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**CHRISTIAN COMMITMENT
AND
REASONABLE CONSENSUS
IN
PLURALIST SOCIETIES**

**JOHN RAWLS' IDEA
OF
AN OVERLAPPING CONSENSUS
IN THE PERSPECTIVE OF
THEOLOGICAL SOCIAL ETHICS
AS CONCEIVED OF BY
MARTIN HONECKER**

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PREFACE

The problem of establishing and safeguarding through institutional arrangements a consensus about some common values, elementary rights and fair procedures has become more urgent as our societies have become more pluralistic. Setting this kind of problem on the agenda, I found it appropriate to consider the political philosophy of John Rawls more closely. He has in a unique way handled the political and moral problems actualised by the fact of pluralism and the need for a common institutional framework for social co-operation.

When turning to Rawls' philosophy, the intention is to consider vital parts of it in a *theological* perspective. And it is indeed interesting to consider certain aspects of Rawls' political liberalism, and especially his idea of an overlapping consensus, in the perspective of theological social ethics, since the Rawlsian "overlap", the core of which is a conception of justice, requires from the citizens a kind of moral backing, in accordance with their deeper (religious) commitment. Thereby theological (social) ethics is challenged.

In the present theological thesis Rawls' liberal conception is related to a theological conception of social ethics, as conceived by Martin Honecker. There are good reasons for paying special attention to Honecker's conception in this connection. For even if Honecker does not very thoroughly and explicitly discuss Rawls' theory, – neither his conception of political liberalism nor his idea of an overlapping consensus, there is nevertheless some kind of correspondence in thought between the theologian Honecker and the philosopher Rawls, which makes it interesting to bring them together, – at least in a dissertation. Honecker is, as well as Rawls, concerned about basic rights, the central issues of justice and the ground-values to be fairly shared and publicly justified in modern pluralistic societies. The issues handled in this dissertation should also be of great relevance in a Norwegian context, not just in an American or a German one.

The Ethics Program of the Norwegian Research Council seemed to be the right place for projects of the kind I aimed for, – with an interest both in theology and philosophy. When the Ethics Program decided to give me a scholarship on terms that were also acceptable to my employer, Diakonhjemmet College, I could for nearly four years

devote myself to a problem, which I had for a long time already been concerned with: How may it be possible to establish and maintain a shared basis of social co-operation and public reasoning, when facing the deep diversity of modern societies?

I very much want to thank the *Norwegian Research Council*, especially the Ethics Program, and not least the leader of this program, prof. Dagfinn Føllesdal, as well as its coordinator, Tom Eide, for the interest they have taken in each one of us who were participants in the program. I am also very grateful to Diakonhjemmet College for enabling me to concentrate on the task of elaborating this thesis (with just some “disturbances” following from the fact that I could after all not so easily drop out of all the tasks I was already involved in at the Research Department of Diakonhjemmet). But nonetheless I felt that I never lacked the necessary institutional backing from Diakonhjemmet, and I am especially grateful to Kjell Nordstokke and Einar Vetvik for their generosity.

The dual structure of my project, however, meant that I had to join two doctoral programs, both the *Ethics Program*, which had a more philosophical aim and the official doctoral program of the *Theological Faculty*, required for all those aiming at a theological degree of this kind. Even if the participation in two programs was quite demanding sometimes, I really profited from both. And not least I profited from cooperating with many fellow-candidates in these doctoral programs. The genuine interest that the many participants – with their highly different projects – took in one another’s efforts, has in itself been a lesson in applied ethics and in co-operation based on mutual confidence.

At a very early stage I asked, professor *Svein Aage Christoffersen* at the Theological Faculty of Oslo to be my main adviser. I very much appreciate that he so kindly and positively met my wish to have him as supervisor. Systematically, constructively and with insight he has responded to all the pages I produced. I also profited very much from the feed-back I got, by e-mail and face to face, from Thomas W. Pogge, professor of philosophy at Columbia University,. His insight in Rawls’ philosophy is well known. He was certainly also very much concerned about the theological arguments!

Considerable thanks also goes to Ingebjørg, my wife, who for more than three years had to share the efforts both of a husband and a son, simultaneously working on their respective doctoral dissertations within highly different subject areas; engineering and

theology. Beside the demanding tasks she had in her own job, she took a genuine interest in problems arising within the field of engineering as well as within the political philosophy of Rawls.

Since Rawls is a philosopher whose ideas have for a long time been frequently examined, analysed and commented upon by many skilled persons within special fields of highly different nature, it may be nearly impossible to have a full overview over the literature published about his philosophy. In addition, the works and articles produced by Honecker are also numerous. I therefore had to limit myself quite strictly to the works which I considered particularly interesting for my purpose. The works and articles referred to in the texts and footnotes throughout the dissertation are included in my list of literature. However I have also included some works in my list of literature, which are not directly referred to in the text, but which have nevertheless been of importance for me when working out my thesis. Some of the works used in the doctoral courses of the Ethics Program were for instance relevant in this respect. Let it also be remarked that references to literature are explicitly and in a rather complete way given in each footnote throughout the thesis. This seemed convenient, however, since the thesis was continually revised, passages were moved, removed, inserted and omitted, until the entire “product” was completed at the end of January 1998. Of course this also means that the thesis does not reflect literature published after this time.

Working simultaneously within philosophy and theological social ethics is a demanding task. But this kind of dialogue is also fascinating, challenging and, I believe, also highly required.

Lörenskog, June 1999,

Kai Ingolf Johannessen

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1. INTRODUCTION

1.1. *The problem*

Modern societies possess a great diversity of people with different cultural backgrounds, life styles, moral convictions and religious and philosophical beliefs. These societies are very unlike the societies of earlier times where people that lived in close geographical proximity, appeared to be much more homogenous in their values and beliefs. Whereas this modern diversity should be considered an asset and whereas human differences are by no means always a source of problems¹, widespread rivalry over people's preferences and their diverse understanding of the good may be a *political* problem since open conflict may ensue. Weaker groups may be oppressed by stronger groups and people may feel that their perceived right to hold and further certain doctrines, is violated. Furthermore, vital decisions may be made by state authorities in favour of certain parties justified by 'the due process of law'.² It is necessary to consider the extent to which basic equality and individual freedom can be safeguarded within the legal system, how rivalry and differences within a society may be restrained by coercive means and how far patterns of social co-operation and co-existence can be maintained in societies which 'work through differences'.³

¹ The unproblematic and even positive aspects of diversity, and the possibilities opened up by pluralism, are clearly underlined in the book *Moral Conflict. When Social Worlds Collide*, eds. W. Barnett Pearce and Stephen W. Littlejohn (1997): "Sometimes, we are willing, even eager, to put our stories at risk by interacting with individuals who are different from us... we deliberately seek out difference and change in a type of exploratory form of communication. Although one could spend a year travelling around the world without seeking difference, most sojourners enjoy travel precisely because it is an opportunity to explore other ways of being human, to learn new stories. Being exploratory requires seeing connections among stories, relating one system of thought to another, and importing ideas from one community into those of another. This pattern leads one to strive for improvement, to search for the ultimate good by seeing the various ways in which peoples at different times and in different places have come to understand their experience." p.112.

² It seems quite obvious that the existence of pluralism in itself actualises questions of political justice and fairness between the differing parties. After having first introduced three kinds of justice, Wolfgang Huber continues: "Diesen drei Elementen der *iustitia commutativa*, der *iustitia contributiva* und der *iustitia distributiva* tritt jedoch noch ein viertes, formales Element zur Seite. Ich bezeichne es gemäß der auf Aristoteles zurückgeführten Tradition als *iustitia legalis* oder Verfahrensgerechtigkeit. Während die drei ersten Elemente Prüfkriterien der Rechtssetzung darstellen, bildet die Verfahrensgerechtigkeit ein entscheidendes Prüfkriterium der Rechtsanwendung. ... Sie wird vor allem in den Regeln des angemessenen Prozeßverfahrens, des 'due process of law' entwickelt und zur Geltung gebracht." W.Huber, *Gerechtigkeit und Recht. Grundlinien christlicher Rechtsethik* (1996), p.196.

³ "Repression and violence signify the ultimate failure of traditional administrative, judicial, and democratic forms of decision making. They reflect society's inability to work through differences." *Moral Conflict. When Social Worlds Collide*, eds. W. Barnett Pearce and Stephen W. Littlejohn (1997), p.119.

Understandably, there is considerable scepticism towards all attempts of establishing a shared moral basis in modern societies by political means. The differences in opinion with regard to values and moral standards are so deep as to appear to render all attempts of establishing a unified value-basis for society, entirely utopian. In addition, the impact of using the coercive powers of the state to combat pluralism⁴ by enforcing a 'unifying' comprehensive⁵ moral doctrine, may appear to be destructive.

In modern Western societies there has been a breakdown of confidence in an 'absolute' authority. This entails a corresponding decline in the authority of the Church. The collapse of the former 'corpus christianum' in our societies has to a considerable extent paved the way for the present situation of diversity (and increased tolerance?) with regard to beliefs, values and moral doctrines. The loss of confidence with respect to many explicit and implicit norms and values which have traditionally been promoted by the church and supported by the state, has contributed to a development towards an increased pluralism and prompted conflicts which, by their deep-rooted nature, cannot always be settled peacefully. Thus, a breakdown of confidence in a previously 'absolute' authority may, without doubt, make society vulnerable to inner rivalries and disintegration. The increasing confidence in an autonomous *ratio*, accelerated in the age of Enlightenment, as a common basis for moral and political organisation of society after the collapse of the 'corpus christianum', has hardly proved as successful as one may have hoped. Radical pluralism, as it may be observed in for example post-modernistic thought, raises doubt as to whether an autonomous *ratio* per se can provide a definite basis for overcoming serious conflicts and the disintegration of society.

Nevertheless, in order to make social co-operation and coexistence possible and in order to have conflicts peacefully settled, it seems required that there is an instance in modern democratic societies with the legitimate authority and the political power both to guarantee a reasonable amount of liberty and plurality, and simultaneously to restrain

⁴ *Pluralism* is in this connection used about a certain kind of heterogeneity within democratic societies; it means that there is a diversity among individuals (and groups) concerning religious faith, moral beliefs and (private) conceptions of the good.

⁵ Using the term *comprehensive* about moral or religious views one usually wants to stress that these religious and philosophical views cover a wide range of issues. This understanding correspond to *Webster's Encyclopedic Unabridged Dictionary of the English Language* (cf. the 1994-edition, p.302) where the term *comprehensive* is taken to mean "of large scope; covering or involving much; inclusive ...". But in our connection the term *comprehensive* also characterises a view as "complete" in the sense that the *deeper* reasons for holding a view are also included.

socially unacceptable forms of pluralism. A reasonable diversity should somehow be settled, regulated and safeguarded by a common framework that most members of society consider to be fair.⁶

John Rawls, one of the most prominent representatives of today's philosophy, has devoted himself to the question how a shared and fair framework for coexistence in pluralist democratic societies can be established and maintained. Rawls is the author of *A Theory of Justice*, published in 1971. Rawls book has had an enormous influence on the political and social sciences, as well as upon discussions and debates in ethics, economics and jurisprudence.

In Rawls' latest book, *Political Liberalism*, published more than twenty years later (1993), the primary focus is still upon the possibility of establishing an organisation of society that can be accepted as 'fairly just' by (nearly) all of its members. But as he, in his recent writings⁷, is so deeply engaged in the problem of diversity within modern societies, he now raises very clearly the urgent question: "how is it possible that there may exist over time a stable and just society of free and equal citizens profoundly divided by reasonable religious, philosophical and moral doctrines?"⁸

Rawlsian political liberalism is concerned with establishing the most "fair background

⁶ Alexander Schwan clearly sees that the state-authorities of democratic societies should give room for a reasonable pluralism. But simultaneously he also emphasises that a growing pluralism makes a common framework or a basic consensus even more urgent: "'Pluralismus' besagt also spezifisch, daß die vielen in der modernen Lebenswelt vorhandenen und wirkenden Kräfte ... ausdrücklich im Staat anerkannt und gutgeheißen werden und daß ihnen ein gesicherter Raum freier Entfaltung eröffnet wird, und zwar sofern sie ihrerseits die staatliche, im Grundkonsens des ganzen Volkes oder der gewählten politischen Repräsentanten festgelegte Verfassungsmäßige Ordnung bejahen oder zumindest respektieren. Diese Ordnung ist als Rahmen- und Strukturbedingung unerlässlich, damit allen pluralen Kräften Recht, Schutz and Wirkmöglichkeit in der Konkurrenz, beim Austrag von Konflikten, bei deren Lösung, im wechselseitigen Austausch und in gegenseitiger Achtung zuteil werden können. Der Staat besteht also um der Freiheit und Gerechtigkeit für die vielen Individuen, Gruppen, Organisationen, Institutionen und Ideen willen. Er ist dann dafür verantwortlich, über den gesellschaftlichen Frieden zu wachen, der das freie und zugleich gerechte Spiel der pluralen Kräfte erlaubt; zu dessen Gewährleistung und zur Sicherung ihres eigenen Wohles wird den pluralen Kräften politische und weltanschauliche Toleranz im Verhältnis zueinander sowie die Anerkennung der staatlichen Ordnung abverlangt." A. Schwan: "Pluralismus und Wahrheit", *Christlicher Glaube in moderner Gesellschaft*, Vol. 19 (1981, second edition), p.147f.

⁷ The term "recent" is here used to cover mainly the period after 1985, starting with the article Justice as Fairness: political not Metaphysical, *Philosophy and Public Affairs* (1985, Vol.14, No.3). Here one finds the crucial concern very clearly and sharply expressed, that "a workable conception of political justice ... must allow for a diversity of doctrines and the plurality of conflicting, and indeed incommensurable, conceptions of the good affirmed by the members of existing, democratic societies." (p.225).

⁸ J. Rawls, *Political Liberalism* (1993), p.195.

conditions for different and even antagonistic conceptions of the good”.⁹ The concern for the institutional organisation of society is therefore crucial. The most essential political task is to develop “a just basic structure within which permissible life styles have a fair opportunity to maintain themselves and to gain adherents over generations.”¹⁰ This implies that “the state, at least as concerns some constitutional essentials, is not to do anything intended to favour any particular comprehensive view.”¹¹ Fundamental fairness obviously depends on a government’s ability to achieve a proper balance between two vital concerns:

- The concern for impartiality, which implies that state authorities should, as far as possible, be neutral about matters of religion, faith and comprehensive morality.
- The task of providing individuals, groups and associations with differing conceptions of the good life, a fairly equal opportunity to prosper.

Rawls could not solve his task satisfactorily merely by developing a new comprehensive political doctrine to be imposed upon citizens by an external authority. Instead it appears that he intends to establish a platform beyond the existing (reasonable) comprehensive doctrines without obstructing or opposing them. In this connection he introduces an appropriate test-question, which political liberalism, grounded on a conception of justice as fairness, should pass; namely: “Is Justice as Fairness Fair to [different] Conceptions of the Good?”¹² Rawls hopes that political liberalism can pass this test, and he gives good reasons for believing that it can. If he succeeds in his project, this would be a decisive step towards establishing a consensual basis for social co-operation in pluralist societies. The Rawlsian project is indeed ambitious: Rawls hopes to pave the way for an overlapping consensus about vital terms of coexistence, which can be accepted as fair from highly different perspectives. Therefore the question, “Is Justice as Fairness Fair to [different] Conceptions of the Good?”, is particularly crucial.

It might be appropriate, however, to shift the perspective and to try to answer the test-question raised by Rawls from within a «comprehensive» view. Could Rawls’ concep-

⁹ J. Rawls, *Political Liberalism* (1993), 199.

¹⁰ J. Rawls, *Political Liberalism* (1993), p.198.

¹¹ J. Rawls, *Political Liberalism* (1993), p.196. And Rawls simultaneously adds that “At this point the contrast between political and comprehensive liberals becomes clear and fundamental.”

¹² J. Rawls, *Political Liberalism* (1993), p.195

tion of political liberalism, with its built-in idea of an overlapping consensus, really be considered fair and morally acceptable from a Christian perspective, – i.e. from moral principles given within theology itself?

The main question of the present thesis can now be properly formulated: How may it be possible from within theological social ethics to endorse an overlapping consensus as conceived of by premises given in Rawls' political liberalism? In The idea of an Overlapping consensus Rawls defines an overlapping consensus about a moral-political conception as:

“... a consensus in which it [a political conception] is affirmed by the opposing religious, philosophical and moral doctrines likely to thrive over generations in a more or less just constitutional democracy, where the criterion of justice is that political conception itself.”¹³

The main question raised in the present dissertation should be of considerable interest from the point of view of theological social ethics, and should simultaneously count as a fundamental ‘litmus-test’ to the Rawlsian project as such.¹⁴

1.2. John Rawls, biography and main works

In the following I shall give a brief sketch of John Rawls' biography and a short review of his works. This is judged sufficient for my present purpose.

John Bordley Rawls was born in 1921 in Maryland (Baltimore)¹⁵. His family was fairly wealthy. John Rawls, however, clearly realised that there were grave inequalities in the American society and that a lot of poor people did not have fair or equal access to educational or economic opportunities. The injustice could not be overlooked.

John Rawls went to a private school (Calwert School) from 1927 till 1933 and then to the Kent School, a private school for boys. The Kent School was an Episcopalian

¹³ *Oxford Journal of Legal Studies* (Vol.7; No.1, 1987), p.1.

¹⁴ Rawls accepts this test-question: “Thus, a conception of justice may fail because it cannot gain the support of reasonable citizens who affirm reasonable comprehensive doctrines; or as I shall often say, it cannot gain the support of a reasonable overlapping consensus. Being able to do this is necessary for an adequate political conception of justice...” J. Rawls, *Political Liberalism* (1993), p.36.

¹⁵ There are written several books about John Rawls. I can for instance refer to: C. Kukathas & P. Pettit: *John Rawls. En introduktion* (Swedish translation 1992), Wolfgang Kersting: *John Rawls zur Einführung* (1993), Thomas W. Pogge: *John Rawls* (1994). The latter book gives both an informative biographical overview as well as a clear introduction to Rawls' political conception as such. In my short biography I am especially drawing on Pogge's book.

institution which allowed very little latitude in terms of behaviour and religious duties. (The pupils had for instance to attend one church service every day, except on Sundays when they had to attend two). John Rawls did not find the intellectual standard of the school especially high.

When the second world war broke out, John Rawls started at Princeton. He studied mathematics, chemical subjects and history of arts, but at last he turned to philosophy. He was especially influenced by Norman Malcolm who had studied under Wittgenstein and had written his thesis for C.S.Lewis. In 1942 Rawls participated in a seminar held by Malcolm about the evil of man, an issue actualised by the war. The students read texts written by Plato, Augustine, Bishop Butler, the theologian Reinhold Niebuhr and others.

Upon finishing his undergraduate degree at Princeton, Rawls enlisted in the army and served in the Pacific, New-Guinea, the Philippines and Japan. He remained in the army until 1946.

Rawls returned to Princeton as a Graduate Student in philosophy where he remained (with one year's break) until he had finished his dissertation about the human character.¹⁶ During this period he also attended courses within economics, political theory and constitutional law.

In 1949 he married Margareth.¹⁷ They had four children.

During 1952 and 1953 Rawls lived in Oxford where he became acquainted with H.L.A.Hart, a lecturer in jurisprudence. Here, Rawls also participated in seminars on Kant's *Grundlegung zur Metaphysik der Sitten* and Mill's *On Liberty*, held among others by I. Berlin.

In 1953, Rawls was appointed an assistant professor at Cornell University, and three years later was appointed Associate Professor.

In 1959 he went to Harvard to give lectures for one year. The next year he was ap-

¹⁶ The exact title of his thesis was. *A study in the Grounds of Ethical Knowledge: Considered with Reference to Judgements on the Moral Worth of Character.* (1950)

¹⁷ She was especially concerned with *Art* and *History of Art*. And she was also engaged in work for equal rights for women.

pointed as a professor at Massachusetts Institute of Technology (where he was a colleague of Noam Chomsky). In 1962 Rawls returned to Harvard where he has remained.

The years at Harvard were obviously very stimulating. But there were difficulties too, especially during the Vietnam war era, which was characterised by widespread student activism in protest of the war. Rawls himself was very critical of the war. Some of Rawls' colleagues, however, had very different views. In his position as chairman of the Philosophical Seminary in 1970, Rawls had to handle many internal conflicts.

Rawls' *A Theory of Justice (Theory)* was published in 1971, and quickly met with international acclaim.

While this is not the place for a *bibliography* of Rawls' writings¹⁸, some comments addressing the relation between his two main works, "*A Theory of Justice*," published in 1971, and *Political Liberalism*, published over twenty years later in 1993, are in order.

Even if *A Theory of Justice* decisively influenced the philosophical, moral and political debate from the day it was published, the ideas it expressed had already been presented by Rawls as subjects of public discussion. Thus Rawls himself says:

"In presenting a theory of justice I have tried to bring together into one coherent view the ideas expressed in the papers I have written over the past dozen years or so. All of the central topics of these essays are taken up again, usually in considerably more detail.... Although the main ideas are much the same, I have tried to eliminate inconsistencies and to fill out and strengthen the argument at many points."¹⁹

And he mentions explicitly several essays, which are now integrated in his main work in a more or less revised version.²⁰

¹⁸ Andreas Føllesdal has elaborated such a bibliography, to which I am very much indebted. Cf. *Norsk Statsvitenskapelig Tidsskrift*, 1994, 2:261-263.

¹⁹ J. Rawls, *A Theory of Justice* (1971), p.vii.

²⁰ He refers himself explicitly to: "Outline of a Decision Procedure for Ethics" (1951, *The Philosophical Review*, vol. 60, 177-197, where he takes up ideas from his thesis, which he had the foregoing year defended for a Ph.D); "Justice as Fairness" (1958, *The Philosophical Review*, 67, 164-194. A thinner essay about Justice as Fairness had been published in *Journal of Philosophy*, 54, 653-662, 1957); "The sense of Justice" (1963, *The philosophical Review*, 72, 281-305); "Constitutional Liberty" (1963, In C.J.Friedrich & J.W.Chapman, *Nomos: Justice*, 98-125, New York: Atherton Press); "Distributive Justice" (1967, In P.Laslett & W.G.Runciman, *Philosophy, Politics and Society*, Third Series, 58-82, London: Blackwell); "Distributive Justice: Some Addenda" (1968, *Natural Law Forum*, 13,15-71); "The Justification of Civil Disobedience" (1969, In Hugo A. Bedau, *Civil disobedience: Theory and Practice*, 240-255, New York: Pegasus).

Similarly, *Political Liberalism*, reflects the integration and refinement of ideas that Rawls had expressed in previously published essays/lectures and which were, therefore, already part of the public discussion.²¹

Rawls has produced other noteworthy essays relating to the above²² and my thesis draws heavily on some of Rawls most recent articles.

A Theory of Justice remains Rawls' most famous and influential book and in that respect is considered his principal work. Rawls is inseparably associated with the conception of justice as fairness, and the two principles of justice that he so thoroughly elaborated in *A Theory of Justice* have been the subject of intense public discussion for almost 30 years:

“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.”²³

Second Principle

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

a) to the greatest benefit of the least advantaged and

²¹ He mentions explicitly: “The Basic Structure as Subject” (1978, In A.I Goldman & J.Kim, *Values and Morals: Essays in Honor of William Frankena, Charles Stevenson, and Richard B. Brandt*, 47-71, Dordrecht: D.Reidel Publishing Company); “Kantian Constructivism in Moral Theory. The Dewey Lectures” (1980, *Journal of Philosophy*, 77, 515-572); “The Basic Liberties and Their Priority” (1982, In *The Tanner Lectures on Human Values*, Vol. 3, 3-87, Salt Lake City: University of Utah Press, Editor: Sterling M. McMurrin); “Justice as Fairness. Political not Metaphysical” (1985, *Philosophy and Public Affairs*, 14, 223-251); “The Idea of an Overlapping Consensus” (1987, *Oxford Journal of Legal Studies*, 7, 1-25); “The Domain of the political and Overlapping Consensus” (1989, *New York University Law Review*, 64, 233-255. (The last three essays are considerably revised and also combined when integrated in *Political Liberalism* together with *Public Reason*, which appeared now for the first time.)

²² Cf. for instance: “Two Concepts of Rule” (1955, *Philosophical Review*, 64, 3-32); “The Sense of Justice” (1963, *The Philosophical Review*, 72, 281-305); “Justice as Reciprocity” (1971, In S.Gorovitz, *Utilitarianism: John Stuart Mill, with Critical Essays*, 242-268, New York: Bobs Merill); “Distributive Justice” (1973, In Edmund S. Phelps, *Economic Justice*, 319-362, London: Penguin. This essay combines ideas that were presented by Rawls in two earlier essays about the same issue in 1967 and 1968); “Fairness to Goodness” (1975, *The Philosophical Review*, 84, 536-554); A Kantian Conception of Equality (1975, *Cambridge Review*, 94-99); “Social Unity and primary Goods” (1982, Amartya Sen & Bernard Williams, *Utilitarianism and beyond*, 159-185); “The Priority of Right and ideas of the Good” (1988, *Philosophy and Public Affairs*, 17, 251-276); “The Law of Peoples” (1994, in Stephen Shute and Susan Hurley, *On Human Rights, The Oxford Amnesty Lectures 1993*, 41-82); “Reply to Habermas” (1995, *Journal of Philosophy*, 132-180); “Introduction to the Paperback Edition” (in *Political Liberalism*, 1996), “The Idea of Public Reason Revisited” (1997, *The University of Chicago Law Review*, vol. 64, 765-806).

²³ The first principle is taken from J. Rawls, *A Theory of Justice* (1971), p.250.

b) attached to offices and positions open to all under conditions of fair equality of opportunity.”²⁴

The main aim of the present research-project is not to discuss Rawls’ theory of justice rigorously. It is, however, necessary for me to be well acquainted with the most essential aspects of his conception of justice and with the main lines of the debate, since Rawls’ consensual efforts cannot be analysed independently of the idea of justice as fairness.

However, I will also emphasise that Rawls himself, in his more recent writings allows for different conceptions of justice, when seeking a shared basis for fair social cooperation and public reasoning. As Rawls states, “Political liberalism, then, does not try to fix public reason once and for all in the form of one favoured conception of justice. That would not be a sensible approach.”²⁵

Rawls ends his most recent article, *The Idea of Public Reason Revisited* (1997), by comparing his two main works, *A Theory of Justice* (1971) and *Political Liberalism* (1993), in a way well worth noticing:

“I end by pointing out the fundamental difference between *A Theory of Justice* and *Political Liberalism*. The first explicitly attempts to develop from the idea of the social contract, represented by Locke, Rousseau, and Kant, a theory of justice that is no longer open to objections often thought fatal to it, and that proves superior to the long dominant tradition of utilitarianism. *A Theory of Justice* hopes to present the structural features of such a theory so as to make it the best approximation to our considered judgments of justice and hence to give the most appropriate moral basis for a democratic society. Furthermore, justice as fairness is presented there as a comprehensive liberal doctrine (although the term “comprehensive doctrine” is not used until later) in which all the members of its well ordered society affirm that same doctrine. This kind of well ordered society contradicts the fact of reasonable pluralism and hence *Political Liberalism* regards that society as impossible. Thus, *Political Liberalism* considers a different question, namely: How is it possible for those affirming a comprehensive doctrine, religious or nonreligious, and in particular doctrines based on religious authority, such as the Church or the Bible,

²⁴ The second principle is taken from J. Rawls, *A Theory of Justice* (1971), p.83. Let me now add that Rawls also introduces two priority rules: the first priority rule securing “The Priority of Liberty” and the second priority rule securing “The Priority of Justice over Efficiency and Welfare”. Cf. J. Rawls, *A Theory of Justice* (1971), p.302, where the priority rules are elaborated in detail. Let it also be added that the so-called “opportunity-principle” and the “difference-principle” may sometimes be referred to in reverse order. Usually “the difference principle” is the second part of Rawls’ second principle of justice. This is the case in Andreas Føllesdal’s article on “Human Worth and Human Rights Based on John Rawls Contractualism” in *Menneskverd. Humanistiske perspektiver* (1982), ed. Jon Wetlesen, p.116, just as it is normally the case in *Political Liberalism* (cf. p.291).

²⁵ J. Rawls, “The Idea of Public Reason Revisited”, *The University of Chicago Law Review* (1997;3), p.774.

also to hold a reasonable political conception of justice that supports a constitutional democratic society? The political conceptions are seen as both liberal and self-standing and not as comprehensive, whereas the religious doctrines may be comprehensive but not liberal. The two books are asymmetrical, though both have an idea of public reason. In the first, public reason is given by a comprehensive liberal doctrine, while in the second, public reason is a way of reasoning about political values shared by free and equal citizens that does not trespass on citizens' comprehensive doctrines so long as those doctrines are consistent with a democratic polity. Thus, the well ordered constitutional democratic society of *Political Liberalism* is one in which the dominant and controlling citizens affirm and act from irreconcilable yet reasonable comprehensive doctrines. These doctrines in turn support reasonable political conceptions – although not necessarily the most reasonable – which specify the basic rights and liberties and opportunities of citizens in society's basic structure.”²⁶

It is not difficult to see that the ideas originally set out in a *Theory of Justice* have evolved, incorporating modifications and innovations, even as *Political Liberalism* demonstrates the continuity in the Rawlsian concern for a society that reflects a shared and fair scheme of social co-operation. A decisive influence in the evolution of Rawls' ideas since *A Theory of Justice* was published, is an increased insight in the phenomenon of pluralism, which inevitably characterises modern liberal democracies. Indeed, addressing the problem of pluralism and especially that of a reasonable pluralism, is a major part of Rawls' project in *Political Liberalism*. Moreover, the very phenomenon of pluralism actualises the demand for an overlapping consensus, as Rawls clearly recognises in *The idea of an overlapping consensus* (1987), and in *Political Liberalism* (1993).

Since I am mainly concerned with Rawls' consensual efforts, as actualised through the fact of pluralism, it is most natural to concentrate on his more recent writings, with special weight on *Political Liberalism*²⁷, where the idea of an overlapping consensus is thoroughly elaborated, as is also Rawls' idea of public reason with the accompanying ideal of a duty of civility. However, Rawls still draws also on the idea of a social contract, based on consent, and this idea cannot be omitted in a thesis concerned with an agreed basis for social coexistence. It is still of importance when addressing the problem of establishing a voluntary consensual basis for social co-operation. And in fact Rawls'

²⁶ J. Rawls, “The Idea of Public Reason Revisited”, *The University of Chicago Law Review* (1997;3), p.806f.

²⁷ Let it here also be mentioned that Rawls sets some new accents in his introduction to the paperback edition of *Political Liberalism* (1996), as will be shown.

idea of a social contract plays a role not just in *A Theory of Justice* but also in *Political Liberalism* as well as in other writings.

Rawlsian thought is often employed, quoted and referred to in political and moral debates when issues of basic justice are set on the agenda, and is also taken into account when people are concerned with matters of pluralism, political values, the terms of public reason and the shared premises for an overlapping consensus. The way in which Rawls unfolds his ideas on these topics presents an interesting challenge from the perspective of theological (social) ethics. Although Rawlsian liberalism is presented as a strictly *political* conception, this does not mean that political liberalism should *eo ipso* be excluded from the interest-sphere of comprehensive moral, religious and philosophical doctrines. On the contrary, it is precisely because it is a *political* liberalism that Rawls can hope for support for his consensual project from within very different doctrines.

And thus the question arises again: *How* might it be possible for theological social ethics to endorse Rawls' liberal conception as a shared basis for social co-operation and coexistence in pluralist societies?

1.3. Some remarks on the research situation

As mentioned, Rawls is first and foremost associated with the conception of “justice as fairness”. A concern for justice is also central within Christian social-ethics. This convergence of concerns alone should guarantee a theological interest in Rawls' political philosophy. Considering, however, that Rawls' main work was published in 1971, the lack of systematic theological contributions to the Rawls-debate is quite remarkable.

Within the fields of politics and philosophy “*A Theory of Justice*” has been a topic of discussion and debate since its publication. It may be possible to identify several main positions in the philosophical debate. Identifying these positions – very roughly – will help determine the boundaries of the debate. The following three main-positions should be mentioned:

1. The neo-liberals (the view they hold can also be classified as “libertarianism”) argue that Rawls' liberal conception of justice does not really guarantee the rights of indi-

viduals, but might instead undermine personal freedom. If state-authorities are given a justified right to interfere in matters concerning property, economy and redistribution, individual liberty might very soon be strictly limited. Libertarians instead wish to limit the mandate of the state to a considerable extent. "Libertarians maintain that ... only a minimal or night-watchman state that protects against force, theft, and fraud can be justified."²⁸ Robert Nozick has been considered one of the most influential spokesmen for the neo-liberal view.²⁹

2. The communitarians criticise Rawls from the opposite point of view, for giving the individual perspective too much importance. For communitarians, the community, the social moral and cultural centre of human beings, is not given its proper and constitutive place in Rawls' theory. In spite of his interest for the very basic structure and for society as a fair system of co-operation, it is the individual perspective which is dominating in a Rawlsian liberalism according to most communitarians. For instance, Rawls' original position does not allow individuals to define themselves by their personal attachments and social bonds. Michael J. Sandel has a reputation as a representative of a communitarian perspective and as a critic of Rawls.³⁰
3. From a Marxist point of view Rawlsian liberalism appears to be viewed as a kind of reformism. In Rawls' conception the perspective of class-struggle is not constitutive. The liberal society is instead taken as a fair co-operative system. In accordance with a Marxian approach some theologians might criticise Rawls' lack of class-analysis, his liberal individualism and his confidence in human rationality.³¹

The theological contribution to the debate on Rawls' ideas, his theory of justice and political liberalism, is not very significant. Although Rawls may frequently be referred to in theological articles and books, not least in the English-speaking part of the world, Rawls' philosophy does not appear to have been subjected yet to a thorough and

²⁸ J. P. Sterba in *The Cambridge Dictionary of Philosophy* (1995). Libertarianism is here contrasted to so called welfare liberalism. "Welfare liberals maintain that ...coercive institutions of a welfare state requiring a guaranteed social minimum and equal opportunity are justified." *Ibid.*, p.628

²⁹ Cf. for instance *Anarchy, State and Utopia*, which was first published by Basic Books, Inc. 1974. (I have used a Swedish translation. *Anarki, Stat och Utopi*, Stockholm 1986).

³⁰ Cf. M.J.Sandel, *Liberalism and the Limits of Justice* (first published 1982).

³¹ But as far as I can see it is possible to find in Rawls' concern for justice also essential aspects that could for instance be utilised within a perspective of "liberation theology". In this respect is the dissertation written by H. Bedford-Strohm, *Vorrang für die Armen* (1992), very interesting.

systematically analysis from a theological point of view.³²

In as much as I am discussing Rawls work in a European context, I will refer to some literature in the German and Norwegian debate, where Rawls theory is examined or mentioned. Here, in the European context, I feel even more justified in claiming that Rawls' ideas have not really been examined from the perspective of theological social ethics. The work of the following writers merit, however, further mentioning here:

Arthur Rich considers Rawls' theory at some length in the first volume of his ethics of economy. Christian faith and Christian love might provide society with an increasing sense of justice. In a similar way – but based upon the rationality and reasonableness of man and his natural sense of justice – Rawls work can contribute to increased justice and a strengthening of fair co-operation in society. Rich is fundamentally appreciative of Rawls' ideas.³³

Martin Honecker recognises that Rawls clearly intends to develop a *moral* conception of justice which, from the point of view of theological social ethics, is the strength of Rawls' theory.³⁴ According to Honecker, however, Rawls' conception of justice is

³² The overview “Zur Rawls-Rezeption in der theologischen Ethik” given by Bedford-Strohm (*Vorrang für die Armen*, 1992, pp.21-24), supports the view that more thorough systematic-theological approaches to Rawls' conception are difficult to find in the English/American-speaking part of the world too. Nevertheless Bedford-Strohm refers to K. Lebacqz: *Justice in an unjust World. Foundations for a Christian Approach to Justice*, Minneapolis 1987. (Cf. also *Six Theories of Justice. Perspectives from Philosophical and Theological Ethics*, Minneapolis 1986). And H. Beckley: “A Christian Affirmation of Rawls's Idea of Justice as Fairness” (in *Journal of Religious Ethics*, part 1;1985, part 2;1986) is also worth mentioning. Harlan Beckley sees in Rawls' ideas a proper basis for an overlapping consensus among Christian and non-Christian citizens. The anthropology of John Rawls – with emphasis upon morality, equality, liberty and rationality – is to a certain extent considered compatible with central ideas in Christian ethics. Bedford-Strohm also refers to W. Werpehowski: *Social Justice Selves: John Rawls's 'Theory of Justice' and Christian Ethics* (1981). William Werpehowski finds an essential compatibility between Rawls' conception of a just (“human”) society and central ideas of Christian ethics. His criteria for judging Rawls' conception are taken from the theology of Karl Barth, as expressed in “the humanity of God” (die Mitmenschlichkeit Gottes). And let me also add that David Tracy refers to Rawls as a philosopher with a mixed theory for ethical reflection [which] allows any intelligent and rational person to enter the argument on genuinely common grounds without prior commitments to Rawls' own “personal preferences”. Cf. D.Tracy, *The Analogical Imagination. Christian Theology and the Culture of Pluralism* (1991). But of course it will be impossible for me now to refer to (nearly) all the theological books and articles where Rawls is mentioned or used for some particular purpose.

³³ Cf. A. Rich: *Wirtschaftsethik. Bd.1: Grundlagen in theologischer Perspektive* (1984).

³⁴ Cf. M. Honecker *Einführung in die Theologische Ethik* (1990), p. 190f.: “John Rawls will erneut Gerechtigkeit und Moral - wie vor ihm Platon, Aristoteles, Kant - aneinander binden. Er beabsichtigt eine Herleitung von Gerechtigkeitsprinzipien aus Moral. ... So stellt sich die Frage: Ist Gerechtigkeit überhaupt rational zu definieren? Ist jede Berufung auf Gerechtigkeit nur ‘Leerformel’ zu Zwecke ideologischer Legitimation bestehender Machtverhältnisse? Es stellt sich also die Aufgabe der Ideologiekritik: Kann man Gerechtigkeit überhaupt theoretisch – wie Platon und Rawls es versuchen –

simultaneously too abstract, even if it provides us with ‘Klugheitsregeln’ which are useful in a more pragmatic perspective.³⁵ I shall more thoroughly consider Honecker’s theological conception in the main body of the thesis.

Heinrich Bedford-Strohm has completed a research-project in social ethics in which he analysed the pronouncements given by U.S. Catholic bishops concerning justice and social responsibility. Bedford-Strohm's dissertation pays considerable attention to John Rawls' theory of justice. He has no difficulty in recognising, and to a great extent integrating, Rawlsian moral principles of justice with comparable theological doctrines of social ethics.³⁶ According to Bedford-Strohm, there is good reason to believe that the social implications of Rawls' conception of justice should render it creditable from the side of the church.

Helmut Kaiser considers Rawls’ theory of justice in some detail in *Zeitschrift für Evangelische Ethik* 1991(4).³⁷ Although concerned with the role of justice within the domain of business and economy, Kaiser also focuses more generally on the issue of ‘fairness’ which is so essential of Rawls’ theory of justice.³⁸

losgelöst von den empirischen Verhältnissen bestimmen? ... An Rawls’ Versuch einer vernünftigen Definition von Gerechtigkeit wird nochmals die Aporie erkennbar; vor welche die Idee der Gerechtigkeit führt. Gerechtigkeit entspricht einer ebenso ursprünglichen Sehnsucht des Menschen, wie sie zugleich ein schillerndes und vieldeutiges Phänomen ist. Eine wissenschaftlich annähernd vertretbare Bestimmung von Moral muß stets formal bleiben.” Cf. also M. Honecker, “Rechtfertigung und Gerechtigkeit in der Perspektive Evangelischer Theologie”, *Jahrbuch des evangelischen Bundes* 23 (1990). Honecker considers Rawls’ conception of justice to be “abstract”, but nevertheless practically valuable. Since Honecker’s theological conception of social ethics will be considered more thoroughly later in my dissertation, I shall then seek for a much broader and deeper theological basis within the social ethics of Honecker for approaching the philosophy of Rawls.

³⁵ And thus Honecker can also say: “Rawls’ Regeln zur Bestimmung von Gerechtigkeit sind zweifellos pragmatisch wichtig als ‘Klugheitsregeln’, auch wenn sie für die theoretische Verbindung von Gerechtigkeit und Moral nicht zureichen.” M. Honecker, *Einführung in die Theologische Ethik, Grundlagen und Grundbegriffe* (1990), p.191.

³⁶ Cf. H. Bedford-Strohm: *Vorrang für die Armen. Auf dem Wege zu einer theologischen Theorie der Gerechtigkeit*, 1993. I refer to the original version of the dissertation, defended at the University of Heidelberg in 1993. The dissertation is later published by Christian Kaiser.

