others as bearers of an abstract identity. What is truly other, different and individual can be neither informative for others nor a matter of public knowledge, interest or communication.³⁹

The biblical idea of justice as right relationship implies understanding (achieved through argumentation in practical discourse), mutuality and reciprocity. These qualities are operative only if there is genuine intersubjectivity, genuine relation, and genuine dialogue. These are crucial qualities in Habermas's theory of communicative rationality and communicative action.

Habermas's analysis of the way in which rationality can be employed strategically, rather than communicatively, reveals that monological communication is oriented toward success rather than understanding, and is an attempt to manipulate or exploit (i.e. control) the other. If communication is entered with the intention of regarding one's interlocutor as an object, it degenerates into strategic communi-

cation, creating a spurious relation in which the other (as object) is intended as having no independent meaning, and perceived as not being ethically transcendent. Because the other is related to as an object rather than as another subject of communication, he or she is intended and experienced as a reflection of the 'communicating' subject, who seeks from the other "only that which is a confirmatory repetition of itself".⁴⁰ Monological subjects cannot recognise communication oriented toward a genuine mutuality of understanding because they do not recognise others as subjects, and because their intention of others as objects effectively silences their otherness. They cease to be subjects of interpersonal interaction and, as McFadyen points out, exist

not so much in a social (i.e. moral) 'world', as in a causal world. That is to say, as a monological subject of communication, [such a person] becomes an object causally interacting with others in order to bring them under control. ... In monological communication a person is in relation only in and for her or himself. The other is intended as an object whose existence in the relation coincides with one's own purposes, desires, needs and intentions which have been self-constituted and validated.⁴¹

The profoundly individualistic nature of Rawls's original position as a device to establish social justice, despite his avowedly *social* intentions, is incompatible with the Christian vision of society as based on right relationship, determined by genuine intersubjective communication, and characterised by community, not self-interest and individualism. Such a society, intended by God in creation (and not confined to the Christian doctrine of the Kingdom of God), is a society of universal justice, truth and freedom in which relations are intended and structured dialogically by God. The Christian vision of true sociality is captured in a social and political theology which stresses the inter-relatedness and organic unity of creation

and, by its social analysis, attempts to address the injustices and evils facing humankind today (which are as much structural as individual). Such a theology will discern and use a 'mediative' theory like Habermas's theory of justice as it tries to develop a co-operative, dialogical social praxis for social justice. It will also avoid theories and other theologies which intentionally or not purvey the pernicious individualism which vitiates rather than forms society, and is therefore antithetical to God's society-forming justice.

A deficient understanding of the Trinity, e.g. a "hard monotheism" in which God is perceived to be the sole, undifferentiated subject,⁴² produces a pathological individualism which is responsible for domination because the form of its communication is monological. This kind of individualism is not only the consequence of defective Trinitarian theology: it also flows from the tenacious and prevalent view in the Church that Christian faith is concerned with the relationship of the individual soul to God, and with personal faith in Christ as "my personal Saviour". Against this view it needs to be asserted vigorously that the Christian faith is directly concerned with social and political matters, and should issue in conduct oriented toward achieving a just society which conforms to the kind of society which God desires and designs by his justice. It is an irreducible tenet of Christian faith in the Incarnation that the gift of salvation is available only in and through the human realities of society, history, people and politics.⁴³ Lane rightly points out that "we cannot by-pass these mediating factors and move into some realm of the purely sacred".⁴⁴ Church teaching which shuns the social implications of the Judeo-Christian faith insulates faith from the contingencies of daily life, and undermines the sense of human responsibility for society and for the future of the world. The belief

which such teaching engenders does not foster intense human concern for justice or a responsible commitment to the building of the Kingdom of God. Lane notes that humankind is called "in Christ" to partner the history of liberating salvation, to be the co-operators with God in effecting the New Creation: "For the Christian, to exist is to co-exist with Christ in the task of working for the Kingdom of God".⁴⁵

Other influences in Christian tradition are equally responsible for the emergence of individualism, especially the dualistic nature of Augustine's two-city theology and Luther's two-Kingdom theology which is inadequate, unsatisfactory and even immoral.⁴⁶ The early Lutheran understanding of the evangelical precept of love not being applicable to political society produces a kind of individualism and a purely personal spirituality which ignores the structural conditions which cause misery to one's neighbours. Troeltsch explains the consequences of such a spirituality:

... as soon as the Christian believer turns from this spirituality to take his part in real life, he can only express his inner liberty through submission to the existing order, as a method of manifesting Christian love to the brethren, and to Society as a whole, or as something evil to be passively endured and accepted ...⁴⁷

Niebuhr pronounced an even harsher judgement on the social teaching of Luther when he showed the disastrous consequences which Luther's Two-Kingdom theology and his insistence on passive righteousness had in the history of German civilisation.⁴⁸ According to J. L. Segundo, the Lutheran separation of faith from good works spawned an immoral neutralism with regard to political systems.⁴⁹ Segundo argues that Christian theology and accurate biblical exegesis must be based much more on a sensitive appreciation of what liberates humankind, and on the communal demands of building the Kingdom, here and now.⁵⁰

The tendency to separate faith and politics, religion and society, continues in our own time and is responsible for the current cult of individualism with its idolatrous pursuit of self-interest.⁵¹ This individualism has produced not only a ruthless competitiveness but a shameless lack of concern for social justice and for the formation of a just society. According to Metz, it is "bourgeois religion" which embraces the liberal, individualistic separation of religion and politics, and which favours a highly privatised religion.⁵² The individualism associated with such a church is antithetical to real community, because it accepts the unbiblical view that society is merely the coming together of independent people seeking their own independent interests; it leads to what Sölle calls "necrophiliac religion" - the love of, attachment to, and support for an institutionalised, dehumanised, and emotionally deprived society.⁵³ The excellent social teaching of the Roman Catholic Church, based soundly on Scripture, has unfortunately made little impact on other churches, and many parts of its own tradition. The social nature of human beings made in God's Trinitarian image, the message of human interdependence, of human beings not as isolated individuals but as individuals-in-community,⁵⁴ must be pressed home with greater diligence by the Church. Dermot Lane, explicating the organic thought of A. N. Whitehead's process philosophy, says that once the fundamental relationship between the individual and society is severed, "the individual begins to take on an aggressive, exploitive [sic], competitive role towards the larger organic whole of reality".⁵⁵

Theology and the Church must emphasise the essential interdependence of individuals and their need of society, as well as the social nature of the action appropriate to God's people who are his co-workers or agents in the holy task of

establishing justice in the world. If justice is right relationship, taking the form of communicative action, and is intended by God to form a network of healing and life-giving connections (i.e. a just society), the capacity in humans to seek and establish the right relations which God intends is divine. All who desire and struggle for justice participate in divinity.⁵⁶ Carter Heyward argues that the capacity for right relations is the gift of God, and that God is nothing other than "the *eternally creative source* of our relational power";⁵⁷ Welch goes further, and claims that "the divine is that relational power".⁵⁸ The perception by feminist ethical theorists of the divine reality underlying relationality provides support for my contention that Habermas's theory mediates God's justice because of its other-regarding and relational ethos.

The critique brought against Kantian moral theory by writers like Carol Gilligan can be levelled against Rawls's theory of justice, which posits an autonomous moral agent who discovers and applies a set of fundamental rules through the use of universal and abstract reason. The self in Habermas's communicative ethics differs from Rawls's Kantian self: the latter operates in the service of a formal, universalistic ethics of duty, mastering each new situation by submitting it monologically to the test of the categorical imperative, but does not examine prevailing cultural values and the need interpretations to which they give rise. Rawls's Kantian universalism seems to support a notion of autonomy defined in terms of the rigid independence of the ego from the situations which confront it - and thus some sort of isolation from the claims of the other, particularly when they have a radically different character.

Habermas contends that this moral rigorism is to be contrasted with the image of autonomy which can be derived from the notions of ego identity and the communicative interpretation of reciprocity. The critical reflectiveness and flexibility in relation to need interpretations required by these notions cannot be realised through a monological, situation-independent style of cognition and judgement. Rather, it can come into its own only in dialogue. At the core of communicative ethics is the image of an open conversation, that is, a conversation in which one is obliged to listen to other voices. Such conversation is ultimately to be seen as a continual learning process in which different experiences are shared in the processes of recognising more clearly who we are and what we want to become.⁵⁹

The orientation of his communicative ethics has led Habermas to enter the open conversation he advocates, and to listen to (and accept) other voices, especially the challenge that has come from the work of Gilligan.⁶⁰ She contrasts the focus of thinkers like Kohlberg on the Kantian "ethic of justice" which emphasises rights, fairness, balancing claims, with her own focuses on compassion, avoidance of harm, context-sensitivity, connectedness and interdependence. According to White, "much of the thrust of Gilligan's critique runs parallel to the insights of communicative ethics",⁶¹ particularly Gilligan's view of a mature conception of morality in which "dialogue replaces logical deduction as the mode of moral discovery".⁶²

The other-regarding and dialogical nature of Habermas's theory of justice can be considered a manifestation of the divine, and the presence of grace. Grace, in this sense, is an intensity of relationship which is effected through the power of

the Holy Spirit present in communication oriented toward mutual recognition, understanding and reciprocity. Habermas's emphasis on orientation toward the other, and on the role which language plays in forming society through communicative action, reflects the justice of God as right relationship, communicatively established. Habermas's elevation to primacy of the social role of language contains the recognition that language is the starting point for the history of the species.

Since language is the instrument of our formation, and universally constitutes intersubjectivity which leads to the true sociality God intends in creating us as social creatures for society, God is present in the very structures of language. A theological interpretation of Habermas's remark that "the Logos of language founds the intersubjectivity of the lifeworld, in which we find ourselves already preunderstood"⁶³ relates it to the presence of Christ, God's Logos or Word to humankind, in communication which establishes right relationship necessary for the formation of society. Relationship is conformed to Christ when those who are party to it recognise the radical mutuality of our being, and accept each other as genuine subjects (not objects) of communication;⁶⁴ when they expose themselves to each other's criticisms and respond in an attempt to reach rational agreement with them about the truth of statements, the correctness of norms, and the generalisability of particular interests, needs and intentions. Rational understanding and agreement here depend on the cogency of reasons given for the pursuit of interests.

We have seen that the communication which establishes right relationship entails legitimation of the norms involved in the co-ordination of social action; legitimation here means the rational justification or discursive redemption of the universal validity claims underlying these norms in practical discourse, under

conditions approximating to the ideal speech situation. The "organisational energy"⁶⁵ behind co-ordination of social action, and present in communication which is for others, is the Holy Spirit. The Holy Spirit, through co-inherence with Christ as the Word of God, is active in the attempts of those who try to form a society through domination-free, consensus-seeking discourse. McFadyen maintains that "in social terms, the power of the Spirit is operative in breaking open hard structures of distorted communication in order to establish dialogue and community ... The activity of the Spirit in the social world is therefore primarily an orientation on others and only secondarily ... on oneself".⁶⁶

The particular discourse advocated in Habermas's theory of justice and communicative ethics is dependent upon a particular mode of human action, namely communicative action. The communicative justice of God (by which I mean right relationship established through undistorted argumentation in the Trinity) is socially refracted or mediated in communicative action which is oriented to mutual understanding, and in practical discourse which seeks consensus about the norms steering social policy and guiding social action. Habermas's theory of justice proposes the ideal speech situation, with its unlimited, domination-free discourse, as the procedural device by which justice is to be established in society. This model of communication is an ideal to which all communication tends because language, which is at the root of communication, has an inherently emancipatory drive toward truth and justice, understood as uncoerced consensus arrived at through a conversation to which all have equal access.

The discursive procedure in Habermas's universal discourse ethics, as we have seen, does not (like Rawls's theory of justice) impose prior constraints on the

subject matter that can be introduced in practical discourse. Habermas's theory of justice permits parties to the discourse to introduce specific needs and interests, provided that these are submitted to collective scrutiny in a concrete, public forum in order to be tested for generalisability. The formation of society by the open discussion of generalisable needs and interests, and by the collective shaping of norms and values in free communication (rather than the struggle for distributive power) implies democratic political activity in the public sphere. If justice is understood in terms of legitimation or justification of generalisable interests⁶⁷ with the aim of forming a just society, then the defence of the public sphere and democratic institutions becomes a crucial activity for the Church in its quest for social justice and its effort to follow the divine imperative, because what is generalisable can only be determined by dialogue and debate in the public sphere.

Another reason for the attractiveness of Habermas's thought to theology (rather than that of Rawls who tends to neglect the public sphere within civil society) is his emphasis on democratic participation in a public sphere in which citizens define the terms and conditions of their public life, and engage in dialogue and argumentation about the norms and social policies which form their society without repression.⁶⁸ A serious objection has been raised by Seyla Benhabib to Habermas's argument that his theory of practical discourse, and specifically the counterfactual procedure of discursive will formation on generalisable interests, can form a just society. Benhabib makes two criticisms: 1) that the gulf between ideal and actual discourse is so great as to be unbridgeable - i.e., the notion of consensus is so exacting that there is no reason to assume that any actual norm would satisfy it; 2) and that Habermas's discourse model cannot serve as a criterion

of democratic legitimacy, " for it presupposes the possibility of a *self-transparent and self-identical collectivity*".⁶⁹ Benhabib considers the counterfactual idea of discursive argumentation to be paradoxical, because the step of "abstraction" that leads social and political agents to engage in practical discourse when conflicts and crises cause a background consensus to collapse "can only take place when such agents are willing to suspend the motivating force and content of these real conflict situations. ... [T]he very project of discursive argumentation presupposes the ongoing validity of a *reconciled intersubjectivity*".⁷⁰ Habermas's ideal community of reconciled intersubjectivity thus eliminates conflict and diversity of interests by allowing only universalisable need interpretations. According to Benhabib,

This is a transcendental illusion, for, although the very project of an emancipated society means eliminating certain structural sources of interest conflict in present societies, a human society freed from all sources of conflict and diversity of interests cannot be conceived of without eliminating the radical plurality of ways of life, of cultural traditions and individual biographies which differentiate humans from one another. Such a society of reconciled intersubjectivity would be a self-identical collectivity, but not a human community. ... Not only is the project of such a self-transparent and self-identical collectivity impossible, it is not even desirable.⁷¹

The error in this argument is its misconstrual of the way in which Habermasian consensus functions. Habermas's notion of a rational consensus does not require that everyone shares the same ideals, or that they all subscribe to one particular concept of the common good; rather, it points to a form of life in which the ideal of diversity and plurality is publicly affirmed and maintained on the basis of citizens' sharing a democratic conception of themselves as free and equal persons.

Baynes has argued against criticisms⁷² similar to those of Benhabib: he maintains that the ideals of a rational consensus and the ideal speech situation do not require that every social norm or public policy receive the unanimous agreement of all who might be affected by it: "What is required ... is that the processes of public decision making and compromise formation be considered fair in the sense that the rules governing those processes also be open to debate and in principle capable of general agreement at a deeper level of justification. The picture of a legitimate order in Habermas's notion of a rational consensus is not that of a society that requires unanimity on every debated issue, but of a society that at a variety of levels and in different forms has institutionalised a network of overlapping and intersecting civic, political, and legal forums in which citizens collectively deliberate about and determine the basic terms of their collective life [i.e., a public sphere]".⁷³ There is little evidence in this picture of a self-identical collectivity, nor of a prior or continuing reconciled intersubjectivity. The aim of practical discourse is to achieve the formation of a just society by dialogical, non-coercive communication that establishes which particular and diverse interests can find acceptance among all participants in the discourse. The aim is to achieve consensus, not to require an initial state of undisturbed agreement and harmony.

I believe that the dialogical, non-coercive and democratic form of communication advocated in Habermas's theories represents a mediation of the communication within the Trinity, and impels Christians to seek a properly deliberative model of democracy. It also impels us to work for a healthy and re-politicised public sphere by establishing or strengthening informal political institutions in which

dialogue and debate about social norms of action take place in a fair setting. This is the subject of the final section.

6.3 Justice, Society and Deliberative Democracy

The connection between the justice of God, the formation of society, and democracy is discourse, with its essential requisites of genuine dialogue and participation, which are norms for both divine and human communication. Of all political theories of government, democracy is best suited to the aim of forming a just society, because it entails the recognition of the real needs and interests of others as claims on the community at large. Democracy will lead to a just society only if it incorporates a genuinely communicative and deliberative principle of generalisability (like Habermas's), and if it embodies the norm of dialogue, thus generating justice as normative legitimacy.

The controlling conception of justice which I have used through this thesis is right relationship, which I have supplemented with the related notions of communicative action and normative legitimacy. Justice, in this sense, is concerned with the discursive legitimation of the norms, based on particular needs and interests, which affect the direction of social policy and the co-ordination of social action. What is required for such legitimation is the extension of free and equal participation in dialogue and in a political structure in which people are recognised as autonomous subjects of political communication. McFadyen, in making the point that the exercise of socio-political power must conform to the norm for participation in dialogue (namely, freedom as autonomy in communication), notes that "freedom is itself to conform in its exercise to the norm for commitment to others, which is also set in dialogue".⁷⁴

Democratic participation receives different emphasis in the theories of Rawls and Habermas. In the following exploration of this difference I rely strongly on Baynes's analysis of the role of the public sphere in the thought of Rawls and Habermas. I use this analysis to show that the genuinely participative and deliberative democracy toward which Habermas's theory of justice tends has greater affinity with the communicative nature of God's justice, and provides a model which theology can appropriate in its attempt to implement the divine imperative to do justice, thereby forming the kind of society which God intends.