³⁷ H. Kaiser, “Von der ‘Brüderlichkeit’ zur Gerechtigkeitstheorie von John Rawls: Eine Vermittlung von Ethik und Wirtschaft”, *Zeitschrift für Evangelische Ethik* (1991;4), pp.248-267.

³⁸ Helmut Kaiser’s considerations to the idea of “fairness” as used by Rawls, are very much to the point and might appropriately be presented in this introductory chapter to my own thesis. Kaiser starts by contrasting the principle of *fairness* with a utilitarian approach: “J.Rawls Kritik am Nutzenprinzip besteht darin, daß das Ziel dieses Utilitätsprinzips – das größte Glück der größten Zahl – dem Fairneßgrundsatz widersprechen kann. Denn es ist utilitaristisch durchaus denkbar und legitimierbar, daß ein einzelner, einzelne Gruppen mit dem Glück der Mehrheit aufgerechnet werden. Dies ist jedoch nach J.Rawls ethisch nicht zulässig, weil für ihn das Fairneßprinzip ‘Zu jedermanns Vorteil’ gilt. Er stellt sich die Gesellschaft als ein System von fairer Zusammenarbeit vor, welche als Kooperation zu wechselseitigem Vorteil durch

Joachim von Soosten considers in his article on the communitarian critique of deontological moral approaches, among others John Rawls' conception of justice.³⁹ He is especially concerned with the question whether "the right" should be given some kind of priority over "the good", as Rawls seems to suggest.⁴⁰

eine Identität von Interessen bestimmt ist: 'Die Frage der Fairneß ergibt sich, wenn freie Personen, die keine Herrschaft übereinander ausüben, sich an einer gemeinschaftlichen Tätigkeit beteiligen und sich untereinander auf die Regeln einigen beziehungsweise die Regeln anerkennen, die diese Tätigkeit definieren und die jeweiligen Anteile an Vorteilen und Lasten festlegen. Die Parteien halten eine Praxis gewöhnlich dann für fair, wenn keiner das Gefühl hat, er oder einer der anderen werde durch Beteiligung daran übervorteilt oder werde dazu genötigt, Ansprüchen nachzugeben, die nicht als legitim empfunden werden. Fairneß ist eine soziale Kategorie, gekennzeichnet durch Herrschaftsfreiheit, Gleichheit und Konsens. Das Fair play beinhaltet für J.Rawls eine 'Einschränkung des Eigennutzens', wobei die Einschränkung des eigennützigen Strebens eine Verhaltensform ist, 'durch die Teilnehmer an einer gemeinsamen Praxis ihre wechselseitige Anerkennung als Personen mit gleichen Interessen und Fähigkeiten zeigen'. Mit diesem für J.Rawls zentralen Begriff der Fairneß hat er für seine Theorie der Gerechtigkeit zentrale anthropologische Vorentscheidungen getroffen, welche eine Absetzung zum klassischen ökonomischen Menschenbild bedeuten, welches seit und – fälschlicherweise – mit Bezug auf *Adam Smith* den Eigennutz und das egoistische Erfolgskalkül als alleinige Triebfeder des gesellschaftlichen Wohlstandes bestimmt. Mit der Anerkennung des Anderen im Fair play wird *erstens* das egoistische Verhalten überwunden, bei welchem der einzelne seine Ansprüche und Interessen in den Vordergrund stellt, ohne diejenigen des anderen zu berücksichtigen. Fairneß stellt vielmehr eine Beziehung der positiven Gegenseitigkeit dar, in welcher eine gegenseitige Verständigung über Ansprüche, Bedürfnisse und Interessen geschieht. Damit kann noch nicht von Solidarität oder Brüderlichkeit in dem Sinne gesprochen werden, daß man sich vorbehaltlos für den anderen einsetzt, doch basiert Fairneß auf der goldenen Regel, welche in ihrer positiven Formulierung im Neuen Testament heißt: 'Alles, was ihr wollt, das euch die Leute tun, sollt auch ihr ihnen tun.' (Mt 7,12) ... *Zweitens* fordert J. Rawls mit dem Gedanken der Fairneß, daß der Gedanke des Gemeinwohls im Utilitarismus nicht allein kollektiv, sondern distributiv verstanden werden muß. Es darf nicht allein auf das maximale Gesamtwohl ankommen, vielmehr muß die Verteilung des Gesamtwohls auf die verschiedenen Mitglieder der Gesellschaft eine 'selbständige Rolle' spielen. ... Mit dem Begriff der Fairneß sind damit wichtige ethische Voraussetzungen für den Gerechtigkeitsbegriff geschaffen, welche in drei Punkten zusammengefaßt werden können, womit gleichzeitig die Leitidee der Brüderlichkeit aufgenommen wird:

- Fairneß geht davon aus, daß das eigene Handeln vorgängig auf das Handeln des anderen bezogen ist und beinhaltet mit der goldenen Regel die positive Forderung, daß das Handeln dem Kriterium 'Zu jedermanns Vorteil' genügen muß.

- Fairneß enthält damit das Kriterium des distributiven Vorteils, welches besagt, daß das Wohl des einzelnen eine besondere Berücksichtigung erfährt und nicht nutzensumentheoretisch aufgerechnet und vernachlässigt werden darf.

- Wird Brüderlichkeit verstanden als 'Für-andere-Dasein' (D.Bonhoeffer), welches auf der wechselseitigen Angewiesenheit der Gesellschaftsmitglieder aufeinander beruht, dann gibt es zwischen Fairneß und Brüderlichkeit dort eine grundsätzliche Übereinstimmung, wo die 'positive Gegenseitigkeit' (Mt 7,12) als Grundstruktur einer jeden menschlichen Beziehung angenommen und damit die 'Koinzidenz von Moral und Selbstinteresse' aufgebrochen wird." H. Kaiser, "Von der 'Brüderlichkeit' zur Gerechtigkeitstheorie von John Rawls: Eine Vermittlung von Ethik und Wirtschaft", *Zeitschrift für Evangelische Ethik* (1991;4), p.256f.

³⁹ J. von Soosten, "Gerechtigkeit ohne Solidarität? Deontologische Ethik in der Kritik", *Zeitschrift für Evangelische Ethik* (1992;1), pp.61-74.

⁴⁰ It seems as if von Soosten to some extent defends Rawls against the criticism of Michael Sandel: "Vor allem ermöglicht Sandels Begründung der prioritären Stellung des Guten keine Antwort auf die Frage, wie der normative Rahmen moderner Gesellschaften beschaffen sein muß, unter deren Bedingungen eine Vielfalt rivalisierender Konzepte des guten Lebens miteinander koexistieren und kooperieren können. Weil eine Antwort hierauf ausbleibt, gelangt Rawls folgerichtig zu der Überzeugung, daß nur die von ihm ausgearbeiteten Gerechtigkeitsprinzipien die historisch errungene Freiheit zur Verwirklichung

Wolfgang Huber pays considerable attention to Rawls' philosophy in his book about *Gerechtigkeit und Recht* (1996). Huber touches upon Rawls' concern for consensus, but it is especially his theory of justice upon which he focuses. Huber obviously assesses Rawls' theory positively and stresses that Rawls in an appropriate way has combined two traditions; – an Aristotelian tradition and a biblical approach to the phenomenon of justice.⁴¹

In a German-speaking context, and with the noted exception of Bedford Strohms dissertation, Rawls' theory has not previously been very systematically considered from a *theological* point of view.

In a Norwegian context of theological social-ethics, Rawls is sometimes mentioned.

Professor **Axel Smith**, in his book from 1982 about "just distribution"⁴², discusses Rawls' conception of justice. He appears to find the theory interesting, but is nevertheless critical. Smith finds very little in Rawlsian liberalism that might contribute to diminishing the unjust gap between rich and poor in the world to-day. Smith further views Rawls' method for grounding an institutional scheme of social co-operation on a fundamental consent from all coexisting parties, as incapable of dealing with the fundamental conflicts in a modern world.

individueller wie gemeinschaftlicher Lebensziele und Lebensformen (erstens) unter Schutz stellen können, ohne daß (zweitens) deren Rivalität untereinander sich ruinös auf die Grundlagen des gesellschaftlichen Verkehrs auswirken müßte. Das letzte Argument führt auf den Kern der Einwände gegen Sandels Interpretation der 'Theory of Justice'. Auch ein kommunitär erweiterter Personbegriff muß nämlich keinesfalls die Aufgabe der Vorrangstellung des Rechten und Gerechten nach sich ziehen, weil auch und gerade die gemeinsame Suche nach dem guten Leben des gesellschaftlichen Schutzes durch ein faires Regulativ bedarf, wie es das Konzept der 'Gerechtigkeit als Fairneß' in Aussicht stellt. Die Abhängigkeit der Priorität des Gerechten vor dem Guten von einem atomistischen Personbegriff ist keineswegs zwingend...". J. von Soosten, "Gerechtigkeit ohne Solidarität? Deontologische Ethik in der Kritik", *Zeitschrift für Evangelische Ethik* (1992;1), p.65.

⁴¹ "Auf diese Weise verknüpft Rawls die Fragestellungen der beiden Gerechtigkeitstraditionen ... und nimmt aus beiden entscheidende Momente auf. Der aristotelischen Tradition folgt er, indem er Gerechtigkeit konzentriert vom Gleichheitsprinzip aus versteht. Er bestimmt das Gleichheitsprinzip dadurch genauer, daß er es im Sinn einer Gleichheit größtmöglicher Freiheiten interpretiert. Diese Gleichheit der Freiheiten zielt nicht zuletzt auf die Gleichheit der Beteiligungschancen am gesellschaftlichen Leben und an den gesellschaftlichen Gütern. Der biblischen Gerechtigkeitstradition aber folgt Rawls, auch wenn er nicht ausdrücklich auf sie Bezug nimmt, der Sache nach darin, daß er als wichtigsten Prüfstein jeder Gerechtigkeitstheorie die Position der Unterprivilegierten, der bei der Verteilung knapper Güter Benachteiligten anerkennt. Daß sie gegen Übervorteilung geschützt werden und daß ihre benachteiligte Situation verändert wird, ist für eine Theorie der Gerechtigkeit entscheidend." W.Huber, *Gerechtigkeit und Recht. Grundlinien christlicher Rechtsethik* (1996), p.190.

⁴² A. Smith: *Rettfordeling* (1982).

Ivar Asheim, professor in ethics at the Free Faculty of Theology in Oslo, very briefly refers to John Rawls in his 1991-book on ethics.⁴³ It appears that he in this book shares the view that Rawls, as a moral philosopher, has tried to make essential improvements in utilitarianism, without escaping its inherent weaknesses.

In his book, *Hva betyr holdninger? Studier i dydsetikk* (1997), Asheim analyses the Rawlsian conception in more detail. Here he focuses both on Rawls' conception of justice and on his idea of an overlapping consensus and considers the weight ascribed by Rawls to public reason. It is interesting to see that Asheim now – in matters of politics and ethics – finds a parallel concern between Rawls' ideas and the theological doctrine of the two kingdoms.⁴⁴

It should also be mentioned that **The Research Department of the Swedish Church**, in co-operation with **The Department of Studies of the Lutheran world Federation**, has given a Research Report concerning a *just* Europe. And here Rawls' conception of justice is at least taken explicitly into account as a highly relevant theory for understanding political and economic processes in Europe to day!⁴⁵

The theological approach to Rawls' philosophy in a Norwegian (and Scandinavian) context has been occasional and rather unsystematic.

This very short outline is, however, sufficient to demonstrate that there are different opinions in a theological context about Rawls' theory. Some theologians have been fundamentally critical – for different reasons, and some have accepted Rawls' conception as a contribution to increased justice, which might be endorsed theologically and

⁴³ Ivar Asheim: *Øyet og horisonten. Grunnproblemer i aktuell etikkdebatt* (1991), p. 181(note 157).

⁴⁴ “Slik Rawls reformulerer sin teori, koker den ned til et spørsmål om forholdet mellom politikk og etikk i et demokratisk samfunn. At dette spørsmålet reiser ømtålige grenseproblemer, er innlysende. I luthersk tradisjon har disse problemene vært søkt løst ved en teori som distingverer mellom to regimenter, et verdslig og et åndelig. Poenget med denne teorien er blant annet å unngå religionstvang. I saker som angår tro og livssyn, skal det herske full frihet. Tvangsmakt er bare tillatt i det verdslige regiment og for verdslige saker og forhold, det vil si til opprettholdelse av ytre samfunnsrettferdighet. Som vi har sett ..., innebærer denne læren visse differensieringer med hensyn til fellesskapsbegrepet. Lignende differensieringer foretar også Rawls, når han for det demokratiske, politiske samfunn som rettferdighetsteorien gjelder, sier at det verken er ‘a community’ eller bare en ‘association’, men noe midt imellom. Rawls’ teori har i det hele visse fellestrekk med distinksjonen mellom to regimenter, ettersom også den utvilsomt innebærer at politiske avgjørelser i bestemte sammenhenger må være religiøst nøytrale.” I. Asheim, *Hva betyr holdninger. Studier i dydsetikk* (1997), p.186f.

approved of by churches and Christians. This outline has also demonstrated that theologians, when referring to Rawls, mostly focus on his theory of justice, – his strong concern for elementary liberties and rights as well as the wider social implications which his liberal conception of justice is supposed to have. Of course Rawls’ basic ideas about liberty, equality, distributive justice, fairness and social co-operation apply within many sectors of life, not least within the domain of economy, which some theologians concerned with social and economic ethics have clearly seen. Rawls’ ideas of agreement and more specifically about an overlapping consensus are not so often taken into consideration from a theological point of view. This, in my opinion, is remarkable.

I will focus on Rawls’ *consensual* efforts and especially the vital assumption which is most clearly contained within his conception of an overlapping consensus: that the basic terms of co-operation should be endorsed from a Christian point of view (as well as from other perspectives). In approaching Rawls’ moral/political conception I will take my point of departure from a particular, but representative theological position: the theological conception of social-ethics as elaborated in the works of the German professor of ethics at the University of Bonn, Martin Honecker. My reasons for this approach are as follows:

1. Differences in historical and cultural development as well as differences in theological schools and between denominations have contributed to considerable variations, in theological ethics. In this situation I found it most appropriate to take my point of departure not from theology per se, but from one particular theological conception.⁴⁶

⁴⁵ *A just Europe. The Churches Response to the Ethical Implications of the new Europe* (1992), Ed. D. Hedin & V. Mortensen.

⁴⁶ Let me now remark that I have for my purposes mainly concentrated on the following works and articles from Honecker’s hand: *Konzept einer sozialetischen Theorie. Grundfragen evangelischer Sozialethik*, (J.C.B.Mohr, Tübingen, 1971); “Zur gegenwärtigen Bedeutung von Barmen V” (*Zeitschrift für Evangelische Ethik*, 1972, pp.207-218); “Theologische Kriterien und politische Urteilsbildung” (*Zeitschrift für Theologie und Kirche*, 1974, pp.472-490); “Das Problem der Eigengesetzlichkeit” (*Zeitschrift für Theologie und Kirche*, 1976, pp.92-130); *Sozialethik zwischen Tradition und Vernunft*, (J.C.B.Mohr, Tübingen, 1977); “Erfahrung und Entscheidung. Zur Begründung einer theologischen Ethik” (*Zeitschrift für Theologie und Kirche*, 1978, pp.485-502); *Das Recht des Menschen. Einführung in die evangelische Sozialethik*, (Gütersloher Taschenbücher/Siebenstern 290, Gütersloher Verlagshaus Gerd Mohn, Gütersloh 1978); “Die Denkschriften der EKD als Paradigma ethischer Argumentation” (in *Kirche im Spannungsfeld der Politik. Festschrift für Bischof D. Hermann Kunst D.D. zum 70. Geburtstag am 21. Januar 1977*. Ed. Paul Collmer, Hermann Kalinna, Lothar Wiedemann, Göttingen 1978, pp.131-

2. My approach is not an arbitrary one. Honecker explicitly refers to the theory of John Rawls. But that was not the deciding factor in my choice. Instead I have taken into account that Honecker is concerned with many of the problems Rawls thought central to his theory, and he is addressing them from a theological perspective. For instance he is concerned with the issue of pluralism and the need for some kind of consensual framework for coexistent parties within modern societies.
3. Just as Rawls has elaborated a consistent political philosophy with clear moral aspects, Honecker has presented us with a systematic account of theological social ethics with a strong concern for the importance of *sharing* some basic political values.
4. Honecker, who was, during his education, strongly influenced by Barthian theology, now assumes a (modern) Lutheran point of view in addressing basic questions of social and political ethics. He reinterprets and employs theological principles and models as for instance “the doctrine of the two kingdoms” and the distinction between “law and gospel” (issues which are very often discussed in a Norwegian Lutheran context too). I hope to contribute to this debate.

For these reasons, I believe Honecker’s theological conception of social ethics provides a proper and very interesting theological point of departure for my approach to Rawls’ ideas. This does not mean, however, that I will try to establish a kind of one-way communication between a more or less fixed and unquestionable theological position and Rawlsian political philosophy. I am convinced that Rawls will not leave the presup-

142); “Das Problem des theologischen Konstruktivismus” (*Zeitschrift für Evangelische Ethik*, 1980, pp.97-110); “Thesen zur Aporie der Zweireichelehre” (*Zeitschrift für Theologie und Kirche*, 1981, pp.128-140); *Perspektiven christlicher Gesellschaftsdeutung*, (Gütersloher Verlagshaus Gerd Mohn/-Gütersloh 1981); “Sind Denkschriften ‘kirchliche Lehre’?” (*Zeitschrift für Theologie und Kirche*, 1984, pp.241-263); *Einführung in die Theologische Ethik. Grundlagen und Grundbegriffe* (Walter de Gruyter, Berlin/New York, 1990); “Vernunft, Gewissen, Glaube. Das spezifisch Christliche im Horizont der Ethik” (in *Evangelische Ethik. Diskussionsbeiträge zu ihrer Grundlegung und ihren Aufgaben*, München 1990, Ed. Hans G.Ulrich, pp.124-123); “Rechtfertigung und Gerechtigkeit in der Perspektive Evangelischer Theologie” (in *Rechtfertigung und Gerechtigkeit, Jahrbuch des Evangelischen Bundes 23*, Göttingen, 1990, pp. 41-66); “Der Auftrag der Kirche und die Aufgabe des Staates” (In *Essener Gespräche zum Thema Staat und Kirche*, Vol.25, pp.49-76, Münster 1991, Eds. Heiner Marré, Johannes Stütting. The broad discussion that followed that lesson is referred on the pages from 76-102); “Zur ethischen Diskussion der 80er Jahre” (*Theologische Rundschau 56*, 1991, pp.54-97); “Europa og den evangeliske kirke” (in *Forankring og Forandring. Verdier for det nye Europa. Festschrift til Ivar Asheim på 65-årsdagen den 5. august 1992*, Universitetsforlaget 1992, pp.221-233, eds. Sverre Dag .Mogstad, Lars Østnor); *Grundriss der Sozialethik* (Walter de Gruyter, Berlin/New York 1995); “Vernunft, Affekt,

positions and principles of a theological social ethics undisturbed.

1.4. An outline of the dissertation

Rawls' philosophical/political conception of liberalism has, as already suggested, been intensively discussed in political and philosophical contexts all over the world for more than twenty-five years. His requirement that there be an overlapping consensus about “a regulative political conception of justice”⁴⁷ very clearly challenges moral theology, religious individuals, groups and churches, as participating members of a democratic regime, with a moral concern for the fair organisation of society. In my opinion, Rawls' theories should therefore be subjected to analysis from a *theological* point of view.⁴⁸ No systematic theological attempt to do this has been made. I will, by way of this dissertation, take a step in that direction.

In chapter 2 I will concentrate on some of the main features of the liberal society as a fair system of co-operation. In this connection I shall also consider the question how church and theology might conceive of the value-formation of society as such. This is an issue which Honecker has considered rather thoroughly, and it is helpful to draw upon these considerations. At the same time, the question necessarily arises as to whether it may be fruitful at all to employ an idea of political unity which includes certain shared moral and political values.

The difficulty in taking for granted some kind of unity with regard to political and moral

Erfahrung” (*In Fundamente der Ethik. Bilanz der Neuzeit*, Freiburg 1996, pp. 95-110, ed. Adrian Holderegger).

⁴⁷ “What is needed is a regulative political conception of justice that can articulate and order in a principled way the political ideals and values of a democratic regime, thereby specifying the aims the constitution is to achieve and the limits it must respect. In addition, this political conception needs to be such that there is some hope of its gaining the support of an overlapping consensus, that is, a consensus in which it is affirmed by the opposing religious, philosophical and moral doctrines likely to thrive over generations in a more or less just constitutional democracy, where the criterion of justice is that political conception itself.” J. Rawls, “The Idea of an Overlapping Consensus”, *Oxford journal of Legal Studies* (1987, Vol.7, No.1), p.1.

⁴⁸ Discussing the so called “Option für de Armen” as an issue of social ethics – immediately after having presented Rawls' theory of justice – Wolfgang Huber appropriately stresses that this kind of issue “zielt gerade auf eine theologische Theorie der Gerechtigkeit, die konsequent an der gleichen Würde aller Menschen ausgerichtet ist und eben deshalb in der Diskriminierung von Menschengruppen und in ihrem Ausschluß von aktiver gesellschaftlicher Teilhabe einen Verstoß gegen elementare Gerechtigkeitsforderungen sieht. Aus theologischen Gründen drängt sie auf eine politische Theorie der Gerechtigkeit, nach welcher die Freiheitschancen aller einzelnen den entscheidenden Maßstab für die Legitimität politischer Herrschaft darstellen.” W.Huber, *Gerechtigkeit und Recht. Grundlinien christlicher Rechtsethik* (1996), p.194.

values will be quite obvious when I turn to chapter 3, where a central background premise for Rawls' approach to the consensus-problem is displayed: *The fact of pluralism* brings Rawls to the "negative" conclusion that no comprehensive moral doctrine can (or should) be taken as the appropriate basis for settling the institutional architectonic and practice of democratic and pluralist societies. The question before us is, however, whether such a conclusion – which might in fact be considered a serious challenge and threat to many religious views – should be considered plausible.

One can hardly deny that the Christian church throughout history has often seen itself as having a responsibility for providing society with moral values and standards. The influence of such values on western culture until now cannot be disputed. The process of secularisation and the increasing diversity, however, has altered the situation radically. In modern societies there is a true conglomerate of influential moral ideas and conceptions of the good life that are conceived of more or less independently of, and sometimes even in opposition to, Christian ethics. The very "fact of pluralism" cannot be ignored, and in itself, would appear to render the ideal of a *Christian* society a rather utopian affair. The idea of individual freedom – with the accompanying idea of liberty of conscience – would appear to decisively render any attempt to restore the idea of society *qua* "corpus christianum" futile. Many citizens would doubtlessly consider it unfair if the coercive powers of the state were used to enforce controversial moral doctrines and values rooted in a particular (religious) belief-system upon society as a whole. And it appears that religious ethics cannot in the long run exclusively set the premises for the value-formation of modern democratic societies. It seems as Honecker for his part shares this presupposition.

But Honecker as well as Rawls, nevertheless, hold that there has to be established *common* institutions of government and laws, which can be widely recognised by the citizens, and that there has to be some *shared* basis for public reasoning, making it possible for the parties to justify to one another the very standards of fair coexistence and to establish agreed ways of solving political conflicts.

But Rawls very clearly stresses that no comprehensive view or doctrine can be taken as a common moral platform for settling the common institutional framework of modern democratic societies.

The question that the thesis has to answer is whether the Rawlsian assumption (that *no* comprehensive doctrine can fairly be made the very value-basis for ordering society) is really plausible. How should Rawls “negative assumption” be judged in a theological perspective? Honecker provides us with sufficient material for discussing this issue.

Rawls’ “negative” assumption; that *no* comprehensive moral doctrine should be given priority when defining the political values for the very basic structure of society, would obviously be more attractive – even from a theological point of view – if he simultaneously succeeds in establishing the idea⁴⁹ of an *overlapping consensus* as a credible and fair alternative, likely to gain adherents from (nearly) all groups, in societies characterised by the fact of pluralism.⁵⁰

After having analysed the hard facts of pluralism, I will turn to the “constructive”, and demanding task of analysing the crucial premises for a *shared* institutional framework for social co-operation elaborated by Rawls. He is convinced that fair coexistence in highly pluralist societies requires a consensus on elementary principles of justice, fair procedures, fundamental rights and liberties, and the kind of political and social institutions necessary to guarantee these goods. In chapter 4, I consider different aspects of the consensus-problem, with special weight on Rawls’ way(s) of developing a *consensual* framework.

Since the idea of having essential shared standards in a society, that can be *willingly* entered upon by all citizens, is so central within the *liberal* tradition to which Rawls belongs, it is important to see how he pursues typical liberal concerns by renewing and systematically employing an idea found in the Western political culture, namely the idea

⁴⁹ In this place it might be appropriate to underline how Rawls himself employs the frequently used terms; ‘idea’, ‘conception’ and ‘doctrine’ (and for my own part I shall normally follow Rawls): “I shall use the term *doctrine* for comprehensive views of all kinds and the term *conception* for a political conception and its component parts, such as the conception of the person as citizen. The term *idea* is used as a general term and may refer to either as the context determines.” J. Rawls, “The Idea of Public Reason Revisited”, *The University of Chicago Law Review* (1997;3), p.766 (note 3).

⁵⁰ Samuel Scheffler realises that political liberalism is in some respect attractive: “The appeal of liberalism derives to a considerable extent from its commitment to tolerating diverse ways of life and schemes of value.” But immediately he adds: “Yet this same commitment is also responsible for much of what is puzzling about liberalism.” S.Scheffler, “The Appeal of Political Liberalism”, *Ethics* (1994, Vol.1205, No.1), p.4.

of a basic social contract.⁵¹ Contractarianism aims at grounding the very organisation of society on *consent* from those governed. Hence I can more specifically proceed to Rawls' idea of an overlapping consensus, especially as conceived of in his most recent writings, - particularly in *Political Liberalism* (1993).

According to Rawls it is necessary that the most fundamental principles of fair coexistence "can be argued for as valid, or desirable or appropriate without reliance on any particular comprehensive view..."⁵² Rawls therefore avoids religious doctrines and even more comprehensive kinds of liberalism⁵³ as well as utilitarian welfare-principles and controversial ideological views when seeking an overlapping consensus about the value-system of the state and the central public institutions of society. Thereby he appears to challenge a theologically based perspective on the unity of society. It may therefore be of special interest to see how this challenge can be met, on premises given within a theologian conception of social ethics, as conceived of by a modern theologian as Martin Honecker.

Let it now be added, however: Since Rawls stresses so strongly that the political values, incorporated in the basic structure of society, are to be *voluntarily* recognised by the different parties, these political values can obviously not conflict decisively with the comprehensive doctrines to which citizens in pluralist societies feel most committed. Therefore an overlapping consensus has to be conceived of as a "consensus that includes all the opposing philosophical and religious doctrines likely to persist and to gain adherents in a more or less just constitutional society."⁵⁴ Although the content of an overlapping consensus can obviously not be taken from any *particular* religion or comprehensive value-system, the very idea of establishing an "overlap" could certainly not succeed at all if it could not somehow be *endorsed*⁵⁵ from the perspective of very

⁵¹ In other contexts I think that Rawls might have drawn upon other political ideas, which are considered essential in public reasoning.

⁵² K. Greenawalt, *Private Consciences and public Reasons* (1995), p.106.

⁵³ Although Rawls himself is obviously indebted to both John Locke and Immanuel Kant for his liberal conception, Locke and Kant are simultaneously taken as standard examples of a kind of comprehensive liberalism, that – according to Rawls – could not serve as a common ground for political coexistence in pluralist societies. Rawls himself intends to elaborate a *political* liberalism with a minimum of metaphysical ambitions.

⁵⁴ J. Rawls, "Justice as Fairness: Political not Metaphysical", *Oxford Journal of Legal Studies* (1987, Vol.7, No. 1), p. 225f.

⁵⁵ This is Rawls' own terminology. I will later consider more explicitly the proper meaning of *endorsing* an overlapping consensus.

diverse comprehensive political, philosophical and religious views. This means that even competing doctrines might be supposed to have some perspectives on society and the political conditions for coexistence in common.⁵⁶

Society, as a fair system of co-operation requires an overlapping consensus on vital criteria of justice, which political institutions should satisfy. Rawls makes it clear that; “Justice is the first virtue of social institutions, as truth is of systems of thought.”⁵⁷ Some elementary principles of justice should plausibly be taken as the core of an overlapping consensus. Achieving this kind of consensus is, however, a difficult project in the face of pluralism, even if it should not be substantively or metaphysically very demanding. Rawls is aware of the difficulties but holds, nonetheless, that a well-ordered society requires at least a minimal consensus in matters of basic justice, fair (re)distribution, social co-operation and the procedures for handling of conflicts.

It is a crucial premise in modern liberalism that the very organisation of society has to be grounded on *consent* from those governed and not on an absolute divine will. Then it is also of great importance that a common forum can be established, – making it possible for citizens to justify to one another the positions they take when basic issues of justice, matters of law or constitutional principles are at stake. Rawls stresses very clearly the *shared* premises for public reasoning.

And so does Honecker. Theological social ethics, as conceived of by Honecker, appears to share with political liberalism a basic confidence in public *reason* /political *ratio*, – and thereby in the ability of citizens to handle the problems within the “worldly realm” reasonably. This issue is very thoroughly discussed in chapter 5 where I also stress, however, that there are *limits* to the efficacy of political reason. Taking my point of departure from Honecker’s social ethics, I can employ central Lutheran “distinctions” when considering reasonable *political* ideas, conceptions and practices in the perspective of Christian faith. It should especially be emphasised that there are aspects of the

⁵⁶ I should also hold the possibility open that Rawls’ attempt to establish vital liberal premises for an overlapping consensus in pluralist societies, will prove far too optimistic. Maybe should a Rawlsian proposal for an overlapping consensus better be rejected. This possibility I will also have in mind.

⁵⁷ J. Rawls, *A Theory of Justice* (1971), p.3.

doctrine of the two kingdoms that can fruitfully be employed.⁵⁸

At the end of chapter 5 I introduce and discuss Rawls' idea of public reason more specifically. According to Rawls "the idea of public reason ... is a view about the kind of reasons on which citizens are to rest their political cases in making their political justifications to one another when they support laws and policies that invoke the coercive powers of government concerning fundamental political questions."⁵⁹ In "their political justification to one another" citizens are in need of a referential basis, that is fully accessible⁶⁰ to all the parties involved in social co-operation. Persons entering the public forum have to draw on a conception of justice, which satisfies the "publicity-condition", it has to be openly argued for and it can be reasonably assessed.⁶¹ And it may be widely endorsable.

Rawls also stresses that there is an inherent *ideal* in public reason which drives people with an elementary sense of justice to behave in accordance with an idea of "civic friendship" when entering the public forum.⁶² The moral commitment following from the idea of public reason itself is "materialised" in *the duty of civility*.

"And since the exercise of political power itself must be legitimate, the ideal of citizenship imposes a moral, not a legal, duty – the duty of civility – to be able to explain to one another on those fundamental questions how the principles and

⁵⁸ There are some problems of terminology when presenting (and using) this model in an English-speaking context. Sometimes I will nonetheless just use the phrase "doctrine of the two kingdoms". But often I will try to make the terminology more suitable for modern times by using instead the notion "two realms", as it is used for instance in the book *Two kingdoms and one world. A sourcebook in Christian Social Ethics* (1976, ed.K.H.Herz). Cf. for instance p.309f. And sometimes I even use the phrase "two regiments". The notion 'regiment', which according to *Webster's Encyclopedic Unabridged Dictionary of the English Language* (1994-edition), can be used about governmental rule, has also clear military connotations and is often associated with strong control. Cf. Webster's Dictionary, p.1208. When the notion is used theologically, however, it should not be forgotten that the term just reflects the meaning of 'regere' (to rule). Having this in mind I can sometimes appropriately use the phrase "two regiments".

⁵⁹ J. Rawls, "The Idea of Public Reason Revisited", *The University of Chicago Law Review* (1997;3), p.795.

⁶⁰ This implies that the others can fully understand it and also that it might be possible for them to accept it freely on fully reasonable premises.

⁶¹ This concern is expressed in a more nuanced way by Rawls himself when underlining that "the idea of publicity as understood in justice as fairness has three levels, which may be described as follows: The first ... is achieved when society is effectively regulated by public principles of justice. ... The second level of publicity concerns the general beliefs in the light of which first principles of justice themselves can be accepted... The third and last level of publicity has to do with the full justification of the public conception of justice as it would be presented in its own terms." J. Rawls, *Political Liberalism* (1993), p.66f.

⁶² J. Rawls, "The Idea of Public Reason Revisited", *The University of Chicago Law Review* (1997;3), p.771.

policies they advocate and vote for can be supported by the political values of public reason. This duty also involves a willingness to listen to others and a fair-mindedness in deciding when accommodations to their views should reasonably be made. ... As reasonable and rational, and knowing that they affirm a diversity of reasonable religious and philosophical doctrines they should be ready to explain the basis of their actions to one another in terms each could reasonably expect that others might endorse as consistent with their freedom and equality. Trying to meet this condition is one of the tasks that this ideal of democratic politics asks of us. Understanding how to conduct oneself as a democratic citizen includes understanding an ideal of public reason.”⁶³

If members of society – both groups and individuals – are to succeed in securing the required minimum amount of overlapping consensus about the very “basics” of society there has to be both a public forum for arguing, reasoning and justifying political standpoints in matters of vital shared interest, and there has to be standards and ideals for how to behave within this public forum. Thus a well ordered society requires a general adherence to the *duty of civility*, that is, a willingness to comply with elementary standards for social co-operation and public reasoning in matters of basic justice and essential conditions for social co-operation and coexistence. Reasonable people will agree to these terms. In [chapter 6](#) I primarily consider the ideals inherent in the idea of public reason and deal with the kind of conflicts that may arise in fulfilling one’s civic duty. For instance, the duty of civility requires that individuals and associations, both Christian citizens and Churches within democratic societies, be able and willing to make the adjustments required for participating in a public forum. This means that, when engaging in matters of shared political interest and basic justice, the arguments used by individuals and associations should be such that they can be generally accessible in terms of *common* reason.⁶⁴

A duty of civility, as elaborated by Rawls, may well be considered a necessity in modern pluralist democracies. It is, nonetheless, a question how far individuals and groups can avoid drawing on or referring to their deeper (private) moral convictions when engaging in public discourse or acting on behalf of some authority of society (as a judge,

⁶³ J. Rawls, *Political Liberalism* (1993), p.217f.

⁶⁴ That this might be a controversial claim can easily be seen. In the debate within the Norwegian Parliament before a new and liberal abortion law passed Stortinget, some of the representatives decided for instance to present their ultimate reasons for denying to vote for a liberal abortion-law, arguing explicitly from the Bible (Psalm 139). Even if such arguments were understood and perhaps even respected by many, a further reasoning and dialogue was thereby perhaps made difficult.

legislator etc.)⁶⁵ without ending up with a kind of split morality instead of just a virtuous accommodation to terms implicit in public reason. These tensions are reflected in the very title of chapter 6: “Citizenship, discipleship and the duty of civility.”

In chapter 7 I reach a conclusion. In this chapter I pay due attention to the fact that both individual Christians and Churches are political agents, playing a role within the political arena. The church has often considered it important to exert and maintain a Christian influence on law-making and public life. Should churches and individual Christians likewise endorse an overlapping consensus and comply with the constraints inherent in a duty of civility? It may be well worth noting that churches are not seldom trying to find new ways suitable for playing their *public* role. In matters of social ethics one has for instance – in Germany – made use of so called “*Denkschriften*”. The churches will avoid categorical statements about political issues. The very term “*Denkschriften*” indicates that churches may be rather tentative in their approach to matters of public interest, taking into account that all parties have to make some adjustments to the fact that the public forum is a field of *shared* interest.⁶⁶ Somehow churches themselves, when engaging in matters of social ethics and politics, seem to comply with the “consensual virtue”, *the duty of civility*, as the moral ideal inherent in the very idea of public reason. By accepting the terms of political ratio and public reason (with its inherent ideal), the “worldly realm” is theologically marked as a *shared*

⁶⁵ Thomas W. Pogge is one of the Rawls-experts, who most clearly has seen the dilemmas that might be actualised when trying to further coexistence and consensual virtues in society by practising a duty of civility: “Jeder Bürger wird durch eine Grundordnung regiert, die er selbst als gerecht anerkennt und kann dann auch die demokratisch getroffenen Entscheidungen akzeptieren, die seiner eigenen religiösen, moralischen oder philosophischen Weltanschauung zuwiderlaufen (vgl. PL 217). Diese Möglichkeit wird aber nur dann realisiert, wenn jeder seiner Pflicht zur Kulanz unter Bürgern (‘duty of civility’) nachkommt, d.h. sein politisches Handeln, d.h. Argumentieren, Entscheiden, Abstimmen, usw. in der Öffentlichkeit – nicht unbedingt innerhalb von Organisationen wie der Kirchen, Universitäten, Gewerkschaften usw. – nach bestem Wissen und Gewissen ausschließlich an dem gemeinsamen Kriterium, den gemeinsamen Richtlinien und den allen zugänglichen Informationen orientiert, wenigstens wenn es um Merkmale der Grundordnung selbst geht. Man soll sich in solchen Fällen also nicht von der eigenen umfassenderen Weltanschauung oder Konzeption des Guten beeinflussen lassen, noch von Informationen, die man nur aufgrund seiner Weltanschauung als Informationen betrachtet (z:B. daß ein bestimmter Religionsunterricht Gott mißfällt oder die Seele verdirbt). Das Achten dieser Pflicht ist Teil des Gerechtigkeitssinns, der für eine durch eine politische Gerechtigkeitskonzeption wohlgeordnete Gesellschaft erforderlich ist: In einer solchen Gesellschaft erfüllt jeder diese Pflicht, und es ist auch allgemein bekannt, daß jeder dies tut.” T. W. Pogge: *John Rawls* (1994), p.136f.

⁶⁶ It should here be mentioned that “*Denkschriften*” are not merely a kind of more or less casually statements from the side of the Church with regard to contingent problems arising in particular modern societies. In a fundamental “*Denkschrift*” are “*Aufgaben und Grenzen kirchlicher Äußerungen zu gesellschaftlichen Fragen*” focused in a more principled way. Cf. *Die Denkschriften der Evangelischen Kirche in Deutschland*, Band 1/1 (1981, 2.Aufl.), p. 43ff.

concern and as moral “commonwealth”. But even if committed to a duty of civility, as inherent in public reason, it cannot be denied that Christian discipleship as such also entails a moral duty, and reconciling the two obligations may be a difficult task.

This overview should make it clear that I am omitting many of the issues often associated with the examination of Rawls’ philosophical conception. I am concentrating on Rawls’ efforts to establish an agreed basis for social co-operation, and this project is considered throughout in a theological perspective. For the theological premises I take my point of departure clearly from the conception of Martin Honecker, His social ethics is therefore thoroughly introduced and analysed throughout the present thesis.

But primarily this study is concerned with Rawls, or better: with certain aspects of his philosophy. Even if one might find changes in Rawls’ liberal conception, there remains a remarkable continuity. The concern for establishing an agreed basis of fair coexistence among members of society as free and equal citizens is itself part of that continuum, – one which has been strengthened, fortified and well expanded upon during the years Rawls has been engaged in the political/philosophical debate. I believe it would be a mistake to view the stages of Rawls’ development as jumps from one position to another. Rather he has all the way critically assessed and refined his ideas. When Rawls, in his most recent writings, stresses the importance of agreeing on *shared* terms of public reason, this does not mean that other aspects, as for instance the contractarian approach, is taken as “outmoded”⁶⁷ or that an overlapping consensus should better be based on some quite different ideas of justice. Instead Rawls strengthens and expands the idea of an overlapping consensus by refining original ideas, seeking all the way support in vital ideas within the political culture. And he emphasises that:

“When political liberalism speaks of a reasonable overlapping consensus of comprehensive doctrines, it means that all of these doctrines, both religious and nonreligious, support a political conception of justice underwriting a constitutional democratic society whose principles, ideals, and standards satisfy the criterion of reciprocity. Thus, all reasonable doctrines affirm such a society with its corresponding political institutions: equal basic rights and liberties for all citizens, including

⁶⁷ In his latest article he writes that: “Each of us must have principles and guidelines to which we appeal ... I have proposed that one way to identify those political principles and guidelines is to show that they would be agreed to in the original position. Others will think that different ways to identify these principles are more reasonable.” J. Rawls, “The Idea of Public Reason Revisited”, *The University of Chicago Law Review* (1997;3), p.773.

liberty of conscience and the freedom of religion.”⁶⁸

Stressing the principle of rule by *consent*, requires that related ideas in Rawls’ conception are closely held together, namely the idea of establishing an overlapping consensus which has to be linked with Rawls’ contractarian approach and with his concentration on public reason with its inherent ideal of a duty of civility. The very idea of maintaining in society a public forum implies in itself that there already is a basic *consensus* about some *shared* terms of public reasoning and public justification. Some shared principles of justice may serve as a common referential basis for public reasoning about the basics and essentials of society. On the other hand the proper exercise of public reason may contribute decisively to maintaining a morally based “overlap” and to the strengthening of civic friendship.