Baynes argues that "no topic in *A Theory of Justice* is more ambiguous or conflict-ridden than the role of democratic participation (both political and non-political) in Rawls's vision of a just society".⁷⁵ The difficulty is that, while Rawls regards the basic social structure as the primary subject of justice, he divides the basic social structure into a public and a private sphere. The retention of this traditional liberal distinction has undesirable consequences for his theory of social justice, including his ambivalence about the importance of democratic participation,⁷⁶ and his assumption that social justice could be realised through the active intervention of the welfare state into the private sphere.⁷⁷ More seriously, according to Baynes, Rawls "fails to thematise the public sphere within civil society".⁷⁸ Rawls, in his definition of the basic structure,⁷⁹ acknowledges the importance of the publicity requirement, i.e. that the terms of social co-operation are publicly known, and that the background social institutions of society are fair. However, Baynes contends that "despite the importance of the publicity requirement, Rawls nowhere explicitly discusses the need for, and importance of, institutions of the public sphere within the basic structure".⁸⁰ Even though I consider this charge to

be unfair (because Rawls does include a number of important institutions in the basic structure),⁸¹ I agree with Baynes that Rawls does not discuss how these or other institutions (like autonomous, self-organised associations within civil society) might curb the regulatory power of the state.

The fact that Rawls does not include the public sphere as a specific institution (or set of institutions) within the basic structure is evidence that he does not make democratic participation central to his notion of social justice. The result, according to Baynes, is that "Rawls's discussion of democratic participation is vague and fragmented".⁸² By contrast, because Habermas makes the concept of the public sphere an explicit theme in his writings,⁸³ he gives greater weight than Rawls to democratic participation. It is my contention that the post-traditional public sphere which emerges from Habermas's study⁸⁴ of the (largely Kantian) idea of the bourgeois public sphere represents the kind of overarching institution which the Church should promote and defend, because it would contribute to the creation of a deliberative democracy in which justice, as normative legitimacy, would produce true sociality, thus forming a society in accordance with God's will and desire, and conforming to his social Trinitarian nature.

The bourgeois public sphere, which is the basis of Habermas's concept,⁸⁵ was a set of socio-cultural institutions that arose in the conditions of liberal capitalism in the 18th century, in opposition to the absolutist powers of the state. These were autonomous voluntary associations like private clubs, coffee-houses, learned societies, literary associations, publishing houses, journals and newspapers. These institutions of the public sphere were based on the principle of reasoned communication among private citizens as free and equal persons, and whose purpose was to

restrain and legitimate the political power of the administrative state. They also provided a forum for the public debate, deliberation and discursive transformation of "private interests" in civil society.⁸⁶ Habermas's thesis in his early work on the public sphere was that this concept had a very limited life-span, ideologically as well as historically. It did not provide the basis for the expansion of political and civil liberties to include all members of the demos; nor did it eliminate those social inequalities which restricted the scope of the public sphere, because of the commercialisation and bureaucratisation of civil society during the 19th century. What emerged, instead of a public sphere formed by an enlightened citizenry, was a society manipulated by propagandistic mass media, oriented to consumption and a politics based on the competition and bargaining between interest groups. The conclusion of his early work was extremely cautious about the possibility for a renewed public sphere under the radically altered conditions of late capitalist society.⁸⁷

However, in his later work *Legitimation Crisis*⁸⁸ Habermas introduced socio-theoretical categories which enabled him to analyse both institutions and potential legitimation crises in modern capitalist societies; but he was not yet able to show how institutions that would contribute to form a deliberative democracy might arise from the sort of crisis tendencies he analysed.⁸⁹ According to Baynes, Habermas achieves a reconstructed, post-traditional public sphere in *The Theory of Communicative Action*, "primarily through the introduction of ... an analysis of social rationalisation from the dual perspective of society as system and life-world".⁹⁰ In Habermas's notion of a pluralist and deliberative society citizens define the terms and conditions of their common life, and engage in discursive

argument about collective norms, social policies and political decisions.⁹¹ Baynes points out that what is unique about this understanding of the public sphere is the view that the formation of public opinion should take place within informal institutions or "secondary associations" that are sufficiently shielded from the colonising effects of the capitalist economy and administrative state (e.g., advertising and party political propaganda).⁹² These informal or secondary associations provide public forums for discussion and debate, and for the formation and transformation of the preferences and interests of the members of a society.⁹³

The challenge which this model presents for a more radical democratic practice is to find ways in which the growth of "solidarity" or resource of public opinion can be encouraged, and then employed to curb or control the resources of money and power that are the primary media of the market and administrative state. Baynes raises two difficult questions in connection with Habermas's understanding of the public sphere and democratic practice:

1. What measures can or should be taken to insure that such self-organised and autonomous associations are themselves democratically organised or at least congruent with other democratic values?
2. How can these associations within civil society exercise any control over the formal institutions of the market and administrative state without either being absorbed by them or producing the "mischiefs of faction" ... within them?⁹⁴

Answers to these questions are discernible in recent essays by Habermas, where he has spoken of the need for social movements and autonomous associ-

ations within civil society, along with more formal institutions like the judiciary, to exercise a delicate combination of power and intelligent self-restraint with respect both to the state and to the market.⁹⁵ In contrast to other models of democracy, the idea in the model of deliberative democracy is "not so much to accord certain key functional groups (e.g. labour and business) privileged access to the decision-making processes of government, but to find ways to encourage the growth of a wide range of civil and political forums, provide them with access to relevant forms and sources of information, and develop mechanisms such that the deliberative conclusions reached in them have an effect in setting the agenda and in shaping the policies and proposals considered within the more traditional forms of parliamentary representation".⁹⁶ Habermas does not want the formal political system and its mass political parties simply to be *replaced* by a more highly decentralised form of democratic rule based solely on such secondary institutions. What he insists on is that the former relinquish one of their functions - the generation of mass loyalty.⁹⁷ Habermas, instead of calling for the dismantling of the formal political system, suggests that secondary associations of the public sphere should surround and "besiege" it, without conquering it.⁹⁸

Baynes notes that although this metaphor does not help much to identify the specific modes of exchange that should exist between institutions of the public sphere and the state, the basic intuition is clear:

the informal associations within civil society responsible for the production of solidarity should exercise an indirect influence upon the formal political system through the production of loyalties and legitimations.⁹⁹

The importance of these informal associations and institutions in the public sphere cannot be over-emphasised.¹⁰⁰ The deliberative democracy which they engender is vital to the formation of a just society, for without it the destructive logic of the subsystems of money and power would threaten to subsume all institutional life. Cohen and Arato argue that "this is why even small and finite steps in political and economic democratisation - pale in comparison to the unattainable ideals of the classical theory of democracy - can have dramatic implications in all modern societies. The gains to be had are not in a revived agora, but in a multiplicity of more autonomous roles, solidary and egalitarian relations and forms of participation in all dimensions of modern culture".¹⁰¹

Baynes suggests that Habermas's model of the public sphere is not limited to proposals for reforming the traditional institutions of parliamentary debate, but must be broadly conceived as a vast array of institutions in which a wide variety of practical discourses overlap. It ranges from the informal movements and associations in civil society where solidarities are formed, through the institutions of the mass media, to the more formal institutions of parliamentary debate and legal argumentation. Although the idea of a practical discourse in which all citizens participate as free and equal persons is not directly realised in any one of these forums, this idea should be evident in the design and arrangement of the whole network of institutions. In the deliberative model, the "moment" of deliberation does not reside primarily with the judiciary nor with the body of elected representatives, but is dispersed throughout a vast communicative network.¹⁰²

The robust model of the public sphere which Habermas proposes contains indications for a genuinely deliberative democracy, and (like communitarianism)

bases its vision of justice on a vibrant view of political community. By his emphasis on political participation and the widest-reaching democratisation of decision-making processes in social life, Habermas has enriched our understanding of the social and cultural possibilities of modernity, particularly the re-politicisation of the public sphere.¹⁰³ Consequently, Habermas's theory puts greater emphasis than Rawls's theory of justice on democratic participation by citizens in the institutions which attempt to secure normative legitimacy, the steering of public structures, and thereby the formation of a just society. Such a society cannot be formed unless the process in which norms, interests and needs are to be deliberated and tested for generalisability is genuinely participative and dialogical. Justice is established through the procedure proposed in Habermas's discourse ethics, because the genuine explication of needs and interests which occurs in it ensures the incorporation of the particular, yet generalisable, interests of particular groups into the democratic structures of public communication. The needs and interests here referred to are "life-interests", a term which McFadyen uses to denote those interests and needs which no one can or should do without.¹⁰⁴ Since these needs and interests, especially of the poor and disadvantaged, are satisfied largely in a society which is formed by communicative justice, i.e. the justice of God, there is an intrinsic connection between this justice and genuinely deliberative, democratic institutions:

Life-interests which really are essential and generalisable ... may only be formulated through a dialogue in which interests are legitimated and priorities for need satisfaction agreed. The real and abiding universal life-interest is primarily ... in the institutionalisation of dialogue in concrete socio-political situations, without which those interests in a situation which are generalisable could be neither thematised nor democratically formed. There is consequently a universal interest in democratic forms of socio-political structure ... The universality of this

democratic interest corresponds to the universality of human creation in God's image, to God's intention of all people as autonomous subjects of communication, as under God's rule and as sharing in the democratic dominion over the earth.¹⁰⁵

Recognition of the correspondence between the deliberative democratic model and the universal, beneficial purpose of God's justice for the formation of society should impel the Church to a vigorous promotion and defence of the public sphere, because it is in this sphere that such a model of democracy could thrive. Consensus in public affairs is derivable ultimately from unconstrained debate and agreement in the public sphere, under conditions approximating to Habermas's ideal speech situation. Since these conditions are a codification of the ideal form of life in God's Trinitarian image, the Church should endorse and implement the theory in which they appear.¹⁰⁶

Conclusion

In this chapter I have argued that the justice of God is present in secular theories which aim at the formation of a just and better society. Although Rawls's theory of justice is motivated by a desire to achieve justice in society, and to ensure a just basic structure (i.e. to form a more just society), his procedural method of the original position was found to be inadequate on account of its tendency toward monism, and owing to Rawls's ambivalence about real democratic participation in determining norms and principles for steering society. In his view of ethical discourse as a type of practical reasoning that seeks to adjudicate between conflicting moral points of view about how we ought to live, Habermas holds that moral reasoning does not adjudicate between different points of view behind a veil of ignorance, but rather in actual discourse with others.

I have argued that Habermas's theory of justice, set within his theory of communicative action and his discourse ethics, is more worthy to be considered a mediation of God's justice, because it is more consonant with the communicative and non-coercive or domination-free nature of God's justice. I have also argued that since there is an intrinsic connection between God's communicative justice and a model of deliberative democracy, the Church should ensure that that model is operative in its own structures; and it should strive to strengthen all those informal institutions, of which it is a special kind, so that the solidarity they produce can resist the forces of monetarisation and bureaucratisation which threaten the public sphere in the lifeworld, and can have a transformative effect on the formal political system in order to form a just society.

The Church is a special kind of institution in the public sphere because it is more widely, and in some cases more intimately, connected with the array of institutions in society. It can rely, to a considerable extent, on the good will of many of these institutions and on their recognition of its supportive and enabling role. Where this good will and recognition do not exist, the Church must demonstrate that the practical or political theology which motivates it to be involved in the common quest for a better society does not rest on the acceptance of its beliefs or on imperialistic forms of communication.¹⁰⁷ Rather, the Church must demonstrate a preparedness to correlate its social critique mutually with those of other disciplines, with a recognition that in some modern theories what is true, right, good and just cannot be known in advance,¹⁰⁸ but can only be established through an extended dialogue in which all those who are potentially affected can argue and

agree about the norms which will regulate their interaction and satisfy their particular but generalisable needs and interests.

This preparedness and recognition constitute a *de facto* acceptance of the communicative ethics which is at the heart of Habermas's theory of justice - an ethics which corresponds to the communicative justice of God in its intention to form society. The recognition of this correspondence, which I have argued is the result of the incarnational presence of God in all sincere efforts to establish justice with the intent of forming a just society, should impel the Church to promote communicative ethics at every level of social interaction, from personal to international relations, from local to national and international government, as well as in ecclesiastical structures.

Footnotes

- 1 By arguing that secular theories may be mediations of God's justice I am not invoking the principle of the heterogony of purposes (i.e. the principle which assumes that there is a will working in the social process which is not identical with the wills of the human beings concerned), used by thinkers like Adam Smith, Kant, Hegel, Marx, Engels and others; rather I am asserting the incarnational principle of God's action through human agency. It would take us too far afield to compare these two principles, which despite superficial similarities are profoundly different. The notion that "the finger of God" is to be discerned in the coincidental formation of a harmonious society as a result of secondary and unintended effects of volitions and actions directed toward selfish and private ends is scarcely credible (unless one holds a mechanistic view of the universe), and is incompatible with a faith in God who is social in his Being, and in whose social image we are made and constituted. (For a fuller treatment of the issue of the heterogony of ends and of the thinkers who used the concept, see W. Stark: "Christian Thought in Social Theory" in his book *Social Theory and Christian Thought*, Routledge and Kegan Paul, 1958, pp. 31-62.)
- 2 According to Helmut Peukert, the problem with the Enlightenment project's use of reason to provide a critique of instrumental reason, especially in the twentieth century, has been the failure of enlightened reason to measure up to the consequences of its actions. [H. Peukert: "Praxis universaler Solidarität. Grenzprobleme im Verhältnis von Erziehungswissenschaft und Theologie", in Edward Schillebeeckx, Ed., *Mystik und Politik. Theologie in Ringen um Geschichten und Gesellschaft*, Mainz: Matthias-Grünwald Verlag, 1968, pp. 172-185.] The ultimate pessimism and despair reflected in the writing of those thinkers this century who tried to continue the Enlightenment project are the consequences, as Habermas has shown, of their adherence to the philosophy of consciousness. The autonomy which they so eagerly desired was also responsible for the dogmatic self-assertion, domination and horrors

of modernity which followed in the wake of the palpably distorted (instrumental) use of reason.

- 3 A. MacIntyre: *After Virtue*, 2nd Edition, Duckworth, 1985.
- 4 M. Walzer: *Spheres of Justice*: Oxford: Blackwell, 1983.
- 5 D. W. Hardy: "Created and Redeemed Sociality", in C. E. Gunton and D. W. Hardy, Eds.: *On Being the Church: Essays on the Christian Community*, Edinburgh: T. & T. Clark, 1989, p. 24. Hardy, referring to K. Apel's notion of transcendental universals, asserts that they should be understood as the basis of the real, since they manifest themselves in the empirically real. [ibid., p. 27.]
- 6 S. Hampshire: "Morality and Convention", in A. Sen and B. Williams, Eds., *Utilitarianism and Beyond*, Cambridge: Cambridge University Press, 1982, p. 148. [My emphasis]
- 7 For elaboration of this idea, see the essays of Habermas cited in footnote 95 below, as well as the following: Joshua Cohen: "Deliberation and Democratic Legitimacy" in Hamlin, A., and Pettit, P., Eds.: *The Good Polity*, Oxford: Blackwell, 1989, pp. 17-34; N. Bobbio: *The Future of Democracy*, translated by R. Griffin and edited by R. Bellamy, Cambridge: Polity, 1987; B. Manin: "On Legitimacy and Political Deliberation", *Political Theory* 15/3 (1987), 338-368; the essays in M. Taylor, Ed.: *Christians and the Future of Social Democracy*, Ormskirk and Northridge: G. W. and A. Hesketh, 1982.
- 8 D. P. McCann and C. R. Strain: *Polity and Praxis*, Minneapolis: Winston Press, 1985, pp. 39-45.
- 9 C. Davis: *Theology and Political Society*, Cambridge: Cambridge University Press, 1980.
- 10 McCann and Strain, op. cit., p. 40.
- 11 The notion of dialectical reflection is taken from M. Lamb's methodological proposal for theology of "reflectively dialectical orthopraxis" (p. 134) and "noetic praxis" (p. 85) in his book *Solidarity With Victims*, New York: Crossroad, 1982.
- 12 W. Pannenberg: *Christianity in a Secularised World*, SCM Press, 1988, Chapter 3 (pp. 43-58). From an Orthodox perspective, Demosthenes Savramis points, in an instructive essay, to the dangers of uncritical and unreflective conformity by theology to modern secular theories, and to "the spirit of the age". ["Theology and Society: Ten Hypotheses", in R. Preston, Ed.: *Technology and Social Justice*, SCM, 1971, pp. 398-421; here, p. 400.]
- 13 J. Macquarrie makes the point that to reduce God to any human category would be "a new domestication of God and a new idolatry" - see his "God and Secularity", Volume III of *New Directions in Theology Today*, Lutterworth, 1968, p. 65.
- 14 cf. D. B. Forrester's remarks about the 1960s theologians of secularisation who, in their affirmation, celebration and "Eusebian sanctification" of the secular, forgot its dark side, the fallibilistic nature of human political systems, and the propensity of humankind to sin. [*Theology and Politics*, Oxford: Blackwell, 1988, p. 41.]
- 15 Pannenberg, op. cit., p. 57.
- 16 J. Habermas: "Transcendence from Within, Transcendence in This World", in Browning, D. S. and Fiorenza, F. S., Eds.: *Habermas, Modernity, and Public Theology*, New York: Crossroad, 1992, pp. 236-237. On religion's function of 'legitimizing the existing order', see Forrester, op. cit.; J. B. Metz: *Faith in History and Society*, Burns and Oates, 1980. , op. cit; L. Newbigin: *The Other Side of 1984*, British Council of Churches, 1983; and C. Winter: *The Breaking Process*, SCM, 1981.