Let it also be noted here that the problems raised by Rawls and his concern for establishing basic shared terms of social co-operation, seem to be a matter of interest for several theologians, not just Honecker. The very influential catholic theologian, Hans Küng, for instance, is concerned with parallel problems. Hans Küng, referring explicitly to Rawls, stresses in his *Projekt Weltethos* the need for a fundamental consensus about moral “basics”, although he has obviously a wider concern than Rawls.

“Gerade die plurale Gesellschaft, wenn in ihr verschiedene Weltanschauungen zusammenleben sollen, braucht einen **grundlegenden Konsens**, zu dem die verschiedenen Weltanschauungen beitragen, so daß sich zwar kein ‘strenger’ oder totaler, wohl aber ein ‘Overlapping Consensus’ (John Rawls) bilden kann.”⁶⁹

⁶⁸ J. Rawls, “The Idea of Public Reason Revisited”, *The University of Chicago Law Review* (1997;3), p.801.

⁶⁹ It may be of interest also to present the text preceding the lines I have quoted: “Denn der freiheitlich-demokratische Staat – im Gegensatz zum mittelalterlich-klerikalen (“schwarzen”) oder zum modern-totalitären (“braunen” oder “roten”) – muß von seinem Selbstverständnis her nun einmal weltanschaulich neutral sein. Das heißt, er muß verschiedene Religionen und Konfessionen, Philosophien und Ideologien dulden. Und dies bedeutete zweifellos einen ungeheuren Fortschritt in der Menschheitsgeschichte, so daß heute überall in der Welt eine ungeheure Sehnsucht nach Freiheit und Menschenrechten zu spüren ist, die kein westlicher Intellektueller, der westliche Freiheit ständig genießt, je als ‘typisch westlich’ desavouieren sollte. Der demokratische Staat, muß seiner Verfassung gemäß Gewissens- und Religionsfreiheit, muß auch Presse- und Versammlungsfreiheit und alles, was zu den modernen Menschenrechten gezählt wird, achten, schützen und fördern. Und trotzdem: dieser Staat darf bei all dem gerade keinen Lebenssinn und Lebensstil dekretieren, er darf keine obersten Werte und letzte Noten rechtlich vorschreiben, wenn er seine weltanschauliche Neutralität nicht verletzen will. Hierin liegt ganz offensichtlich das Dilemma jedes modernen demokratischen Staatswesens (ob in Europa, Amerika, Indien oder Japan) begründet: Was es rechtlich nicht vorschreiben darf, darauf ist es zugleich angewiesen. Gerade die plurale Gesellschaft, wenn in ihr verschiedene Weltanschauungen zusammenleben sollen, braucht einen **grundlegenden Konsens**, zu dem die verschiedenen Weltanschauungen beitragen, so daß sich zwar kein ‘strenger’ oder totaler, wohl aber ein ‘Overlapping Consensus’ (John Rawls) bilden kann.” H. Küng in: *Projekt Weltethos* (Fourth

1.5. Some methodological reflections

Theology employs different methods. Obviously, the same methodology cannot be applied to areas of church history, bible-exegesis, dogma and (social)ethics. And there are different approaches to ethical issues within theological ethics, – just as there is within moral philosophy. We certainly possess neither an authoritative philosophical method nor a “canonical” theological method in ethics. Martin Honecker, correctly I believe, observes that there exists a methodological pluralism not just within philosophy, but within theology as well.⁷⁰ He does not claim methodological exclusiveness for theological ethics.⁷¹

I. *Ethics* can be understood as a theorising over (everyday) moral life with special regard to the norms, values and virtues that are implied. This theoretical reflection might be merely descriptive or it can be normative in its aim. Like Honecker I take a normative approach. The term *social-ethics* gives ethics a particular scope, as is clearly expressed by Honecker:

“Ethik hat die Frage zu bedenken: Was soll ich tun? Sozialethik im besonderen hat sich der Frage zu stellen, welche Bedingungen, Voraussetzungen, Strukturen gegeben sein müssen, damit Menschen verantwortlich handeln und zusammenleben können. Sie hat die Gesellschaft, die Vielfalt sozialer Beziehungen und Bezüge im ganzen zu bedenken, weil diese das Bezugsfeld menschlichen Handelns darstellen. Eine Einführung in die Sozialethik hat folglich das Verhältnis von Mensch und Gesellschaft zum Thema...”⁷²

The present project belongs within the domain of normative social ethics. And it should not be difficult to consider Rawls’ normative theory of justice and his conception of

edition,1992), p. 48f. Although Küng explicitly refers to Rawls, there are obviously some differences between them too. Küng is aiming at a common “Weltethos”, while Rawls is aiming at a morally grounded political consensus about the basic structure and main institutions of society.

⁷⁰“Daran wird deutlich, daß ich nicht eine bestimmte ethische Methode und Theorie als allein gültig übernehmen kann. Der Pluralismus ethischer Ansätze und Methoden ist ein Faktum, dem ein Lehr- und Studienbuch Rechnung zu tragen hat.” M. Honecker, *Einführung in die Theologische Ethik. Grundlagen und Grundbegriffe* (1990), p.vi.

⁷¹ He emphasises that; “Einer Darlegung der Ethik als theologischer Disziplin sind vorab drei Klarstellungen vorzuschicken: (a) Es gibt keine besondere und spezifisch theologische *Methode* der Ethik. Auch theologische Ethik kann in ihren Methoden nur die Arbeitsformen und das Vorgehen jeder anderen Ethik übernehmen. (b) Die *Grundbegriffe* der Ethik sind in der Regel keine spezifisch christlichen Begriffe (z.B. Norm, Pflicht, Tugend usw.). (c) Auch die Paraklese als solche ist noch keine spezifisch christliche *Redeweise*. ... Es liegt auf der Hand, daß eine Ethik, die Lebensfragen thematisiert und nicht einfach Lehrsätze anwendet, nur vereinbar ist mit einer 'offenen' Auffassung von Dogmatik und systematischer Theologie.” M. Honecker: *Einführung in die Theologische Ethik* (1990), p.20f.

⁷² M. Honecker: *Das Recht des Menschen* (1978), p.17.

political liberalism within a perspective of theological social ethics.

Rawls, however, emphasises, especially in his book about *Political Liberalism*, that his conception is strictly *political* and, as such, not to be taken as a comprehensive moral doctrine. Despite this, Rawls elaborates a political theory of justice that is *morally* grounded and an idea of an overlapping consensus that can be maintained for *moral* reasons. Honecker is right when writing that “John Rawls will erneut Gerechtigkeit und Moral – wie vor ihm Platon, Aristoteles, Kant – aneinander binden.”⁷³ Rawls’ conception of *political* philosophy clearly presupposes a moral perspective. Even pluralist societies require that there be some essential norms, binding for moral reasons, not just upheld by the means of coercive state power. Our normative ethical approach to Rawls’ political philosophy therefore genuinely accords with Rawls’ own conception.⁷⁴

II. Modes of social ethics have to accord with life-*reality* and the *complexity* of modern societies. That is clearly reflected in Honecker’s balancing of “einen Ansatz 'von oben' und einen Ansatz 'von unten’”⁷⁵ and in the stress he puts upon the requirement of a “Konvergenzargumentation”.⁷⁶ There has to be a simultaneity of theological reflection, general arguments drawing on a morally laden idea of “humanity”, as well as general insights stemming from the different sciences. All of these are factors to be weighed in reaching a proper solution in “worldly” affairs.

⁷³ M. Honecker *Einführung in die Theologische Ethik* (1990), p. 190.

⁷⁴ Rawls himself is (still) considered one of the main representatives of modern normative theory in political science. Daryl Glaser defines normative theory (a bit loosely) as follows: “The remit of the term can, however, be defined more broadly, to cover all political theorising of a prescriptive or recommendatory kind: that is to say, all theory-making concerned with what ‘ought to be’, as opposed to ‘what is’, in political life.” D. Glaser, “Normative Theory”, *Theory and Methods in political Science* (1995, eds. D. Marsch and G. Stoker), p.21. And after he has referred some of the critique against normative theory as such, Glaser adds: “Despite such criticism, normative theory remains a living and vital branch of political studies. Indeed, it has benefited from a considerable revival of interest since the early 1970s, thanks in part to the influence of writers such as John Rawls and Robert Nozick.” *Ibid.*, p.21f.

⁷⁵ M. Honecker, *Das Recht des Menschen. Einführung in die evangelische Sozialethik* (1978), p. 128

⁷⁶ “Für eine gesellschaftsbezogene, das Politische einschließende Ethik läßt sich das Christliche nicht mehr autoritativ ermitteln - sei es mit Hilfe historisch-kritischer Exegese, sei es aufgrund einer axiomatischen Dogmatik... Der theologische Beitrag – gemeint ist der Beitrag der theologischen Fachwissenschaft – zu ethischen Urteilsbildung kann nur der Diskussionsbeitrag eines Dialogpartners in einem umfassenderen Kommunikationsprozess unter der Christen sein. An die Stelle der theoretischen Behauptung einer bestehenden Konvergenz von gegenwärtiger gesellschaftlicher Situation und christologischer Entscheidung hat eine Konvergenzargumentation zu treten, in der die theologische Besinnung auf das Christliche nur ein Argument neben anderen, beispielsweise der allgemeinen Humanität oder auch verallgemeinerungsfähiger, wissenschaftlicher Erkenntnisse ist.” M. Honecker, “Theologische Kriterien und politische Urteilsbildung”, *Zeitschrift für Theologie und Kirche* (1974) p.489.

There appears to be parallels between Honecker's ideal of a "Konvergenzargumentation" and Rawls' attempt to reach wide reflective equilibrium.⁷⁷ Aiming at a wide reflective equilibrium means that we are seeking support for moral beliefs by alternately and systematically narrowing and widening our perspective, thereby taking into account both our (intuitive) judgements in particular cases, and our more principled views, drawing also on wider theoretical insights of a moral as well as a non-moral kind.⁷⁸ Thereby the most appropriate moral point of view is achieved in an ongoing process, by seeking a proper balance between the moral intuitions we have about concrete (contingent) cases, the principled views we also hold, and the other theoretical considerations we are making. Although a definitive equilibrium may never be achieved, the constant refinement of our moral judgements and the public testing of our moral beliefs allows for an ethical approach in matters of politics that is both elastic and consistent. More strongly stated, seeking wide reflective equilibrium aims at increasing – in an ongoing process – the *coherence* among the moral intuitions, considered judgements, general norms, reflected principles, firm beliefs and theoretical insights we have.⁷⁹

⁷⁷ Rawls' works do not contain very extensive discussions about methodology as such. Methodological questions are raised within different contexts and might be taken into consideration in those parts of Rawls' theory where such problems are more or less clearly implied. In this preliminary methodical chapter, however, I have found it necessary to comment briefly on a couple of methodical aspects most characteristic of the Rawlsian approach.

⁷⁸ Norman Daniels describes very appropriately how wide the horizon of wide reflective equilibrium might be: "We not only must work back and forth between principles and judgments about particular cases, the process that characterizes narrow equilibrium, but we must bring to bear all theoretical considerations that have relevance to the acceptability of the principles as well as the particular judgments. These theoretical considerations may be empirical or they may be moral. ... It is important that we see how diverse the types of beliefs included in wide equilibrium are, as well as the kinds of arguments that may be based on them. They include our beliefs about particular cases; about rules, principles, and virtues and how to apply or act on them; about the conflict between consequentialist and deontological views, about partiality and impartiality and the moral point of view; about motivation, moral development, strains of moral commitment, and the limits of ethics; about the nature of persons; about the role or function of ethics in our lives; about the implications of game theory, decision theory, and accounts of rationality for morality; about human psychology, sociology, and political and economic behavior; about the ways we should reply to moral scepticism and moral disagreement, and about moral justification itself. As is evident from this broad and encompassing list, the elements of moral theory are diverse. Moral theory is not simply a set of principles." N. Daniels, *Justice and Justification. Reflective equilibrium in theory and practice* (1996), p.6.

⁷⁹ Tranøy discerns a stronger and a weaker sense of the notion *coherence*. Coherence in the strongest sense shall not be defined here. But the way Tranøy defines coherence in a weaker sense to a wide extent applies in this context: "Det vi trenger, er et koherens-begrep som ligger midt mellom kravet om motsigelsesfrihet, som tydeligvis er et minstekrav for ordnede kunnskapsmengder, og et strengt deduktivt koherens- eller systemideal. Vitenskapenes verden byr på høyst forskjellige muligheter til å oppfylle slike ønskemål. For mens både konsistens (motsigelsesfrihet) og konsekvens (deduktiv følgeriktighet) er relativt greie å definere eller i alle fall å eksemplifisere, er de mellomliggende koherens-begreper på ingen måte lette å gjøre rede for selv om behovet for dem er aldri så påtrengende. Det som da ofte synes å skje, er at

Inspired both by Honecker's way of establishing a "Konvergenzargumentation" and Rawls' way of seeking a wide reflective equilibrium, I am, throughout my thesis, alternating between political liberalism and theological social ethics, seeking a "Vermittlung"⁸⁰ between Rawls' political approach and Honecker's moral concern. This indicates that I need not first establish a comprehensive theological platform, with the intention of correctly assessing and properly correcting *political* liberalism from premises derived from some kind of privileged religious insight. It should be clear that I am aiming at a more principled clarification, but will not avoid considering a more practical "test-case" (as in chapter 6).

III. An important aspect of a methodological approach aiming at (wide) *reflective equilibrium* is that political arrangements, schemes and values are in principle taken as *revisable*. Political conceptions as well as social institutions can always be improved, as can the moral theories which underlie them. Increasing of *coherence*, which is what one aims at when going for a (wide) reflective equilibrium might, at best, be taken as an indication of truth, but coherence in itself can never guarantee that a position of truth has really been attained. In political liberalism Rawls accordingly makes a crucial distinction between "truth" and "reasonableness". Within the domain of the political it is sufficient to aim at (the most) *reasonable* solutions.

To some extent this corresponds with Honecker's concern for avoiding (religious) absolutism in politics, aiming instead at a more *reasonable* and even pragmatic approach in matters belonging within the "worldly realm". Citizens in highly complex societies, - sharing much of the same uncertainty⁸¹, have to handle common problems on the basis

kravene om konsistens og koherens går over i eller erstattes av vagere, men ikke desto mindre artikulerbare krav om system, orden og sammenheng. Begreper, prinsipper og teorier som stilles sammen, må være relevante for hverandre, ha noe med hverandre å gjøre, må kunne inngå i "logiske" forbindelser med hverandre, gi opphav til hypoteser og ideer, øke kunnskapsmengdens fruktbarhet og forskernes evne til innen systemet å generere nye interessante påstander eller teorier. I dette tror jeg vi kan se noe karakteristisk for strukturen i det vi kunne kalle metodologiske normer som ordnet system. Dets ulike normer viser seg ofte å være 'beslektet' fordi, med skiftende omstendigheter, går de over i hverandre, forutsetter de hverandre, erstatter de og samarbeider de med hverandre." Knut Erik Tranøy: *Vitenskapen – samfunns-makt og livsform*, Universitetsforlaget 1986 (4th edition 1994), p.137

⁸⁰ For the use of this term cf. M.Honecker, *Das Recht des Menschen. Einführung in die evangelische Sozialethik* (1978), p.149

⁸¹ "Keine Ethik verfügt nämlich über einen Vorrat an abrufbaren Einsichten für alle Lebenslagen. Sie teilt vielmehr die Ratlosigkeit und Verlegenheit der von neuen Herausforderungen, neuen Situationen und neuen Aufgabenstellungen Betroffenen." M Honecker: *Einführung in die Theologische Ethik. Grundlagen und Grundbegriffe* (1990), p x.

of shared values, political reason and the practical and theoretical insight they have gained. Honecker takes the essential Lutheran distinctions, and in particular the doctrine of the two kingdoms, as providing a proper systematic-theological approach for determining – among other things – our responsibility in matters of politics and social ethics. More correctly, one should say that Honecker to a large extent takes his theological point of departure in a reinterpretation of the doctrine of the two kingdoms as a hermeneutic key when approaching the domain of the political.⁸² I think that “the doctrine of the two kingdoms” provides an appropriate systematic-theological “gateway” to Rawls’ political conception, as it is expressed both in his theory of justice, in his conception of an overlapping consensus and, last but not least, in his idea of public reason.

This allows me to proceed in accordance with Honecker’s theological approach without violating Rawls’ aim of establishing a strictly political and widely shared platform for coexistence, that may even be morally backed up on genuinely religious (and other) grounds. And it further allows me, in accordance with the distinction between “the two realms”, to avoid making a theological claim of privileged insight in “worldly” things.

IV. I will conclude by making some remarks concerning the use of terminology, specifically with regard to expressions referring to Christian or theological thought. By using the term *Christian ethics*, as I often do, I do not refer to any “authorised” theological system of ethics⁸³. The notion *Christian ethics* might, however, sometimes be

⁸² Honecker fears, however, that theological models like *the doctrine of the two kingdoms* might end up as formulas of little use (“Leerformel”) for complying with the present political/moral problems which people in modern societies are really facing: But nonetheless he finds hardly a better theological “device” for paving the way most properly into the domain of the political, even if he is very much aware of the apories, problems and historical abuses of this doctrine. Tentatively at least, he will nonetheless set out from a new interpretation of the doctrine of the two kingdoms: “Angesichts der geschilderten Aporien und offenen Fragen habe ich vorgeschlagen, die Zweireichelehre neu zu interpretieren. Dieser Vorschlag ist, wie nachdrücklich betont sei, *eine* Hypothese, und auch nicht die einzig mögliche.” M. Honecker, “Thesen zur Aporie der Zweireichelehre”, *Zeitschrift für Theologie und Kirche* (1981), p.136f.

⁸³ The phrase *Christian ethics* might of course also be taken in a rather polemic sense, or it might at least signal that the *relation* between a theological approach to social ethics and philosophical or strictly political approaches is taken to be fundamentally conflict-laden. The famous theologian, *Dietrich Bonhoeffer*, may without doubt be supported by many theologians when he at the very outset of his *Ethics* states that: “The knowledge of good and evil seems to be the aim of all ethical reflection. The first task of *Christian ethics* is to invalidate this knowledge. In launching this attack on the underlying assumptions of all other ethics, *Christian ethics* stands so completely alone that it becomes questionable whether there is any purpose in speaking of *Christian ethics* at all.” D. Bonhoeffer, *Ethics* (English translation 1955. First published in Germany 1949), p. 17-19. Quite another view, however, can be found in the theological ethics, as conceived of by the influential Scandinavian theologian, *Knud E. Løgstrup*, who even wants to avoid the term *Christian* as a qualification of a particular kind of ethics. Knud E. Løgstrup obviously fears a situation in society where “Gud er blevet argument, retsligt, moralsk og politisk. Tavsheden er brudt,

considered an appropriate term when comprising a number of more or less different approaches to questions of morality which share the premise that they take their point of departure from Christian belief or Biblical sources. The term *theological ethics*, which is also used in my thesis, may often be more adequate and also less controversial, especially if one just wants to underline that moral issues are being considered in the light of theological principles.⁸⁴ In addition one might use the expression *moral theology*⁸⁵, as Rawls himself can do. He quite simply uses the phrase ‘moral theology’ about kinds of ethics that are in a stronger or a weaker sense explicitly religiously grounded.⁸⁶ But even if I sometimes find it appropriate to use the expressions *moral theology* or *Christian ethics*, I will thereby not undermine a clear presupposition of my thesis; – that all parties involved in social co-operation can be assumed to share some common moral ground when addressing political values, social norms, institutionalised standards of justice, and terms of public reasoning.

ofte på en meget larmende måde i rethaveri og i en utålelig og fraseaktig bedre-viten. Hvad enten det derfor drejer sig om at tage stilling til ægteskabslovgivning, børneopdragelse, til spørgsmålet om straffens motivering skal være gengæld eller prevention, til en politisk-økonomisk opfattelse af, hvordan samfundet skal indrettes etc. må den kristne tage stilling dertil på ganske de samme vilkår som enhver anden.”K.Løgstrup, *Den etiske Fordring* (1969), s.128.

⁸⁴ It also makes sense to make a distinction between *Christian* morality and *theological* ethics in accordance with the widely accepted distinction between ethics and morality. Thus Christian morality might be understood as a practice *motivated* by norms, values, ideas inherent in the Christian faith. And theological ethics might be understood as the theological (theoretical) reflection over this kind of morality.

⁸⁵ The expression “*theologia moralis*”, which comes close to the notion “moral theology” can be found already by G.Calixt as early as in 1634. Cf. *Epitome theologiae moralis* (1634). This terminology seems to some extent also to come close to the terminology recently used by Trutz Rendtorff: In his “ethical theology” he will make it possible “Ethik als eine Grunddimension der Theologie zu begreifen und den eigenständigen ethischen Sinn von Theologie zu erkennen.” Cf. *Ethik. Grundelemente, Methodologie und Konkretionen einer ethischen Theologie*, (1990), p.7.

⁸⁶ Cf. for instance *Political Liberalism*, p.xxiv where Rawls uses the notion *moral theology*: “These things they thought they knew with the certainty of faith, as here their moral theology gave them complete guidance.” *Ibid.*

2. THEOLOGY, POLITICAL LIBERALISM AND THE VALUE-FORMATION OF SOCIETY

2.1. *The problem*

Although I touch upon some sociological issues, I have no intention of providing any detailed sociological analysis. Let me just remark that sociologists have yet to reach any agreement about the fundamental basis of society.⁸⁷ By the way, – although some classical sociologists like Max Weber may be referred to in *A Theory of Justice*⁸⁸, Rawls does not draw upon particular sociological theories.

The foundation of society is also a matter of fundamental interest in theological social ethics. Christians involved in social co-operation within the framework of society are usually very much concerned about the kind of values which underlie the social structure and form the basis for coexistence. Rawls makes it quite clear from the very outset of the first chapter of his monumental work, *A Theory of Justice*, that he has to “begin by describing the role of justice in social co-operation and with a brief account of the primary subject of justice, the basic structure of society”⁸⁹. Society, or better – *the institutional scheme of society* – settles in a very decisive way the terms for cooperation, distribution and implementation of citizens’ rights, duties and liberties.

The major institutions of society have a decisive influence on the welfare of each citizen. And thus *both* the essential social and economic arrangements such as the institution of the family, the rules for acquiring property, the organising of the means of production on the one hand, *and* the legal and governmental safeguarding of elementary rights and liberties such as freedom of thought, the liberty of conscience, and the right to practice one’s religion on the other hand, have an essential impact on the type of life that it is possible for individuals, groups and associations to lead. The major institutions of society, viewed as a single scheme, largely determine citizens’ opportunities, life-plans, legal rights and duties. This is why Rawls makes the basic structure of society his

⁸⁷ The sociologist, Joachim Israel, for instance emphasises this kind of fundamental disagreement, confessing that “det rår dyp uenighet og meningsulikhhet mellom sosiologer om hvordan man skal oppfatte samfunnet.” J. Israel, *Sosiologi* (Norwegian edition Oslo 1973), p.63.

⁸⁸ There can obviously not be a sharp division between political philosophy and sociology. The very phenomenon of *society* makes them overlap.

⁸⁹ J. Rawls, *A Theory of Justice* (1971), p.3.

primary subject. But the institutional framework of society faces according to Rawls a crucial test: How are justice, liberties and elementary rights for individual citizens in fact promoted and secured by the basic structure itself? The institutional scheme of society⁹⁰ is to be established as a suitable framework for individuals' fundamental life-prospects and conceptions of the good.

The idea of *society*, and not least the interdependence between the “architectonic” of society and vital ideas of religion and ethics, has been subject to different conceptions throughout history and may, in principle, have no fixed definition. Society continuously changes. I think that Paul Barry Clark has made that clear in a way very much to the point:

“This does not mean that there is something that we cannot call society. It is, however, a strange beast. It is rather like the duality of light, which is both wave and particle, uncertain in its appearance; for it appears as simultaneously substantive and as reflexive. As substantive it appears definable and fixed, as reflexive it appears fluid and without boundaries for no sooner are the boundaries imagined than they have changed. Those boundaries might be imagined by ethics or by theology but no sooner are they imagined than society changes. This implies that the relation between ethics, society and theology is one of constant challenge, interpenetration, change and fluidity. They gather together briefly in a moment, but no sooner is the moment grasped than the grasping changes the relation and destroys the moment. So it is with reflexive relations.”⁹¹

To speak of *society* is normally to speak of individuals placed within a certain social order and this gives rise to the question whether society should appropriately be taken as prior to the individual. In a sense it certainly is. One is born into a society, some social patterns already exist, social, political and economic institutions are already at hand. There may even be shared traditions, some widely recognised moral values and settled standards of justice as well as distributive mechanisms.

A more individualistic perspective on society cannot entirely be ignored: It is for instance a crucial idea – at least within liberalism – that members of society have elementary rights and liberties, and should be allowed to pursue beliefs, talents, interests and conceptions of the good, independently of any commitment merely derived from their belonging to a social and political entity.

⁹⁰ I mostly prefer the phrase “institutional scheme of society” instead of the more Rawlsian phrase “basic structure of society”.

⁹¹ P. B. Clarke in: *Dictionary of Ethics, Theology and Society* (1996, Article on SOCIETY), p.785.

But even for citizens acting on their own, there obviously have to be some common rules by virtue of which the freedom of an individual is taken as compatible with a similar freedom for others. Members of society (like chess-players for instance) have to play by some vital shared rules if their social interplay is to allow any possibility of realising goals or ends which are in the interest of all individuals. It seems as if the well-being of society as such is dependant on whether the coexistent members of society really succeed in establishing and defending some kind of *common good*. But then one might ask: How is it possible for citizens to share some substantial norms for “fair interplay”, and even have a shared aim or a “common good” as an acceptable point of orientation for them all? It is not easy to see from where to derive the values and the components required for establishing an institutional framework of coexistence upholding shared standards and thereby preventing social disintegration.

It cannot be denied that the church – as an association with a considerable influence at least within western societies – has always had an idea about what a good society should be like, and what might threaten its order. The way the structural framework of society is arranged, the way a genuinely *shared* basis for coexistence is conceived, eventually also approved and ultimately realised within such a framework, seems to be of as great importance to citizens generally as it is for the Church as an association within society. Thus theological social ethics will permanently take into consideration the way society is structured, the understanding of the common good, the practising of distributive principles, the coercive role of the state, the rights of individual citizens, their liberties, freedom of conscience etc. And in fact churches have often issued more or less authoritative pronouncements to the question of the common good and about political systems, social issues and the actual problems which are typical of modern societies.⁹²

Those concerned with the problems of securing a moral basis for coexistence and social co-operation in modern societies – among which churches and church-members may safely be assumed – should find Rawls' political liberalism of considerable interest. But should the church, or at least individual church-members, really “support” a proposal for a broad and morally grounded consensus, – conceived of on Rawlsian premises? Can political liberalism provide for an organisation of society that is morally and politically

better, more acceptable and fairer than other schemes? Is there any reason to believe that Rawlsian liberalism is in a better position than other political ideologies, moral theories or Christian belief-systems to produce an adequate “overlap” or a shared conception of the “common good”, or that that conception is sufficient to establish the requisite unity given the present deep diversity which characterises modern societies? Is there any theological reason to expect that a “common good” or an “overlap”, conceived of on liberal premises could really be endorsed from genuinely theological premises?⁹³

2.2. Different perspectives on society

2.2.1 A consensus- versus a conflict-perspective?

Although the term “overlapping consensus” is mostly used in John Rawls’ later writings, he has always emphasised his concern for a broad agreement on the basic structure of society. It therefore seems most appropriate to consider him a typical representative of a consensus-perspective on society.⁹⁴

Sociologists who defend a consensus-theory (as functionalists like Talcott Parsons do) usually regard society as “an *integrated whole*, composed of structures which mesh closely with one another”.⁹⁵ Anthony Giddens, a well-known modern sociologist, takes it to be typical of those defending a consensus-model that they think of society as a set

⁹² Cf. for instance the use of Encyclicals in the Catholic Church, and the publishing of so-called “Denkschriften” from the side of the Protestant Churches in Germany in recent time.

⁹³ I take my approach to this question from the perspective of theological social ethics as conceived of by Martin Honecker. Of course it might also have been very interesting to consider this question from another theological point of view; for instance from a Barthian perspective, from a Catholic perspective etc. That will be done, - only as far as it illuminates Honecker’s way of thinking or if it is appropriate to contrast Honecker’s conception of social-ethics with some other influential position, - for instance the Barthian one.

⁹⁴ It is worth mentioning that Axel Smith, one of the few Norwegian theologians, who has taken Rawls’ theory of justice into consideration, obviously finds the Rawlsian scheme of society too harmonious and therefore introduces a conflict-perspective *in addition*. After having considered the problem of distributive justice in utilitarianism and in Rawlsianism Smith continues: “For å finne fram til rettferdige løsninger på den typen konflikter vi har for oss kunne en ved siden av utilitarismens og Rawls’ løsningsmodeller trenge flere andre modeller som kunne ivareta andre hensyn. Det burde for eksempel også være en modell som bare aksepterte ordninger som gir de gruppene som fra før av står lavest på den sosiale skala større fordeler enn andre, slik at sosiale ulikheter i samfunnet systematisk ble bygget ned.” A. Smith: *Rett fordeling. Om normer for en kristen politisk etikk* (1982), p. 166. (I think Rawls through the difference-principle in fact meets this claim from Smith.) And so Smith continues: “Men det kan også være bruk for modeller som på en mer fundamental måte bryter med grunnleggende forutsetninger hos Rawls. Rawls er det sosilogene betegner som en *konsensusteoretiker*. (Allardt) Han går ut fra at rettferdige løsninger er å finne langs en linje som forutsetter *avveining* mellom forskjellige interesser. Det hender at den rettferdige løsningen ikke er å finne langs en slik linje, men bare ved å ta utgangspunkt i en helt grunnleggende *konflikt* i samfunnet.” *Ibid.*, p.166.

⁹⁵ A. Giddens: *Sociology* (1995, second edition), p.721.

of interdependent parts, which are mutually supporting and constraining upon one another. Giddens' characterisation of this interdependence from a sociological perspective takes the form of a rather common analogy:

“the analogy here is not with the walls of a building, but with the physiology of the body. A body consists of various specialised parts (such as the brain, heart, lungs, liver and so forth), each of which contributes to sustaining the continuing life of the organism. These necessarily work in harmony with one another; if they do not, the life of the organism is under threat. So it is according to Durkheim (and Parsons), with society. For a society to have a continuing existence over time, its specialised institutions (such as the political system, religion, the family and the educational system) must work in harmony with one another. The continuation of a society thus depends on cooperation, which in turn presumes a general consensus, or agreement, among its members over the basic values.”⁹⁶

And so one might consider it typical of consensus-models that they take it to be essential that a society is organised in accordance with an overriding value-system, which existing authorities are trying to maintain. Ideally spoken this value-system should also be taken for granted by most citizens.⁹⁷ In harmonious and “balanced” societies there has to be – or so it would seem – a strong concern for common norms and values and accordingly also for the way these norms and values can most appropriately be made widely acceptable. The role of basic institutions, such as the family, the school-system, the courts and also the churches, in the process of creating and promulgating society's “internalised” common norms and values, has to be considered rather crucial.

Conflict theorists, on the other hand, consider the existence of antagonisms essential to a

⁹⁶ A. Giddens: *Sociology* (1995, second edition), p.721.

⁹⁷ Some sociologists, however, obviously mean that a consensus-perspective on society necessarily implies a high degree of social control. This is for instance emphasised by Joachim Israel: “Derfor er det nødvendig ... at samfunnet skaper og bevarer ett eneste verdisystem og forsvarer seg mot angrep som tar sikte på å endre dette systemet. Hvordan oppnår man dette integrerte og eneste verdisystem? Gjennom sosialiseringprosessen og gjennom sosial kontroll som fører til likeartede meninger og vurderinger (konsensus = samsvar i meninger og vurderinger). Ved sosialiseringprosessen blir barn via oppdragelse og utdanning indoktrinert til å lære seg å akseptere det herskende eller dominerende verdisystemet eller, om man så vil, den herskende klasses verdisystem. Sosial kontroll vil si alle de tiltak som hindrer at det oppstår avvikende atferd, eller som tilbakefører avvikende atferd til den atferd som faller sammen med det dominerende verdisystemet. Sosial kontroll blir utøvd av politi og domstoler, av barneverns- og edru-skapsnemnder, av skoler og utdanningsanstalter, av kirker og rotary-klubber (i hvert fall forsøker de sistnevnte å gjøre det. Om de lykkes i samfunn som våre, er en annen sak)... For å resumere: Hos dem som snakker om at samfunnet er et system i balanse, understrekes betydningen av sosiale og moralske normer, av et allment godtatt verdisystem, av likeartet atferd. Sosialisering og sosial kontroll blir ansett for å være de viktigste samfunnsmessige prosessene. Man finner at avvikende atferd forstyrrer balansen og integrasjonen i samfunnet. Konflikter blir betraktet som forstyrrende momenter som truer balansen, likevekten og den sosiale integrasjonen.” J. Israel: *Sosiologi* (Norwegian edition, 1973), p.61. The perspective of Joachim Israel himself should rather be characterised as a conflict-perspective.

society.⁹⁸ Conflicts normally exist in a society as a result of the ubiquitous scarcity of basic goods; raw materials, economic resources, food and social goods, and the perception of injustice in the distribution of social goods and scarce material resources. Of course there might occasionally be sufficient goods, but material and economic abundance among some privileged groups can normally be achieved only through a corresponding suppression of elementary needs of others, – what seems obvious in a world-wide perspective. And so one should take for granted that there is usually a deep and insoluble conflict of interest among diverse groups and classes in society. This kind of conflict is not primarily a conflict concerning norms, ethics and moral ideas, but a conflict concerning the control over economic resources, raw material and political power. Karl Marx's account of class conflict might be taken as the paradigmatic example of a conflict-theory. Although not all conflict theories assign a dominant role to the class-struggle as Marx's did, conflict models all consider the existence of some antagonism *essential* to the existence of any given society. Conflicts are simultaneously considered the vital driving forces of social change in society. In a conflict-perspective one could never consider a situation of prevailing consensus as stable. Consensus is always the result of contingent circumstances. And according to sociologists like Joachim Israel the two fundamental perspectives on society, the consensus-perspective and the conflict-perspective, cannot be reconciled.⁹⁹

At first blush, it would seem obvious that Rawls' could not be a conflict theorist given his requirement of an overlapping consensus, while that same requirement makes Rawls'

⁹⁸ *Collins Dictionary of Sociology* considers conflict theories “more particularly, [as] the relatively diffuse collection of theories that in the 1960s were ranged against, and contested the dominance of, Parsonian STRUCTURAL-FUNCTIONALISM and its emphasis on societies as mainly governed by value-consensus and the internalization of institutionalized shared values.”(p.112). This is a very vague description that might however suffice in our context.

⁹⁹ As far as I can see, even a conflict-model, might take a certain framework for granted, within which competition, struggle and controversies are to be carried out. What seems right, however, is that for genuine and more “dogmatic” conflict-theorists should any kind of synthesis between a perspective of consensus and a perspective of conflict beforehand be ruled out. “Mange forfattere fremholder at man burde kunne finne en syntese ettersom både konflikter og konsensus forekommer i alle samfunn. Dette er i og for seg riktig. Men de mister poenget i vårt resonnement. Problemet er ikke om det forekommer konsensus og konflikter samtidig, problemet er hvilken betydning man tillegger dem: Enten er balansen det sentrale og det normale, og konflikter det som forstyrrer balansen, eller også er konflikter det sentrale og normale, mens balanse er noe tilfeldig. I konsensusteorier om samfunnet har man følgende mønster: Konsensus fører til ensartethet som fører til likevekt som blir forstyrrt av avvikende atferd og konflikter som blir kontrollert gjennom sosialisering og sosial kontroll som fører til konsensus. I konfliktteorier om samfunnet har man følgende mønster: Knapphet fører til tvang som fører til konflikter som fører til ulike

theory an equally obvious candidate for inclusion within the class of consensus theories. Moreover, classifying Rawls as a consensus theorist seems much more consistent with Rawls embrace of liberalism in as much as liberalism is widely assumed to postulate an essential harmony between individual aims and social goals.¹⁰⁰ But first impressions are just that, impressions and Rawls merits a closer look.

Before enlisting Rawls without reservations in the consensus school it should be noted that Rawls, when elaborating the idea of an overlapping consensus, is facing the radical diversity of modern societies. Without doubt Rawls recognises the great destructive potential contained within the conflicts inherent in modern society. Unlike Marx, however, he does not see the ground-conflicts as stemming only from inequities in the distribution of economic resources. Rather, Rawls realises that fundamental differences in beliefs, religion, norms, values, moral ideas, aspirations, life-plans and conceptions of the good give rise to serious conflicts in modern societies.¹⁰¹ It is Rawls' clear insight in this *deep* diversity which raises questions about his inclusion within the consensus camp.

Simply acknowledging the existence of diversity may be rather trivial. But saying that the diversity in modern societies is *deep*, means that there is in society different interests and conceptions of the good which are incompatible, not just in the sense that they do not in themselves fit harmoniously together or have competing aims, but even in the sense of being mutually exclusive. The not infrequent attempts by one religion during the history to eliminate another provide a good example of this exclusiveness.

The phenomenon of contemporary diversity seems to be most characteristic of societies having reached a certain stage of differentiation, complexity, modernity and individual autonomy. This is clearly realised by Rawls. Therefore, if Rawls is characterised as a

verdisystemer som sammen med konfliktene utgjør drivkrefter for sosial forandring som fører til andre eller nye former for knapphet." J. Israel, *Sosiologi*, p.63.

¹⁰⁰ Some theologians even take this as a decisive reason why classical liberalism should be considered essentially in conflict with Christian *social* ethics. Axel Smith, for instance, writes that "Liberalismens pionerer hadde tro på en grunnleggende harmoni mellom egennytten og fellesnyten. Når et menneske arbeider for sin egeninteresse, vil dette som regel også gagne det som er fellesskapets interesse. Denne harmonitenkningen er kanskje det trekk ved liberalismen som står i den skarpeste motsetning til Bibelens menneskesyn og samfunnsforståelse." A. Smith: *Rett fordeling. Om normer for en kristen politisk etikk* (1982), p. 163. And he adds that "Den grunnleggende motsetningen i samfunnsynet mellom Bibelen og klassisk liberalisme på dette punkt har ikke i tilstrekkelig grad vært påaktet av samfunnsinteresserte kristne mennesker." *Ibid.*, p.164.

¹⁰¹ In a Weberian perspective one might likewise emphasise the kind of diversity that could be ascribed to the decisive differences regarding religious belief, gender and the plurality of interests more generally.

“consensus-theorist”, it should simultaneously be added that an understanding of the conflict potential within modern societies is also crucial to understanding his political philosophy.

2.2.2. The circumstances of (in)justice

The perspective one takes on society, should correspond to the *real* world in a sufficiently close way. An insight into the “circumstances of justice” provides us with background knowledge that is required when elaborating a conception of justice to go appropriately with real societies. The overview as well as the comments I give in this connection refer mainly to section 22 in *A Theory of Justice*, where Rawls states:

“The circumstances of justice may be described as the normal conditions under which human cooperation is both possible and necessary. Thus, as I noted at the outset, although a society is a cooperative venture for mutual advantage, it is typically marked by a conflict as well as an identity of interests. There is an identity of interests since social cooperation makes possible a better life for all than any would have if each were to try to live solely by his own efforts. There is a conflict of interests since men are not indifferent as to how the greater benefits produced by their collaboration are distributed, for in order to pursue their ends they each prefer a larger to a lesser share. Thus principles are needed for choosing among the various arrangements which determine the division of advantages and for underwriting an agreement on the proper distributive shares. These requirements define the role of justice. The background conditions that give rise to these necessities are the circumstances of justice”¹⁰²

By referring in this way to the circumstances of justice, or perhaps I should better say the circumstances of injustice, Rawls stresses that the societies he has in mind are characterised by conflicting as well as coinciding interests. The “circumstances” must reflect the reality of modern societies. A conception of justice built on the insight in the circumstances of justice has to provide people with principles for sharing fairly what their co-operative efforts can be expected to bring forth¹⁰³, while simultaneously protecting each citizen from being exploited by the others. It should also be added that citizens can normally not be expected to have their interests sacrificed to those of their co-citizens. A society where the circumstances of justice apply is not to be conceived of

¹⁰² J. Rawls, *A Theory of Justice* (1971), p.126. Rawls says that “my account largely follows that of Hume in *A Treatise of Human Nature*, bk.III, pt.II. sec.ii, and *An Enquiry Concerning the Principles of Morals*, sec.III, pt.I.” *Ibid.* p.126.