- 17 Habermas: "Transcendence From Within, ...", op. cit., p. 228.
- 18 D. A. Lane: *Foundations for a Social Theology: Praxis, Process and Salvation*, New York/Ramsey: Paulist Press, 1984, p. 135.
- 19 See M. Lamb's acute and excellent analysis of the destructive and nihilistic character of the dogmatic instrumental rationality underlying much science and technology which have been used in the interests of the military-industrial complex (particularly the nuclear arms race), in "Communicative Praxis and Theology: Beyond Modern Nihilism and Dogmatism", in Browning and Fiorenza, op. cit., pp. 92-118 (here pp. 94-99).
- 20 *ibid.*, p. 109.
- 21 See volume 2 of Habermas's *A Theory of Communicative Action* for elaboration of his thesis of the colonisation of the lifeworld.
- 22 Habermas: *The Philosophical Discourse of Modernity: Twelve Lectures*, Cambridge, Massachusetts: MIT Press, 1987.
- 23 P. Lakeland: *Theology and Critical Theory*, Nashville: Abingdon Press, 1990, p. 219.
- 24 An example of the debilitating effect of concentration on human sinfulness is Robert Benne's Niebuhrian analysis of human nature, which leads him to assert that the idolatrous will-to-power which dominates human beings is a prime cause for distrusting all group or corporate power. Following Niebuhr, he claims that as the oppressed and powerless advance in power and prestige, "they have a tendency to seek sufficient power to guarantee their security, inevitably at the expense of other life. Although they can and should strive for more power, as they reach it they are as likely as any powerful group to cope with their past and present security by dominating others". [R. Benne: *The Ethic of Democratic Capitalism - A Moral Reassessment*, Philadelphia: Fortress Press, 1981, p. 33.] I reject the alleged inevitability of this domination, particularly if members of a society adopt a communicative ethics of the kind proposed by Habermas, in which social criticism is followed by discourse in which the needs and interests of all are submitted to dialogue, and norms of social action are legitimated in practical discourse by all who are affected by them. Benne concedes that "it is a mark of relatively just ... nations that they are receptive to the words of judgement spoken against them". [*ibid.*, p. 34.] The informal institutions of a re-politicised public sphere have this critical function (see the discussion on pp. 333ff.).
- 25 S. D. Welch: *A Feminist Ethic of Risk*, Minneapolis: Fortress Press, 1990, p. 106.
- 26 *ibid.*, pp. 106-107.
- 27 A. McFadyen: *The Call to Personhood: A Christian Theory of the Individual in Social Relationships*, Cambridge: Cambridge University Press, 1990, p. 220; J. B. Metz: *Theology of the World*, Burns and Oates/Herder and Herder, 1969, p. 153.
- 28 Welch, op. cit., pp. 107-108.
- 29 *ibid.*, p. 107.
- 30 J. L. Segundo, S.J.: *The Liberation of Theology*, Maryknoll, New York: Orbis Books, 1976, p. 145.
- 31 McFadyen: *The Call to Personhood*, op. cit., pp. 219-224.
- 32 *ibid.*, p. 220.
- 33 *ibid.*, p. 221.
- 34 *ibid.*

- 35 The Church has no privileged noumenal access to norms which are unavailable to secular thought. The norms in the Judeo-Christian tradition are not part of a corpus of arcane wisdom, but are readily available to secular thought in scripture, and are in many cases the origin of norms in secular ethics.
- 36 S. Welch notes that "the ability to remain self-critical, to remain open in a systematic structural manner to revision, is a sign of maturity"; *op. cit.*, p. 109.
- 37 F. S. Fiorenza: "The Church as a Community of Interpretation: Political Theology between Discourse Ethics and Hermeneutical Reconstruction", in Browning, D. S. and Fiorenza, F. S., Eds.: *Habermas, Modernity, and Public Theology*, *op. cit.*, pp. 67, 85, 86, 87.
- 38 *ibid.*, p. 85.
- 39 McFadyen, *op. cit.*, p. 26.
- 40 *ibid.*, p. 123.
- 41 *ibid.*
- 42 *ibid.*, p. 25.
- 43 R. Preston, in arguing for the necessity of politics for the Christian, asserts that the Gospel and every Christian doctrine bear on the political realm: *Church and Society in the Late Twentieth Century: The Economic and Political Task*, SCM, 1983, p. 118.
- 44 D. A. Lane, *op. cit.*, p. 23. cf. G. Gutierrez: "Liberation Praxis and Christian Faith" in R. Gibellini: *Frontiers of Theology in Latin America*, New York: Orbis Books, 1979, pp. 21ff.
- 45 Lane, *ibid.*
- 46 For further discussion of the separation between religion and politics, see D. B. Forrester, *op. cit.*, chapters 1 and 2, especially chapter 2 - "The Private and the Political", pp. 27-56; and J. B. Metz: *Faith in History and Society*, Burns and Oates, 1980.
- 47 E. Troeltsch: *The Social Teaching of the Christian Churches*, George Allen and Unwin Ltd., 1931, vol. 2, p. 540.
- 48 R. Niebuhr: *The Nature and Destiny of Man*, vol. 2 - *Human Destiny*, Nisbet and Co., Ltd., 1943, pp. 200-202.
- 49 J. L. Segundo: "Capitalism - Socialism: A Theological Crux", *Concilium* 6/10 (1974), 112f.
- 50 *ibid.*, p. 122.
- 51 cf. M. J. Himes and K. R. Himes: "The Myth of Self-Interest", *Commonweal* 125 (23rd September 1988): pp. 493-498. For a different approach to the issue of self-interest, see G. Hughes' essay "Christianity and Self-Interest", in Taylor, M., Ed.: *Christians and the Future of Social Democracy*, *op. cit.*, pp. 47-71; Hughes is concerned with the relationship between Christianity and egoism as a moral theory. He concludes that if egoism is ultimately incompatible with Christianity, it is not crudely and obviously so.
- 52 J. B. Metz: *The Emergent Church: The Future of Christianity in a Post-Bourgeois World*, SCM, 1981, pp. 88-89.
- 53 D. Sölle: *Death by Bread Alone*, Philadelphia: Fortress Press, 1978, pp. 9-14.
- 54 A philosophical anthropology which presents human beings not as isolated and totally independent entities, but interdependent individuals-in-community, is con-

sistent with the biblical paradigm of humans created by God in his social image as distinct but related beings.