¹⁰³ I am deliberately vague about this, for if the idea is to establish principles for sharing a *surplus*, resulting from citizens co-operative efforts, it seems obvious that one should also have an idea about what fairly belongs to each person independently of social co-operation.

as a society of saints:

“In a society of saints agreeing on a common ideal, if such a community could exist, disputes about justice would not occur. Each would work selflessly for one end as determined by their common religion, and reference to this end (assuming it to be clearly defined) would settle every question of right. But a human society is characterized by the circumstances of justice.”¹⁰⁴

It is the competing interests in society combined with the danger that some people might otherwise feel entitled to enforce their own interests against the others, that give rise to the need for principles of justice.

Now Rawls holds that the circumstances of justice in society are mainly of two kinds:

- First there is what Rawls characterises as the *objective* circumstances. In this connection he underlines the existence of moderate scarcity.¹⁰⁵
- Second, there are the *subjective* circumstances which arise because people, although they might have roughly similar basic needs and interests, also pursue different conceptions of the good and have diverse rational long-time plans.¹⁰⁶ And people are also bound by very different natural ties, allegiances and loyalties.

The ability to satisfy the objective conditions presuppose two things. On the one hand there is the synergetic effect: Co-operation can be expected to result in a “surplus” to be distributed fairly. On the other hand moderate scarcity still applies: The co-operative “product” can any way be supposed to fall short of the actual demands that most people usually have for that product.¹⁰⁷

When considering subjective conditions, Rawls stresses that individual life-plans and personal convictions of conscience have to be handled and balanced on terms that are widely recognisable as *fair*. Compliance with the terms given by the circumstances of justice is only possible if the settled principles are *inclusive* enough to be *widely* recog-

¹⁰⁴ J. Rawls, *A Theory of Justice* (1971), p.129f.

¹⁰⁵ In a situation of abundance, with sufficient goods for everybody, the need for principles of justice would in no way be urgent. In a situation of very radical and utmost scarcity it is a question whether any principles of distributive justice would do in any way. Rawls assumes that: “Natural and other resources are not so abundant that schemes of cooperation become superfluous, nor are conditions so harsh that fruitful ventures must inevitably break down.” J. Rawls, *A Theory of Justice* (1971), p127.

¹⁰⁶ J. Rawls, *A Theory of Justice* (1971), p129.

¹⁰⁷ When considering the previously mentioned difficulties in defining the *surplus* (and what fairly belongs to each person independently of social co-operation), it seems obvious that the distributive dilemmas might be considerable.

nised and simultaneously *specific* enough to set constraints upon those who might otherwise feel justified in enforcing their views on others.¹⁰⁸

My point is that Rawls' description of the “circumstances of justice” deals directly with the circumstances of scarcity, social differences and diversity regarding people’s life-prospects. How these circumstances should most appropriately and fairly be handled is, however, the difficult question. Rawls even lets the “circumstances” be reflected in the “original position”, – when the most fundamental principles of justice as fairness are to be settled.

2.3. Rawls’ perspective on society

2.3.1. Society as a fair scheme of social co-operation

Although the diversity within modern societies is without doubt taken by Rawls to be radical, the main perspective on society within the Rawlsian political conception is obviously not a perspective of irreconcilable conflict, where situations of consensus are to be considered merely contingent and arbitrary. Rawls’ hope is that it might after all be possible to establish an overlapping consensus, which can be made stable by being endorsed by all citizens as fair.

Thus Rawls is mainly concerned about achieving the fairest possible terms of social co-operation. The very idea of fair social co-operation is indeed central to Rawls’ conception of society. Society is considered a joint co-operative venture. According to Rawls one should, however, distinguish between socially co-ordinated activity and cooperation. While the former might be ordered by some tyrannical sovereign, the latter is supposed to rest on rules, principles and procedures that the co-operating parties themselves can – in some fundamental way – freely accept.¹⁰⁹

- If social co-operation between free citizens shall succeed – according to Rawls – it has to be widely acceptable as *fair*.
- Fair terms of co-operation are to be expressed in principles specifying for the citizens their fundamental rights and duties, which are effectively to be safeguarded by the

¹⁰⁸ “Thus justice is the virtue of practices where there are competing interests and where persons feel entitled to press their rights on each other.”, J. Rawls, *A Theory of Justice* (1971), p.129.

¹⁰⁹ I have taken the co-operating agent to be the individual citizen. But let it just be mentioned that agents of co-operation might also be governments, associations, churches, congregations and communities.

main political *institutions* of society.

- The very institutional organisation (the basic structure) of society is, however; decisively dependent on the support from citizens with a *sense of justice*.

The basic structure as such should provide for *fair* terms of co-operation, – terms that all citizens and parties might endorse, provided of course that the other parties accept them too. Thus there is a natural element of reciprocity inherent in *fair* co-operation.¹¹⁰ Rawls explains the application of the principle of fairness to individuals as follows:

“I shall try to use this principle to account for all requirements that are obligations as distinct from natural duties.¹¹¹ This principle holds that a person is required to do his part as defined by the rules of an institution when two conditions are met: first, the institution is just (or fair), that is, it satisfies the two principles of justice; and second, one has voluntarily accepted the benefits of the arrangements or taken advantage of the opportunities it offers to further one’s interests. The main idea is that when a number of persons engage in a mutually advantageous cooperative venture according to rules, and thus restrict their liberty in ways necessary to yield advantages for all, those who have submitted to these restrictions have a right to a similar acquiescence on the part of those who have benefited from their submission. We are not to gain from the cooperative labors of others without doing our fair share. The two principles of justice define what is a fair share in the case of institutions belonging to the basic structure. So if these arrangements are just, each person receives a fair share when all (himself included) do their part. Now by definition the requirements specified by the principle of fairness are the obligations. All obligations arise in this way. It is important, however, to note that the principle of fairness has two parts, the first which states that the institutions or practices in question must be just, the second which characterizes the requisite voluntary acts. The first part formulates the conditions necessary if these voluntary acts are to give rise to obligations.”¹¹²

An approximately just institutional scheme will further fairness and give rise to obligations that are voluntarily accepted by the co-operating parties (as for instance the obli-

¹¹⁰ According to Rawls “the idea of reciprocity lies between the idea of impartiality, which is altruistic (being moved by the general good), and the idea of mutual advantage understood as everyone’s being advantaged with respect to each person’s present or expected future situation as things are..... reciprocity is a relation between citizens expressed by principles of justice that regulate a social world in which everyone benefits judged with respect to an appropriate benchmark of equality defined with respect to that world. This brings out the further point that reciprocity is a relation between citizens in a well-ordered society expressed by its public political conception of justice. Hence the two principles of justice with the difference principle, with its implicit reference to equal division as a benchmark, formulate an idea of reciprocity between citizens. Finally, it is clear from these observations that the idea of reciprocity is not the idea of mutual advantage.” John Rawls: *Political Liberalism* (1993), p.16f.

¹¹¹ Let it be remarked that according to Rawls is the term *obligation* with its emphasis on voluntariness, obviously a key-term in connection with the commitment implied in the very idea of fairness. “The term ‘obligation’ will be reserved, then, for moral requirements that derive from the principle of fairness, while other requirements are called ‘natural duties’.” J. Rawls, *A Theory of Justice* (1971), 344.

gation to keep promises).

In its approach to society Rawls' political philosophy reflects a "fairness-model", which implies that society is mainly to be taken as a joint venture of co-operation, even if it is simultaneously characterised by radical diversity. Rawls' idea of society as a fair system of co-operation provides for a much more subtle insight into the nature of society than either "conflict- or harmony-models".

2.3.2 The ideal of a well-ordered society

Faced with the growing diversity within modern democratic societies, it is difficult to see how such societies can be (and remain) *well-ordered*. Diversity would seem to entail the weakening of the attachments and bonds among persons. It also means that the diversity of values, norms and life-prospects makes it difficult to establish a platform of shared values that all citizens can approve of. And the great emphasis on individual freedom hardly seems conducive to strengthening common standards and norms. Nevertheless the idea of a well-ordered society, based on widely approved morally grounded ordering principles is a leitmotif in Rawls' theory.

Rawls' ideal of a well-ordered society makes it possible to think of society as a *fair* system of co-operation and to consider it as a genuine social unity of coexistent citizens. Thus, the conception of a well-ordered society is normative and highly idealised.¹¹³

According to Rawls a well-ordered society is;

- a society where the citizens accept fundamental principles of *justice*.
- a society where these principles are *publicly* known. (Each citizen knows them and also knows that the principles are known and recognised by the other citizens).
- a society where it is publicly acknowledged that the *basic structure* of society satis-

¹¹² J. Rawls, *A Theory of Justice* (1971), p.111f.

¹¹³ Thomas Pogge says about Rawls' notion of a well-ordered society that "His notion of a well-ordered society is normative, not descriptive". And he immediately adds: "Thus, when the parties are said to choose a criterion of justice for a well-ordered society, this cannot mean that their criterion is applicable *only* to well-ordered societies, that a different criterion should be used for assessing societies that are not well-ordered. ... Rather, it means that the chosen criterion of justice must harmonize with a cluster of our considered judgements that Rawls collects together into the 'model-conception' of a well-ordered society. It must be satisfiable under the ideal conditions of a well-ordered social system." T.W. Pogge, *Realizing Rawls* (1991 Second edition), p.266. It is obviously very important to see, as Pogge

fies these principles of justice, – or where one has at least good reason to believe that this may be the case.

- a society where the citizens have a normally effective *sense of justice*, corresponding to the fair institutional scheme of society as such.¹¹⁴

And so Rawls concludes by saying that; “In such a society the publicly recognised conception of justice establishes a shared point of view from which citizens' claims on society can be adjudicated. This is a highly idealized concept.”¹¹⁵ Thus the ideal of a well-ordered society – although not elaborated in detail by Rawls – provides us with standards for assessing the (lack of) justice of the basic structure of *actual* societies and for improving the institutional scheme of real societies.

Let me further specify the most important features of a well-ordered society:

I. The domain of the *public* plays an essential part in a well-ordered society.

There is in a well-ordered society a public understanding concerning the kind of claims it would be appropriate for citizens to advance towards one another.¹¹⁶ The principles and rules regulating the coexistence within the institutional scheme of one's society are supposed to be publicly known and can therefore also be publicly discussed and assessed. Thus Rawls' conception of political liberalism can in many respects be seen as a contribution to establishing “a reasonable public basis of justification on fundamental political questions”.¹¹⁷ The assessment of the scheme of society, the valuation of the principles for a fair distribution of the basic goods, should be crystallised and recognised within the *public* forum. As Rawls stresses, “a well-ordered society is a society effect-

emphasises, that the conception of a well-ordered society as conceived of by Rawls, is a ‘model-conception’ with a strong normative character.

¹¹⁴ My four points here are clearly expressed (in three points) by Rawls: “To say that a society is well-ordered conveys three things: first ... it is a society in which everyone accepts, and knows that everyone else accepts, the very same principles of justice; and second ... its basic structure – that is, its main political and social institutions and how they fit together as one system of cooperation – is publicly known, or with good reason believed, to satisfy these principles. And third, its citizens have a normally effective sense of justice and so they generally comply with society's basic institutions, which they regard as just.” J. Rawls, *Political Liberalism* (1993), p.35.

¹¹⁵ J. Rawls, *Political Liberalism* (1993), p.35

¹¹⁶ “...in a well-ordered society there must be a public understanding as to what claims are appropriate for citizens to make in matters of justice.” J. Rawls, “Social unity and primary goods” in *Utilitarianism and beyond*, eds. A.Sen & B. Williams (1994, first published 1982), p.164.

¹¹⁷ J. Rawls, *Political Liberalism* (1993), p.XIX

ively regulated by a public political conception of justice.”¹¹⁸ (Rawls’ notion of “the public” is thoroughly analysed below).

II. A well-ordered society is *stable*.

Rawls admits that his earlier writings paid too little attention to the problem *how* the principles underlying an institutional framework, characteristic of a well-ordered society, could be made stable by being willingly *endorsed* by citizens, or at least by most of them. The problem of diversity, i.e. the conflicting (social) interests, the heterogeneity of beliefs and the highly different aims that individuals as well as groups and associations might pursue, may spoil any chance of maintaining a stable society, unified by some common aims and values.

Rawls – in his latest writings – realises that he has to pay more attention to the problem of how a *stable* basis is possible, – and can be maintained in societies characterised by deep and lasting diversity in many respects. In truly liberal societies one should not choose the “easy” way; - to enforce social and political unity, stability and “well-orderedness”¹¹⁹ by the means of the coercive powers of the state, as was sometimes the case also in “liberal” societies.¹²⁰

Instead Rawls emphasises that the basis of an enduring social unity must be a conception of justice which is;

“in some way supported by, all reasonable (or the reasonable) comprehensive doctrines in society. A second comment is that this basis of social unity is the deepest because the fundamental ideas of the political conception are endorsed by the reasonable comprehensive doctrines, and these doctrines represent what citizens regard as their deepest convictions, religious, philosophical, and moral. From this follows stability for the right reasons.”¹²¹

The path to stability in a society which is well-ordered on Rawlsian premises, is obviously not a short one. A social unity, which is sufficiently stable, has to be secured by

¹¹⁸ J.Rawls, “Reply to Habermas”, *The Journal of Philosophy* (1995), p.141.

¹¹⁹ In a sense of the word many societies, ruled by absolute sovereigns, might be reckoned as “well-ordered”.

¹²⁰ Rawls therefore stresses that political liberalism with its inherent idea of public reason “does not trespass upon religious beliefs and injunctions insofar as these are consistent with the essential constitutional liberties, including the freedom of religion and liberty of conscience. There is, or need be, no war between religion and democracy. In this respect political liberalism is sharply different from and rejects Enlightenment Liberalism, which historically attacked orthodox Christianity.” J. Rawls, “The Idea of Public Reason Revisited”, *The University of Chicago Law Review* (1997;3), p.803f.

¹²¹ J.Rawls, “Reply to Habermas”, *The Journal of Philosophy* (1995), p.147.

principles of justice that can somehow be *endorsed* by citizens themselves, even if they are differently situated and hold incompatible religious beliefs and pursue different conceptions of the good. This issue of stability was not – according to Rawls himself – sufficiently considered in his first conception of *A Theory of Justice*. That is where Rawls' recent writings are most self-critical, and where the most significant incongruence between his two main works; *A Theory of Justice* and *Political Liberalism* can be found.¹²² The “later” Rawls considered his former ideas about how a well-ordered society could be upheld to be – at least to some extent – “unrealistic”. As mentioned, this does not mean that he has rejected his former conception, only that he considers it insufficient to address the question of how a just society can be maintained over time. Here, I would underline that Rawls’ idea of a well-ordered society is based upon the assumption that such a society's institutional scheme can be approved of and supported by its members for moral reasons. This will also secure “stability for the right reasons”.

III. The most characteristic feature of a well-ordered society is that it is *just*.

The primary focus of the Rawlsian theory is first of all the *institutional* scheme, the very basic structure of society, defining decisively the framework for citizens coexistence and social co-operation. And Rawls begins the first chapter of *A Theory of Justice* by stressing that:

“Justice is the first virtue of social institutions, as truth is of systems of thought. A theory however elegant and economical must be rejected or revised if it is untrue; likewise laws and institutions no matter how efficient and well-arranged must be reformed or abolished if they are unjust. Each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override...”¹²³

Elementary principles of *justice*, that can be widely approved of, should indeed be considered an appropriate bulwark both against the instability inherent in “private

¹²² Reflecting on *A Theory of Justice* as presented in 1971 Rawls now admits that “... the idea of a well-ordered society of justice as fairness is unrealistic. This is because it is inconsistent with realizing its own principles under the best of foreseeable conditions. The account of the stability of a well-ordered society ... is therefore also unrealistic and must be recast. This problem sets the stage for the later essays beginning in 1980.” J. Rawls, *Political Liberalism* (1993), p.xvii.

¹²³ J. Rawls, *A Theory of Justice* (1971), p.3. For his political purpose Rawls is narrowing the focus of justice: “Many different kinds of things are said to be just and unjust: not only laws, institutions, and social systems, but also particular actions of many kind, including decisions, judgments, and imputations. We also call the attitudes and dispositions of persons, and persons themselves, just and unjust. Our topic, however, is that of social justice. For us the primary subject of justice is the basic structure of society...” *Ibid.*, p.7)

society”¹²⁴ and towards the kind of stability inherent in the homogeneous societies, where the so-called “common good” is enforced, even by the extensive use of the coercive powers of society. Rawls realises clearly that trying to enforce “well-orderedness” by use of the coercive powers of society – at the cost of individual liberty – might in the long run render society not well-ordered and fair, but rather unjust and therefore unstable. There is therefore a need for a shared conception of justice and for principles of co-operation which provide the coexisting members of a society with reasonable means of fairly settling disagreements and conflicts. Rawls on his part emphasises in this connection that:

“Justice as fairness begins, as I have said, with one of the most general of all choices which persons might make together, namely with the choice of the first principle of a conception of justice which is to regulate all subsequent criticism and reform of institutions. Then, having chosen a conception of justice, we can suppose that they are to choose a constitution and a legislature to enact laws, and so on, all in accordance with the principles of justice initially agreed upon.”¹²⁵

A well-ordered society is to be characterised by an institutional scheme that can be *recognised* as fair. The institutional framework of a well-ordered society is arranged according to principles that its members can freely, willingly and reasonably be assumed to recognise as “fair”. This means that there is also good reason to believe that a well-ordered society might be self-supportive: It is likely that coexistent citizens, living within an institutional framework that can be recognised as fair, will thereby strengthen their sense of justice. And moral persons with a sufficient sense of justice, can be expected to have an interest in upholding a just institutional framework.

I think Rawls very plausibly stresses the urgent need for at least some shared principles of coexistence. But it seems far from obvious why citizens, living together in a society which Rawls himself takes to be a society characterised by deep diversity, should agree on *one* conception of justice as fairness as specified by Rawls. However, Rawls would not deny that there might be different conceptions of justice providing for well-ordered

¹²⁴ The notion of “private society” can be found both in Plato’s “Republic”, 369-372, and in Hegel’s “Philosophy of Right”, §§ 182-187. According to Rawls the main features of private society “are first that the persons comprising it, whether they are human individuals or associations, have their own ends which are either competing or independent, but not in any case complimentary. And second, institutions are not thought to have any value in themselves, the activity of engaging in them not being counted as a good but if anything as a burden.” J. Rawls, *A Theory of Justice* (1971), p.521.

societies. The conception of “justice” people hold is of essential significance for the way they conceive of a well-ordered society.

2.3.3. Use of coercive powers in a well-ordered society

Although liberal societies cannot enforce an authorised religious view or a highest unifying value for all citizens by use of coercive means, no society, real or ideal, can ignore the question of how the coercive powers of society are *legitimately* to be used. Power is an inherent part of politics, and power is in its very nature coercive.

There is a very long debate within politics, philosophy, law and theology about both the nature of power and the *legitimate* use of (coercive) power. It is neither necessary nor possible to do more than focus upon a few narrow aspects of this debate which directly concern us. The complexity of the phenomenon of *power* is readily reflected in the many terms one finds in Greek and Latin to express it, e.g., *du/namij*, *e)cousi/a*, *a)rxh/* and, *potentia*, *potestas*, *dominium*, respectively.

Most people agree that the state normally has a monopoly to use the coercive power of society. But if the coercive powers of society were used to maintain social unity by enforcing a controversial “common good”, for instance a system of religious and moral doctrines as a common law for the whole society, the result should most likely be some kind of tyranny.

It can easily be observed how the Christian church – throughout its history – recognised different kinds of state-authorities, provided they were able to use the coercive power to maintain at least an elementary protection of the inhabitants as can for instance clearly be seen in St.Paul’s Letter to the Romans (Rom.13,1-5). In this case – so many years before the Constantinian turning point – it is astonishing that St. Paul could somehow recognise the *legitimacy* of the Roman government. A precondition for this is obviously that the pagan authority can be taken as an “instrument” preventing the escalation of evil, and in doing so it is even to be considered God’s servant. This perspective, however, also implies that the coercive power of state-authorities is clearly seen as mandated

¹²⁵ J. Rawls, *A Theory of Justice* (1971), p.13. The way an initial choice can be brought about according to Rawls is rather complex. As I shall discuss more thoroughly later in my thesis, he constructs an appropriate “initial-situation” for settling the most fair terms of justice.

and limited by God's own power.¹²⁶

Turning to liberal democracies, the question of power has to be reconsidered: What is the source of legitimacy assigned to the government's use of coercive power and how far does that legitimacy extend in the use of that coercive power in such societies?

According to Rawls' conception of political liberalism it is very clear that the political power of liberal democracies can only be "the power of free and equal citizens as a collective body".¹²⁷ And the coercive power is therefore exercised legitimately only when it is exercised in accordance with constitutive principles that are justifiable to all citizens as rational and reasonable moral persons. And so Rawls formulates the liberal principle for legitimating the power of society in the following way:

"...our exercise of political power is fully proper only when it is exercised in accordance with a constitution the essentials of which all citizens as free and equal may reasonably be expected to endorse in the light of principles and ideals acceptable to their common human reason."¹²⁸

¹²⁶ It might appropriately be remarked that when the power of God was discussed in medieval theology, one sometimes made a distinction between God's "potentia absoluta" and his "potentia ordinata" (Duns Scotus). Under a perspective of absolute power, God's power might be considered entirely unbound. Under a perspective of "ordained" power God is, however, seen as a king who has bound himself to laws and principles, which can be widely known. Making analogies to the political domain this would mean that an absolute power, i.e. a power that is not restricted by any law, should be contrasted to a power limited by constitutive principles. In political life, as we find it within constitutional democracies today, the power can only be an "ordained" power. In late medieval theology other aspects of actual interest were emphasised too: A distinction was sometimes made between the *form* of power that could legitimately be exercised by the church and the *form* of power that was legitimately to be exercised by the state. The state had an exclusive right to use the "sword". And the "sword" here symbolises the "coercive" power (*potentia coactiva*), which includes the legitimate right to enforce directives in society and to use legal "sanctions" (penalties, imprisonment and sometimes even capital punishment) to uphold the scheme of society.

¹²⁷ J. Rawls, *Political Liberalism* (1993), p.136

¹²⁸ J. Rawls, *Political Liberalism* (1993), p.137. In the light of this it might be astonishing to see how Rawls – as a liberal – can assess different "hierarchical" schemes of society quite positively. The notion "hierarchical" is adopted from one of Rawls most recent essays, "The Law of peoples". This essay is in my opinion in many ways interesting (and controversial), since Rawls here extends some principles of his political conception to the relation between states. "A further aim is to set out the bearing of political liberalism once a liberal political conception of justice is extended to the law of peoples. In particular, we ask: What form does the toleration of non-liberal societies take in this case? Surely tyrannical and dictatorial regimes cannot be accepted as members in good standing of a reasonable society of peoples. But equally not all regimes can reasonably be required to be liberal, otherwise the law of peoples itself would not express liberalism's own principle of toleration for other reasonable ways of ordering society nor further its attempt to find a shared basis of agreement among reasonable peoples. Just as citizens in a liberal society must respect other person's comprehensive religious, philosophical, and moral doctrines provided they are pursued in accordance with a reasonable political conception of justice, so a liberal society must respect other societies organized by comprehensive doctrines, provided their political and social institutions meet certain conditions that lead the society to adhere to a reasonable

Not surprisingly, Rawls' conception of a *liberal* principle of legitimacy lacks any reference to a mandate from God or to a divine law-book. The principle is instead grounded in the power of the citizens, – not just as individuals, but as a corporate body. According to Rawls to say that an exercise of government power is legitimate means that the citizens are exercising power over themselves. And this should most plausibly imply that the principles for exercising that kind of power should in themselves be part of *an overlapping consensus*, – a mutually binding agreement made in advance. Since the constitutive principles for use of society's coercive powers express the idea of citizens exercising power over themselves, increased weight has to be ascribed to the field of the *public* as the forum where practices involving use of the coercive powers of society can be continually discussed and justified in a *shared* forum.

One should not assume a conflict between this strictly political way of legitimating (coercive) power in society and the deeper theological idea that the use of the (coercive) powers of society belongs ultimately to the state according to a divine mandate.¹²⁹

2.3.4. Society - a voluntary or a non-voluntary scheme?

The idea of society as a system of fair co-operation between free and equal persons who are viewed as fully co-operating members of society over a complete life-time might be taken as an organising idea and an appropriate starting point for a political theory.¹³⁰

“... if we are to succeed in finding a basis for public agreement, we must find a way of organizing familiar ideas and principles into a conception of political justice that expresses those ideas and principles in a somewhat different way than before. Justice

law of peoples.” J. Rawls, “The Law of Peoples”, *On Human Rights. The Oxford Amnesty Lectures 1993* (eds. S. Shute and S. Hurley, 1993), p.42f.

¹²⁹ The problem here is obviously whether a “perspective from above” can be reconciled with a “perspective from below” without entirely losing foothold of an ultimate divine legitimacy of state-power. In the works of the well-known theologian, Helmut Thielicke, it is obvious that the modern state “wird theologisch als eine Verordnung des Willens Gottes interpretiert. Dieser theologische Gedanke, der Staat sei eine Verordnung Gottes, er sei eine Weise seines Regiments im Reiche zur Linken, bezieht sich keineswegs nur auf einen Obrigkeitsstaat im Sinne des römischen Imperiums oder des mittelalterlichen Feudalstaates, sondern er ist auch nahtlos auf die modernen Demokratien zu übertragen- eben weil er sich auf die Staatlichkeit als solche bezieht.” H. Thielicke, *Theologische Ethik, II,2* (1966), p.20f. (§ 96).

¹³⁰ Cf. J. Rawls, *Political Liberalism* (1993), p.9 where Rawls himself characterises the idea of society as a fair system of co-operation as “a fundamental organizing idea”. And in accordance with this Thomas Pogge emphasises that: “Um eine Gerechtigkeitskonzeption verstehen und beurteilen zu können, müssen wir eine konkrete Vorstellung von der Gesellschaft haben, die diese Konzeption verwirklichen würde.” T.W. Pogge: *John Rawls* (1994), p, 129. And he adds: “Eine konkrete Vorstellung allein reicht aber, nach Rawls, nicht hin. Denn es kann ja sein, daß die konkret vorgestellte Gesellschaft in unserer Welt und mit wirklichen Menschen einfach nicht funktionieren würde.” *Ibid.*, p.129.

as fairness tries to do this by using a fundamental organizing idea within which all ideas and principles can be systematically connected and related. This organizing idea is that of society as a fair system of social cooperation between free and equal persons viewed as fully cooperating members of society over a complete life.”¹³¹

I have emphasised that Rawls considers society a fair scheme of co-operation. But there is another aspect to the idea of society as a joint venture of fair co-operation. According to the philosopher Thomas Nagel “A society satisfying the principles of justice as fairness comes as close as a society can to being a *voluntary* scheme, for it meets the principles which free and equal persons would assent to under circumstances that are fair.”¹³² This accords with Rawls’ view as expressed for instance in *A Theory of Justice*:

“Yet a society satisfying the principles of justice comes as close as society can to being a voluntary scheme, for it meets the principles which free and equal citizens would assent to under circumstances that are fair.”¹³³

But Rawls makes it clear that:

“No society can, of course, be a scheme of cooperation which men enter voluntarily in a literal sense; each person finds himself placed at the birth in some particular position in some particular society, and the nature of this position materially affects his life prospects. Yet a society satisfying the principles of justice comes as close as a society can to being a voluntary scheme....”¹³⁴

Considering society as a joint co-operative venture for free and equal citizens can obviously not mean that it should in all respects be viewed as a *voluntary* enterprise. From one perspective society should most appropriately rather be viewed as a non-voluntary scheme.

Society is viewed by Rawls as a “closed” system, (a view that involves a considerable abstraction). The many complex relations to other societies are not focused upon. And then follows the nearly trivial supplement: “Its members enter it only by birth and leave it only by death.”¹³⁵ Rawls speaks of citizens as born into a society where they are to lead a complete life. They are neither entering society at the age of reason, nor when they might find it advantageous nor when it complies completely with their own inter-

¹³¹ J. Rawls, *Political Liberalism* (1993), p.9

¹³² Thomas Nagel: “Rawls on Justice”, in *Reading Rawls*, Ed. Norman Daniels, Basil Blackwell, Oxford 1975, p.5

¹³³ J. Rawls, *A Theory of Justice* (1971), p.13. By using the phrase “under circumstances that are fair” Rawls alludes to the “circumstances” of an original position, which shall be thoroughly presented and discussed later.

¹³⁴ J. Rawls, *A Theory of Justice* (1971), p.13.

ests, desires or beliefs. Instead citizens are normally to be considered fully co-operating members of society *over a complete life*.

This perspective on society as not just a voluntary, but also a *non-voluntary* scheme, has some very decisive implications, – not least of all, for theological social ethics: One should be aware of the decisive difference between a *society* at the one hand and the kind of *communities* or *associations* on the other hand, which one – according to Rawls – should be free to join or leave at any time. Churches should in this perspective most appropriately be regarded as communities or associations, since no man is considered bound to any particular church-membership and he may leave his church freely. Church-membership is obviously *voluntary* in a way that citizenship is not. Neither heresy nor excommunication from a religious community should therefore affect one's civil status as a citizen.

In Rawls' opinion, a more or less explicit fundament of values and common traditions can obviously be taken as constitutive of most communities.¹³⁶ There is within a community usually some shared aims and particular ideas about a common good, from which certain duties and obligations can be derived. But I think that Rawls in a plausible way has made it obvious that the wider political society – understood as a non-voluntary scheme that one enters by birth and leaves by death – cannot be unified and fairly ordered if communal values that are typical of churches, local societies and more homogeneous communities, are to be taken as a common basis for coexistence. In the wider society – consisting of diverse associations, competing interest groups and citizens with different conceptions of the good – a less substantial alternative is required. I think there are both principled reasons (one should not impose on citizens as free and equal persons a particular conception of the good) and factual reasons (cf. the fact of pluralism) for seeking a less substantial alternative. These reasons are crucial considerations when turning to the problem of elaborating an overlapping consensus that can be the basis of social unity.

¹³⁵ J. Rawls, *Political Liberalism* (1993), p.12

¹³⁶ Sometimes I have used the notion "community" and sometimes the notion "association". In this respect my intention is to follow Rawls' terminology: "By definition, let's think of a community as a special kind of association, one united by a comprehensive doctrine, for example, a church. The members of other associations often have shared ends but these do not make up a comprehensive doctrine and may even be purely formal." J. Rawls, *Political Liberalism* (1993), p.40.

2.3.5 A well-ordered society conceived of as a *liberal* society

Although Rawls might use the notion *well-ordered* about non-liberal societies¹³⁷, there can be little doubt that he himself aims for schemes of society regulated by broadly *liberal* conceptions of justice, with justice as fairness as the paradigmatic standard example. And thus it should be correct to say that a Rawlsian well-ordered society is conceived of as a liberal society.

The term *liberal* has been applied to highly different issues, views and conceptions. And thus any definition of *liberalism* might be controversial and disputed.¹³⁸ My concern, however, is not so much with “classical” liberal views as with “modern” liberalism, as elaborated in an eminent way by John Rawls.¹³⁹

First: The priority of certain political *liberties* is quite obvious within liberalism in general as it is within the Rawlsian version. (Rawls does not distinguish between basic *liberties* and basic *rights*). Rawls emphasises the traditional political liberties such as; freedom of political speech and press, freedom of assembly, liberty of conscience and freedom of association, the liberty and integrity of the person (violated, for example, by slavery), and he also mentions more generally the rights and liberties covered by the rule of law.

In a well-ordered society as conceived of by Rawls it is required that society takes steps

¹³⁷ “ Here I understand a well-ordered society as being peaceful and not expansionist; its legal system satisfies certain requisite conditions of legitimacy in the eyes of its own people; and, as a consequence of this, it honors basic human rights. One kind of nonliberal society satisfying these conditions is illustrated by what I call, for lack of a better term, a well-ordered hierarchical society. This example makes the point, central for this argument, that although any society must honor basic human rights, it need not be liberal. It also indicates the role of human rights as part of a reasonable law of peoples.” J. Rawls, “The Law of Peoples”, *On Human rights. The Oxford Amnesty Lectures 1993*, (Eds. S. Shute and S. Hurley, 1993), p.43.

¹³⁸ In a book, recently published in Norway, Ånund Haga emphasises clearly the difficulties in defining precisely the terms “liberal” or “liberalism”: “Det er sjølvsagt vanskeleg å snakke allment om liberalismens utematiserte føresetnader, ettersom ‘liberalisme’ slett ikkje har nokon entydig bruk. Uttrykket blir nytta om eit mangfald av delvis heterogene synsmåter, og for at det skal skiljast mellom dei, blir dei stundom inndelte i ymse slags bindestreksliberalismar. Desse strekkjer seg frå det som på den eine utenden er ein radikal sosialliberalisme, som innanfor bestemte grenser stør ein god mon offentleg styring, til det som på den andre utenden er ein sterk profilert marknadsliberalisme, som vil redusere offentlege inngrep til det som måtte vere eit lite, men uomgjengeleg minimum (nemlig for å sikre at alle individuelle interesser får utfalde seg under frie og like vilkår).” Å.Haga: “Liberalismens utematiserte føresetnader, *Den politiske orden* (Ed. E. O. Eriksen 1994), p.25. Let it just be added that the tradition of liberalism should at least be traced back to John Locke (1632-1704), but also to Immanuel Kant (1724-1804) and maybe even to Thomas Hobbes (1588-1679).

¹³⁹ This means that I will not here go deep into *different* liberal conceptions.

to make liberty *effective*.¹⁴⁰ The notion “effective” in this connection implies that a merely formal codification of basic liberties (and rights) is not sufficient. What Rawls intends is that,

“including in the first principle of justice the guarantee that the political liberties, and only these liberties, are secured by what I have called their ‘fair value’. To explain: this guarantee means that the *worth* of the political liberties to all citizens, whatever their social and economic position, must be approximately equal...”¹⁴¹

Therefore a scheme of society has to be seen not just in relation to the rights and liberties it proclaims, the test comes in determining how certain it is that these liberties will be implemented and to what extent these rights are really realised.¹⁴² In a Rawlsian conception of political liberalism, liberty and basic rights can never be pro forma. Avoiding

¹⁴⁰ In this respect Rawls remains much of a consequentialist! The emphasis on the real liberty does not mean that all kinds of “liberties” are to be given priority over other (moral) principles and values. But it means that the basic political liberties, as for instance the freedom of thought and speech, free voting and the right to participation in political life, and the rights for citizens to join associations voluntarily, must obviously be guaranteed before people can make *effective* use of other rights. And thus Rawls can even propose quite radical steps to secure these basic liberties: “We may take for granted that a democratic regime presupposes freedom of speech and assembly, and liberty of thought and conscience. ... If the public forum is to be free and open to all, and in continuous session, everyone should be able to make use of it. All citizens should have the means to be informed about political issues. They should be in a position to assess how proposals affect their well-being and which policies advance their conception of the public good. Moreover, they should have a fair chance to add alternative proposals to the agenda for political discussion. The liberties protected by the principle of participation lose much of their value whenever those who have greater private means are permitted to use their advantages to control the course of public debate. For eventually these inequalities will enable those better situated to exercise a larger influence over the development of legislation. In due time they are likely to acquire a preponderant weight in settling social questions, at least in regard to those matters upon which they normally agree, which is to say in regard to those things that support their favored circumstances. Compensating steps must, then, be taken to preserve the fair value for all of the equal political liberties. A variety of devices can be used. For example, in a society allowing private ownership of the means of production, property and wealth must be kept widely distributed and government moneys provided on a regular basis to encourage free public discussion. In addition, political parties are to be made independent from private economic interests by allotting them sufficient tax revenues to play their part in the constitutional scheme.”, *A Theory of Justice* (1971), p.225f.

¹⁴¹ J. Rawls, *Political Liberalism* (1993), p.327. (Italicisation is made by me).

¹⁴² “Wie soll beurteilt werden, ob und inwieweit eine unter einer bestimmten Grundordnung lebende Person die von Rawls geforderten Grundrechte hat? Zum Verständnis seiner Antwort auf diese Frage sind bezüglich eines jeden Grundrechts drei konzentrische Themen zu unterscheiden. Das engste, formal-rechtliche Thema betrifft die Frage, inwieweit jeder Person in den Verfassungs- oder Gesetzestexten ihrer Gesellschaft das betreffende Stück Freiheit explizit zugesprochen wird. Das weitere, effektiv-rechtliche Thema betrifft die Frage, inwieweit sie tatsächlich sicheren Zugang zu diesem Stück Freiheit hat ... Innerhalb des zweiten Themas unterscheidet Rawls dann zwischen Umfang und Sicherheit von Grundrechten. Der *Umfang* betrifft die Frage, wieviel die gesetzlich garantierten Grundrechte nach der gängigen Rechtsprechung abdecken – welche Handlungsweisen z.B. als vom Grundrecht auf Redefreiheit geschützt verstanden werden. Für die Bewertung einer Grundordnung relevant ist hier natürlich nur, inwieweit gesetzlich garantierte Grundrechte das abdecken, was sie abdecken müssen, um ein ‘adequates Paket’ zu bilden. Die *Sicherheit* eines Grundrechts betrifft die Frage, wie solide es, bzw. sein Gegenstand geschützt sind. Es gibt genügend Staaten, in denen z.B. das Recht auf freie Religionsausübung offiziell garantiert, aber doch nicht sicher ist....” T. W. Pogge, *John Rawls* (1994), p.108f.

this outcome is one of the goals of his theory.

However, where some *liberal* theories treat liberty rights as inviolate, Rawlsian liberalism holds that citizens should be ready to accept certain constraints on their individual liberty in some cases. Liberty practised in a way that is compatible with a similar scheme of liberty for others opens necessarily up for certain trade-offs. Rawls emphasises, however, that “liberty can be restricted only for the sake of liberty itself.”¹⁴³ Nevertheless the question arises whether basic liberties might sometimes be restrained for the sake of satisfying basic needs. This is a question I cannot discuss thoroughly here, but a few brief comments are in order:

Rawls avoids the most difficult discussions about the proper balancing of individual *liberty* rights against the satisfaction of basic *needs* by focusing on societies characterised by only moderate scarcity. But sometimes he seems to suggest that a trade-off between basic liberties and basic needs might be required, – in spite of the clear lexical ordering of the two principles of justice.¹⁴⁴ There are, however, according to Rawls, certain liberties and fundamental rights that human beings should never abandon. I think that the right to practice one’s religion may be such a fundamental right.

The emphasis on the political value of liberty is a first characteristic of political liberalism. By stressing basic liberty liberalism without doubt limits the absolute power of state-authorities. And the way one emphasises the respect of the liberty and the rights of *each* person simultaneously serves to give toleration the weight it has within most versions of liberalism.¹⁴⁵

It should be noted here that the value of liberty, and also the problem of occasionally

¹⁴³ J. Rawls, *A Theory of Justice* (1971), p.244.

¹⁴⁴ Concerning this question Thomas Pogge appropriately adds: “Am vernünftigsten wäre es vielleicht, Grundrechte und Grundbedürfnisse auf eine Stufe zu stellen, und dann Rawls’ ersten Grundsatz so zu verstehen, daß er für jedes Gesellschaftsmitglied ein Grundrecht auf Befriedigung seiner Grundbedürfnisse fordert. Diese Gleichstellung wird an zwei Stellen angedeutet, an denen Rawls die politischen Fragen, die entweder die Grundbedürfnisse oder die Grundrechte tangieren, kollektiv als solche bezeichnet, bei denen es um *wesentliche Verfassungsinhalte* geht (PL 166, 228f. [refers to the German edition of *Political Liberalism*]). Die Gleichstellung hätte den weiteren Vorteil, daß Rawls’ Abrücken von der amerikanischen Verfassungstradition durch ein Näherrücken an die Menschenrechtsdokumente der Vereinten Nationen ausgeglichen wäre.” T. W. Pogge, *John Rawls* (1994), p.124.

¹⁴⁵ This is for instance clearly underlined by Kymlicka: “... any liberal philosophers have argued for tolerance because it provides the best conditions under which people can make informed and rational judgements about the value of different pursuits. Respect for the liberty of others is predicated not on our inability to criticize preferences, but precisely on the role of freedom in securing the conditions under which we can best make such judgements.” W. Kymlicka, *Liberalism, Community and Culture* (1989), p.10.

limiting individual freedom in a legitimate way, may similarly be strongly emphasised within Christian social ethics.¹⁴⁶

Second: Most kinds of liberal views would also “require a formal equality of opportunity in that all have at least the same legal rights of access to all advantaged social positions.”¹⁴⁷ But there might in society be a lot of inequalities and contingencies concerning people’s talents, natural endowments, family backgrounds, social limits and start-positions. And Rawls is seeking ways “to mitigate the influence of social contingencies and natural fortune on distributive shares.”¹⁴⁸ He is aiming at *securing* the most “fair equality of opportunity”¹⁴⁹. This should mean not just that positions in society are open in a formal sense, but also that one should have a fair chance of attaining these positions.¹⁵⁰ And it should also mean that society’s political and legal institutions really have to pave the way for a fair *distribution* of primary goods¹⁵¹ among the citizens. The impact of a society’s institutional organisation on the distributive mechanisms, and on the opportunities of each citizen is to be assessed from a clearly egalitarian perspective. Hence it follows that it might be necessary that some structural constraints are built into the social system, thereby restricting for instance those mechanisms of an “autonomous” free market which might hamper fair equality of opportunity.¹⁵²

¹⁴⁶ Tor Aukrust is the author of a well-known and very influential theological book about *Social Ethics* in Norway. Even if he is very much aware of the differences, he is trying to draw social-ethical and political consequences from the biblical idea of freedom: “Denne projisering av frihetsbegrepet over på det samfunnsmessige plan må i prinsippet anerkjennes som en legitim tolkning og realisering av den kristne frihetstanke. For friheten i Kristus kan ikke begrenses til en indre holdning; den omfatter det hele menneske, også mennesket som samfunnsborger.” T. Aukrust: *Mennesket i samfunnet. En sosialetikk. Bind I* (1965), p. 142. But he also realises that individual freedom must be limited, and sees the social contract as a means to bring about the required limitation: “Denne erkjennelse av grensene for den sosiale frihet kommer til uttrykk i ‘kontrakt-teorien’.” *Ibid.*, p.143.

¹⁴⁷ J. Rawls, *A Theory of Justice* (1971), p.72.

¹⁴⁸ J. Rawls, *A Theory of Justice* (1971), p.73.

¹⁴⁹ Cf. J. Rawls, *A Theory of Justice* (1971), p.73: “The liberal interpretation, as I shall refer to it, tries to correct for this [contingency] by adding to the requirement of careers open to talents the further condition of the principle of fair equality of opportunity.”

¹⁵⁰ Cf. J. Rawls, *A Theory of Justice* (1971), p.73. Rawls obviously intends to establish a fair position beyond the mere “notion of careers open to talents” *Ibid.*, p.83.

¹⁵¹ A list of such *primary goods* need not be “specified” here. Let it now more generally be stated that primary goods are basic goods that every rational man is presumed to want, – whatever else he is aiming at.

¹⁵² To mitigate the influence of social contingencies Rawls obviously finds it necessary to take steps “...to impose further basic structural conditions on the social system. Free market arrangements must be set within a framework of political and legal institutions which regulates the overall trends of economic events and preserves the social conditions necessary for fair equality of opportunity.” J. Rawls, *A Theory of Justice* (1971), p.73.

However, the liberal conception of equality, as conceived of by Rawls, is not incompatible with a certain amount of inequality, but it is incompatible with a basic structure of society, which is excluding some from political and social participation.¹⁵³ In Rawls conception a fundamental equality, that can by no means be just formal, is taken as a vital premise if one shall arrive at principles of coexistence that all parties can endorse.¹⁵⁴ It is only as free and equal partners that they can be expected to agree to and to comply with fair terms of coexistence.

Thus political liberalism doubtlessly embraces a strictly *egalitarian* conception of society.¹⁵⁵ And let me quickly add that one should distinguish between an “egalitarian liberalism” and “libertarianism”.¹⁵⁶

There is doubtlessly a strong concern for recognising the equal worth of all human beings in egalitarian liberalism. This concern is similarly focused from the point of view of theological social ethics, although it may be a rather complex affair both to properly evaluate either the historical role the church has played in furthering the value of political *equality* in society, or the social impact of central Bible texts like the following:¹⁵⁷

“So there is no difference between Jews and Gentiles, between slaves and free men,

¹⁵³ In one of his latest essays, “The Law of Peoples”, published in the book *On Human Rights. The Oxford Amnesty Lectures 1993*, (Ed. S. Shute and S. Hurley, 1993), Rawls tries to comply with the problem of justice in and between so-called hierarchical societies.

¹⁵⁴ I shall later more thoroughly discuss the way Rawls has structured the initial choice-situation, the original position, to secure a basic equality between the consenting parties.

¹⁵⁵ According to Rawls himself is political liberalism (as expressed in the two principles of justice) to be characterised as “an egalitarian form of liberalism in virtue of three elements. These are a) the guarantee of the fair value of the political liberties, so that these are not purely formal; b) fair (and again not purely formal) equality of opportunity; and finally c) the so-called difference principle ...” J. Rawls, *Political Liberalism* (1993), p.6. Thomas Pogge emphasises that; “Dieser egalitären Elemente wegen ist Rawls’ Konzeption besonders auf moralische Loyalität angewiesen. Denn das Eigeninteresse der politisch einflußreicheren, d.h. der begabteren und sozial besser gestellten Bürger würde diese eher dazu motivieren, den demokratischen politischen Prozess zur Untergrabung der egalitären Elemente zu mißbrauchen.” T. W. Pogge, *John Rawls* (1994), p.150.

¹⁵⁶ This distinction is for instance made in an essay written by Ånund Haga: “Ettersom liberalistiske posisjonar nærmar seg den eine eller den andre av dei nemnde utendane, har det no vorte vanleg å kalle dei respektivt egalitær liberalisme og libertariansk liberalisme... [Footnote 1:] Dei mest representative formuleringane av desse posisjonane gir respektivt Rawls (1971) og Nozick (1974).” Å.Haga, “Liberalismens utematiserte føresetnader”, *Den politiske orden*, (ed. E. O. Eriksen, 1994), p.25.

¹⁵⁷ Even if it might be considered a rather complex affair to evaluate fairly the role that the churches have played and might still play in furthering political *equality*, Tor Aukrust stresses that especially modern democracy has made the idea of equality politically relevant in a way that should be considered highly legitimate from the point of view of Christian social ethics: “Alle mennesker er *skap*t like. Demokratiets sosiale anvendelse av likhetsidéen er kristelig legitim. Det vil i det lange løp innebære en uholdbar selv- motsigelse om kirken forkynte alle menneskers likhet i Guds rike og samtidig tolererte et kynisk ulikhetsprinsipp i det samfunnmessige liv.” T. Aukrust: *Mennesket i samfunnet. En sosialetikk. Bind I* (1965), p. 145.

between men and women; you are all one in union with Christ Jesus.” (Gal. 3,28)

Third: An ideal of *fraternity* may also be taken as a vital aspect of liberalism. In a society where all citizens are considered free and equal, it should not be possible for those better off to use their favourable position to take advantage of the weaker citizens when distributive principles are settled and practised. Under Rawlsian liberalism, the so-called “difference-principle” protects and benefits the worst off. The “difference-principle” is a fundamental part of the Rawlsian liberal conception and says that permissible “social and economic inequalities ... are to be to the greatest benefit of the least advantaged members of society.”¹⁵⁸ Rawls explicitly relates the difference-principle to the idea of fraternity as follows:

“The difference principle, however, does seem to correspond to a natural meaning of fraternity: namely to the idea of not wanting to have greater advantages unless this is to the benefit of others who are less well off.”¹⁵⁹

Rawls thinks that one reason why the motive of fraternity has played a less important role than the ideals of “liberty” and “equality” in modern theories about democratic society, is that fraternity is taken to express affection, sentiment and feelings that might be most typical of family-life. And, simultaneously, it is often assumed that one cannot realistically expect citizens within the wider political society to have that kind of affection towards one another. Fraternity, nevertheless, expresses a kind of solidarity that no modern well-ordered society can do without. Linked to the difference-principle, the idea of fraternity can also be made a workable idea within the wider society. Of course it should be admitted that the difference principle in itself explicitly recognises and allows for some kind of social and economic inequality in society. Nevertheless, the difference principle, when linked to the idea of fraternity, should pave the way for assessing the organisational structure of a society from the perspective of the worst-off within it.¹⁶⁰

From the point of view of moral theology it is quite crucial, when evaluating a political conception, that there be not just a concern for individuals as *free* and *equal*, but also a genuine concern for the less advantaged. The theologian Heinrich Bedford Stroh thus

¹⁵⁸ J. Rawls, *Political Liberalism* (1993), p.6. I will not here enter into a more thorough discussion of the “difference-principle” as such. Let it just be underlined that this principle is a rather controversial part of Rawlsian liberalism.

¹⁵⁹ J. Rawls, *A Theory of Justice* (1971), p.105

¹⁶⁰ For the present, however, I leave out the problem how the principles of liberty, equality and fraternity are more exactly to be balanced if conflicting.

defends Rawls' difference principle, because he believes that it might contribute to an institutional scheme of society which reduces social inequalities by specifically taking into account the improvement of the situation of the least advantaged.¹⁶¹

Summing up, one might say that the most characteristic features of a well-ordered *liberal* society is that it is a fair society in the sense that the very institutional scheme of society guarantees and effectively safeguards each citizen's fundamental *liberties* (and *rights*), secures for each member fairly *equal opportunities* and also provides for the general means by which people may make use of their liberties and rights. And there is in Rawlsian liberalism a strong inherent idea of social *fraternity*, as expressed in the difference principle. Let me now just show how Rawls very briefly expresses;

“...the content of a liberal conception of justice. The content of such a conception is given by three main features: first, a specification of certain basic rights, liberties and opportunities (of a kind familiar from constitutional democratic regimes); second, an assignment of special priority to those rights, liberties and opportunities, especially with respect to claims of the general good and of perfectionist values; and third, measures assuring to all citizens adequate all-purpose means to make effective use of their liberties and opportunities. These elements can be understood in different ways, so that there are many variant liberalisms.¹⁶²

A liberal society is accordingly a society which allows for individual liberty, considerable variety and the pursuit of different conceptions of the good.

2.3.5.1. EXCURSUS: Liberalism – advancing an “atomist” conception of society?

The notion “atomism”, as used in this excursus, is taken from the philosophy of Charles Taylor.¹⁶³ In Taylor's writings the term “atomism”, which is rather vague, is used to

¹⁶¹ “Im übrigen spricht viel für die Annahme, daß in einer Gesellschaft, in der die Rawlsschen Grundsätze eine immer größere Geltung erlangen, die gesellschaftlichen Unterschiede nicht größer werden, sondern abnehmen. Rechenschaftspflichtig ist in einer solchen Gesellschaft nämlich nicht der Ausgleich von Unterschieden, sondern vielmehr deren Beibehaltung oder gar Verstärkung. Auch wenn Rawls sich mit guten Gründen gegen die strikte Egalität entscheidet, so trägt die Gerechtigkeit als Fairneß der egalitären Intention zweifellos Rechnung. ... Das Unterschiedsprinzip – darauf hat Rawls wiederholt hingewiesen – bezieht sich nur auf die öffentlichen Prinzipien und politischen Rahmenbedingungen, die die sozialen und wirtschaftlichen Ungleichheiten in einer Gesellschaft regulieren.” H. Bedford-Strohm: *Vorrang für die Armen. Auf dem Wege zu einer theologischen Theorie der Gerechtigkeit* (dissertation 1991), p.243f.

¹⁶² J. Rawls, *Political Liberalism* (1993), p.6.

¹⁶³ I have used a Swedish translation of “Atomism”, (first published 1979), made by T.Lindén in *Charles Taylor. Identitet, frihet och gemenskap, Politisk-filosofiske texter i urval* av H. Grimen (1995). The version of liberalism that Taylor is referring to and criticising, is mainly the libertarian version as repre-

characterise certain doctrines, mostly of a contractarian type, that have played a considerable role in the western political culture since about 1600.¹⁶⁴ From the perspective of “atomism” society is the product of co-operation between coexisting *individuals* for their mutual advantage. Society is an arrangement established to defend, support and coordinate basic individual interests. This means that society is considered an aggregate of mere individuals, – co-operating, however, in a joint synergetic venture. Thus, for example, one may find among citizens a readiness to pay for a common insurance-system or a public health-service-system in case one gets ill, or to maintain a police-system in order to protect citizens from criminals, and members of society might also be expected to pay for other services that cannot appropriately be solved on the level of individuals. Despite these joint enterprises, this view of society is mainly “instrumental” and individualistic, - not genuinely social. One needs and uses society for one’s own purposes. The atomist perspective is in sharp contrast to the “holism” described by Taylor.

Taylor locates “atomism” within the liberal tradition as expressed by philosophers like Thomas Hobbes and John Locke. Liberalism is taken to be a standard example of individualism, however, it should, as already suggested, in many respects also be taken as a typical manifestation of modern political ideas about individual rights, personal freedom and emancipation from absolutism and despotism. Thus liberalism has directly contributed to the limitation of state-absolutism.

Modern liberalism is also concerned about the relation between *man and society* (culture and community), a relation which seems, however, to be even more fundamentally stressed from a communitarian point of view. This concern is reflected in the works of philosophers like Alasdair MacIntyre¹⁶⁵, Michael Sandel¹⁶⁶, Michael Walzer¹⁶⁷ and also

sented by Robert Nozick in his book from 1974: *Anarchy, State and Utopia*. Rawls is not directly referred to in this essay. But the term “atomism” is also used by Taylor in other works, for instance in *Sources of the Self. The Making of the Modern Identity*, Cambridge University Press 1989 and in *Philosophical Arguments*, Harvard University Press, Cambridge/Massachusetts 1995. In the last book I will especially refer to chapter 10, “Cross-Purposes: The liberal-Communitarian Debate”, where a Rawlsian version of liberalism is directly taken into consideration. Taylor is aware of the problem connected with using a term like “atomism” to characterise very different kinds of liberalism. However, taking this into account, the term seems to focus on a problem that is recognised as important also by Rawls.

¹⁶⁴ A contractarian approach shall be more thoroughly considered later.

¹⁶⁵ Cf. for instance *After virtue, a study in moral theory* (1992, first edition 1981).

¹⁶⁶ Cf. *Liberalism and the Limits of Justice* (1990, first edition 1982).

¹⁶⁷ Cf. *Spheres of Justice. A Defence of Pluralism and Equality* (1983).

Charles Taylor, all of whom have mounted serious challenges to liberalism.¹⁶⁸ The controversy between communitarians and liberals concerns both vital anthropological questions and not least the question how a society or a community is most properly to be unified by some kind of common good and shared values.

Communitarians emphasise that we find ourselves *embedded* in various social relationships to which we are inevitably “bound.” We play predefined roles in public life, within religious associations or in the smaller communities we belong to. We are in a way “pre-formed” by the particular values of our community, and by the shared traditions we are acquainted with; we are dependent on particular achievements of *our* culture, and we are to a large extent brought up to respect the norms and values that are internalised through the institutions of our society. Thus, we cannot escape our culture, society, community or social attachments. Communitarianism views individuals from a genuinely social perspective, - “as part of a system of social attachments in families, neighbourhoods, and communities”¹⁶⁹ That man is a social being, does not mean that he could not survive if he was excluded from all kinds of communal life. But it means that human beings can only fulfil their “telos,” their human potentiality, their moral, rational and human capacity when socially embedded.

Thus Charles Taylor strongly defends the social thesis that persons are “situated” beings sharing in a common and inescapable authoritative horizon.¹⁷⁰

Our common traditions and communal values are essential from a *communitarian* point of view and largely determinative in the development of a shared value-platform in society. Communitarians stress that citizens at the very outset already participate in an *au-*

¹⁶⁸ Thomas Pogge suggests that the significance of the communitarian attack might be a bit overestimated: “There is a widespread sense that Rawls’s work is in shambles because his critics have shown its foundations to be essentially and irremediably flawed. Since Rawls’s mistake is thought to be a deep one, the collapse of his theory is said to indicate something larger, to remark the end of an era, perhaps the death of liberalism, the demise of the Enlightenment tradition, or even the bankruptcy of systematic moral philosophy. What we need is a radical reorientation in our ethical thinking, or so the story goes. Several authors have already volunteered to set the agenda for the dawning post-Rawlsian era, an agenda based on the renunciation not merely of Rawls’s conclusions but of his goals and entire project. [Footnote 2:] Here I have in mind, for example, Alasdair MacIntyre, Bernhard Williams, Michael Sandel, and Michael Walzer, who want ethics to be centrally concerned with human virtues, with ground projects and deep commitments, or with a notion of community.” T.W. Pogge: *Realizing Rawls* (1989), p.2.

¹⁶⁹ Cf. *Communitarianism. A New Public Ethics* (1994, Ed. M. Daly), p.55.

¹⁷⁰ I have, however, shown that society is in a fundamental way considered “inescapable” from Rawls’ point of view too. Cf. my discussion about society as a voluntary and a non-voluntary scheme earlier in this chapter.

thoritative value-horizon, a phenomenon which is of the greatest significance for social unity. They will reject a liberal view that takes a consensus about basics in society to be the result of an agreement among “free-standing” individuals, – who as free and rational parties, find it prudent to come to some kind of agreement or a kind of *modus vivendi* with other individuals on some required terms of coexistence. According to Taylor, liberalism, being essentially atomistic, lacks an ontological basis for establishing a genuine social perspective, even when considering the relation between man and society.

The relevance of this disagreement applies to the problem of defining a “common good”:

- According to a liberal view – as the communitarians see it – society is just an aggregate of individuals and accordingly “the common good is constituted out of individual goods, without remainder.”¹⁷¹ This means that the common good of society can in reality be no more than a “convergent good”.
- It seems as if liberalism treats the existence of very *different* conceptions of the good in modern pluralist societies as given, rather than supporting a shared quest for a genuinely unifying common good.
- This might even be a reason why modern liberalism so often develops into a so-called “procedural liberalism”, with an ideal of being impartial towards the many substantial conceptions of the good, that in fact exist.

To have a society, however, citizens need according to Taylor a genuinely “common good” instead of just an aggregate of “convergent goods”. And one should try to proceed from merely convergent “I-identities” to a genuine “we-identity”.¹⁷²

¹⁷¹ C. Taylor: *Philosophical Arguments* (second printing 1995), p.188.

¹⁷² In Taylor’s opinion such liberalist views cannot really take the decisive step from a “for-me-and-you-perspective” to a “for-us-perspective”. The move from the “for-me-and-you” to the “for-us”, is for instance one of the most important things we bring about in language, – and any theory of language has to take account of that. Charles Taylor illustrates with a little story the transition from a convergent “for-me-and-you-perspective” to a genuinely social “for-us-perspective”: “Jacques lived in Saint Jérôme, and his greatest desire was to hear the Montreal Symphony Orchestra under Charles Dutoît playing in a live concert. He had heard them on records and radio, but he was convinced that these media could never give total fidelity, and he wanted to hear the real thing. The obvious solution was to travel to Montreal, but his aged mother would fall *into* a state of acute anxiety whenever she went farther than the next town. So Jacques got the idea of recruiting other music lovers in the town to raise the required fee to bring the orchestra to Saint Jérôme. Finally the great moment came. As Jacques walked into the concert hall that night, he looked on the Montreal symphony visit as a convergent good between him and his fellow subscribers. But then, when he actually experienced his first live concert, he was enraptured not only by the quality of the sound, which was as he had expected quite different from

But is it really accurate to hold that liberals (like Rawls) have a “pre-social” and “atomistic” perspective on society which denies the significance of our “situatedness”? Does a liberal perspective necessarily or practically mean that society is taken to consist of citizens who – as individuals with certain rights – are to be considered prior to all the social relations, traditions, roles, institutional arrangements and communal practices, in which they are involved?

There is considerable varieties within liberalism, – something that Charles Taylor is obviously well aware of. I am concerned with Rawlsian liberalism. And John Rawls, as a representative of modern political liberalism, clearly realises that an accusation against liberalism for being basically “individualistic” is indeed a kind of objection that also;

“underlies much of the criticism of *Theory*. This criticism holds that the kind of liberalism it represents is intrinsically faulty because it relies on an abstract conception of the person and uses an individualist, nonsocial, idea of human nature, or else that it employs an unworkable distinction between the public and the private that renders it unable to deal with the problems of gender and the family.”¹⁷³

However, it does not appear to me that Rawlsian liberalism can be easily accused of treating society as nothing more than a mutually advantageous association of individuals. Citizens’ situatedness within the political culture of their own society is in no way neglected. On my reading, Rawls does not set out from an abstract hypothetical position of atomic individualism but takes the first and decisive step towards establishing an overlapping consensus in society by identifying “the fundamental ideas we seem to share through the public political culture we belong to. From these ideas we try to work out a political conception of justice congruent with our considered convictions on due reflection.”¹⁷⁴

Rawlsian liberalism does not deny the significance of traditions and communal values. Rawls takes it as given that people belong essentially to families, local communities,

what you get on records, but also by the dialogue between orchestra and audience. His own love of music fused with that of the crowd in the darkened hall, resonated with theirs, and found expression in an enthusiastic common act of applause at the end. Jacques also enjoyed the concert in a way he had not expected, as a mediately common good.” C. Taylor: *Philosophical Arguments*, (second printing 1995), p.191. Let me also add that Taylor distinguishes between “‘mediately’ common goods” and “‘immediately’ common goods”. Listening to music alone might be quite another experience than listening to music when it is mediated in a common forum. And now he adds that there are also certain things, as for instance friendship, which essentially have to be shared. These are in an eminent way the “‘immediately’ common goods”.

¹⁷³ J. Rawls, *Political Liberalism* (1993), p. xxix

¹⁷⁴ J. Rawls, *Political Liberalism* (1993), p.150f.

different ethnic groups and are members of churches, and that they normally have a deep attachment to these relationships and the communal values they represent. But it is nevertheless difficult to see why it should necessarily follow from this that *the wider political society* which includes different ethnic, religious and cultural groups, associations and minorities should, without considerable reservation, be conceived of in a way completely analogous to the way one thinks that *communities* are most properly and naturally structured.

But it cannot be denied that one of the fundamental objections against liberalism is that man is made a socially unsituated “detached self”. In some respects such an objection might be understandable, especially if the parties in the so-called original situation are allowed to provide us with the premises we need for elaborating an ontology of the person. But it would be a misunderstanding to proceed like this.¹⁷⁵ In fact, Rawls emphasises that the talents, moral powers and abilities of human beings “ – as individuals – cannot come to fruition apart from social conditions”.¹⁷⁶ However, it must be remarked that Rawlsian political liberalism in itself has neither a deep ontology of the person, nor is it a requirement inherent in political liberalism that one ignores the social embeddedness of the “self”.

Notwithstanding the above, it should also be underlined that it is a central concern in liberalism to prevent citizens from being considered a mere “product” of society, tradition, culture and community. Rather, citizens are to be taken as individual persons able of judging morally the practices, the institutions and the arrangements of their own society (and of the communities to which they belong) from a more *detached* point of view. Within a liberal perspective it is therefore easier than within a communitarian perspective to assess one’s society (and community) from a more impartial position, thus transcending one’s own cultural and communal “embeddedness”.¹⁷⁷ This might be

¹⁷⁵ I shall later discuss Rawls’ use of the idea of an *original position* in connection with his use of the idea of a social contract.

¹⁷⁶ J. Rawls, *Political Liberalism* (1993), p.270.

¹⁷⁷ “Without conflating all persons into one but recognizing them as distinct and separate, it enables us to be impartial, even between persons who are not contemporaries but who belong to many generations. Thus to see our place in society from the perspective of this position is to see it *sub specie aeternitatis*: it is to regard the human situation not only from all social but also from all temporal points of view. This perspective of eternity is not a perspective from a certain place beyond the world, nor the point of view of a transcendent being; rather it is a certain form of thought and feeling that rational people can adopt within the world.” J. Rawls, *A Theory of Justice* (1971), p.587. Let it be added that Rawls is more

crucial when setting out for a morally grounded *overlapping* consensus, which can provide us with a basis for criticising even the social scheme one belongs to. And it might also be crucial for establishing the kind of standards which are expressed in universal individual rights.

From the perspective of theological social ethics one might expect to find a certain affinity towards communitarian ideas/ideals about social unity and communal practices, as well as a clear rejection of social “atomism”. First I should reiterate that the objection that liberalism furthers “atomistic individualism” does not apply very well to Rawlsian liberalism. And let it now be added that moral theology should also be expected to transcend the kind of particularism which may follow from a communal perspective. Believing in God the Creator opens up for a more *universal* perspective!¹⁷⁸

2.4. Theology contributing to the unity of society?

2.4.1. Theology and the ordering of society

The concern of egalitarian liberalism is not primarily a concern for any one particular set of values or religious truths that might be taken as an essential value-basis for society. The positive attitude of political liberalism to people’s religious commitment seems to rest on a fundamental respect for persons’ elementary rights, the basic liberties of each citizen, and a strong concern for the freedom of conscience. Stressing the value of personal rights, freedom of conscience and individual liberty, egalitarian liberalism should most likely further a diversity of beliefs. This would simultaneously require a rather fundamental *impartiality* from governmental authorities, social institutions and public laws in matters concerning religious belief.

The consequence of adopting such a liberal scheme clearly appears to undermine any goal of realising a *Christian* society.¹⁷⁹ A liberal conception of society, conceived to be maximally impartial towards the different coexisting groups, might be considered *fair* only if it succeeded in providing a *fair* framework for those practising a Christian belief as well as for the adherents of other religious and moral conceptions, without favouring

careful in recent writings, where he seems to require not just a perspective “sub specie aeternitatis”, but also stresses people’s particular situatedness.

¹⁷⁸ The universal perspective has made it easier for churches/Christians to engage in matters concerning human rights.

¹⁷⁹ Of course one might ask whether there has ever been something like the “Christian” society and whether there might be the slightest possibility of ever realising a “Christian” conception of society.

any particular moral or religious view.

In 1971, the same year Rawls' monumental 607 page work *A Theory of Justice* was published, the theologian Martin Honecker published his *Konzept einer sozialetischen Theorie*, which at 203 pages was a less monumental work. Honecker makes it quite clear that this work should be considered a tentative contribution to the theological debate about social ethics.¹⁸⁰ Issues concerning social justice and the relatively best scheme of society, as well as questions concerning the social and political responsibility of Christian citizens and of the church as an association within modern and complex democracies, had in many respects become increasingly problematic.

One can hardly expect to find a thoroughly elaborated conception of society and state or a complete theory of justice within a tentative *theological* conception of social ethics. Nevertheless Honecker provides us with at least some decisive perspectives on society. In *Konzept einer sozialetischen Theorie*, however, he starts by contrasting his own view to two others.

Honecker rejects a modern-eschatological approach to social ethics¹⁸¹ that is, an approach to society taking its point of departure from the kerygma about the kingdom of God. While there are strong motivations for assuming the primacy of the Christian kerygma in many respects, and doing so might even have some decisive impact on people's overall political perspective, Honecker held that the kerygma of the kingdom of God cannot be directly transformed into a political program, theory or symbol. Rather, an eschatological social ethics would most likely render all established societies merely provisional arrangements. Let it, however, be remarked that there are also strongly eschatological versions of social ethics with a less "revolutionary" approach.¹⁸²

¹⁸⁰ He considers his own concept to be "Ein Diskussionsbeitrag, unzulänglich und unfertig, wie Diskussionsbeiträge zu sein pflegen, aber immerhin eine Konkretion, die veranschaulichen soll, wie der Ansatz ausgezogen werden kann. In der gegenwärtigen Lage der theologischen Sozialethik werden alle systematisch abgewogenen und unangreifbar gemachten Entwürfe immer zu spät kommen. Daher muß man den Mut haben, noch nicht nach allen Seiten hin abgesicherte Überlegungen öffentlich zur Diskussion zu stellen, in der Hoffnung, daß die öffentliche Erörterung die Probleme einer Präzisierung und Lösung näherbringen wird." M. Honecker, *Konzept einer sozialetischen Theorie. Grundfragen evangelischer Sozialethik* (1971), p.10.

¹⁸¹ It is especially a "theology of hope" as conceived of by Jürgen Moltmann, mainly in *Theologie der Hoffnung* (1964), that Honecker has in mind.

¹⁸² In an essay, *Guds rike som politisk mål. Gisle Johnson og det sosiale spørsmål i dag*", Svein Aage Christoffersen has shown how the most influential Norwegian theologian of the 1900th century, claims that the state should be a Christian state, contributing to a moral education in accordance with vital prin-

Honecker also rejects a “theology of order” (“Theologie der Ordnungen”) as insufficient. According to a “theology of order”, as understood by Honecker, the basic organisation of society has its ultimate legitimacy in divine will and authority. And the well-orderedness of society depends on the maintenance of a pre-ordained hierarchical structure.¹⁸³ In a “theology of order” the state-institution plays the most central role, since this institution has the required divine legitimacy and power to enforce social unity and to cope with disorder.¹⁸⁴ There are many reasons why Honecker criticises a “Theologie der Ordnungen”¹⁸⁵, but let me focus here on just one aspect of his critique: A “theology of order” is too often and too easily used to give legitimacy to existing state authorities and social organisations which can not plausibly be morally defended.¹⁸⁶

ciples inherent in the kerygma of the kingdom of God: “...læren om staten blir en lære om den kristelige stat. På samme måte som bare det kristelige ekteskap er et sant ekteskap, er det bare den kristelige stat som kan tilsvare statens ide, som er å skape det fullkomne samfunn som forutsetning for den enkeltes fullkommenhet. Statens oppgave er 'som et Organ for Guds i Kristus aapenbarede Vilje paa den kristelige Families og det kristelige Selskabs Grundvold ved sin kristelige Lov og Retsorden at fremme de enkelte Statsborgeres sædelige opdragelse og saaledes bidrage Sit til Guds Riges komme'. Johnson tenker seg ikke at kirken skal styre staten. Men han tenker seg at kirken skal utstyre staten med den sedelighet som staten har til oppgave å tilføre samfunnet, fordi det i realiteten bare er kirken som kan utstyre staten med denne sedelighet” S. Aa. Christoffersen in *Arv og utfordring, Menneske og samfunn i den kristne moraltradisjon* (Eds. S. Aa. Christoffersen and T. Wyller, 1995), p.238.

¹⁸³ “Die Obrigkeit und nur sie allein, ist von Gott eingesetzt. Macht entfaltet sich nach diesem patriarchalischen und personalen Verständnis von Staatsautorität nur von oben nach unten. Machtausübung von unten her ist undenkbar.” M. Honecker, *Konzept einer sozialetischen Theorie. Grundfragen evangelischer Sozialetik* (1971), p.147

¹⁸⁴ There might be considerable variations within a “theology of order”. It is for instance obvious that there are great differences between theologians like Paul Althaus, Walther Künneth and Helmut Thielicke, three theologians that figure in the dissertation of T. Bakkevig: *Ordnungstheologie und Atomwaffen. Eine Studie zur Sozialetik von Paul Althaus, Walter Künneth und Helmut Thielicke* (1989). But a common feature is obviously that the main institutions of society, in particular *state* and *family*, are viewed as ordered by God to prevent egoism, sin and escalation of disorder. The family institution is usually taken to be instituted by God through the creation act, while the state-institution might be seen as required because of the fall of man. Both kinds of institutions, however, have their ultimate legitimacy from God. And as an institution, enforced because of the fall and the egoism of man, the state has a legitimate mandate to use coercive powers to prevent disorder, anarchy and evil, and protect the weaker against the stronger. Thus it is also recognised that the state has to use the means that should be considered adequate when dealing with evil and egoism.

¹⁸⁵ There are at least three more reasons why Honecker rejects a “theology of order”. **First** it has not taken sufficiently into account that (western) society has changed fundamentally. Models “ursprünglich entworfen für ein einheitliches ‘Corpus christianum’, in welchem es noch keinen staats- und kirchenfreien Raum gab” (*Konzept einer sozialetischen Theorie*, p.8f.) should not automatically be considered applicable to modern democratic societies. **Secondly**: Taking the nature of sin and egoism into consideration, there should be no reason to believe that an absolute ruler should be less subject to sin, evil and greediness than most ordinary citizens. Experiences with the third “Reich” should be sufficient for demonstrating this. Procedures should instead be institutionalised, - guaranteeing that political authorities are effectively, publicly and continually controlled. **Thirdly**: Honecker is very critical of state-metaphysics mainly concerned with the essence (das Wesen) of the state rather than its actual functions. Most kinds of state-metaphysics tend toward state-positivism.

¹⁸⁶ “Die Theologie der Ordnungen versteht menschliche Verhältnisse als Stiftungen Gottes. Daß in ihnen Gottes erhaltende Gnade wirksam ist, kann man wohl glauben. Aber man kann diesen Glauben nicht zur

Thus, Martin Honecker is very much aware – and critical – of the ideological and legitimating function that a “theology of order” might have in society. If basic political institutions are ultimately held to be “sacrosanct”, then the institutional scheme of society can hardly be appropriately assessed and criticised from a moral, political and rational point of view. There are many reasons why Honecker stresses this point.

- A divine legitimation of the state-authority has falsely been made an eminent task of religious organisations.¹⁸⁷
- According to Honecker no *particular* conception of the state can be derived from premises given in the Bible or in theological dogmatics.¹⁸⁸
- The role of the state may easily be overestimated through a “theology of order”. According to Honecker it is an urgent task to make the state accept its limitations.¹⁸⁹
- The state might, nevertheless, be taken as an “*ordinatio divina*”¹⁹⁰, but one has to be very careful about drawing political consequences from the religious view that the state may *theologically* be taken as an “*ordinatio divina*”.
- In modern societies an appropriate political “Willensbildung kann nur gelingen im Konsens der betroffenen Bürger.”¹⁹¹

Thus Honecker concludes that the obligation of churches and Christians to supply the state with the moral basis and the substantial values required for maintaining the order and unity of society no longer exists or, at the least, is radically altered in modern societies.¹⁹² And he rejects theological legitimation of any particular political scheme of

gesellschaftlichen Legitimation vorhandener Institutionen verwenden.” M. Honecker, *Konzept einer sozialetischen Theorie. Grundfragen evangelischer Sozialetik* (1971), p.2.

¹⁸⁷ But Honecker admits that there are versions of a “theology of order” that are not subject to his kind of critique. He takes theological social ethics, as elaborated by Emil Brunner, as an example.

¹⁸⁸ “Aus Glaubenssätzen und biblischem Zeugnis ist keine Staatsform herzuleiten. Der gegenwärtige Staat is in seiner konkreten Erscheinung ein Gebilde der Geschichte.” M. Honecker, *Grundriß der Sozialetik* (1995), p.337. Let me here insert that someone might accept the latter assertion, while still finding the former (“Aus Glaubenssätzen und biblischem Zeugnis ist keine Staatsform herzuleiten.”) unjustified.

¹⁸⁹ It is for instance necessary to stress that; “Der christliche Glaube sieht den Zweck des Staates dadurch begrenzt, daß er nicht Heilsveranstaltung sein darf.” M.Honecker, *Grundriß der Sozialetik* (1995), p.337.

¹⁹⁰ “Christlicher Glaube anerkennt jedoch die Notwendigkeit von Staatsgewalt und politischer Macht, um dem Bösen willen. Deshalb bejaht er das Prinzip der 'Staatlichkeit', als Gottes Setzung, als *ordinatio divina*.” M. Honecker, *Grundriß der Sozialetik* (1995), p.337.

¹⁹¹ M. Honecker, *Grundriß der Sozialetik* (1995), p.337.

¹⁹² And therefore Honecker can now clearly state that: “Die christliche Gemeinde und die einzelnen Christen sind nicht vordringlich nach einem eigenen materialen theologischen (‘theoretischen’) Beitrag

society. Ironically, this undermining of a theological legitimacy for the modern state and political scheme may be symptomatic of the modern legitimacy crisis itself. Modern societies are left with the task of finding new ways to ground the legitimacy of state authority in the aftermath of the collapse of widely recognised religious authority. In denying the church's legitimising power Honecker simultaneously prevents the Christian gospel from being politically and morally “exploited” and misused to support any particular political schemes or conceptions of society. One might, therefore, assume that Honecker – being so critical of the political legitimation-history of the church in western societies – should also be critical of *theologically* supporting an “overlap” as conceived of within the framework of political liberalism.¹⁹³

From this Honecker's sceptical attitude towards a “theology of society” (“Theologie der Gesellschaft”) can be easily understood. Admittedly Heinz-Dietrich Wendland, who uses this term explicitly, takes a “realistic” approach.¹⁹⁴ He fully recognises the hermeneutic problem of applying Bible-texts in matters of actual politics, and he avoids the risk of letting the modern world define the agenda of theology and church. But nevertheless he tends to establish a privileged theological position¹⁹⁵ for interfering in matters

zur politischen Theorie gefragt, der in der Regel doch nur legitimatorischen Zwecken dienen würde oder dienstbar gemacht würde.” M. Honecker, *Grundriß der Sozialethik* (1995), p.337

¹⁹³ However, Honecker admits that from the theological side there may be a greater “affinity” towards certain political schemes and conceptions than towards others. The shades of grey are not insignificant.

¹⁹⁴ “Es ist nicht die Intention der evangelischen Theologie der Gesellschaft, dieser Gesellschaft und ihren Strukturen mit utopischen Forderungen gegenüberzutreten. Eine gegensatzlose, spannungslose soziale Einheit gibt es nicht - am wenigsten auf dem Boden einer ‘pluralistischen’ Gesellschaft. Aber die Kirche ist auf diesem Boden durch ihre Sendung zum Wächter bestellt, zum Anwalt der menschlichen Einheit der Gesellschaft, damit deren Zerspaltung und ‘Desintegration’ nicht verhindere, daß die Gemeinschaft der Menschen über die sozialen Gegensätze hinweg und durch die Verbandsmauern hindurch erhalten oder neugewonnen werde; der Gefahr neuer Klassenbildung muß sie in den Weg treten; in dem Wirwar von Verbands- und Gruppensprachen, der dazu führt, daß man sich gegenseitig nicht mehr versteht, muß sie für die echte Gesprächsmöglichkeit Sorge tragen, Türen in die Mauern brechen und dem personalen Kontakt zwischen getrennten Sozialparteien und Verbänden dienen. Auch heute noch steht eine Fülle von Möglichkeiten offen.” H.-D. Wendland, *Die Kirche in der modernen Gesellschaft* (2. verbesserte und ergänzte Ausgabe 1973), p.147. God himself sets obviously the premises not just for the church as such, but for the concrete political aims as well: “Wie Gott alle Grenzen zum Menschen hin überschritten hat und die Feindschaft des Sünders gegen sich selbst aufhebt, ist die Nächstenliebe niemals festgesetzt in Gesetz und Recht. Sie bleibt darum nicht in den Grenzen der Vernunft und Humanität ... Deshalb sind alle Träger der sozialen Arbeit im Staat, in der Gemeinde, in den Verbänden der Wohlfahrtspflege, darum sind ökonomisch-politische Verbänden wie der Neosozialismus und der Neoliberalismus zu befragen, ob es für sie nicht endlich an der Zeit sei, ihre letzten Voraussetzungen und Traditionen radikal zu überprüfen, zu revidieren und eine neue Entscheidung zu treffen, die über die privaten Beziehungen zu dieser oder jener Philosophie, dieser oder jener Gestalt der Humanitätsreligion hinaus endlich zu Wirklichkeit Gottes und damit des Menschen vorstößt.” *Ibid.*, p.175f.

¹⁹⁵ Honecker on his side underlines: “Bei der Diagnose der Gesellschaft ist die theologische Sozialethik auf sozialwissenschaftliche Information angewiesen. Sie kann sich dabei nur auf profane Vernunft-

of politics equally concerning all citizens. Such an attempt to establish a “theology of society” from which to evaluate and revise the scheme of society, might end up with an “overtaxation” of dogmatic motifs and biblical texts in matters which are in reality of a genuinely political nature. That would be both theologically illegitimate and politically inappropriate.

Indeed, Honecker has no intention of undermining the belief that “civitas terrena” belongs within the non-transparent providentia dei. To deny this should have rendered him a Manichaeist. But using God(s will) as a decisive and ultimate argument when political issues are at stake, would bring a kind of absolutism into the political domain, that would render reasonable political discourse more or less impossible. One has to take into account that the role of God’s will in the political arena is itself a controversial matter among the members of society, – just as it is among the Christians.

Taking politics (and morality) as a joint venture, simultaneously facing the radical diversity of modern societies, Honecker seems largely forced to avoid “Eine kerygmatische Einschärfung ethischer Grundsätze und jede Form von autoritärer Moralvermittlung...”¹⁹⁶ when addressing the question of moral values for society as such and the impact of Christian norms in this context. As a result, Honecker seems to be left with a rather “thin” version of Christian social ethics. “Thin” in so far as it seems impossible for him to argue for the kind of substantial religious ethics, which would be required if he should effectively provide society with “Christian” guidelines in political matters.

Like Rawls, Honecker is obviously concerned about shared basic values, norms and agreements that might render fair coexistence among diverse parties possible. Taking the characteristic features of modern democratic societies into account when considering social ethics in a theological perspective, Honecker reaches conclusions that are to a large extent similar to vital aspects of Rawls’ theory. Thus Honecker aims at furthering an attitude of reasonable co-operation (not least on the part of Christians) in resolving the common problems facing citizens of modern societies. But there is another goal which is similarly stressed in Honecker’s conception, – i.e. to prevent Christian ethics

erkenntnis berufen. Gegen eine ‘Theologie der Gesellschaft’ ist Skepsis geboten. Denn daß die theologische Erkenntnis Einblick in eine besondere Tiefendimension der Gesellschaft gewähren kann, ist nicht nachzuweisen.” M. Honecker, *Konzept einer sozialetischen Theorie. Grundfragen evangelischer Sozialetik* (1971), p.10.

¹⁹⁶ M. Honecker, *Grundriß der Sozialetik* (1995), p.ix.

(or religion) from being ideologically and politically misused.