- 55 D. A. Lane, op. cit., p. 107. cf. Davis's warning not to confuse the unconditional worth of the individual with the individualism of bourgeois society: "Bourgeois individualism reduces human beings to their economic relationships and, in so doing, puts them in competition with one another. ... Society is organised on the principle that human beings are replaceable units, shaped to fit into a limited number of functional slots. ... Individualism is ... not respect for the individuated being of the free person, but simply the human unrelatedness of men and women when organised solely in terms of economic competition." C. Davis: *Theology and Political Society*, op. cit., pp. 178-179.
- 56 Cf. S. Welch's remark about feminist and liberation theologians who claim that to work for justice is holy: "We participate in divinity as we delight in the beauty of humankind, as we rage against all that destroys the dignity and complexity of life. The ability to love and to work for justice is profoundly spiritual". Welch: op. cit., p. 172.
- 57 C. Heyward: *Our Passion for Justice*, New York: Pilgrim, 1984, cited by S. Welch, op. cit., p. 172.
- 58 Welch, *ibid.*, p. 173. While I agree with Welch's assertion that "the terms *holy* and *divine* denote a quality of being within the web of life, a process of healing relationship, and ... the quality of being worthy of honour, love, respect, and affirmation", [*ibid.*, p. 178] I do not fully subscribe to her "theology of divine immanence" because in its emphasis on immanence it neglects the dimension of transcendence (e.g., she contends that "divinity is not a mark of that which is other than finite"). [*ibid.*, p. 178.]
- 59 Habermas: "On Social Identity", *Telos* 19 (1974), p. 99.
- 60 C. Gilligan: *In a Different Voice: Psychological Theory and Women's Development*, Cambridge, Massachusetts: Harvard University Press, 1982; also "Do the Social Sciences Have an Adequate Theory of Moral Development?" in N. Haan, et al., Eds., *Social Science as Moral Enquiry*, New York: Columbia University Press, 1983, pp. 33-51.
- 61 S. K. White: *The Recent Thought of Jürgen Habermas*, Cambridge: Cambridge University Press, 1988, p. 84.
- 62 C. Gilligan: "Do the Social Sciences Have an Adequate Theory of Moral Development?", op. cit., p. 45.
- 63 Habermas: "Transcendence from Within, Transcendence in This World", op. cit., p. 247.
- 64 The recognition of others as equal partners who alternate as *subjects* in dialogue is crucial to the establishment both of right relationship and of personal identity. McFadyen's study of the individual in social relationships shows that we are who we are only through our relations with others who are *real* others. The social constitution of our being requires the recognition that although our natural state is to be in need of community with another and others, we must respect the otherness or difference of the other. Otherness is not the basis for exclusivity or separation, but for orientation on one another in relation. Since the form of a properly constituted relation is dialogue, or what McFadyen calls "reciprocal mutuality" [*The Call to Personhood*, op. cit. p. 32], partners in their recognition of the freedom of the other must permit a reciprocal occupation of dialogue roles. Habermas's insistence on mutual recognition, understanding, equality and reciprocity in communicative action is consonant with the biblical account of our creation for mutuality and not for domination. In the radical mutuality of our being, "otherness is not subjugated nor negated, but hon-

- oured" [ibid., p. 35]. The implications of this for justice as right relationship, dependent on mutual understanding and agreement, is that partners in communication cannot achieve a real mutuality of understanding or be properly oriented on one another if one is always subject and the other always object. McFadyen makes the point that "conformity to Christ in dialogue indicates a process of mutual, open discovery through radical respect, not the imposition of one's life, desires, needs and understanding on others". [ibid., p. 166.] The other must be recognised and respected as a distinct yet related subject capable of independent response, and with whom one can seek an unforced understanding in an undistorted, constraint-free discourse.
- 65 This is a phrase which McFadyen uses to conceptualise the Holy Spirit: ibid., p. 63.
- 66 ibid., p. 65.
- 67 The corollary of this understanding is that injustice would be constituted by the suppression of generalisable interests, which is a function of domination.
- 68 There are strong similarities between Habermas's thought and the radically anti-dogmatic thought of Hannah Arendt, whose vision of participatory politics in *The Human Condition* (Chicago: Chicago University Press, 1958) and her other works emphasises the importance of communication, and points to the real possibility individuals coming together to act collectively in forming society through public debate. As for Habermas, so for Arendt, there is no authority for judging the adequacy of opinion [and norms] other than through the force of the better argument in genuine, public discourse. [*Between Past and Future*, Faber and Faber, 1961, pp. 222-223.]
- 69 S. Benhabib: "The Methodological Illusions of Modern Political Theory: The Case of Rawls and Habermas", *Neue Hefte für Philosophie* 21, 1982, p. 71.
- 70 ibid.
- 71 ibid., p. 72.
- 72 S. Lukes: "Of Gods and Demons: Habermas and Practical Reason", in *Habermas: Critical Debates*, op. cit., pp. 139-141; M. Walzer: *Interpretation and Social Criticism*, Cambridge: Harvard University Press, 1987, p. 11 n. 9; I. Young: "Impartiality and the Civic Public", in *Feminism as Critique*, Eds. S. Benhabib and D. Cornell, Minneapolis: University of Minnesota Press, 1987, pp. 70-72; J.-F. Lyotard: *The Post-Modern Condition*, Minneapolis, University of Minnesota Press, 1984.
- 73 K. Baynes: *The Normative Grounds of Social Criticism*, Albany: State University of New York Press, 1992, p. 121.
- 74 McFadyen, op. cit., p. 207.
- 75 Baynes, op. cit., p. 167; there is no agreement even among Rawls's most able critics, among whom Baynes cites the following: H. L. A. Hart: "Rawls on Liberty and Its Priority" in *Reading Rawls*, Ed. N. Daniels, Oxford: Blackwell 1975, p. 252; A. Gutmann: *Liberal Equality*, New York: Cambridge University Press, 1980, pp. 175-176; C. Pateman: *The Problem of Political Obligation: A Critical Analysis of Liberal Theory*, New York: Wiley, 1979, p. 133.
- 76 Baynes says that there are a number of considerations that might be responsible for the (explicitly) diminished role of political participation in Rawls's theory of justice. These are fairly complex and lengthy, and would divert us unduly at this stage; see Baynes, ibid., pp. 168-169.
- 77 Our discussion of Habermas's thesis of legitimation crisis in chapter one revealed how such intervention by the welfare state, in order to achieve greater social justice, often results in the fragmentation, bureaucratisation, monetarisation and juridifica-

- tion of civil society (i.e., the colonisation of the lifeworld). The deficiency of Rawls's analysis in regard to the pathologies caused by welfare-state intervention is the result of his failure to engage in the kind of social analysis found in Habermas's theory of communicative action.
- 78 Baynes, *op. cit.*, p. 162.
- 79 J. Rawls, "The Basic Structure as Subject", in *Values and Morals*, edited by A. Goldman and J. Kim, Boston: Reidel, 1978, p. 47.
- 80 Baynes, *op. cit.*, p. 162.
- 81 Rawls mentions the following institutions in *A Theory of Justice*: the political constitution (TJ, pp. 7, 304-309), the nuclear family (TJ, pp. 7, 300, 511), the competitive market (TJ, p. 7, 304-309), an autonomous legal system (TJ, p. 235), and an interventionist welfare state (TJ, p. 275).
- 82 Baynes, *op. cit.*, p. 167.
- 83 See R. C. Holub's study of Habermas's concept of the public sphere: *Jürgen Habermas: Critic in the Public Sphere*, Routledge, 1991.
- 84 Habermas: *The Structural Transformation of the Public Sphere*, Cambridge, Massachusetts: MIT Press, 1989.
- 85 cf. H. Arendt's picture of the public sphere (derived from her understanding of the classical Greek age) as a tangible, communal realm in which people face one another as free and equal, and participate in the formation of opinion, and thus in determining society-forming norms of action, through public discourse, through persuasion rather than force: *The Human Condition*, *op. cit.*, pp. 26, 30-31.
- 86 Habermas: *The Structural Transformation ...*, *op. cit.*, pp. 27-28.
- 87 *ibid.*, pp. 234-235; according to Jean Cohen and Andrew Arato, Habermas nevertheless insisted that "the now utopian idea of a critical public could not be entirely abandoned by liberal democracies, and therefore the institutional reconstruction of genuine public life remained possible and desirable". See Cohen and Arato's essay "Politics and the Reconstruction of the Concept of Civil Society" in *Zwischenbetrachtungen im Prozess der Aufklärung: Jürgen Habermas zum 60. Geburtstag*, edited by Axel Honneth, Thomas McCarthy, Claus Offe and Albrecht Wellmer, Frankfurt: Suhrkamp Verlag, 1989, p. 492.
- 88 Habermas: *Legitimation Crisis*, Heinemann, 1976.
- 89 Baynes, *op. cit.*, p. 174.
- 90 *ibid.*
- 91 A similar argument is presented by J. Cohen: "Why More Political Theory?" *Telos* 40, Summer 1979, pp. 70-94; and by J. Cohen and A. Arato in *Civil Society and Social Theory*, Cambridge: MIT Press, 1991.
- 92 Baynes, *op. cit.*, p. 178.
- 93 The democratisation of society, as a vital dimension of the formation of society, is a more complicated enterprise than the promotion of active and participative secondary associations. Along with ensuring a constitution with judicial independence (a *sine qua non* of a democracy), efforts must also be aimed at institutionalising structures which will ensure certain complexes of fundamental rights (e.g. those concerning cultural reproduction, like freedom of thought, press, speech and communication; those insuring social integration, like freedom of association and assembly; and those securing socialisation, like protection of privacy, intimacy, and inviolability of the person). According to Cohen and Arato, "these complexes are

related to two other sets of rights that mediate between civil society and either the capitalist economy (rights of property, contract, labour) or the modern bureaucratic state (electoral rights of citizens, welfare rights of clients). ... Accordingly, the project of establishing or transforming fundamental rights is one of the most important tasks for collective actors involved in the politics of society". [Cohen and Arato: "Politics and the Reconstruction of the Concept of Civil Society", op. cit., p. 502.] However, even the revival of the idea of a public sphere, and the efforts to re-politicise society, could dramatically improve the situation for many in modern societies if illegitimate power were restrained and generalisable interests were not suppressed.

- 94 Baynes, op. cit., p. 178.
- 95 Habermas: "The New Obscurity: The Crisis of the Welfare State and the Exhaustion of Utopian Energies", in *The New Conservatism*, Cambridge: MIT Press, 1989, pp. 64ff; "Ist der Herzschlag der Revolution zum Stillstand gekommen? Volkssouveränität als Verfahren", in *Die Ideen von 1789*, edited by Forum Für Philosophie Bad Hamburg, Frankfurt: Suhrkamp Verlag, 1989, pp. 28ff..
- 96 Baynes, op. cit., p. 179.
- 97 Habermas: "The New Obscurity", op. cit., p. 67.
- 98 Habermas: "Volkssouveränität ...", op. cit., p. 31.
- 99 Baynes, op. cit., p. 179.
- 100 cf. H. Arendt's idea of the spontaneous formation of citizens' councils, which come about because of the deep desire of people to participate, to debate, to have their voices heard in public, and to have a possibility to determine the political course of their country; *Crises of the Republic*, New York: Harcourt Brace Janovich, 1969, p. 232.
- 101 Cohen and Arato: "Politics and the Reconstruction of the Concept of Civil Society", op. cit., p. 503.
- 102 Baynes, op. cit., p. 180.
- 103 S. Benhabib contends that after Max Weber, "Jürgen Habermas has given us the most differentiated and subtle account of the developed possibilities of modern societies, while challenging our imagination to envisage anew the task of participatory politics in complex, democratic societies". ["Autonomy, Modernity, and Community. Communitarianism and Critical Social Theory in Dialogue", in *Zwischenbetrachtungen*, op. cit., p. 391.]
- 104 McFadyen, op. cit., p. 214.
- 105 *ibid.*
- 106 Implementation involves detailed attention to working out and establishing structures of participation. Preston, among others, has pointed out that participation raises its own crop of questions, and opens up a very large number of problems which will test political, economic, social and industrial policy to the full: see his essay "Capitalism, Democracy and Christianity" in M. Taylor, Ed.: *Christians and the Future of Social Democracy*, op. cit., pp. 26- 27; see also David Held, *Models of Democracy*, Oxford: Polity Press/ Blackwell, 1987.
- 107 cf. F. S. Fiorenza's remarks about the need for discourse between theology and other disciplines: "Habermas's discourse ethics provides a model for understanding the role of the tradition of moral discourse and the public task of political theology. A communicative conception of rationality impels a political theology to base its political and moral appeals not simply upon the authority of a religious tradition, but rather upon open discourse within the community and in relation to the discourses

of other communities within the public realm. Habermas's communicative conception of reason should inhibit political and liberation theologies from basing their ethical political judgments upon abstract appeals to natural law, divine command, eschatological proviso, or apocalyptic interruption. A political and liberation theology sensitive to a communicative conception of rationality must be willing to submit its religious claims and their political implications to the challenge of public discourse." [in Browning and Fiorenza, Eds.: *Habermas, Modernity, and Public Theology*, op. cit., pp. 5-6.]

- 108 Similarly, no particular, "divinely-ordained" social order, with a detailed social, economic and political programme, can be determined in advance. The plenary sessions of the Amsterdam and Evanston assemblies of the World Council of Churches recognised this in their intention "to proceed pragmatically from facts and work towards a 'responsible society', the concrete form of which could not be established in detail beforehand because it would have to proceed from a given situation". [Hans-Heinrich Wolf: "Towards an Ecumenical Consensus", in Preston, R. H., Ed.: *Technology and Social Justice*, SCM, 1971, p. 432.]

Conclusion

My concern in this thesis has been to investigate whether leading secular theories of justice mediate the justice of God so as to form a just society, i.e. a society characterised essentially by right relationship. The reason for my turning to the theories of Rawls and Habermas is that the biblical material on justice is not capable of direct application to modern conditions, because the Bible's social precepts were formulated for entirely different conditions. Nor has the theological material on justice been systematically formulated in a theory which attempts, in an interdisciplinary way, to relate the biblical understanding to contemporary political, sociological and philosophical theories which are designed to form a just society under modern conditions. The theories of Rawls and Habermas both attempt to supply a procedure aimed at establishing justice as normative legitimacy (and, from a theological point of view, right relationship) at a societal level. My investigation reveals the greater adequacy of Habermas's theory because it is more consonant with the social and dialogical nature of God's justice, and because that justice is the divine reality underlying communicative action, with its dimensions of unconditional mutual recognition, equality, reciprocity and solidarity.

The understanding of justice which emerges from my correlational and critical theological engagement with two modern socio-political theories of justice is right relationship, established in modern times by a publicly discursive procedure which secures a domination-free agreement and rational consensus about universalisable norms, whose rightness and validity have been justified through practical discourse. To the charge that such a definition of social justice, which appears to rest on the notion of pure procedural justice, has no distinctive theological content,

I reply that my 'incarnational' approach discerns the presence of God in the very structures of the procedures which attempt to secure, non-coercively, the right relationship that God intends as part of the creative process of forming society.

The contribution which theology makes to an integrated approach in the public arena to the formation of a just society is both the Gospel proclamation of the special justice of God, with its bias to the disadvantaged; and the affirmation of a communicative understanding of justice. This takes account of the needs and interests of all potential participants in public discourse, thereby working to prevent domination, whilst giving opportunity to the disadvantaged both to be heard and to participate deliberatively in the formation of society.¹ With the aid of analytical categories drawn from Habermasian communication theory, it is possible to see that Jesus' communicative action exemplifies the non-coercive operation of God's justice, in so far as it proceeds in a genuinely dialogical way to establish right relationship.

Since it is possible to discern the major direction of God's justice in the Bible and to understand its nature, it is also possible to affirm theories and action which are consistent with God's justice, and to consider them as at least partial mediations of God's justice. Further, since we know that the Judeo-Christian tradition contains an imperative to "seek first the Kingdom of God and his justice" (Matt. 6:33), the Church should act to establish this justice in the realm of human interaction, i.e. the political realm, and should look for signs of God's justice wherever they may be found, especially *extra ecclesiam*. After due critical assessment and correlation, the Church should affirm and support theories which are aimed at the formation of a just society.

The Church, acting in this role, can be an important agent in the formation of society. I suggested earlier (p. 341) that the Church should promote the notion of a universal ethics, and should commend a procedure which tries to secure normative legitimacy through domination-free, fully intersubjective and inclusive communication, based on shared understanding, agreement, co-operation and consensus. The Church, cognisant of and sensitive to the pluralistic nature and conditions of the modern state, should go further and join those who are trying to establish a common normative foundation.

Since it is the case that God wills just society, it is incumbent on the Church and theologians to produce a political theology which employs a communicative and relational understanding of justice in the task of ensuring that the state returns to a basis of normative legitimacy, and of sustaining the consensual basis of society at a national and international level. The Church, if it is true to its normative tradition, is in a position to do this because it can provide an institutional and cultural locus for the consideration of practical moral issues, especially justice, and thus provide an institutional base in modern society for a universal discourse ethics.²

I have no illusions about the formidable difficulties facing anyone who proposes such a radical shift in the Church's role, and indeed in its mission. The first hurdle to overcome is the internal ecclesiastical resistance to, and frequent dismissal of, political involvement. We are faced here with a massive educational task. Educational policy and training in the Church need radical *re-vision*, so that the nature of God (justice) and the social teaching of Jesus may be *re-presented*, stripped of erroneous 'personalist' and exclusively 'other-worldly' theology which

separates the secular and spiritual realms. Such theology leads either to an understanding of religion and faith as interior and personal piety, with a concomitant withdrawal from the public sphere, or to the maintenance of an uncritical attitude to the powers that be, often arising from an interest in conserving the *status quo* and thus legitimating the existing order. In order to be true to what God requires (Micah 6:8), the Church must re-orient itself at every level,³ especially in its educational policy, to the priority of justice, which is at the centre of the Judeo-Christian tradition. Those in the Church who oppose political involvement need to be shown that the search and struggle for justice are profoundly spiritual, because these are an integral part of seeking (and actively working for) God's Kingdom and his justice.

The second obstacle to overcome is the essentially disrespectful attitude of those who wish to relegate religion to the private sphere, owing to its alleged inability to contribute anything meaningful to the public sphere if that contribution emanates from irrelevant, outdated (and therefore untrue) cosmological world-views (e.g. Habermas) and irrational, incredible metaphysics (e.g. Rawls). The advantage of Habermas's discourse ethics is that it is guided by the moral principle of unconditional mutual recognition and respect among humans as free and equal subjects. It also admits to the discursive process all points of view, with the proviso that their adherents are able to justify the claims underlying the norms which they propose to form society, and that they are willing to submit to no force other than the force of the better argument.