2.4.2. The value-formation of society

When focusing on the value-formation of society, it might be instructive to turn to the intense German debate in the seventies about the role of legislation in questions of family-politics generally, and the right to seek and have an abortion specifically. This debate provides examples of the kind of questions and problems raised in this chapter. From the specific issue of abortion there arose a much wider debate about the kind of fundamental values (“Grund-werte”) which could most appropriately serve as a *shared* value-basis for society, and a discussion about the causes of the present “value-crisis”. The following questions are typical of those raised in the public debate:

- How far should state-authorities themselves be responsible for the furthering of basic *moral* values and for the safeguarding of fundamental *ethical* norms for society as a whole?
- What role could and/or should the churches – and other associations within civil society – play in promoting central ethical values for society as a whole?

From the perspective of the churches, especially from the side of representative Catholic church-leaders, it was taken as a regrettable fact that political authorities did not maintain vital and fundamental values as they ought to.¹⁹⁷ It was argued that, even in a pluralist society, there are specific *substantial norms and values*, such as the protection of the life of the unborn, that should be taken as a unanimous achievement of civilised societies, and which political authorities should abide by.

Bundeskanzler Helmut Schmidt responded to the critique against the state-authorities. In Schmidt’s opinion, state-authorities should have a very limited task in settling controversial questions of morality. Of course he did not deny that the law and the coercive powers of the state should be used for safeguarding the most essential rights and political liberties, provided these are basic rights founded on moral values that are widely

¹⁹⁷ Honecker writes: “Kritisiert wird, daß das Sittengesetz und die Grundwerte angefochten werden: Die Mißachtung der Familie, die Infragestellung der Institutionen Ehe und Familie, ideologische Interpretationen der Bildungsziele und -inhalte wie des Demokratieverständnisses, die Einschränkungen des Rechts des ungeborenen Lebens durch die Ermöglichung des Schwangerschaftsabbruchs werden ausdrücklich genannt.” M. Honecker, *Das Recht des Menschen. Einführung in die evangelische Sozialethik* (1978), p. 189.

approved of in society as such. Schmidt's point, and purpose, was to underline the position that there is no democratic legitimation for making moral standards, especially controversial ones, part of the law of a modern society, – and even less for furthering such standards by use of coercive power or the criminal law.¹⁹⁸

Schmidt does, however, not draw the conclusion that churches should stay entirely out of politics. On the contrary, given the Church's considerable moral influence within western societies, Helmut Schmidt considered the church itself co-responsible for the moral crisis of modern western societies:

“Wenn daher die Mißachtung der Grundwerte seitens der Kirche und der Verlust eines Grundwertekonsensus beklagt wird, dann ist dies zuerst und vor allem eine Anfrage an die Verkündigung der Kirche.”¹⁹⁹

Within the framework of civil society the church has both a task and an opportunity (like anybody else) to contribute to the value-formation of society, thus influencing the norms and values to be held by most citizens. The state-authorities, however, cannot in the same way “preach” morality or advance particular (Christian) values and moral doctrines, especially if they are not widely *shared*. Rather, the state-authorities' primary responsibility is the protection of the fundamental legal rights (“Grundrechte”), guaranteed by a society's constitution.

In many ways Honecker found this debate about the elementary, unifying groundvalues of society important but also confusing.²⁰⁰ Some distinctions were in his opinion to be

¹⁹⁸ “Der Staat des Grundgesetzes kann als Staat nicht Träger eines eigenen Ethos sein ... Nur das, was in der Gesellschaft an ethischen Grundhaltungen tatsächlich vorhanden ist, kann in den Rechtsetzungsprozess eingehen, kann als Recht ausgeformt werden.” (Gorschenek, p. 22), Quoted from M. Honecker, *Das Recht des Menschen. Einführung in die evangelische Sozialethik* (1978), p. 190

¹⁹⁹ This is Martin Honecker's way of formulating Bundeskanzler Schmidt's standpoint. Cf. *Das Recht des Menschen. Einführung in die evangelische Sozialethik* (1978), p. 190.

²⁰⁰ It has to be admitted that many different concerns are without doubt brought into the German debate about ground-values, what might seem a bit confusing. Honecker proposes to use the term “Grundwert” in a way that is less confusing: “Der Begriff der ‘Grundwerte’ wird in den meisten Dokumenten und Stellungnahmen weniger erklärt als einfach vorausgesetzt. Eine Folge davon ist, daß es sehr verschiedene Sachverhalte als Grundwerte bezeichnet werden. Die Erklärung der katholischen deutschen Bischöfe ‘*Gesellschaftliche Grundwerte und menschliches Glück*’ vom 7. Mai 1976 ordnet diesem Begriff sowohl sittliche Werte wie Freiheit, Gerechtigkeit, Frieden, Wahrheit, Liebe zu, als auch Grundprinzipien der katholischen Soziallehre – Gemeinwohl, Subsidiaritäts- und Solidaritätsprinzip –, als auch elementare Rechtsgüter, wie den Schutz des Lebens oder der Würde der Person, und schließlich Institutionen wie Ehe und Familie, dann die Rechtsordnung, den Staat und sogar die Demokratie. Ethische Grundüberzeugungen, Rechtsgüter, Institutionen und Sozialprinzipien werden damit freilich nicht mehr unterscheidbar.... Nun ist nicht zu bestreiten, daß alle genannten Sachverhalte bezogen sind auf den *einen Wert der Personwürde*. Aber dennoch sind Institutionen oder Sozialprinzipien lediglich auf diesen Wert *bezogen*. Sie sind nicht selbst Grundwerte. Die Unschuld des vulgären Wert-Begriffs

made:

- First one has to distinguish clearly between state-authorities, church-authorities and civil society when placing questions of moral value-formation and the honouring of substantial social norms on the agenda.
- And a corresponding distinction between “Grundrechte” , “Grundwerte” and “letzte Werte” is to be made.²⁰¹

All of the participants in the debate agreed that state-authorities have the task of safeguarding (even by use of coercive power) the constitutional and most fundamental rights of the citizens.²⁰² There also seems to be a wide agreement that constitutional basic rights are rooted in vital ground-values recognised in society, – even if it may be characterised by widespread diversity.

Let me, however, interject a remark that might seem obvious, but that should nevertheless be considered very much to the point: Schmidt distinguishes two political perspectives, a state-perspective and a civil-society-perspective. But even if the distinction might be of importance, it was the opinion of many representatives of the church that he distinguished too sharply. A “dualism” between state and civil society cannot successfully be maintained. Honecker for his part wishes to underline that:

“Der Staat, der Daseinsvorsorge im umfassenden Sinne leistet und dabei auch Fürsorge für die Kultur faktisch wahrnimmt, ist nicht der klassische Nichtinterventionsstaat, der sich mit Polizeifunktionen begnügt. Vielmehr ist es auch Sache des Staates, gemeinsame Überzeugungen seiner Bürger zu schützen. Er schafft diese Werte und Grundhaltungen nicht; aber er lebt von ihnen und kann sich deshalb nicht indifferent und gleichgültig ihnen gegenüber verhalten. Zudem sind die Staatsbürger doch nichts anderes als die Gesellschaft. Eine Abstinenz des Staates gegenüber den

täuscht jedenfalls über seine Probleme hinweg. Daher soll der Begriff ‘Grundwerte’ hier nur sittliche Grundeinstellungen bezeichnen und deswegen auch von Menschenrechten unterschieden werden. Überdies würde ich es vorziehen, statt von Grundwerten von ethischen Maßstäben oder Grundnormen ethischen Verhaltens zu reden. Da sich aber der Begriff ‘Grundwerte’ in der Diskussion eingebürgert und durchgesetzt hat, behalte ich ihn trotz Bedenken bei.” M. Honecker, *Das Recht des Menschen. Einführung in die evangelische Sozialethik* (1978), p. 167f. In this way Honecker can distinguish between “Grundwerte” and “Grundrechte”, what means that he takes the former to provide us with specific moral guidelines, while he holds that “Grundrechte sind in der Verfassung eines Staates positiviert Menschenrechte”. *Ibid*, p.188.

²⁰¹ For the term “letzte Werte” I refer to Martin Honecker, *Das Recht des Menschen. Einführung in die evangelische Sozialethik* (1978), p. 189.

²⁰² A remark might be to the point here: “Grundrechte sind in der Verfassung eines Staates positiviert Menschenrechte”, according to Honecker. Cf. *Das Recht des Menschen. Einführung in die evangelische Sozialethik* (1978), p. p.188

Grundwerten ist faktisch undurchführbar.”²⁰³

After all it appears to me that this brings Honecker rather close to Helmut Schmidt’s point of view. The active role of the state-authorities in the moral value-formation should be very limited. In and of themselves, state-authorities might be expected to be as far as possible morally neutral in controversial questions involving faith and comprehensive religious doctrines. But the state nevertheless needs a moral backing from the citizens, – it is dependent on the “gemeinsame Überzeugungen seiner Bürger”. And as far as the Church is concerned, it can be expected that it, as an influential value-producing association within society, will somehow contribute to the value-formation of democratic societies,.

As remarked, many participants in the debate contested that the distinctions between state and civil society, and between “Grundrechte” and “Grundwerte” could be drawn so clearly and sharply as the “Bundeskanzler” in fact did.²⁰⁴ But it was obviously not easy for church-leaders to say how far state-authorities should go in furthering certain moral values by the means of coercive power and the legislative institutions. Even if the state is dependent on fundamental moral values found in political society, it might be problematic for the state as such to be an advocate of particular moral doctrines.

As far as I can see, Honecker can in no way be said to be unappreciative of the position taken by Bundeskanzler Schmidt. This is clearly evident from Honecker’s rejection of those who criticise state-authorities for being concerned just with “ethischen Minimalia”.²⁰⁵ Helmut Schmidt is, according to Honecker, correct in claiming that a modern

²⁰³ M. Honecker, *Das Recht des Menschen. Einführung in die evangelische Sozialethik* (1978), p. p.191.

²⁰⁴ Honecker takes Cardinal Höffner, the leader of the Catholic Bishops conference, as an example of a theologian, who is contesting that such a sharp distinction between (comprehensive moral) ground-values and (legal) ground-rights can be clearly drawn: “Im Widerspruch dazu erklärte der damalige kommissarische Vorsitzende der Deutschen Bischofskonferenz, eine solche Unterscheidung von Grundrechten und Grundwerten, für abwegig: ‘Grundwerte sind das Rechtsgut, der Inhalt der Grundrechte und darum deren unaufgebbare Bestandteil ... Der Staat hat ... die Grundrechtsgüter, also die Grundwerte mit seiner Autorität und seinen legitimen Möglichkeiten nicht nur zu respektieren, sondern auch zu schützen, zu gewährleisten und zu fördern, z.B.in der Gesetzgebung über Ehe und Familie, in der Gestaltung der Gesellschaft, im Erziehungs- und Bildungswesen, im Ausbau des Systems der sozialen Sicherheit, in der Mitgestaltung der öffentlichen Meinung. Hier ist auch der Schutz der Grundwerte durch das Strafrecht zu nennen. Der Staat kann sich seiner Verantwortung für die Inhalte der Grundwerte, wenn er sich nicht aufgeben will, nicht entziehen. Er ist weltanschauungsneutral, aber grundwertgebunden.’ (Gorschenek, S.156).” The quotation is taken from M. Honecker, *Das Recht des Menschen. Einführung in die evangelische Sozialethik* (1978), p. 190f.

²⁰⁵ Here Honecker obviously has in mind an article about “Aspekte der Freiheitsproblematik im Recht”, written by A.Hollerbach in: *Philosophische Perspektiven* 5, 1973, S.29-41. Honecker stresses that

state cannot have the task of promoting more than an essential minimum²⁰⁶ of basic *moral* values. How could the government of a modern pluralist and constitutional democracy maintain more than an ethical minimum-program without using methods that are not worthy of modern constitutional democracies?²⁰⁷

But, according to Honecker, this certainly does not mean that a modern state should be entirely *neutral* in all questions of significant moral value. There are obviously some doctrines concerning the integrity and inviolability of the person which cannot be the subject of political bargaining or compromising and which state-authorities should themselves advance, protect and act upon. Honecker makes this quite clear:

“Auch theoretisch sind Grundrechte und Grundwerte nicht völlig voneinander zu trennen. Die Anerkennung der Würde der Person ist eine Wertentscheidung; zugleich ist der Schutz der Menschenwürde ein Grundrecht. Die Grundrechte beruhen zumindest auf der Geltung *eines* Grundwerts, auf dem Grundwert des Person-Seins. Diesen Grundwert können Mehrheitsentscheidungen nicht aufheben. Er ist weder Staat noch Gesellschaft verfügbar. Dieser Grundwert der Würde der Person ist sowohl Grundlagenordnung politischer Ethik wie Grundlage des staatlichen Rechts.”²⁰⁸

And state-authorities have no reason to fear that upholding certain moral doctrines of this kind, might be considered “eine staatliche Sanktion kirchlicher Wertvorstellungen”.²⁰⁹ In matters touching upon the value and integrity of the person, political

“einmal ist gegen den Satz ‘Mit ethischen Minimalia ist kein Staat zu machen’ einzuwenden: Der Staat kann als Maximum an Grundwerten rechtlich nur ein Minimum dessen schützen, was gesellschaftlichen Gruppen fordern. Positive Wertoffenheit des Staates gebietet ihm aber, gesellschaftlichen Gruppen ein Mehr an Verwirklichung ihrer Wertvorstellungen zu ermöglichen als er von der Gesamtgesellschaft rechtlich erzwingen kann. Zum anderen sind Grundwerte Voraussetzungen und Interpretationshilfen von Grundrechten. Aber es wäre gefährlich, eine vollständige Ethisierung des Rechts anzustreben, da dies zu einer Überbeanspruchung der Autorität des Staates wie zu einer Juridifizierung des Ethos führen müßte. Insoweit hat der Einspruch von Helmut Schmidt recht. Die Differenzierung von Grundwerten und Menschenrechten ist notwendig; eine auf den Dualismus von Recht und Ethos gegründete Trennung, Separierung der Menschenrechte von den Grundwerten aber macht das Recht zu einem wertfreien, damit beliebig manipulierbaren Instrument der Ordnung sozialer Beziehungen und Verhältnisse.” M. Honecker, *Das Recht des Menschen. Einführung in die evangelische Sozialethik* (1978), p. 192.

²⁰⁶ Maybe is the term “minimum” not the most appropriate in this connection. Neither Schmidt nor Honecker will defend the idea that a modern state should just be a “minimum-state” in the sense that it should merely be a kind of police-state with the negative task of punishing evil-doers. A modern state is far more than that, according to Schmidt and Honecker. But I think both of them want to underline that a modern state should be a minimum-state in the sense that it should just promote those *ethical* standards that are most fundamental and widely acceptable. A modern state cannot in itself use criminal law or governmental power to enforce a “thick” moral conception.

²⁰⁷ I think this is also the main point of Bundeskanzler Schmidt: The *coercive* powers of the state should normally not be used to settle controversies in matters of morality and religion.

²⁰⁸ M. Honecker, *Das Recht des Menschen. Einführung in die evangelische Sozialethik* (1978), p. 191.

²⁰⁹ M. Honecker, *Das Recht des Menschen. Einführung in die evangelische Sozialethik* (1978), p. 191.

authorities simply cannot be allowed to be “neutral”.

Thus Honecker takes it for granted that there are or should be in society at least a minimum of *shared* groundvalues (“Grundwerte”) - especially in areas affecting the integrity and inviolability of the person. Such values have to be guaranteed by the state-authorities, codified in form of legal rights, and effectively maintained. Beyond this, however, state-authorities should not attempt to impose a value based homogeneity on society as a whole.

How churches can most appropriately participate in the moral discussion and in the value-formation within civil society is – of course – not fully clarified by Bundeskanzler Schmidt. The theologian Martin Honecker has more to say in this respect, as shall be more thoroughly explored in chapter 5.

2.5. Society – to be sufficiently ordered and unified by a conception of justice?

In the last and concluding section of this main-chapter it should clearly be emphasised how Rawls very consequentially conceives of the unity of society. Note first please, that both Rawls and Honecker clearly agree that the well-orderedness and unity of society cannot just be achieved through a successful approximation to a pre-defined “ewige Ordnung”²¹⁰ Neither does social unity require that people have the same historical traditions, that they agree on religious values, believe in similar comprehensive doctrines and are bound by shared communal bonds and attachments.

Rawls instead makes it clear that “political liberalism conceives of social unity in a different way: namely, as deriving from an overlapping consensus on a political conception of justice suitable for a constitutional regime.”²¹¹ In a well-ordered society citizens should be supposed to have one final end²¹² in common, the aim of justice itself. Thus they are assumed to have a political and reasonable conception of justice, or at least some essentially similar principles of justice, in common, – by which fair co-

²¹⁰ M. Honecker, *Konzept einer sozialetischen Theorie. Grundfragen evangelischer Sozialetik* (1971), 160f.

²¹¹ J. Rawls, *Political Liberalism* (1993), p.201

²¹² According to Rawls “a final end is understood as an end valued or wanted for its own sake and not solely as a means to something else”, J. Rawls, *Political Liberalism* (1993), p.201

existence and co-operation can be established and regulated. Vital principles of justice are to be “materialised” in the very institutional scheme of society, in the procedures for solving conflicts and in the framework for public reasoning. This is considered sufficient for social unity and social co-operation. It is within such a shared framework that communities, associations, groups and individuals can be supposed to be most fairly situated. Vital principles of justice, when made the core of an *overlapping consensus*, are themselves assumed to fill the role of a “common good” in society.

Let me close this chapter with some words from Honecker, which may clearly support Rawls’ view:

“Während eine metaphysische ontokratische Staatslehre Gerechtigkeit als ewige Ordnung begreift, wird sie im gesellschaftlichen Prozess zu suchen und zu verwirklichen. Die Gerechtigkeit liegt nicht vor, sie kann nur das Ergebnis eines demokratischen Consensus sein.”²¹³

²¹³ M. Honecker, *Konzept einer sozialetischen Theorie. Grundfragen evangelischer Sozialethik* (1971), p.160f.

3. PLURALISM AND THE PROBLEM OF COMPREHENSIVE DOCTRINES

3.1. *The problem*

In the previous chapter I argued that a society can be well ordered and sufficiently unified even if it lacks a professed religious basis from which moral doctrines and ethical values can be derived.²¹⁴ Admittedly it seems unlikely that there could be within modern societies any religiously grounded moral doctrine capable of providing us with a widely acceptable moral platform and serving as a common value basis for coexistence and cooperation. In Rawls' own words:

“The religious doctrines that in previous centuries were the professed basis of society have gradually given way to principles of constitutional government that all citizens, whatever their religious view, can endorse. Comprehensive philosophical and moral doctrines likewise cannot be endorsed by citizens generally, and they also no longer can, if they ever could, serve as the professed basis of society.”²¹⁵

It is certainly the case that the widespread “pluralism” in questions of values and moral standards in modern society instils a sense of urgency to reconsiderations of fundamental issues concerning coexistence and the required minimum of consensus.

Although pluralism²¹⁶ can be peaceful, it may equally well lead to sharp conflicts.

If a situation of “bellum omnium in omnes” is to be avoided, society needs to develop regulative political principles that can serve as a basis for a fair coexistence among the various parties of a highly pluralistic society. But the problem is that there seems to be

²¹⁴ This does not mean that religious doctrines should not play a role in the value-formation of society, as I hope to show clearly, – when discussing Honecker's model of “Vermittlung” and Rawls' idea of a consensus endorsed “from within” the different comprehensive (religious) doctrines themselves.

²¹⁵ J. Rawls, *Political Liberalism* (1993), p.10

²¹⁶ Many have adopted a rather negative attitude to the phenomenon of “pluralism”, – for different reasons. Gregor McLennan writes that: “More loosely still, pluralism indicated a certain type of temperament, a particular psycho-personal frame of mind. In this sense, ‘pluralism’ is not significantly different from the general gist of ‘liberalism’, an equally unpopular state of intellectual being for radicals of the 70s stamp. Taken that way, pluralism as an outlook on life and politics could be expected to appeal to the overly-tolerant, *pseudo*-tolerant, ostensibly humanistic, and intellectually eclectic sort of person; the sort of person who does not really have clear opinions on anything; the well-meaning type who, deep down, does not fundamentally want to question or change society; the faint-hearted ones, hesitant even about pushing academic sociology or political science to their full critical potential; the sort of people who fiddle while Rome burns.” G.McLennan, *Pluralism* (1995), p.1f. But McLennan also adds: “Nevertheless, pluralism is nowadays part of the ‘structure of feeling’ of the critical wing of western intellectual culture to a degree that would have been unthinkable even 10 or 15 years ago.” *Ibid.*, p.2.

no substantial value-system, religious or secular, that can serve as an *acceptable* and *shared* moral basis for coexistence and social co-operation in modern societies.

According to Rawls it is a typical and permanent feature of liberal democracies that citizens and associations may legitimately subscribe to different and even “incompatible”²¹⁷ comprehensive moral and religious doctrines. And since these doctrines have widely competing conceptions of what is good and valuable, it seems unfair for one of the parties to impose on society as a whole a value-system that could not in the long run be willingly endorsed, honoured and maintained by (nearly) all citizens. One simply cannot ignore the problem of diversity (value-pluralism), when attempting to establish a shared basis for coexistence and social co-operation for society as a whole.

The fact of *pluralism* was a constant underlying problem in the previous chapter. This “fact”, as understood by Rawls, is well described by Thomas Pogge as follows:

“Das 'Faktum des Pluralismus' ist die von Rawls behauptete Tatsache, daß eine Einigung auf eine umfassende religiöse, philosophische oder moralische Weltanschauung oder Konzeption des Guten in einer freiheitlichen Gesellschaft keinen Bestand haben kann, daß solche Werte immer umstritten sein werden.” [And Pogge adds] “... daß das Faktum des Pluralismus auch ohne Unvernunft und Böswilligkeit Bestand haben würde.”²¹⁸

In this chapter I analyse the role that the phenomenon of *pluralism* plays within the respective thought of John Rawls and Martin Honecker.²¹⁹ Pluralism should neither be ignored as a “positive premise” (since it is connected with freedom) nor as a “negative” premise (since it is a threat to social unity) when conceiving of a political philosophy, or working out an appropriate theological conception of social ethics for modern societies.

Let me sum up: The apparent paradox before us is that a shared professed value-basis cannot be established in modern pluralist societies, and yet modern pluralist societies stand in urgent need of morally grounded principles that can serve as a basis for *fair*

²¹⁷ The notion of “incompatibility” is used by Rawls himself. By using this term I think he wants to stress two important things: First that different comprehensive doctrines, existing in modern societies, might have so different focus-points that they should better be considered incomparable. And secondly I think incompatibility also means that different comprehensive doctrines might provide people with competing “truths” about the same issues, what makes it unlikely that people should come to any kind of agreement about these issues in foreseeable time. (The possibility that people can change their minds – even in matters of the strongest “truths” they hold, should, however, not be excluded).

²¹⁸ T. Pogge, *John Rawls* (1994), p. 135f.

²¹⁹ The amount of literature concerning the issue of pluralism is enormous. I therefore have to limit myself, and of course I shall especially concentrate on the main works of Rawls and Honecker.

coexistence among the various parties in spite of the competing religious and moral doctrines they might hold.

3.2. Pluralism

3.2.1. Explaining the terminology

Collins Dictionary of Sociology offers the following explanation of pluralism:

“The original use of the term was in association with opposition to the Hegelian conception of the unitary state. ...the most important use of the term in modern sociology and political science is the suggestion that modern Western liberal democracies are pluralistic polities, in which a plurality of groups and/or elites either share power or continuously compete for power.”²²⁰

There are three things worth noticing here:

- It is particularly focused on “Western liberal democracies” as societies with a pronounced pluralism.
- These modern democracies can be supposed to be divided into different (interest-) groups.
- The different parties continuously compete for *power*, – or/and have to share power (in a way that is acceptable from the perspective of each group).

Pluralism and liberalism are often taken to be very closely related. Pluralism can hardly thrive without a liberal attitude. There is within liberalism a built-in respect of pluralism.

In his book *Political Liberalism* (1993) John Rawls makes it quite clear at the very outset what characterises modern democracies as pluralist societies,

“a modern democratic society is characterized by a pluralism of incompatible yet reasonable comprehensive religious, philosophical, and moral doctrines. No one of these doctrines is affirmed by citizens generally. Nor should one expect that in the foreseeable future one of them, or some other reasonable doctrine, will ever be affirmed by all, or nearly all, citizens.”²²¹

In this quotation the aspect of “power” is not directly addressed. But there are three

²²⁰ *Collins Dictionary of Sociology* (Eds. D. Jary and J. Jary, 1991), p. 473.

²²¹ J. Rawls, *Political Liberalism* (1993), p.xvi.

other aspects that are focused here, namely that,

- people in modern societies hold doctrines (religious, moral or philosophical) that are incompatible,
- the different doctrines that exist side by side, might nevertheless be considered reasonable,
- there is no reason to believe that any one of the many (religious, moral or philosophical) doctrines shall be universally approved of in the foreseeable future.

Thus, pluralism, as used by Rawls, normally means nothing else than that there is in society a diversity of moral, religious and philosophical doctrines. But this kind of pluralism provides us with a political problem, for the views and values held by different groups and individuals are to a wide extent competing doctrines. And then the problem that was suggested in *Collins Dictionary of Sociology*, gets urgent for Rawls as well: From a political point of view should the competing groups – even when holding conflicting doctrines – simultaneously be coexistent parties, *sharing* the power belonging to society as a whole.

When I use the notions “*value-pluralism*” or “*moral pluralism*” in my thesis I want to stress one essential aspect of pluralism, - an aspect that is very much focused by Rawls as well as by Honecker.²²²

Nicholas Rescher has, even as strongly as Rawls (and Honecker) made it clear that there is no reason to believe that value-pluralism should in the foreseeable future be overcome. He stresses instead that “value disagreement is not only fundamental but also ineliminable”²²³:

“As long as people think themselves to have good reason for prizing things differently – for making different assessments in point of value, significance, importance, and the like – that is, so long as people are *people*, beings with a value-structure of their own, consensus, however attractive in the abstract, is not in the concrete a practicable or even desirable state of affairs. A fundamental variability of reflective evaluations in point of values, ideals, aims, and aspirations prevails among

²²² Very often, when I just use the term “pluralism” I mean “value-pluralism” more specifically. This should be obvious from the context.

²²³ N. Rescher: *Pluralism. Against the Demand for Consensus* (1993), p. 131. By this I think that Rescher wants to stress that pluralism is ineliminable in the sense that it cannot be expected to be eliminated by the means of reasonable and morally acceptable means.

people, engendering a pluralism in cognitive, practical, doctrinal, and even political regards. In sum, value dissensus inheres in human condition.”²²⁴

A distinction may appropriately be made between pluralism in terms of cognitive matters (knowledge and beliefs) and pluralism in axiological matters (values and ends). Rawls’ suggests that it might be much easier to agree on matters of science and “hard” knowledge than on matters of politics and ethics.²²⁵ It might, however, be very difficult to introduce a sharp fact-value divide, thus making ethics a non-cognitive matter while knowledge produced in other fields should be unproblematically certain, and I don’t think that Rawls is making this sharp separation either. I believe that Rescher might be right, that:

“Evaluative disagreement is basic to disagreement in general. Even factual disagreement generally roots in evaluative conflicts, arising when different parties apply different norms and standards to the evaluation of evidence, and thus bring different *cognitive* values to bear. Cognitive valuation calls for *according significance* to certain considerations, seeing certain matters as important, and taking certain cases to be archetypical – or at least highly relevant. Such cognitive values involve taking a particular approach to determining the bearing of ‘the objective facts’, and indicate an evaluative response to an objective situation.”²²⁶

By emphasising the phenomenon of value-pluralism in society, I want to underline that there is a wide range of moral doctrines, norms and evaluative standards that might be considered substantially incompatible or conflicting in some essential respect. Such value-pluralism may be considered a permanent feature of modern democratic societies. This is taken for granted by Honecker as well as by Rawls who do not appear to think it necessary to confirm or document the existence of this kind of pluralism by producing empirical investigations and statistical surveys.²²⁷ But it is nevertheless emphasised that

²²⁴ N. Rescher: *Pluralism. Against the Demand for Consensus* (1993), p. 132.

²²⁵ This seems to be implied in the question set forth by Rawls: “Why does not our conscientious attempt to reason with one another lead to reasonable agreement? It seems to do so in natural science, at least in the long run.” John Rawls, *Political Liberalism* (1993), p.54.

²²⁶ Nicholas Rescher: *Pluralism. Against the Demand for Consensus* (1993), p. 135.

²²⁷ In western societies, for instance in the Norwegian society, many scientific surveys concerning these issues have been made during the last years. And there can be no doubt that statistical surveys to a very wide extent support Rawls’ way of describing “the fact of pluralism”, although the degree of *diversity* concerning moral, religious and metaphysical issues can obviously differ. Cf. to these questions for instance O. Listhaug and B. Huseby, *Values in Norway 1990: Study, Description and Codebook* (ISS-rapport nr. 29, 1990). Institutt for sosiologi og samfunnsvitenskap, Universitetet i Trondheim 1991. This report is part of the Norwegian investigation following from an international value-survey carried out in more than 20 countries all over the world. Cf. also O. Listhaug, *Norske verdier 1982 - 1990: Stabilitet og endring* (Rapport nr. 30). And in 1991 a similar survey about religious belief and religious values was carried out by the International Social Survey Programme in 14 countries. Cf. P. K. Botvar’s comments on

such pluralism is a “fact” in modern societies, so much so that Rawls finds it appropriate to use the phrase “fact of pluralism”.

So far I have shown that the notion of pluralism should be specified by the use of predicates like “moral”, “religious”, “political” etc. For my own part I am especially concerned about the problems provided by *value-pluralism*, which makes it so problematic to go for a basic moral consensus in modern pluralist democracies.

Liberals like Rawls emphasise that the widespread and radical diversity makes coexistence and co-operation difficult, but they nevertheless also stress that some kind of consensus is both required and attainable.

3.2.2. Pluralism and liberalism as twins?

As suggested in the initial explanation of “pluralism” taken from *Collins Dictionary of Sociology*, pluralism and liberalism seem to be very closely related. The philosopher Charles Larmore, however, contests that there is such an “intimate” connection between liberalism and pluralism:

“A prevalent view about the moral sources of liberalism is that it arose out of the acceptance of value pluralism. Liberalism and pluralism are indeed often thought to be intimately connected ideas. Pluralism is often considered an essential part of the basis of liberal principles of political association. And a liberal political order is in turn often perceived as one that guarantees and fosters a pluralistic society. I believe that this view is importantly mistaken. Liberalism does not draw its rationale from an acceptance of pluralism, nor must it seek to promote its virtues.”²²⁸

The reason for this somewhat surprising statement from Larmore, however, is that he holds that “pluralism” should most properly be distinguished from the idea that “reasonable people tend naturally to disagree about the comprehensive nature of the good life.”²²⁹

According to Larmore pluralism should be understood as a philosophical doctrine about

the Norwegian part of this survey in: *Religion uten kirke. Ikke institusjonell religiøsitet i Norge, Storbritannia og Tyskland* (Rapport 10,1993). Cf also Kai Ingolf Johannessen: “Pluralisering av den kristne moral?”, *Tidsskrift for Kirke, Religion og Samfunn* (No 11992), p.41-48. Cf. also P. Repstad: “Tro uten kirke”, *Ibid.*, p.3-14. All the survey-material demonstrates, I think, that a considerable amount of value-pluralism in modern western societies can easily be documented. But as already emphasised, Rawls just takes “the fact of pluralism” as a given fact.

²²⁸ C. Larmore, *The Morals of Modernity* (1996, The quotation is taken from a preliminary edition, given me by the author), p.263.

²²⁹ C. Larmore, *The Morals of Modernity* (1996, preliminary edition), p.263

the nature of value, and as such it is to be contrasted with alternative philosophical value-theories like monism (and dualism). The pluralist (as well as the dualist) would certainly deny that there is just *one* such ultimate source of value. Instead, the pluralist claims that there are multiple independent sources of value.²³⁰

But this means that the question whether a doctrine of pluralism is philosophically true should not be confused with the political question of how a society can most appropriately uphold a legitimate diversity of doctrines (some of which might be pluralist doctrines and some of which might be monist or dualist doctrines). The pluralist doctrine is in itself a very controversial doctrine.²³¹ And if political liberalism was dependent upon the truth value of pluralism as opposed to monism, it would be similarly controversial. Such a philosophically comprehensive and controversial liberalism would be at odds with the ideal of impartiality that has been an essential feature of liberalism when facing existing disagreement concerning diverse philosophical doctrines and conceptions held to be true by different citizens. But according to Larmore there is nothing within the conception of liberalism that requires us to hold a philosophical doctrine of pluralism to be true.

The intuitive tendency to treat pluralism and liberalism as twins may be attributable to the fact that both doctrines are relatively modern phenomena, – and therefore have some vital background-premises in common. Both developed in a world confronted with an emerging metaphysical-religious disenchantment²³², – a world where many people no

²³⁰ The question which of the doctrines – either pluralism or monism – should be given the upper hand, is, however, not without relevance for the problem of handling value conflicts, what Larmore admits: “The purportedly single source of value should be able to provide a common basis for determining, in given situations, the respective weights of the conflicting commitments. Pluralism harbors no such guarantee of solvability. In its lights, conflicting values can stem from different ultimate sources, and when this is so, there can be no assurance of a resolution. ...[But] sometimes we can find a solution to a conflict, not by appealing to a common denominator of value, but simply by recognizing that one consideration carries more weight than the other. Value commitments may be, in other words, comparable without being com-mensurable, the directives they offer in a given situation being rankable without appeal to a common standard.” C. Larmore, *The Morals of Modernity* (1996; preliminary edition), p.269.

²³¹ “Whether true or false, pluralism is an eminently controversial doctrine. It has been, as Berlin has emphasized, a peripheral view in the history of Western thought. It is incompatible with the religious orthodoxies which have sought in God the single, ultimately harmonious source of good. If political liberalism rested essentially on the acceptance of pluralism, it would itself amount to a very controversial doctrine. Yet liberalism’s primary ambition, I believe, has been to find principles of political association, expressing certain fundamental moral values, which, to as great extent as possible, reasonable people may accept, despite the different views about the good and about religious truth which divide them.” C. Larmore, *The Morals of Modernity* (1996, preliminary edition), p.265

²³² In Norway Knut Lundby has clearly considered pluralism an inherent aspect of secularisation: “Seku-lariseringen fremtrer i ulike former i det sen-industrielle samfunn. Vi skiller mellom privatisering av

longer recognised a divine highest good, – or at least not the same highest good. In pluralist societies there was no recognisable highest good or an overarching value, – there was no intelligible divine and hierarchical order or an ultimate aim, that could be recognised by all inhabitants. Instead it seemed most reasonable to accept that there are really multiple sources of value. Genuine pluralism can in a way be considered a result both of recent metaphysical “disenchantment” and of the loss of the unifying force inherent in religion.

Political liberalism, however, facing the same features of modern societies as the more dogmatic pluralists, has not drawn decisive doctrinaire conclusions from the modern metaphysical disenchantment. Liberals can instead accept and respect that there are many reasonable citizens in modern societies, for instance many citizens with a Christian perspective on society, who take the course of history to be in some deeper way in accordance with the plan of God, i.e. with a divine order and will. Political liberalism, with its respect of actual diversity, should for instance respect that some people might reasonably trust in the providentia dei and try to lead their moral life in accordance with a particular value-order as defined by the one God in the Holy Scripture. Political liberalism should better not make a philosophical doctrine of pluralism an axiom of its own.

I think that Larmore argues quite convincingly for the view that pluralism, as he understands it, should be held apart from political liberalism as such. We should notice the

religionen, religiøs og ideologisk pluralisme, foruten kirkelig og anti-kirkelig interessearbeid.” K. Lundby: *Sekularisering i Norden - studert gjennom programmer om kirke og religion i radio og tv* (Stensil nr. 35, 1974) p.(2). And Lundby also emphasises that “Sekulariseringen fører til at kirkereligionen mister sitt monopol som ramme rundt samfunnet, og dermed til en religiøs og ideologisk pluralisme (Berger 1967, s.135). Heretter betegner vi denne kort og godt som ‘pluralisme’. Også pluralismen må forstås på bakgrunn av de strukturelle endringer frem mot industrisamfunnet...” (*Ibid.*, p.36). Pluralism has according to Lundby certain consequences within many fields, – for instance concerning the role of the state: “Pluralisme er altså differensiering. ... I en pluralistisk situasjon opptrer staten som en oppmann mellom religiøse konkurranter. Også i land med statskirke, hvor én kirke formelt favoriseres, er staten i realiteten tilnærmet nøytral i forhold til ulike kirkesamfunn og livssyn-retninger. Statens oppmannrolle vis-a-vis konkurrerende religiøse grupper er slående lik den rolle staten spiller i en liberalistisk laissez-faire-økonomi. I en slik økonomi begrenses statens rolle til å sørge for orden mellom konkurranter som forutsettes å være uavhengige. Denne likhet mellom økonomisk og religiøs fri-konkurranse er langt fra tilfeldig. ... De har røtter i den samme kapitalistisk-industrielle utvikling, og i de samme liberalistiske og individualistiske idéretninger.” (*Ibid.* p. 37). And the consequence of such pluralism is accordingly that religions have to compete with other religions (and denomination) as well as with ideologies and popular philosophies, offering their “products” within the marketplace of free societies, under the protection of an impartial state. As a historical sketch the thesis of Lundby might to a considerable degree be considered

distinction. Larmore has pointed to an important distinction.²³³ If we are not at least aware of this distinction between a doctrine of philosophical pluralism on the one side and the idea of reasonable disagreement on the other, it might sometimes lead to confusing and unpleasant results. What liberalism should really take into account is not as much philosophical pluralism, as the different phenomenon of reasonable disagreement. Liberalism and pluralism should therefore not be considered twins according to Larmore.

But if I now turn to the conception of John Rawls, it is not concerned with Larmore's sharply drawn distinction between pluralism on the one hand and reasonable disagreement on the other hand. Although Larmore criticises Rawls for this, he simultaneously admits that:

“At one point, indeed, he [Rawls] seems close to acknowledging the difference between the two notions. See his *The Domain of the Political and Overlapping Consensus*, *New York University Law Review*, vol. 64, no.2 (May 1989), p.237 (footnote 7).”²³⁴

In my opinion there can be no doubt that when Rawls normally points to “the fact of pluralism”, he just wants to stress the phenomenon that there is in society a diversity of moral, religious and philosophical doctrines. And according to Rawls it has to be considered unlikely that people within modern democracies should ever agree upon the same overarching comprehensive conception of the good. And the persisting situation of “pluralism” also means that it would be unfair to attempt to draw political conclusions, affecting all citizens, from controversial doctrines that are recognised just by some of the citizens.²³⁵ (Larmore would obviously agree with Rawls in this respect.) Political

appropriate, but the relation between “pluralism” and the *conception* of liberalism should in my opinion be taken as far more complex.

²³³ Let it be inserted here that in the article on “pluralism” in *Encyclopedia Americana*, Vol. 22, 1979, written by D. C. Williams, it may likewise be underlined that pluralism “... is generally contrasted with monism, in which all things manifest just one substance or principle, and with dualism, in which they manifest just two.” But it is more in accordance with Rawls’ view when he continues: “Pluralism as a political theory holds that sovereignty does not, or should not, reside in a single group, order or organization of men, but in a cooperation and consensus of many groups.” (p. 258).

²³⁴ C. Larmore, *The Morals of Modernity* (1996, preliminary edition), p.297 (Footnote 6).

²³⁵ One might say that to a wide extent it is the very “fact of pluralism”, as Rawls understands it, that makes it so urgent for him to advance a conception of justice as *fairness*. This is clearly seen by Thomas Pogge: “Damit soll eine Gesellschaft möglich werden, in der eine größere Vielfalt miteinander konkurrierender Lehren gleichberechtigt koexistieren kann durch ihre gemeinsame Anerkennung einer Gerechtigkeitskonzeption, deren Voraussetzungen mit jeder von ihnen vereinbar sind. Rawls betrachtet es als einen wichtigen Vorteil einer Gerechtigkeitskonzeption, daß sie eine gleichberechtigte Koexistenz möglichst vieler vernünftigen Lehren ermöglicht.” T W. Pogge, *John Rawls* (1994), p. 144.

liberalism is without doubt very much concerned with the issue of reasonable disagreement in modern political societies, while the issue of philosophical pluralism as opposed to monism and dualism is systematically avoided.

Taking pluralism in the Rawlsian sense, one might say that liberalism is closely related to the fact (and the problems) of “pluralism” as a political phenomenon most typical of modern societies. Of course one should not deny that the term “pluralism” might plausibly be understood in very different ways, but I think that the way Rawls uses the term is sufficiently precise and also very much in accordance with an ordinary understanding. There should therefore be no confusion regarding Rawls' use of the term.

Quite apart from the fact that Rawls and Larmore differ in terminology²³⁶, both of them are very much concerned with the phenomenon of diversity and reasonable disagreement as essential features of modern democratic societies. And this kind of diversity without doubt gives important premises for political liberalism. While liberalism and pluralism in the Rawlsian sense are not twins, they are nevertheless closely related.

3.2.3. Pluralism in Honecker's “Grundriß der Sozialethik”

I think that the theologian, Martin Honecker's understanding of pluralism closely parallels that of Rawls:

“Pluralismus, Vielfalt kennzeichnet die moderne Lebenswelt. ... Pluralismus ist in einem ein normativer und deskriptiver Begriff. Zunächst ist Pluralismus ein Faktum, nämlich die Vielfalt der Meinungen, Gruppeninteressen in einer Gesellschaft. Die Anerkennung des Rechts auf Glaubens-, Wissens- und Meinungsfreiheit und die Zulassung einer Mehrzahl von Verbänden und Gruppierungen (z.B. Parteien, Tarifpartner) führt notwendig zu einer pluralistischen Struktur der Gesellschaft.”²³⁷

Note that Honecker takes pluralism to be both an empirical and a normative phenomenon. Just as Rawls he takes for granted “the fact of pluralism”. And not unlike Rawls, Honecker also holds that there are certain essential moral values implicit in pluralism, such as for instance a virtue of toleration, a recognition of an elementary liberty of

²³⁶ This difference in terminology is, however, not so systematic and clear. Larmore can sometimes use the term “pluralism” in much the same way as Rawls uses the term, for instance when he refers to “those two characteristically modern phenomena – the pluralism of ideals of the good life and the existence of reasonable disagreement about which ideals are preferable – that stand at the centre of liberal thought.” C. E. Larmore, *Patterns of Moral Complexity* (1987), p.73.

²³⁷ M. Honecker: *Grundriß der Sozialethik* (1995), p.642.

conscience, and the freedom for different groups and associations to practice their religion, hold different kinds of morality and promote their beliefs publicly.

Honecker is very much aware of the distinction that Larmore makes (as discussed above), but he tries at the very outset to make it clear how he wishes to use the notion of “pluralism” within the context of social ethics, and thereby avoids the kind of confusion that Larmore has pointed to. Honecker explicitly distinguishes between a philosophical doctrine of pluralism and pluralism as the kind of diversity that is characteristic of modern societies.²³⁸ The latter refers to the “plurality” of associations, interests, life-projects and moral and religious conceptions that (legitimately) exists in society.²³⁹

Honecker is concerned both with the political and with the religious aspects of pluralism, as well as with the plurality of moral views, doctrines and values within the wider domain of society and within the more limited domain of the church(es). And in fact he pays scant attention to the doctrine of “philosophical pluralism” as opposed to monism and dualism in his further writing.

It is hardly surprising that Martin Honecker, a theologian, is directly concerned about the *Church's* social role in the context of widespread pluralism. The chapter of *Grundriß der Sozialethik*, where he explicitly concentrates on pluralism, is accordingly called “Kirche im Pluralismus”.²⁴⁰ In this chapter Honecker considers both the problem of pluralism in a wider political field (“Gesellschaftlicher Pluralismus”)²⁴¹ as well as the

²³⁸ “Neben einem Pluralismus gesellschaftlicher Kräfte und dem innerkirchlichen Pluralismus ist das Phänomen eines Pluralismus in der Philosophie zu erwähnen. Der Pluralismus in der Philosophie richtet sich gegen eine einlinige Wirklichkeitssicht (z.B. Monismus oder Dualismus). ... Im folgenden geht es allein um den gesellschaftlichen Pluralismus, um Demokratie, Konflikt und Kompromiß, Toleranz etc.” M. Honecker, *Grundriß der Sozialethik* (1995), p.643.

²³⁹ One might try to avoid the term “*pluralism*” in these connections, as does for instance Ian Markham in his book *Plurality and Christian Ethics*. He consequently uses the term “*plurality*” instead, but his reasons for doing so are very special ones: “Ian Markham wishes to avoid the term ‘pluralism’ as he believes it to be too identified with John Hick and with the specific problem of Christianity’s relationship to other religions.” (Cf. the editor, R. Gill’s, preface to I. Markham’s book “Plurality and Christian Ethics”, *New Studies in Christian Ethics*, 1994, p.xi.) In my opinion there might be some good reasons for distinguishing between “pluralism” and “plurality”. But it makes little sense to do so consequently in my thesis, since it is difficult to apply a distinction that Honecker (as well as Rawls) would not use in the same meaning or should obviously not find appropriate: “Als Sprachregelung hat es sich nicht als sinnvoll erwiesen, zwischen Pluralität und Pluralismus zu unterscheiden. Pluralität wäre danach legitime Vielfalt, Pluralismus die Ideologie der Unverbindlichkeit, Relativismus. Pluralität wäre legitim, Pluralismus hingegen illegitim.” M. Honecker, *Grundriß der Sozialethik* (1995), p. 646.

²⁴⁰ M. Honecker, *Grundriß der Sozialethik* (1995), pp.642-648.

²⁴¹ M. Honecker, *Grundriß der Sozialethik* (1995), pp.642-645.

problem of pluralism within the universal church (the interdenominational problem) and the pluralism within the different denominational churches themselves (the intradenominational problem).²⁴²

Let me now add: In a way Christian Churches are trained in handling both intra-denominational and inter-denominational disagreement. Different churches have for a long time participated in the ecumenical dialogue, each of them bringing with them their particular tradition and denominational characteristics. In ecumenical negotiation and discourse, however, the question can usually not be avoided: Which “truths” have to be accepted as an absolute minimum on different levels of co-operation? Some “truths” concerning worship, eucharistic community and baptism are often given the status of an “*articulus stantis et cadentis ecclesiae*”, i.e. they are often reckoned as a sort of “constitutional essentials” within the church. Disagreement on such crucial issues may make mutual recognition and reconciliation nearly impossible. But there remain many issues which do not invoke the question of “Truth” with a capital-“T”. There are, for example, questions concerning the most appropriate way of organising the church, and there are vital and extremely complex issues of how to assess issues of social ethics and politics from a Christian point of view. One could say that overcoming disagreement between the different denominations of the Christian Church, might to some extent be considered easier than establishing a consensus in society as such, since church-consensus always sets out from some common premises given in the Bible as a shared normative source. (Although the hermeneutical approach might differ radically). On the other hand, attempting to reach beyond a merely situational and practical co-operation, to overcome *deep* diversities between the churches seems extremely difficult, just because there is no way the ecumenical debate could entirely suspend the question of truth.

The problem of pluralism, which John Rawls considers, is in many respects different from that of the ecumenical debate of the churches. There is for Rawls no kind of revelatory truth nor any kind of holy documents to be taken as a recognised point of departure. Rawls has to take another point of departure for his consensual efforts. Moreover, he has to set the question of truth itself aside (or at least in brackets) when seeking for a shared political solution. And so the normative premises, the practices and the

²⁴² What concerns “Kirchlicher und theologischer Pluralismus”, cf. M. Honecker, *Grundriß der Sozial-ethik*, (1995), pp.645-648.

methods of the ecumenical consensual work cannot directly be taken as a model for establishing an overlapping consensus about the institutional scheme of society.

My thesis focuses mainly upon the pluralism in society (and the related issue of a morally grounded consensus for the basic organisation of society) although this issue and the problem of pluralism within churches, cannot be kept sharply apart. But pluralism within the church, as well as the conflicts between Christian churches and the many religions, shall only be considered in so far as it might contribute to illuminating pluralism as an issue within social ethics and as a phenomenon of public interest.²⁴³ It is well worth noticing that Honecker in fact discusses general aspects of pluralism, that concern all citizens, even in the chapter about inner-ecclesiological pluralism.

In addition, it should not be ignored that Honecker's perspective is primarily *theological*, – even when he considers pluralism as a phenomenon of the political society. (“Gesellschaftlicher Pluralismus”). And from a theological perspective it might appropriately be asked: Why should people holding conceptions of social and political ethics that are based on theological premises, judge pluralism in much the same positive way as is the case within a Rawlsian version of liberalism? From an ideal²⁴⁴ theological point of view it seems as plausible to say that if pluralism is closely connected with modern secularism, and with an abandoning of a particular Christian perspective on society, one should rather not expect Christians to approve whole-heartedly of the existing pluralism. Instead, one should expect that Christians would try to overcome it (with all morally acceptable means open to them). And why should it be taken for granted that free and rational, reasonable and honest citizens will disagree permanently and radically in matters of religion, morality and values of social-ethics? There is no logical reason why it should necessarily be considered utopian to hope that most people might some day recognise and embrace essential Christian values as the most appropriate basis for coexistence and social co-operation, even within democratic societies.

However, there is little doubt that Honecker takes pluralism as an irreversible fact, that is closely connected with moral ideas of toleration and freedom of conscience. And

²⁴³ I think that the book *Mange religioner - en etikk* (ed. Lars Østnor, 1995), illustrates how different aspects of religious pluralism might also be publicly very relevant.

²⁴⁴ Rawls is always working first within the field of “ideal theory”. Why shouldn't theological social ethics do just the same, – before behaving “realistically”, making necessary compromises and choosing the second best?

from Honecker's theological perspective pluralism is not considered a regrettable fact. It seems as if he takes for granted both that pluralism is the natural outcome of people's free reasoning in matters of morality, politics and religion, and that existing pluralism in modern societies could only be overcome at the cost of elementary human rights. The first assumption might perhaps be disputed, the latter seems to be beyond reasonable doubt.

In my opinion Honecker's approach to pluralism is not very unlike the attitude that Rawls expresses in *Political Liberalism*. Although both Honecker and Rawls assess pluralism in a positive way, both of them are simultaneously aware of the problems that pluralism obviously provides for maintaining a required minimum of social unity. Thus Rawls, especially in his more recent writings, elaborates in some detail his idea of an overlapping consensus within which a *reasonable* pluralism is still supposed to thrive. And Honecker foresees that an escalation of pluralism might undermine social commitment to essential human rights and values, and therefore he stresses that there has to be drawn a "Grenze zwischen legitimen und illegitimen Pluralismus..."²⁴⁵. Even if pluralism is in no way a regrettable fact, it should not be without structure and limits. A moral minimum-basis that cannot so easily be relativised, has to be maintained, – beyond all existing discord.

3.2.4. Reasonable and not reasonable pluralism

It seems as if Rawls – like Honecker – finds it appropriate to distinguish between two kinds of pluralism. Adopting a distinction from Joshua Cohen²⁴⁶ he writes that,

“a democratic society is marked by the fact of reasonable pluralism. ... the diversity of reasonable comprehensive religious, philosophical, and moral doctrines found in modern democratic societies is not a mere historical condition that may soon pass away; it is a permanent feature of the public culture of democracy. Under the political and social conditions secured by the basic rights and liberties of free institutions, a diversity of conflicting and irreconcilable – and what's more, reasonable – comprehensive doctrines will come about and persist if such diversity does not already obtain. This fact of reasonable pluralism must be distinguished from the fact of

²⁴⁵ M. Honecker, *Grundriß der Sozialethik* (1995), p.647

²⁴⁶ “I am grateful to Joshua Cohen for instructive discussion on this point; and also for insisting on the importance of the distinction between reasonable pluralism and pluralism as such ... These matters he discusses in illuminating detail in “Moral Pluralism and political Consensus”, *The idea of democracy*, edited by David Copp and Jean Hampton, Cambridge: Cambridge University Press, 1993.” J. Rawls, *Political Liberalism* (1993), p.36.

pluralism as such.”²⁴⁷

Rawls distinguishes “pluralism as such” from a “reasonable pluralism”. The latter is more specific and should be positively assessed. And thus one might say that the way Rawls conceives of pluralism is not without normative aspects.

By distinguishing between reasonable pluralism and pluralism that is not qualified as reasonable, Rawls in my opinion tries to solve the problem resulting from the ambiguity inherent in pluralism itself. “Pluralism as such” or “simple pluralism” as he also calls it²⁴⁸, might be rather critically assessed, while pluralism, as far as it can be qualified as reasonable, is definitely to be considered a “good”, closely connected with liberty of conscience, freedom of thought and toleration.

But even if one can accept that it is very important to make a distinction like this, it is not an easy distinction to defend and to employ. One is confronted with the problem of how to decide what should count as *reasonable* and as a legitimate kind of pluralism in modern societies, and how to decide which doctrines, conceptions and practices are for instance to be ruled out as not reasonable.

In *Political Liberalism* Rawls frequently uses the notion “reasonable” to qualify different phenomena:

“Rawls refers to reasonable principles of justice, reasonable judgements, reasonable conditions on a process of construction, reasonable decisions, a reasonable political conception of justice, reasonable expectations, a reasonable overlapping consensus, reasonable justification, reasonable norms, a reasonable society, reasonable disagreement, reasonable assurance, reasonable faith, reasonably favorable conditions, the virtue of reasonableness, a reasonable idea, reasonable measures, reasonable requirements, reasonable actions, reasonable doubt, a reasonable basis of public justification, reasonable answers, a reasonable variant of the public conception of justice, a reasonable understanding, reasonable belief, a reasonable combination and balance of values, reasonable extensions of justice as fairness, a reasonable expression of political values, unreasonable force, reasonable pluralism, reasonable comprehensive doctrines and reasonable ways of affirming them, and reasonable agents or persons, who have a reasonable moral psychology.”²⁴⁹

²⁴⁷ J. Rawls, *Political Liberalism* (1993), p.36.

²⁴⁸ Rawls quite often talks of “reasonable as opposed to simple pluralism”. J. Rawls, *Political Liberalism* (1993), p.xvii. He considers “the distinction between simple pluralism and reasonable pluralism” to be a very central one in *Political Liberalism*. Cf. *Political Liberalism*, p. xxx; xxxi.

²⁴⁹ L. Wenar: “Political Liberalism: An Internal Critique” in *Ethics* (Volume 106, No 1, October 1995), p. 34.

The term “reasonable” is obviously central to Rawls’ conception of political liberalism. It should be underlined that the very idea of “reasonable pluralism” in Rawls’ conception is based upon the assumption that most citizens in society are reasonable persons.

For now it is sufficient to emphasise that reasonable persons can be expected to have the required self-insight when making political judgements, they can honour fair terms of co-operation and comply with shared terms of public reasoning. And according to Rawls they have also the required moral capacities that make them ready to seek fair solutions and abide by agreed standards, – provided that others are willing to do the same.

However, even if all the citizens of a well-ordered society were moral persons of high standard and were also reasonable human beings with the most honest intention of respecting fair terms of communication, co-operation and coexistence, pluralism cannot be supposed to vanish. One has to realise that a democratic society, even if inhabited by moral citizens, will still generate pluralism, – but expectedly a reasonable kind of pluralism. So far Rawls’ argument appears plausible.

From a theological point of view one might say that Lutheran theology has a somewhat more complex or “pessimistic” perspective on the moral capacity of natural man. This might be right.²⁵⁰ A thorough examination of this issue is, however, beyond the scope of

²⁵⁰ It is widely assumed that a Lutheran perspective on the moral capacity of man is more “pessimistic” than a liberal approach. But nevertheless I think that one should be rather nuanced when focusing theologically on the “good” that man (as a moral person) can be expected to bring about within the framework of “societas civilis”. It might in this connection be of some interest to refer briefly to a representative work, written by W. Joest: *Ontologie der Person bei Luther*: “Im Ausgangspunkt ist festzuhalten, daß Luther die *Tatsache* einer dem Menschen eigenen Erkenntnispotenz, die Struktur und Verhaltensgesetze des kreatürlich Wirklichen erfaßt, und seiner Kraft der Entscheidung, die zu einem von dieser Erkenntnis geleiteten planvollen Handeln führt, keineswegs in Abrede stellt. Das dictamen rationis und das liberum arbitrium in Entsprechung zu diesem dictamen ist auch für ihn nicht Illusion, sondern anthropologische Realität. Es *gibt* Dinge, die in der Macht des Menschen sind: in der Macht sowohl seiner Erkenntnis wie seiner Entscheidung, und damit auch in der Macht seiner Gestaltungskraft. Sodann: In dieser rationalen Bestimmungs- und Gestaltungsmacht sieht auch Luther an sich ein *bonum* der menschlichen Natur. Ja, er sieht in ihr nicht einmal etwas nur Beiläufiges und für das Wesen des Menschen Unwichtiges, sondern ein in ihn *als* Menschen den übrigen Kreaturen gegenüber *auszeichnendes* bonum seiner Natur, das er – wie wir in den Thesen De homine sahen – gelegentlich in beinahe enthusiastischen Worten preisen kann. Er stellt endlich nicht in Abrede, daß der Mensch auch als Sünder mit dieser rationalen Erkenntnis- und Willenskraft – die ihm erhalten bleibt – in ganz bestimmten Sinne ‘Gutes’ wirken kann. Gutes nämlich im Sinne dessen, was der Erhaltung des Leiblichen Lebens ‘zugute kommt’: nicht nur seines eigenen, sondern auch des der societas civilis. Dabei denkt Luther nicht nur an die unmittelbaren leiblichen Bedürfnisse (Nahrung, Kleidung, Wohnung, ärztliche Versorgung etc.), sondern etwa auch an die Kunst der Staatsführung und Rechtsprechung, die ja ebenso wesentlich der Erhaltung des irdischen Lebens dient. Gewiß, das Gute, das der Mensch so auch als Sünder durch die ratio wirken kann, liegt für Luther auf der Ebene des individuellen und sozialen *utile*, sein Gegensatz ist das *Schädliche*; beides, Nutzen und Schaden, bezogen auf Erhaltung und Förderung des leiblichen Lebens auf Erden. Aber da *Gott* dieses Leben schafft

this dissertation. My point now is just this: Even if people were moral persons, ready to honour fair terms of co-operation, and even if they had also a capacity of assessing evidence and setting priorities in complex matters, and even if they were capable of weighing competing considerations and correctly drawing logical inferences, pluralism will persist. Radical disagreement seems to be an inevitable phenomenon that cannot be removed from modern societies²⁵¹ unless one is ready to use very illiberal methods. And that is out of the question from the point of view of political *liberalism*.

The age of Enlightenment engendered a surging confidence in the power of reason and widespread optimism about what might be achieved through public debate and co-operation between reasonable human beings within the fields of ethics and politics. However, in most pluralist democracies today there is little such confidence in the capacity of human reason to resolve issues in the field of (social) ethics. It might, without great difficulty, be argued that reason itself, if freely practised, tends not towards consensus, but towards a plurality of moral ideas, ethical values, conceptions of the good and beliefs about religious phenomena.

If it were only misunderstandings and irrational aspects of daily life that led to differences, and disagreement, one might realistically hope to resolve them, – clearing the way for a rationally grounded value-concord. And there can be no doubt that people in fact often behave *irrationally*. They clearly make the kind of logical errors that quite quickly lead to conflicting opinions and disagreement. Self- and group-interests, prejudice and bias, blindness and short-sightedness, can all also play an immense role in social and public life, generating diversity and deep conflicts. But what makes things

und aufrechterhalten will, ist diese Funktion menschlicher ratio für Luther keineswegs etwas theologisch Belangloses oder gar Verächtliches.”W. Joest: *Ontologie der Person bei Luther* (1967), p.204f.

²⁵¹ However, I should be a bit more precise about this: It should be considered “unreasonable” (although someone might consider it “rational”) if those in power tried to make it illegitimate for different people to hold and express competing views. But it can hardly be considered “unreasonable” if a political government settles a political controversy that cannot remain unsettled, by taking a decision that outrules some other options. In many cases must a law-giver deliberately take a decision in favour of some interests, thereby outweighing others. For instance should a law of abortion either leave the decision with the woman herself, or draw the required consequences from the view that an “unborn child” – just as grown up people – has elementary human rights that are to be guaranteed by the state. When making law in this connection, one can obviously not have both. This is the kind of cases, which really render pluralism a very difficult problem. Safeguarding the right for different parties to *hold* and to *express* even incompatible views publicly, might be considered very important, but this is nevertheless another kind of problem. For in this case is it not required that one of the incompatible views are to be outruled. One can normally have both.

even more complicated, however, is that all our differences, conflicts and disagreement can in no way be considered just the mere result of ignorance, wickedness, rivalry, egoism, logical errors and such kinds of unreasonableness. Self-interestedness and prejudice might to a wide extent explain why there is often a widespread *unreasonable* pluralism in society, but according to Rawls one should in no way ignore that *reasonable* people, even when behaving as rational and moral agents, will also come to highly different conclusions in matters of morality, philosophy, religion, ethical values and the overall perspective on society and human life.

It remains a crucial insight that there is no acceptable way value-pluralism as such could ever be removed from modern liberal societies by morally acceptable means. Reasonable citizens, holding reasonable doctrines, are to coexist within a society where reasonable pluralism prevails. As far as I can see, Rawls provides us with some characteristics typical of reasonable pluralism, reasonable citizens and reasonable doctrines. However, he does not provide us with criteria for easily distinguishing between those doctrines that are to be outruled as unreasonable and those that are to be included as reasonable

Since I will later consider the issue of the reasonableness of doctrines, let it now just be remarked that doctrines qualified as reasonable are supposed to draw upon a certain tradition of thought, they are assumed to express an intelligible view of the world and are pointing out the most significant values, which can also be properly balanced. But Rawls admits that: “This account of reasonable comprehensive doctrines is deliberately loose.”²⁵²

From a theological point of view Rawls’ “looseness” in defining criteria for outruling comprehensive doctrines as unreasonable is of great importance, since it makes it difficult for political authorities to dismiss religious doctrines on premises, which are genuinely defined as political. I think this is also Rawls’ intention.

3.2.5. Why do reasonable people disagree?

As made quite clear so far, reasonable pluralism might be considered a “good” according to Rawls as well as according to Honecker. But the question remains: Why should we not expect that fair and co-operative citizens will be able to overcome even reason-

²⁵² J. Rawls, *Political Liberalism* (1993), p.59.

able pluralism some day. Should it for instance be considered entirely unrealistic to hope that people could agree on a (Christian) value-basis that might effectively unify nearly all the inhabitants of a well-ordered society? Does not the very fact of pluralism itself indicate that something has gone fatally “wrong”?

Rawls recognises that there are various explanations for the radical and persisting disagreement among a society's citizens in matters of belief, morality, values and life-perspective. And he discusses different aspects of this problem in *Lecture II* of *Political Liberalism* (especially in the §§ 1;2;3), where he raises the following question:

“Why does not our conscientious attempt to reason with one another lead to reasonable agreement?”²⁵³

The answer is given by reference to fundamental limitations on human judgement in matters concerning moral norms, political values and the ultimate meaning of life. These kinds of limitation are summed up by Rawls in a list characterised as “the burdens of judgments”.

In this chapter I will just give a brief overview of Rawls' “burdens of judgment” and its significance for understanding the nature of pluralism.²⁵⁴ For these limitations on our judgement explain why pluralism – and even reasonable pluralism – persists. And Rawls without doubt considers “the willingness to recognize the ‘burdens of judgment’ and to accept their consequences”²⁵⁵ to be one of the most characteristic features of reasonable persons. Such a willingness to accept the “burdens of judgment” is of the greatest importance for converting pluralism as such into a reasonable kind of pluralism in modern societies. What does this really mean?

A lot of uncertainty, hazards and epistemological difficulties are involved in even our most correct and conscientious exercise of the powers of reason and judgement in ordinary social life. Some of the most fundamental and inescapable difficulties we face when trying to make our *best* judgements in questions concerning moral and political

²⁵³ J. Rawls, *Political Liberalism* (1993), p.54

²⁵⁴ That Rawls' ideas about “the burdens of judgment” are not so uncontroversial – from a religious point of view – as it might seem in the first place, shall here just be mentioned. In this place it is sufficient to show that there is so much about the insight in the “burdens” that they can at least to some extent serve to make it obvious why pluralism occurs and cannot be expected to disappear. In a later chapter I will discuss some special problems connected with the idea of “the burdens of judgment”, – and I will thoroughly consider some of these problems in a theological perspective.

issues, – are the following (this list of “burdens” is not intended by Rawls to be a complete list):

1. Reality is *complex*, and the conflicting data might therefore be hard to assess. Lack of empirical evidence is in no way an extraordinary phenomenon.
2. Even if we come to an agreement about the kinds of considerations that are relevant in a complex case, we may still disagree about their *weight*.
3. Our moral and political concepts are often *vague*. This indeterminacy cannot be removed. Therefore we have to rely on interpretation and judgement.
4. When assessing evidence and weighing moral and political values, people are influenced by their *total experience*, that will to some extent always differ.
5. In a dispute there are often different kinds of *normative* considerations of varying force, what makes it difficult to agree on any standard assessment.
6. All systems of social institutions have a limited social space. All that is valuable can in no way be realised simultaneously. In such a situation it is often difficult to *set priorities* and to make appropriate adjustments.

Thus Rawls points to epistemological (our knowledge is in many ways “preconditioned”) as well as semantic (concepts and terms are vague) and situational (our limited social space and particular experience) aspects, that limit our possibility of an “objective” and “absolutely true” and “infallible” judgement in matters of politics and social ethics. These “burdens”, as sketched by Rawls, might be weighed and assessed differently, but I think that such an insight into the limitations of our judgement as a source of pluralism, is of essential importance both in political life and within the field of Christian social ethics.

All human beings have to carry these “burdens of judgments”. Even the most co-operative citizens, the most reasonable persons, as well as the most rational, honest and prudent human beings, have to carry these “burdens”. Taking into account that we can never reach a perspective beyond such fundamental limitations on our judgement, we

²⁵⁵ J. Rawls, *Political Liberalism* (1993), p.49.

can better understand why even reasonable persons might land at very different opinions, beliefs and standpoints in matters concerning political values, moral norms and right conduct. The epistemological limitations inherent in human judgement, the hermeneutical and contextual preconditions that one cannot escape, the vagueness of our concepts, the complexity of situations and the many hard cases of modern societies, – all these things make it very likely that even *reasonable* and *rational* and *honest* agents have to accept that there is often no clear and absolutely indisputable single answer in matters of great complexity. And even if somebody believes very firmly that he has discovered the indisputable “truth” in matters of politics, social ethics and even religious faith, he simultaneously has to realise that there might be no compelling *reasons* for others to accept just the same “truth”. Other people might *reasonably* come to another conclusion and might weigh evidence differently. The “burdens of judgments” foster pluralism concerning political opinions, moral beliefs and conceptions of the good.

This also means that the very fact of pluralism does not necessarily signal that something has gone fatally “wrong” in modern societies but rather indicates that things are going on as one should normally expect. Recognising “the burdens of judgment” makes it obvious why pluralism – i.e. a reasonable pluralism – should not be considered a regrettable flaw of modern democratic societies.

Now one can better understand why a Rawlsian liberal society – even in the perspective of ideal theory – has to be conceived of as a reasonable *pluralist* society. Given the premises of social complexity and the epistemic and semantic limitations on human judgement, one should see diversity as the normal outcome of people’s reasoning, – even when it is at its best, and even if the parties are both honest and reasonable. I think that Rawls has made this obvious²⁵⁶ in a way that also has to be considered plausible in a theological perspective.

3.2.6. Pluralism as closely connected with human freedom

The recognition of the “burdens of judgment” is of the greatest significance for accepting the very idea of a *reasonable* pluralism, that is so closely connected with the ideas of

²⁵⁶ In my opinion that can in itself be considered one of the greatest merits of his work. But this does not mean that the way Rawls employs the idea of “the burdens of judgment” is entirely unproblematic. There might be a risk that the acceptance of “the burdens of judgment” should open up for a widespread

liberty of conscience and freedom of faith. The price for removing a reasonable pluralism and for trying to re-establish homogeneity in respect of moral values within modern societies, might be far too high.²⁵⁷

For pluralism is closely and positively connected to human freedom. I think that Alexander Schwan has emphasised this perspective in a very appropriate way in the voluminous Catholic work on *Christlicher Glaube in moderner Gesellschaft*:

“Der Pluralismus ist darum eine Bekundung des universellen Reichtums, aber auch der konkreten Begrenztheit menschlicher Selbstverwirklichungen, Gestaltungsformen, Bestrebungen und Kräfte. Keinesfalls ist er jedoch von sich her ein Ausdruck der Konfusion oder Schwäche. Vielmehr bedeutet er eine unverzichtbare Bedingung und zugleich einen wesentlichen Inhalt für menschliche Freiheit; Freiheit als Freisein von nicht rational reflektierten, nicht vernunftgemäß eingesehenen, nicht freiwillig anerkannten, nicht bewußt übernommenen, nicht verantwortlich einzulösenden Bindungen und Verpflichtungen; Freiheit zugleich als Sichbestimmen zu vernunftgemäßem, verantwortlichem Denken und Handeln, was die bewußte Übernahme von Bindungen und Verpflichtungen nicht aus-, sondern einschließt.”²⁵⁸

Thus Schwan links pluralism very closely to human freedom and thereby also to the reasonableness and the moral capacity (and responsibility) of human beings, even if he is very well aware that there is no guarantee that freedom in itself will in fact heighten moral responsibility. Schwan is nevertheless very much convinced that any attempt to remove pluralism will lead to a “loss of human substance”. And Rawls very clearly

“relativism” in matters of morality and ethical values. For the moment I shall not more thoroughly consider this kind of objection.

²⁵⁷ I think that Stephen Holmes in his impressive book about *The Anatomy of Antiliberalism* (second printing 1996) has pointed quite clearly to the risks one runs when trying to enforce an ideal of homogeneity what concerns moral and communal values in modern societies.

²⁵⁸ A. Schwan, “Pluralismus und Wahrheit” in: *Christlicher Glaube in moderner Gesellschaft* (Vol. 19, 1981), p. 149. It might indeed be surprising to see how positively the phenomenon of pluralism can be assessed in a very representative Catholic work like this, and how it is connected with the moral freedom and responsibility of human beings, although it is at the end also emphasised that pluralism in itself cannot be unlimited: “Es gibt im Pluralismus nicht *die* eine, absolute, autoritativ über alles gebietende Norminstanz. Nicht zuletzt dieser entscheidende Wesenszug bringt erhebliche Schwierigkeiten für die Orientierung, Identitätsbildung und Sinnfindung der Individuen und Gruppen in der modernen Lebenswelt mit sich. Doch ist er die wohl wichtigste Voraussetzung für ihre freie und selbstverantwortliche Entfaltung, wenn gleich wiederum dafür noch keine Garantie. *Die Pluralität auch der Norminstanzen* ist für das Leben in Gegenwart und Zukunft eine irreversible, unabdingbare und wünschenswerte Grundbedingung. Es kann sinnvollerweise kein Zurück zu weltanschaulich, normativ und sozial geschlossenen Gesellschaften geben. Die sittliche Selbstverwirklichung des Menschen in Selbstbestimmung und Eigenverantwortung wäre dann unmöglich. Insofern ist der Pluralismus eine geschichtliche Errungenschaft, die – einmal erworben – nicht ohne Verlust an humaner Substanz preisgegeben werden kann. Doch bedarf auch die pluralistische Gesellschaft zugleich eines *Fundamentalbestandes an einheitlichem Ethos...*”, *Ibid.*, p.152f. It is also well worth noticing that Schwan is of the opinion that “Für die katholische Kirche haben papst *Johannes XXVIII.* und das *II. Vatikanische Konzil* den endgültigen Durchbruch in der Bejahung von Pluralismus und Demokratie bewirkt.” *Ibid.* p.201.

emphasises that it is the free use of reason and the exercise of the normal human moral capacities within a framework of free institutions that foster pluralism.

“It is the fact that free institutions tend to generate not simply a variety of doctrines and views, as one might expect from peoples’ various interests and their tendency to focus on narrow points of view. Rather, it is the fact that among the views that develop are the doctrines that reasonable citizens affirm and that political liberalism must address. They are not simply the upshot of self- and class interests, or of peoples’ understandable tendency to view the political world from a limited standpoint. Instead, they are in part the work of free practical reason within the framework of free institutions. Thus, although historical doctrines are not, of course, the work of free reason alone, the fact of reasonable pluralism is not an unfortunate condition of human life.”²⁵⁹

Since pluralism is seen as the natural outcome of human reason itself, when unfolded within a framework of free institutions, it becomes obvious why Rawls cannot see pluralism, i.e. reasonable pluralism, as a disaster. “To see reasonable pluralism as a disaster is to see the exercise of reason under the conditions of freedom itself as a disaster.”²⁶⁰

One might from a theological point of view discuss the role of reason itself in matters of social ethics and politics and what can really be expected from the exercise of reason “under the conditions of freedom”. Here, however, I want only to stress one point in Rawls’ argument that seems to be of vital significance: Modern pluralism can only be removed by those having the ideological hegemony in society if they are ready to use their power to discriminate against others to the extent of using the coercive power of the state to uproot views that are considered “false” or “untrue” or “dangerous”. This way of removing pluralism is only possible at the cost of elementary human freedom²⁶¹ and “nicht ohne Verlust an humaner Substanz”, – to say it in Schwan’s words once more.²⁶² Let me now add that I think that Rawls should consider the question of whether the modern development towards a plurality of comprehensive doctrines could be reversed voluntarily and by argumentative means alone, a rather farfetched theoretical question. In fact, Rawls takes the plurality of reasonable doctrines to be “always a

²⁵⁹ J. Rawls, *Political Liberalism* (1993), p.36f.

²⁶⁰ J. Rawls, *Political Liberalism* (1993), p.xxiv.

²⁶¹ To such elementary freedom counts not just freedom of reason, but also freedom of speech (freedom of preaching) and in the end the very freedom of conscience and faith. Trying to overcome pluralism by coercive means, might very well affect those liberties as well, as experience teaches us.

²⁶² A. Schwan, “Pluralismus und Wahrheit”, *Christlicher Glaube in moderner Gesellschaft* (Vol. 19, 1981), p.153.

feature of the culture of a free democratic regime”.²⁶³ His view seems realistic.

But introducing a distinction between “pluralism as such” and “reasonable pluralism” Rawls simultaneously suggests that pluralism cannot be absolute. If there were no reasonable constraints on pluralism, it would end up with threatening freedom itself. And a fundamental limitation is even built into the first principle of justice as conceived of by Rawls, where he makes it clear that;

“each person has an equal right to a fully adequate scheme of equal basic liberties which is compatible with a similar scheme of liberties for all.”²⁶⁴

If pluralism, which might be considered a manifestation of human liberty, shall not to a wide extent place freedom itself in danger, it has to be *compatible with* the liberty of others, what means that all citizens have to accept some basic constraints on their own “free” activities. I think that Stephen Holmes has made this main concern of liberalism very clear in his aptly titled book, *Passions and Constraints* which stresses the dialectic between liberty and constraints. There are certain constraints that quite simply have to be taken as “possibility-creating rules”.²⁶⁵

Rawls similarly proceeds along this line when he first takes pluralism, i.e. reasonable pluralism, to be a manifestation of human freedom, and thereafter aims at letting the parties bind themselves through a consensus on some morally relevant, although not very substantial, rules, principles and procedures for handling moral conflicts, safeguarding political justice, upholding appropriate electoral and legislative routines, establishing acceptable ways of settling constitutional issues, – thereby securing for all citizens the highest possible amount of elementary liberties and rights which are compa-

²⁶³ J. Rawls, *Political Liberalism* (1993), p.xviii. Pluralism what concerns comprehensive doctrines has in Rawls’ opinion got a permanent feature of modern democratic societies. “A modern democratic society is characterized not simply by a pluralism of incompatible yet reasonable comprehensive doctrines. No one of these doctrines is affirmed by citizens generally. Nor should one expect that in the foreseeable future one of them, or some other reasonable doctrine, will ever be affirmed by all, or nearly all, citizens.” *Ibid*, p.xvi.

²⁶⁴ This version of the first principle is taken from John Rawls, “The Basic Liberties and Their Priority (Lesson delivered at The University of Michigan, April 10. 1981), *The Tanner Lectures on Human Values III*, (ed. S. M. McMurrin, 1982), p.5. See also J. Rawls, *Political Liberalism* (1993), p. 291.

²⁶⁵ “Limitations may facilitate as well as cripple. Indeed, limits can well be enabling because they are disabling. Consider grammar. Rules governing the use of language cannot be adequately conceived as pure prohibitions on, or obstacles to, speech. By submitting ourselves to constraints, we gain the capacity to do many things we should otherwise never be able to do. Rules of grammar, in fact, are possibility-creating rules and therefore cannot be accurately described as manacles clamped upon a pre-existent freedom.” S. Holmes, *Passions and Constraint. On the Theory of Liberal Democracy* (1995), p.109.

tible with similar liberties for others.

Accepting reasonable pluralism as a manifestation of liberty might help raise a bulwark against the power of totalitarian political doctrines and the attempts to enforce ideological conformity. And Honecker on his part can therefore, much like Rawls, consider (moral) pluralism a “Kennzeichen einer freiheitlichen Gesellschaft...”²⁶⁶ There are five aspects of Honecker’s conception of pluralism that in my opinion should be emphasised when relating pluralism, as a phenomenon of modern societies, to human freedom:

1. Pluralism should not be considered an inevitable “evil”, to be taken reluctantly for granted, only because there is actually no realistic hope of re-establishing society as a *corpus christianum*. As a “Kennzeichen einer freiheitlichen Gesellschaft...” should pluralism be rather positively assessed, – even from a theological perspective. Pluralism is seen by Honecker as a manifestation of individual liberty, freedom of conscience and freedom of faith.
2. Pluralism and toleration are closely connected. Accepting diversity is to recognise the right of other people to take different standpoints, for instance in questions of morality and faith, and to join a church or to leave the church freely. Honecker, however, simultaneously wishes very much to guard himself against relativism.²⁶⁷
3. As previously suggested, In expressing a variety of interests and conceptions of the

²⁶⁶ M. Honecker, *Grundriß der Sozialethik* (1995), p.642. In earlier writings, as for instance in *Perspektiven der Gesellschaftsdeutung* (1981), Honecker can accentuate that especially the Lutheran church has the required theological “instruments” that should have made it possible to distinguish appropriately between “Society” and “Christianity”, thereby making it possible to accept the pluralism of our society and fully support freedom of conscience. But Honecker is also of the opinion that all the (great) denominations are *now* advancing towards a modern approach to society, what implies that society is taken as a secular enterprise, with institutions guaranteeing human rights, basic liberties, religious freedom and elementary toleration. And so he writes: “Erst die Aufklärung hat mit der Forderung nach Religionsfreiheit und Toleranz den Gedanken und binnen kurzem auch die Wirklichkeit der konfessionell geschlossenen *res publica christiana* erschüttert. Eine der wesentlichen geistigen Wurzeln des gegenwärtigen Pluralismus ist die Anerkennung und Förderung der Menschenrechte, insbesondere des Rechtes der Religionsfreiheit, der Glaubens-, Gewissens- und Bekenntnisfreiheit. Die Anerkennung eines Pluralismus hat zur Voraussetzung die Religionsfreiheit, wie die Forderung nach Religionsfreiheit ihrerseits wiederum bereits Zeichen eines bestehenden Pluralismus ist. Überdies zeigt der Hinweis auf die Religionsfreiheit, daß auch im Katholizismus, wie die Deklaration über die Religionsfreiheit des 2. Vatikanischen Konzils und die darüber geführten Debatten auf dem Konzil erweisen, die Konzeption des Konfessionsstaates fragwürdig geworden ist. Katholische Theologen betonen seitdem die ‘Weltlichkeit der Welt’, die Säkularisierung der Gesellschaft in der Pastorkonstitution ‘Über die Kirche in der Welt von heute’. Zwischen den Theologen ist also eine entschiedene Annäherung in der theologischen Beurteilung und Anerkennung der Säkularität und Eigenständigkeit von Gesellschaft, Wirtschaft, Kultur und Politik erfolgt.” (p.106f.)

²⁶⁷ “Toleranz und Pluralismus sind daher nicht mit Relativismus zu verwechseln, sondern sind Verhaltensweisen *innerhalb* eines Grundkonsens über dasjenige, was unter einer ‘menschenwürdigen’

good, pluralism can in itself be considered a barrier against totalitarian attempts to enforce political and ideological homogeneity by the use of coercive state-power.

4. Pluralism, however, is not just considered a barrier against totalitarian views, but is also seen by Honecker as an alternative to an individualistic and atomistic perspective on society. This is so because Honecker largely views pluralism from a “group-perspective”. Only when joining organisations and associations can individuals in the most proper way make use of their “freedom” and effectively pursue their interests. Thus pluralism is a characteristic of modern societies, being organised in a diversity of interest-groups and voluntary associations.²⁶⁸
5. Even in a pluralist society, however, there has to be within all groups an orientation towards a common good.²⁶⁹ The common good of society gets manifest in the approval of human dignity, the recognition of elementary individual rights, and a fundamental respect of the integrity of each person.²⁷⁰

Gesellschaft verstanden wird.” M. Honecker, *Grundriß der Sozialethik* (1995), p.644.