According to his own theory, Habermas should not (like Rawls) be prejudiced against any conception of the good or point of view, whether or not he

is able to accept its provenance, for normative legitimacy is determined purely through discursive will-formation, i.e. through what is universalisable by the agreement of all who are potentially affected. Although he departs from his own principles when he regrettably disparages the views of those arguing from religious grounds, his theory advocates unconditional respect for all points of view, and accepts the fact of their contribution in the public arena where justice is determined discursively. Habermas, and others, need to be held to this fundamental principle of human interaction, so that the voices of all may be heard, and not relegated to a private sphere in which there is little or no possibility of participating in the formation of society.

A third hurdle to be overcome arises from the requirement of a crucial attitude if Habermas's model of communicative action is to succeed, namely the willingness or preparedness to accept the outcome of a practical discourse in which the force of the better argument alone prevails. If justice and the formation of society are the outcome of an ideal legitimating procedure (such as that devised by Habermas), and if Christians believe that humans' social, relational and linguistic constitution by God requires that we establish justice as right relationship or true sociality *dialogically*, then we should have the humility to recognise that God's will may be expressed in such an outcome, and to accept it.⁴

However, this means that when Christians enter the public arena they must be well-prepared⁵ and confident that, on the basis of their substantive normative tradition and a competent grasp of the issues and related disciplines, they will be able to put forward the best argument. This, in turn, means that they will recognise the complexity of the issues surrounding justice and the formation of society; that

they will have engaged seriously in social analysis and thought carefully through the arguments and implications of secular theories; and that they will have done as much substantial and rigorous empirical and normative work on the issues as their counterparts in other disciplines, especially the social sciences. Forrester remarks that the Church must become more intellectually serious about its involvement with politics and about entering and sustaining a dialogue between theology and social theory. He notes that "there seems to be a profound reluctance to take *any* form of social theory seriously, and a naive assumption that a political theology is possible which is innocent of ideology and serious social analysis alike".⁶

Thus, not only is humility required by the Church, which has for most of its history been accustomed to operating 'magisterially' and imperialistically by recourse to unassailable sovereign claims; what is also required is intellectual rigour as the Church engages in social analysis. It is not, nor will be, enough to make simplistic forays into other disciplines. I recognise that this is a danger facing any interdisciplinary approach. Demosthenes Savramis, a Christian lecturer in the sociology of religion, warned the World Council of Churches in the late 1960s to avoid dilettante engagement in social problems: "the tasks that could once be accomplished in this field are now too complex, and sociological knowledge is too advanced, for such dilettantism to be indulged in any longer".⁷ However, as long as the Church and its theologians are aware of the complexity of social issues, and remain alert to the need for carefully thought-out and convincingly integrated contributions to the public arena, there is no reason for them not to be in the public sphere and to engage with political theories, structures, policies, ideologies and practices. If we were to wait until we had achieved expertise or mastery in every

related discipline before we engaged with others to address the urgent issues of justice and society, we should probably never affect or change anything.

Thus to search for signs of God's grace in the work of modern justice theorists, *extra ecclesiam*, is a contribution to the educative task of demonstrating the incarnational presence of God throughout his creation, the irruption of God's rule in history through the person of Jesus Christ, and the sustaining power in the present of the Holy Spirit, all of which manifest themselves in the struggle for justice and the formation of the kind of society which God wills. It is my contention that God is present *a fortiori* in those areas where people seek the formation of a just society which accords with his justice and loving will. My mutually critical engagement with the theories of Rawls and Habermas has led me to conclude that the formation of society is dependent upon justice understood as normative legitimacy, achieved through communicative action and a universal discourse ethics, underlying which, as I showed in chapter 5, is the divine reality of God's justice.

The interdisciplinary engagement which has helped to produce this understanding of justice and the formation of society, although theoretical, serves to ground what is ultimately the aim of all such theory - human action. Action for Christians who are concerned with justice and the formation of society involves:

1. Active, critical, political engagement by Christians, especially with those who shape policy at different levels in society.
2. Commendation of theories which may be considered to mediate God's justice, especially those which contain concrete proposals and procedures for

determining dialogically a just social charter and, more specifically, just social norms and policies.

3. Promotion of and support for social movements or informal political associations which engage in practical discourse about social norms of action, and which exercise a noticeable influence on the formal political system, in order to develop a properly deliberative democracy.
4. Continual, even persistent, exhortation to involvement by the Church in the political process, in order to arrest the debasement of the public sphere, to improve the quality of political life and debate, to counter cynicism and disillusionment with the political process, and create a vibrant political and social community. Such exhortation is aimed at the re-politicisation of society, so that its formation is determined by communicative justice, i.e. through linguistically mediated interaction (communicative action) to achieve domination-free agreement and consensus about policies and decisions which affect all. This exhortation is a crucial implementation of God's special justice for the disadvantaged, because it seeks to draw the powerless, the marginalised and the voiceless into the political process where their needs and interests may be presented or represented in real practical discourse.

The political implications of Christian action outlined above derive from an understanding of communicative action, which is the fruit of this interdisciplinary approach. The normative principle in both Habermas's conception of communicative action and in Christian action is love - interpreted in this context as intersubjective recognition of others and, more importantly, the will to secure and

broaden the life possibilities of others by securing social justice and a just basic structure discursively.

The kind of other-regarding and other-affirming intersubjectivity contained in communicative action has been described in chapter 5 as love of the neighbour, empowered through the Holy Spirit by faith in the Resurrection of Jesus Christ. Since the Resurrection is the ultimate demonstration of God's justice, faith in the Resurrection, which is an assertion of God as the saving reality for all others, is itself just action, expressing God in loving solidarity and interaction which grants unconditional recognition and inclusion to all who are disadvantaged and victims of injustice. It remains for Christians and the Church, in response to the divine imperative to do God's justice, and empowered by Resurrection-faith that ultimately justice will be done, to give themselves to the formation of a society characterised by right relationship, achieved through action whose goal is domination-free communication, universal dignity and freedom in universal solidarity.

Footnotes

- 1 See chapter 6, pp. 338-339.
- 2 cf. the WCC's Evanston report, which described the Christian community as the 'visible centre of the social community' and thus the foundation of social responsibility in the local sphere. [*The Evanston Report*, edited by W. Visser't Hooft, SCM, 1955, p. 114.]
- 3 cf. the emphasis of the Roman Catholic encyclical *Justice in the World*, which was the outcome of the deliberations of 1971 International Synod of Bishops; this document is, according to J. C. Haughey, S.J., "the most forthright statement to date [i.e. 1977] from an official collegial body in the Church on the proper response of the Church and its members to the use and abuse of political and social power". [*The Faith That Does Justice*, New York: Paulist Press, 1977, p. 3.] Haughey also points to the admirable determination of the Jesuit Order, after its General Congregation in 1975, that "the promotion of justice in the world was to become a major focus of its work in the future and a *primary* way of expressing the faith commitment of its membership". [ibid., my emphasis.]
- 4 This humility is not the same as the timidity in the face of secular theories and disciplines, nor as conformity to the "spirit of the age", for which some modern theologians have been criticised. It is the humility of Christ who, in his communicative action, was faithful to, but non-dominating about, the substantive normative position

from which he was offering his perspective. Such humility in modern practical discourse is of the kind which is prepared to submit to the 'force' of the better argument under conditions approximating to the ideal speech situation.

- 5 The criticism that some Church contributions to social theory and problems have been ill-thought out was one of the few valid points made in the otherwise shameful publication of a number of essays in 1984, entitled *The Kindness That Kills: The Churches' Simplistic Response to Complex Social Issues*, edited by D. Anderson, SPCK. cf. the essays in Strain, C., Ed.: *Prophetic Visions and Economic Realities*, Grand Rapids, Michigan: William B. Eerdmans, 1988.
- 6 D. B. Forrester: *Theology and Politics*, Oxford: Blackwell, 1988, p. 157. There is not, however, only the problem of a reluctance to take social theory seriously; there is also the problem of those in the Church who take it seriously, but dismiss it: see, for example, J. Milbank's "sceptical demolition of modern, secular social theory" from a Christian perspective - *Theology and Social Theory: Beyond Secular Reason*, Oxford: Blackwell, 1990. cf. A. Linzey's scathing review of Milbank's work in an article entitled "An End to Turbulent Priests and Faddish Theologians?", in *The Times Higher Education Supplement*, 15-11-1991, p. 20.
- 7 D. Savramis: "Theology and Society: Ten Hypotheses", in R. H. Preston, Ed.: *Technology and Social Justice*, SCM, 1971, p. 400.

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Note: unless otherwise indicated, place of publication is London.

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