²⁶⁸ It seems quite easy to follow Honecker in so far as he considers pluralism a manifestation of human freedom and a barrier against totalitarian doctrines. But it might be more difficult to understand why he can also consider pluralism a bulwark against extreme individualism, – as he in fact does: “Der gesellschaftliche Pluralismus ist die Alternative zu einer totalitären Doktrin, einer Einheitsideologie, zu einer uniformen Zwangsgesellschaft auf der einen Seite, völligem Individualismus auf der anderen Seite; einzelne Individuen (als eine Art Existenzen im Stil von *Defoes Robinson*) haben im Massenstaat keine Chance der Durchsetzung, Pluralismus gewährleistet die Organisation von Interessen in Gruppen, Verbänden und ist Kennzeichen einer freiheitlichen Gesellschaft, die weder einen potentiell omnipotenten Staat anerkennt, noch atomistisch nur einzelne Individuen sieht. Eine Vielzahl der Bürger kann sich zur Durchsetzung von Interessen zusammenschließen.” M. Honecker, *Grundriß der Sozialethik* (1995), p.642. This perspective on pluralism is only possible because pluralism is mainly seen as group-pluralism. But I think that the notion of pluralism cannot be limited this way. A pluralist society should in my opinion be considered both from a group-perspective and from a more individualistic perspective.

²⁶⁹ What Honecker calls “die Norm der Gemeinwohlorientierung” is not very thoroughly explicated by him. But he obviously sees that the fundamental and optimal conditions for coexistence and cooperation in a society will not automatically be the result if the different interest-groups are pursuing only their own interests. And therefore Honecker emphasises that “Die Norm der Gemeinwohlorientierung setzt freilich individueller Freiheit (auch für Verbände) Schranken. Der Meinungs- und Interessenpluralismus bewirkt nicht automatisch das Gemeinwohl. Das Gemeinwohl ist gesellschaftliche und politische Zielbestimmung und ist als regulative Idee unverzichtbar. Für das Gemeinwohl einzutreten ist auch eine Aufgabe der Kirche.” M. Honecker, *Grundriß der Sozialethik* (1995), p.645. But Honecker is nevertheless rather vague about these things. It seems, however, as if he means not just that each group in society should include in its perspective an idea of the common good, but also that all groups should have an orientation towards a more specific common good, conceived of much in the same way by all the groups and recognised by all of them. Only this kind of orientation could provide people with a moral perspective that transcends the mere group-perspective and takes them beyond the mere focusing on narrow group-interests.

²⁷⁰ “Der Pluralismus bedarf also durchaus eines Korrektivs durch eine Wertorientierung. Dem Pluralismus sind folglich Voraussetzungen vorgegeben, nämlich die Menschenwürde, die Grundrechte der Person. Diese Wertorientierung zieht auch einer Toleranz Grenzen...”, M. Honecker, *Grundriß der Sozialethik* (1995), p.644.

I think these remarks are sufficient to demonstrate that Honecker and Rawls do not assess the phenomenon of pluralism very differently. Like Rawls, Honecker takes the phenomenon of (reasonable/legitimate) pluralism to be closely connected with human freedom and with the idea of toleration.

Honecker is also very much in step with Rawls in so far as he underlines that pluralism should not and cannot be total and entirely unlimited. Social co-operation would in fact be impossible if the parties did not honour certain shared duties. Coexistence, as such, depends on the recognition of vital mutual obligations. And the acceptance of political institutions, with a right and an authority to impose on the citizens certain constraints on their liberty, is required to make society work as a *joint co-operative enterprise*. According to Honecker pluralism and the corresponding virtue of toleration as well as the liberty of individuals and associations can only survive within a common institutional framework. And this framework has to be settled and maintained through a ground-consensus, which is morally safeguarded. And so one also finds in Honecker's conception of pluralism a dialectic between freedom and constraint. Some kind of shared moral framework has to be settled and upheld even in modern pluralist societies. "Der Pluralismus bedarf also durchaus eines Korrektivs durch eine Wertorientierung."²⁷¹ Thus I think that Honecker as well as Rawls plausibly shows that pluralism has to be "framed". Even in pluralist societies with competing conceptions of the good, there has to be an underlying moral ground-consensus²⁷² And a moral ground-consensus can hardly be entirely unspecified as regards content. From where should then the elements of the common framework most appropriately and fairly be taken? From one of the existing and old-established comprehensive moral doctrines, or maybe from a new kind of world-view or political philosophy?

²⁷¹ M. Honecker, *Grundriß der Sozialethik* (1995), p.644.

²⁷² In many ways Honecker stresses that pluralism, which certainly has to be positively assessed, cannot be total: "Dem Pluralismus sind folglich Voraussetzungen vorgegeben, nämlich die Menschenwürde, die Grundrechte der Person. Diese Wertorientierung zieht auch einer Toleranz Grenzen: Es kann nicht Sinn der Toleranz sein, Intoleranz zuzulassen und Unrecht, Tyrannei zu dulden. Toleranz und Pluralismus sind daher nicht mit Relativismus zu verwechseln, sondern sie sind Verhaltensweisen *innerhalb* eines Grundkonsens über dasjenige, was unter einer 'menschenwürdigen' Gesellschaft verstanden wird. Dieser Grundkonsens nötigt freilich nicht dazu, die Vielfalt, Pluralität neuzeitlicher moderner Gesellschaft, wie im Mittelalter, in eine uniforme Einheitlichkeit, in eine geschlossene Gesellschaftsstruktur zu zwingen." M. Honecker, *Grundriß der Sozialethik* (1995), p.644.

3.3. No comprehensive moral doctrine can provide a common framework

3.4.1. Competing conceptions of the good

As I have tried to make clear – “the burdens of judgment” and the fact that reason itself tends to foster pluralism render it most unlikely that the pluralism of modern societies can ever be removed by democratic means even if citizens should be both reasonable, honest and co-operative. These are important reasons why both Rawls and Honecker recognise the fact of pluralism.

Honecker, however, clearly argues that there has to be a “*ground-consensus*” in society. Without such a “ground-consensus” pluralism itself and also elementary liberties would not survive. And in a similar way Rawls argues that there has to be an “*overlapping consensus*” even in radical pluralist societies.

But there seems to be an insurmountable obstacle here: A consensus cannot be supposed – at least not in the long run – to be acceptable and stable if it is based more or less explicitly on any of the comprehensive moral or religious doctrines that are already honoured by some particular group within society. It is unlikely that a particular substantial “conception of the good” should have any chance of gaining broad and persisting support as a shared basis for coexistence in pluralist democratic societies. It seems as if no group can provide us with moral doctrines and principles that can be recognised by the others. The search for a superior norm-system with a viable authority, quickly reveals itself to be futile; there is no obvious candidate acceptable by nearly all parties.

3.4.2. Learning from history

Rawls begins his attempt to show that no comprehensive religious or moral doctrine can be taken as an appropriate basis for establishing a common framework in democratic societies with a very short historical overview. He is mainly focusing on the western history after the Reformation.

It is often taken for granted – at least in western societies – that the influence of the Christian religion throughout history has been decisive and that this religion has provided us with basic moral values and paradigmatic ground-stories, which have become

an integrated part of our background-culture.²⁷³ But religious wars are also an integral part of western history and culture. The fragmentation of Christianity and the denominational pluralism, which especially flourished in the time immediately after the Reformation, had irreversible religious as well as political consequences, – and conflicts were “settled” even by use of the most brutal means. It seemed impossible to re-establish social unity on the basis of an agreement about a general and comprehensive religious and moral doctrine. Exhausted after many years of struggle and warfare, the opposing religious/political parties at last turned to a search for agreement on some minimum-principles for peaceful coexistence.²⁷⁴ And so Rawls in fact considers the Reformation – at least indirectly – as the historical origin both of political liberalism and of ideas of toleration and freedom of conscience.

“Thus the historical origin of political liberalism (and of liberalism more generally) is the Reformation and its aftermath, with the long controversies over religious toleration in the sixteenth and seventeenth centuries. Something like the modern understanding of liberty of conscience and freedom of thought began then. As Hegel saw, pluralism made religious liberty possible, certainly not Luther’s and Calvin’s intention. Indeed, the success of liberal constitutionalism came as a discovery of a new social possibility: the possibility of a reasonably harmonious and stable pluralist society. Before the successful and peaceful practice of toleration in societies with liberal institutions there was no way of knowing of that possibility. It is more natural to believe, as the centuries-long practice of intolerance appeared to confirm, that social unity and concord requires agreement on a general and comprehensive religious, philosophical, or moral doctrine.”²⁷⁵

Without doubt, Rawls recognises the strong obligation usually inherent in a religious conviction. One reason why religious convictions might lead to conflicts that cannot be solved, is – according to Rawls – that there is in religiously grounded conceptions of the good a transcendent dimension making compromises in questions that are considered essential, virtually impossible. The striving for religious truth might therefore very easily end in “mortal conflict”²⁷⁶ if the parties are unable to establish a framework for coexistence based on an acceptance of elementary freedom of thought and conscience.

²⁷³ The parable of the good Samaritan (Luk. 10,25ff.) might for instance be considered a story with a great impact on morality and charity in our societies.

²⁷⁴ It should be mentioned that the peace of religion established in Augsburg 1555 did not immediately lead to a general freedom of conscience and faith, but at the most to an acceptance of the principle “cuius regio – eius religio”, while the result of the Westphalian peace after the 30th years’ war (1648), however, implied a certain softening-up of the principle of “cuius regio – eius religio”.

²⁷⁵ J. Rawls, *Political Liberalism* (1993), p.xxivf.

²⁷⁶ J. Rawls, *Political Liberalism* (1993), p.xxvi.

Political liberalism aims for such a framework, but can never neglect the irreconcilable latent conflict in matters of ultimate truth, that may always accompany discussions on matters rooted in religious convictions.

Rawls' overview of the post-Reformation period might indeed be considered a rather short and rough outline of modern western history. But his intention is not that of a historian. And I think that his outline serves an important purpose: to demonstrate that the modern fragmentation of moral and religious beliefs cannot be overcome by argument or discourse (nor can it be assumed, that it can be entirely removed, even by the use of the most oppressive and brutal means). A plurality of reasonable religious and moral doctrines is undeniably the result of a long process that was decisively accelerated through the Reformation.

3.4.3. Thick or thin?

It is not difficult to agree with Rawls; that there is in religion usually a transcendent perspective that makes the moral commitment that follows from religious faith, both strong and uncompromising. And it is a distinctive mark of radically pluralist societies that there is no particular religious doctrine that can be considered rather uncontroversial and generally acceptable. Nevertheless citizens have to share at least some moral values, required for coexistence and social co-operation.

Given the fact of pluralism and given also the plausible assumption that there has to be some kind of moral "commonwealth" which coexisting citizens have to share, political agents are left with a dilemma that they cannot so easily escape: What should be considered a sufficient minimum of *shared* values and norms to make fair coexistence and social co-operation possible?

Taking into account the radical diversity within modern societies, the most appropriate question seems in fact be how far one can *avoid* substantial values, norms and standards that might be considered controversial. For if defining a "common good" for modern societies that is too "thick", the result will most likely not be a strengthening of social unity, but instead an increasing of conflicts that are a danger to the stability of society. If citizens really understand the nature of the deep diversity that is characteristic of modern democratic societies, it seems obvious that they cannot go for an "overlap" or a concep-

tion of the common good that draws exclusively upon a particular religion and a specific value-system. On the other hand: fair co-existence might be hampered and the stability of society threatened also by a radical reductionism concerning the “moral commonwealth” of society, and through the lack of a morally grounded basic structure, that could provide for fair terms of co-operation. An “overlap”, a “moral framework for co-operation” or a “common good” should obviously not be too “thin” either.

I have now used the notions “thick” and “thin”. These terms might seem rather imprecise, and of course they are not notions with a significant theological or philosophical weight. But they are nevertheless often used in a way that I find appropriate for my purpose here, namely to demonstrate that it is very problematic in a pluralist society to take a particular substantial religious or moral system as a common basis when elaborating a moral framework for society as such.

The notions “thick” and “thin” as used now, are taken from a book written by Michael Walzer: *Thick and Thin. Moral Argument at Home and Abroad.*²⁷⁷ Among other things, Walzer is in this book especially concerned with the possibility of understanding and sharing a moral engagement across borders, cultures and societies, but I think that his considerations also apply to societies characterised by radical diversity and inner “borders” between different groups. In the first chapter, called “Moral Minimalism” Walzer starts by telling a story:

“I want to begin my argument by recalling a picture . . . , which is the actual starting point, the conceptual occasion of this chapter. It is a picture of people marching in the streets of Prague; they carry signs, some of which say, simply, ‘Truth’ and others ‘Justice’. When I saw the picture, I knew immediately what the signs meant – and so did everyone else who saw the same picture. Not only that: I also recognized and acknowledged the values that the marchers were defending – and so did (almost) everyone else. Is there any recent account, any post-modernist account, of political language that can explain this understanding and acknowledgement? How could I penetrate so quickly and join so unreservedly in the language game or the power play of a distant demonstration? The marchers shared a culture with which I was largely unfamiliar; they were responding to an experience I had never had. And yet, I could have walked comfortably in their midst. I could carry the same signs. The reasons for this easy friendliness and agreement probably have as much to do with what the marchers did not mean as with what they did mean. They were not marching in defence of the coherence theory, or the consensus theory, or the correspondence theory of truth. Perhaps they disagreed about such theories among themselves;

²⁷⁷ University of Notre Dame Press (1994).

more likely, they did not care about them. No particular account of truth was at issue here. The march had nothing to do with epistemology. Or, better, the epistemological commitments of the marchers were so elementary that they could be expressed in any of the available theories – except for those that denied the very possibility of statements being ‘true’. The marchers wanted to hear true statements from their political leaders; they wanted to be able to believe what they read in the newspapers; they didn’t want to be lied to anymore. Similarly, these citizens of Prague were not marching in defence of utilitarian equality or John Rawls’s difference principle or any philosophical theory of desert or merit for entitlement. Nor were they moved by some historical vision of justice with roots, say, in Hussite religious radicalism. Undoubtedly, they would have argued, if pressed, for different distributive programs; they would have described a just society in different ways; they would have urged different rationales for reward and punishment; they would have drawn on different accounts of history and culture. What they meant by the ‘justice’ inscribed on their signs, however, was simple enough: an end to arbitrary arrests, equal and impartial law enforcement, the abolition of the privileges and prerogatives of the party elite – common, garden variety justice.”²⁷⁸

In a passage as this I think that Walzer has very clearly demonstrated that there is among people a kind of “thin” morality, which is characterised by being not very complex and substantially elaborated, and which is therefore widely endorsable, perhaps even universally acceptable.

It would not be appropriate, however, to consider this kind of “thin” core-morality a kind of moral “Esperanto”, – a new and rather undemanding moral system, conceived and designed to be easily learnt by most people. Walzer does not take this kind of “thin” morality to be unambitious and emotionally shallow. (According to Walzer one should not think of “thinness” in mere procedural terms either). In fact there is not much that is more demanding and less relativist than the cry for ‘justice’ and ‘truth’ set forth by the marchers in Prague.

I have no difficulties in accepting Walzer’s way of assessing this kind of moral minimalism; – which is very appropriately characterised as “morality close to the bone”.²⁷⁹ And I can also agree with Walzer that one should suppose that there is a close interplay between “thin” and “thick”. A “morality close to the bone” must be seen as connected to and embedded in some “thicker,” certainly more controversial and contextually elaborated moral conception that people might have. The particular communal values that each of the protesters marching in Prague have, might in reality differ to a considerable

²⁷⁸ M. Walzer, *Thick and Thin. Moral Argument at Home and Abroad* (1994), p.1f.

degree from the values of the co-demonstrators, and they should certainly differ from our communal values and norms. Nevertheless, we can (quite easily imagine that we could) join their parade in Prague and cry with them for “truth” and “justice”. This is possible because inherent in our own value-system or in our religious beliefs there are also vital standards of justice and truth, and we also have some experiences about what injustice means, and we know something about being lied to, just as they do. Therefore we are able to “join” them. Even if a joint moral enterprise might be rather limited, it is nevertheless strong enough to make a common and morally motivated parade against lies and injustice possible. This is “morality close to the bone”. Let this suffice for now as an explanation of the relation between “thick” and “thin.”

In this connection Walzer also finds it necessary to correct some obvious intuitions held by most people, namely that;

“Men and women everywhere begin with some common idea or principle or set of ideas and principles, which they then work up in many different ways. They start thin, as it were, and thicken with age, as if in accordance with our deepest intuition about what it means to develop or mature. But our intuition is wrong here. Morality is thick from the beginning, culturally integrated, fully resonant, and it reveals itself thinly only on special occasions, when moral language is turned to specific purposes.”²⁸⁰

Now it might be asked: Why should a morality that is “thick”, thus carrying the features of the particular culture and community within which it has developed over generations, “reveal itself thinly only on special occasions”, – for instance in more dramatic situations like the Prague revolt? There should also be the need for a “thinner” morality, focusing on the most essential values that are to be permanently shared by citizens in societies characterised by persisting inner diversity. I think that there are two things about the “thinner” morality that should be emphasised:

- firstly that it has the advantage of being compatible with very different “maximalist” versions of morality and might therefore more easily be widely (or universally) approved of.²⁸¹

²⁷⁹ M. Walzer, *Thick and Thin. Moral Argument at Home and Abroad* (1994), p.6

²⁸⁰ M. Walzer, *Thick and Thin. Moral Argument at Home and Abroad* (1994), p.4.

²⁸¹ In addition one should recall here that it should certainly be considered unconstitutional if some “authorities” tried to use governmental power to enforce more or less directly some “thick” version of a morality, as a religiously or ideologically defined value-basis for all citizens, for the state, the courts or the work of parliament for instance.

- secondly that it focuses on the most elementary rights and values, which is in no way equivalent to lacking the “maximum” obligation, i.e. the strong commitment, that is often ascribed to more comprehensive and “maximalist” versions of ethics.

3.4.4. No comprehensive moral doctrine...

What I – following Walzer – have called a “maximalist morality” should in Rawls’ language better be characterised as a “comprehensive moral doctrine”. Rawls – like Walzer – is aware of the problems that arise when trying to convert a comprehensive moral doctrine into a common moral platform that (nearly) all coexistent parties in pluralist societies should accept. In the long run such a project will not work – and as stressed earlier: it should certainly be impermissible to try to make it work by using the coercive powers of the state. Not a particular comprehensive moral doctrine, but a “thinner” morality seems to be required when defining a common value-basis for people committed to very different comprehensive doctrines. Rawls – again, not unlike Walzer²⁸² – means that a “thinner” moral basis should be supposed to apply more widely than the “thicker” kinds of morality that are closely connected to particular religious or philosophical beliefs.

But Rawls goes further and his claims, for example, that the Christian doctrine should not be taken as an exclusive moral source when establishing a common framework for society, because the Christian doctrine is considered *comprehensive*, raise the question, what it is that should really be ruled out when seeking a value-platform for an overlapping consensus in pluralist societies?

I think Rawls would say that it is “comprehensiveness” itself that has to be avoided as far as possible. What Rawls means when he characterises a given doctrine as comprehensive (and general), is explained as follows:

“A conception is said to be general when it applies to a wide range of subjects (in the limit to all subjects) universally; it is comprehensive when it includes conceptions of what is of value in human life, as well as ideals of personal virtue and character, that are to inform much of our nonpolitical conduct (in the limit of our life as a whole). There is a tendency for religious and philosophical conceptions to be general

²⁸² If going deeper into the more communitarian aspects of Walzer’s approach, certain differences will be obvious. But a thorough analysis of the relation between communitarianism and liberalism does not seem required in this connection.

and fully comprehensive; indeed, their being so is sometimes regarded as an ideal to be realized. A doctrine is fully comprehensive when it covers all recognized values and virtues within one rather precisely articulated scheme of thought; whereas a doctrine is only partially comprehensive when it comprises certain (but not all) non-political values and virtues and is rather loosely articulated. Note that, by definition, for a conception to be even partially comprehensive, it must extend beyond the political and include nonpolitical values and virtues.”²⁸³

According to Rawls a religious (Christian) moral view can normally be considered both general (applying to a wide range of subjects) and comprehensive (including conceptions of value and person that transcends the domain of the mere political). The term *comprehensive* should, I believe, appropriately be applied to moral, religious and philosophical doctrines that systematically cover a wide range of issues in a more or less complete way.

When I use the notion of “comprehensive doctrine” I intend – following Rawls – to characterise a doctrine as both “broad” and “deep”. And a “thin” morality conceived of for the political domain can in no way be “broad” in the sense that it covers a very wide range of subjects within politics, family life, church communities etc., and neither can it be “deep”, at least not in the sense that it implies any kind of religious or philosophical “*Letztbegründung*”. But it is, however, supposed to be “broad” in the sense that it can be expected to be widely approved of.

One can understand that Rawls will reject “unreasonable” comprehensive doctrines as a platform for establishing a common framework, but it seems not as easy to understand why he so categorically also rejects all kinds of “reasonable” comprehensive doctrines as possible candidates when seeking an appropriate moral platform for society as a whole. Rawls, as a matter of principle, effectively disqualifies all comprehensive doctrines from serving as a common moral basis for the citizens of a modern pluralist society.

There are several reasons why Rawls disqualifies comprehensive doctrines (most of which are “reasonable”) as candidates when seeking for an acceptable common moral foundation for co-operation and coexistence in modern democratic societies. According to Rawls:

²⁸³ J. Rawls, *Political Liberalism* (1993), p. 175.

1. It is characteristic of comprehensive religious, moral and philosophical doctrines, that they cannot be expected to be generally approved of by a considerable majority of citizens in pluralist societies, and hence they cannot (any longer) serve as the professed basis of modern societies.
2. Public institutions, as well as a genuinely political conception (of liberalism), should as far as possible avoid addressing specific moral issues which are the subject of controversies between the comprehensive doctrines. Liberal institutions and liberal political conceptions are supposed to treat different parties with a maximum of “fairness”, strengthening the social ideal of impartiality in matters of shared public interest.²⁸⁴
3. A common moral platform based on the hegemony of one’s particular comprehensive religious, philosophical, or moral doctrine can be maintained only by the oppressive use of state power.²⁸⁵
4. A critical approach towards any attempt to make a particular (religious) doctrine the professed moral basis of society does not mean that comprehensive doctrines should themselves be made suspect. On the contrary: religious, philosophical and moral doctrines are to be reckoned as integral and essential parts of the “background culture” of modern societies, and they are indirectly of the greatest importance for securing a morally grounded “overlap”.
5. An attempt by citizens to integrate a political conception of justice with the comprehensive doctrine they hold, into a coherent overall-view is normal. Political conceptions and comprehensive doctrines cannot and should not be kept entirely apart.²⁸⁶
6. A conception of justice, explicitly conceived of as the basis of a well-ordered democratic society, must nevertheless be limited strictly to the domain of the political. Such a unifying conception of justice should therefore in itself not be wide and deep,

²⁸⁴ *Impartiality* means that “political liberalism does not attack or criticize any reasonable view” and it also means that political liberalism does not characterise any comprehensive doctrine as untrue or true. Political liberalism is concentrating on a political conception of justice, which is not referred to as “true” (in opposition to other conceptions), but as “reasonable”. Cf. J. Rawls, *Political Liberalism* (1993), p.xixf.

²⁸⁵ According to Rawls the inquisition was not an accident. What Rawls calls “the fact of oppression”, was considered necessary to prevent heresy and fragmentation of a community unified by a comprehensive religious doctrine in a society largely characterised by homogeneity. The consequence was a violation of the dignity of the person and elementary individual rights (as we see them, today). Cf. J. Rawls, *Political Liberalism* (1993), p.37

²⁸⁶ Cf. J. Rawls, *Political Liberalism* (1993), p. xix

referring to certain “Letztbegründungen” or ultimate “truths”. Those holding reasonable comprehensive doctrines should be ready to accept that the ultimate question of moral and religious truth cannot and should not be decided politically. Politically speaking there may be many reasonable comprehensive doctrines in a pluralist society, even if just one of them might really be true.²⁸⁷

It would be both problematic and unfair to introduce a “thick” comprehensive doctrine as a professed value-basis for society as a whole. Both the Christian (moral) doctrine as well as philosophical views which cover issues of ethics, truth and the meaning of life are obviously considered too “comprehensive” by Rawls. In my opinion there is little reason to doubt that it would be considered unfair by a lot of citizens if society were explicitly grounded on a particular (and controversial) comprehensive doctrine – as for instance the Christian one.²⁸⁸

The question can, however, be raised, whether “theological ethics”²⁸⁹ – as conceived of by Honecker – is appropriately to be considered a comprehensive doctrine in Rawls’ sense of the word. In the introduction to his *Einführung in die Theologische Ethik*, published in 1990, Honecker emphasises that there are good reasons for being “Zurückhaltend ... gegenüber allen emphatischen Postulaten einer (absoluten) theologischen Begründung.”²⁹⁰ Nevertheless it can hardly be denied that Honecker himself conceives of social and political ethics in a clearly theological perspective. In the mentioned book

²⁸⁷ “Should we think that any of the reasonable doctrines present in society are true, or approximately so, even in the long run? The political conception itself does not speak to this question. ... To be sure, within a political conception of justice, we cannot define truth as given by the beliefs that would stand up even in an idealized consensus, however far extended. But in our comprehensive view is there no connection? The advantage of staying within the reasonable is that there can be but one true comprehensive doctrine, though as we have seen, many reasonable ones. Once we accept the fact that reasonable pluralism is a permanent condition of public culture under free institutions, the idea of the reasonable is more suitable as part of the basis of public justification for a constitutional regime than the idea of moral truth. Holding a political conception as true, and for that reason alone the one suitable basis of public reason, is exclusive, even sectarian, and so likely to foster political division.” J. Rawls, *Political Liberalism* (1993), p.128f.

²⁸⁸ This is a perspective that is for instance not sufficiently considered in *Den Norske Kirke og Staten. Instilling fra Det frivillige kirkeråds utredningskommisjon av 1969* (1973).

²⁸⁹ I shall not once more discuss the phrase “theological ethics” or the notion of “Christian ethics”. Discussing this issue any further now would be beyond my point here. There can be little doubt that Rawls himself should consider kinds of ethics, conceived of in a systematic theological perspective, to be clearly comprehensive.

²⁹⁰ M. Honecker, *Einführung in die Theologische Ethik, Grundlagen und Grundbegriffe* (1990), p.vi.

he openly refers to theological premises for ethics as such (chapter 2)²⁹¹, he considers general norms and values in a theological perspective (chapter 4)²⁹². And he really does not ignore the special sources of Christian ethics (chapter 5)²⁹³. And he begins his discussion of social ethics (chapter 6), with a presentation of specific problems that are typical of a modern Lutheran approach.²⁹⁴

It cannot surprise that ethics – in a “Christian” perspective – transcend the domain of the merely political. In principle, ethics conceived of in a theological perspective cannot avoid being both “deep” and “broad”, if measured with Rawlsian criteria for qualifying doctrines as “comprehensive”. “Deep” in the sense that such ethics are grounded fundamentally and theologically in certain doctrines about God the Creator and Redeemer, in certain religious assumptions about human nature, and in a particular (eschatological) perspective on the world. And “broad” in the sense that there is no domain of life, whether political, familial or private that is not thought to be covered by theological ethics, – if for no other reason that nothing on earth can be considered beyond the sphere of the Creator's interest.

Simultaneously, however, I think that Honecker has also shown that Christian ethics need not be considered a complete and absolute system, from which specified moral directives for nearly all domains of life must be derived. I think that “theological ethics” (or “Christian ethics”) as conceived of by Honecker should at the most be considered *partially* comprehensive, rather than taken as a complete system specifically covering (nearly) all fields of life. Christian ethics, as understood by Honecker should not be

²⁹¹ He makes it clear “daß es um theologische Grundlegungen geht, die ebenso in der Fundamentaltheologie, der theologischen Anthropologie, der Dogmatik erörtert werden können.”, M. Honecker, *Einführung in die Theologische Ethik, Grundlagen und Grundbegriffe* (1990), p. vi.

²⁹² He participates in a theological debate even when he stresses that “Die bloße Orientierung an der Bibel als Norm reicht noch nicht zu. Zwischen biblischer Exegese und ethischer Reflexion besteht ja eine Kluft, die nicht zu übersehen ist.”, M. Honecker, *Einführung in die Theologische Ethik, Grundlagen und Grundbegriffe* (1990), p.vii

²⁹³ Let it be inserted that in chapter 5, “Quellen christlicher Ethik”, Honecker discusses the problem of “fundamentalism”. The biblical material is in no way ignored by Honecker himself, but he underlines that: “Anders als eine fundamentalistische Auffassung von der Bibel als Norm der Ethik kann historisch-kritische Exegese den Wortlaut der Bibel nicht als zeitlos gültige Autorität und Norm anerkennen. Die formale Berufung auf die biblische Norm kann daher kein Ersatz für eine sachlich begründete Argumentation sein. Dazu kommt, daß zwischen Bibel und Gegenwart eine Geschichte der Aufnahme und Auslegung der Bibel als Heilige Schrift zu bedenken ist. Darauf will die Berücksichtigung der Geschichte christlicher Ethik aufmerksam machen.” M. Honecker, *Einführung in die Theologische Ethik, Grundlagen und Grundbegriffe* (1990), p.vii.

considered a complete and closed moral system or supposed to be more or less at odds with most other moral systems.

Understanding “Christian ethics” as a *partially* comprehensive moral doctrine, more co-operative and open, might make it easier for its adherents to arrive at a reasonable “overlap” with citizens holding other (partially) comprehensive views. But Rawls’ opinion is obviously unaffected by this: No fully or even partially comprehensive doctrine can be taken as a common moral platform in modern pluralist societies.

Rawls personally conceives of a much “thinner” moral conception for the political field, – paying due attention to the fact that people living within a shared social and moral framework might in fact have very different aims and conceptions of “the good”. But some “goods” seem nevertheless to be assessed in much the same way by most citizens and are considered necessary by nearly all. There are “goods” that are required for people simply to stay alive and lead a decent life. Let us call such kinds of “goods” the “basic goods”. The acquisition and possession of basic “goods” are a prerequisite without which it would not be possible for citizens to realise their different aims, ends, purposes, careers and particular life projects. But when it comes to the more specific goals that individual citizens consider it well worth striving for, there is obviously not one single and overarching telos that unites them.²⁹⁵ It is this aspect of pluralistic diversity and disagreement which is most clearly evident in modern societies.

Hence it can be seen that Rawls – usually considered a deontologist since he sets the right prior to the good – takes teleological aspects into consideration in crucial stages of his theory:

1. When defining the deontological principles of *right* for the political society, he finds it necessary to take the point of departure from some theory of the good, but in doing so he very strongly emphasises that “the concept of goodness has been used only in a rather

²⁹⁴ He starts by discussing “Die Aporien einer ‘Theologie der Ordnungen’”. M. Honecker, *Einführung in die Theologische Ethik, Grundlagen und Grundbegriffe* (1990), pp.291-303.

²⁹⁵ I will not here return to the debate about pluralism and monism as actualised by Charles Larmore. Of course there exist doctrines that strongly focus on a single overarching goal, as for instance Christian doctrines, or on one highest value, as for instance classical utilitarianism. What the latter concerns, one might, however, say that “happiness” or “utility” can be further specified in very diverse directions. And what concerns the former, it has to be added: Even when challenging modern diversity by holding forth an overarching life-perspective (which is controversial) one also very clearly confirms the very fact of pluralism.

thin sense.”²⁹⁶. The content of this “thin” theory of the good is specified by introducing the *primary goods*²⁹⁷, for which all people are supposed to have a basic need, independently of their more contingent life-plans and “thicker” conceptions of value. Thus Rawls assumes that all citizens have roughly the same need for primary goods, such as self-respect, a minimum of economic means as well as basic rights and liberties and certain fair opportunities.

2. When the fundamental rights and liberties are initially developed on the basis of a “thin” theory of the good, elementary deontological constraints on individual life-plans and self-interested aims that might prevent others from having sufficient primary goods, can most properly be settled. If the fundamental constraints are respected, people are free to pursue highly different life-plans and seek more substantial and complex conceptions of the good.²⁹⁸ All citizens are namely expected to have also some “thicker” conception of the good, not just a “thin” one.

Honecker too takes into account that the conception of the good might vary strongly, and is subject to influence by both *cultural* and *historical* distinguishing features. This can clearly be seen in his latest book on issues in theological ethics. In *Grundriß der Sozialethik*, he clearly develops a kind of ethics, characterised by himself as “Güterethik”: In the introduction to “*Grundriß*” he stipulates that the notion of “Güter” should be taken very widely.

“Der Mensch handelt, indem er sich etwas (einen Zweck, Skopos, eine Absicht) auf etwas hin (eine Endbestimmung, ein Ziel, Telos) vornimmt. Mit der Benennung

²⁹⁶ “But the concept of goodness has been used only in a rather thin sense. And in fact I shall distinguish between two theories of the good. The reason for doing this is that in justice as fairness the concept of right is prior to that of the good. In contrast with teleological theories, something is good only if it fits into ways of life consistent with the principles of right already on hand. But to establish these principles it is necessary to rely on some notion of goodness, for we need assumptions about the parties’ motives in the original position. Since these assumptions must not jeopardize the prior place of the concept of the right, the theory of the good used 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.” J. Rawls, *A Theory of Justice* (1971), p.396.

²⁹⁷ The Rawlsian “primary goods are specified to include such things as the basic rights and liberties covered by the first principle of justice, freedom of movement, and free choice of occupation protected by fair equality of opportunity of the first part of the second principle, and income and wealth and the social bases of self-respect.” J. Rawls, *Political Liberalism* (1993), p.76.

²⁹⁸ After having unfolded a thin theory of the good as required to arrive at the most proper principles of justice, Rawls continues: “Once this theory is worked out and the primary goods accounted for, we are free to use the principles of justice in the further development of what I shall call the full theory of the good.” J. Rawls, *A Theory of Justice* (1971), p.396.

eines Zweckes, eines Wozu und Woraufhin des Handelns ist damit das Thema Güterethik angesprochen. ... Der Begriff Gut beschreibt zunächst einmal vorsittliche Güter. Die sprachliche Formulierung ‘Hab und Gut’ verweist auf etwas Faßbares, einen Besitz, ein Gut, das man besitzen kann. Man spricht beispielsweise von Kulturgut, von Rechtsgut, verblaßt auch von Saat‘gut’, oder Diebes‘gut’. In diesem Sinne ist von ‘Gütern’ zunächst als etwas Gegebenem die Rede. Zugleich wird freilich ein Gut wie Leben, Gesundheit, Friede, Rechtsschutz usw. als ‘gut’ bezeichnet. Die Anerkennung, Achtung und Wahrung von ethisch wertvollen Gütern ist Voraussetzung eines guten, gelungenen Lebens. Solche Güter beruhen auf geschichtlicher Überlieferung; sie sind Ergebnis und Ertrag geschichtlicher Erfahrung.”²⁹⁹

Honecker is in the first place concerned about “goods” taken in a more pre-moral sense of the word; “goods” can just be taken as those things that people need, want and consider valuable. Thereafter he brings in a moral perspective on people’s use of these “goods”. The conception of the good, however, that people have, is to a wide extent influenced by historical, cultural, communal and personal factors, and cannot be the same for all. The teleological approach, when getting manifest in moral projects, tends naturally to foster plurality. There are necessarily many different conceptions of the good among the citizens of modern societies. I think that Honecker realises this as clearly as does Rawls. The many different conceptions of the good, which are generally to be considered a resource in a democratic society, are in themselves also a decisive obstacle for really establishing *one* “thick” shared value-platform. However, the many conceptions of the good should thrive (within some rather wide limits).

3.4. A conclusion

In a Western tradition, “true” moral doctrines are often assumed to provide the firm and stable fundament of society. But citizens in modern societies have to realise that the comprehensive doctrines they often relied upon when choosing values for building a societal moral platform, can no longer unanimously be called upon to provide society with a firm substantial moral basis. For even the “thick” comprehensive doctrines that might most likely be held *true* by many citizens, can no longer be endorsed as a professed common basis of society as a whole. No comprehensive moral doctrine – making strong claims about moral, religious or philosophical truth – can (in the long run) pro-

²⁹⁹ M. Honecker, *Grundriß der Sozialethik* (1995), p.vi. Of course this teleological aspect is not entirely dominating in Honecker’s conception of (social) ethics. He makes it clear that a teleological perspective

vide us with a platform that is acceptable as a *shared* moral basis for fair co-operation and coexistence in modern pluralist democracies. It is hard to see how the common standards of society, institutionalised as fundamental and equally binding on all citizens, could *fairly* reflect one particular conception of the good or be derived from any one of the (religious) doctrines existing in pluralist society. Simply put, no fully or partially comprehensive doctrine can provide society with a generally recognisable common framework for co-operation and coexistence.

This “negative” conclusion – based mainly on the analysis of the fact of pluralism and the consequences drawn from this fact – seems to me to be plausibly argued for by Rawls. And I think that this conclusion can to a wide extent be supported also by Honecker since he assesses the fact of pluralism in much the same way as Rawls. But Honecker’s premises for supporting such a kind of negative conclusion – that no comprehensive doctrine can legitimately provide society with a common moral framework and institutionalised standards that may be equally binding on all parties – differ from Rawls’ premises in that they are not merely political, but in fact also theologically underpinned.

should be supplied by a deontological one. And an essential aspect of virtue-ethics also plays a role in his books about ethics.

4. A BASIC CONSENSUS?

4.1. *Introducing the problem*

Rawls reaches the negative conclusion that a modern democratic and pluralistic society cannot (and should not) be unified by a comprehensive moral doctrine. Simultaneously he recognises that pluralism cannot be total, somehow it has to be limited. This is in my opinion already implicit in Rawls' elaboration of his first principle of justice which is intended to establish for each person “a fully adequate scheme of equal basic liberties *which is compatible with a similar scheme of liberties for all.*”³⁰⁰ Both freedom and diversity are supported against the background of a fundamental consensus.³⁰¹

The fact of pluralism is certainly not to be ignored. But it is also a plausible assumption that the more pluralistic a society becomes the greater its need for some *common* standards and means of specifying elementary duties and rights for its coexistent citizens, – Christian citizens as well as others. The goal of this chapter is to take decisive steps beyond the merely negative standpoint, that a modern democratic and pluralist society *cannot* be unified in any acceptable way by any particular comprehensive moral doctrine. The immediate question becomes how can such a consensus (that is supposed to be morally grounded³⁰²) be established and what could be the substantive content of such an agreement about essential principles of coexistence, – given that no comprehensive doctrine can provide us with principles, rules and values that can be accepted by all the parties in a pluralist society.

Assuming the initial achievement of an agreement on some appropriate terms of coexistence, the next question becomes, *how* is that agreement to be maintained over time, what is to stop an initial agreement from being ignored whenever a particular group finds it both possible and advantageous to do so without risk?

Returning to the first question, – if society is taken as a joint co-operative project, as in the Rawlsian conception, then there is an urgent need to “specify the fair terms of co-

³⁰⁰ J. Rawls, *Political Liberalism* (1993), p.291. (Italicisation made by me).

³⁰¹ In a book, recently published, Gerald F.Gaus (with reference to Donald Davidson) convincingly argues that “the facts of disagreement and agreement alike are intelligible only against a background of massive agreement.” G. F. Gaus, *Justificatory Liberalism* (1996), p.49.

³⁰² I shall later consider this basic assumption more thoroughly.

operation among the citizens...”³⁰³ The phrase “fair terms” means that the institutional scheme of society and the common standards that are binding on the citizens, could be willingly approved of by all of them. *Consensus*, the idea that the basic organisational scheme of society can be based upon an agreement about essential *shared* standards that can be *willingly* accepted, is an essential tenet of Rawlsian political liberalism, and the primary focus of this chapter.

One way of grounding the organisation of a society on the *consent* of the governed, while simultaneously emphasising the *binding* character of that consent, is to make the institutional scheme the outcome of a *contract* between the different parties. This approach deserves particular attention, especially given that Rawls' himself views his theory as reviving the contract-tradition. The following consideration of Rawls' contractarian approach, including a brief theological discussion, serves as a prelude to a detailed analysis of his theory of an *overlapping consensus*.

The morally grounded consensus-project presented by Rawls, appears open to the objection that it is both “unrealistic” and “utopian.” It might seem far too optimistic to base the institutional scheme of society on an act of *consent* from those governed. Nor is it all that obvious that a society, based on broad acceptance, will provide us with more justice than more hierarchically structured societies? And it seems truly a leap of faith to simply assume that individuals possess the moral capacity, political will and social virtues required for achieving a morally grounded consensus about the essential terms of coexistence. Rawls realises that such objections might be raised against the liberal idea of a modern society based upon a morally grounded consensus which secures the fairest possible institutional framework,

“The last difficulty I consider is that an overlapping consensus is utopian: that is, there are not sufficient political, social, or psychological forces either to bring about an overlapping consensus (when one does not exist), or to render one stable (should one exist).”³⁰⁴

Another objection, that carries even more weight from a theological perspective, is that the liberal project of grounding the scheme of society on consent, implies more than just

³⁰³ This is taken from the introduction to the central chapter of his book *Political Liberalism* where he concentrates especially on “The Idea of an Overlapping Consensus”, p.133.

³⁰⁴ J. Rawls, *Political Liberalism* (1993), p.158

a wish to make the scheme of society widely acceptable. It treats society and the state as an entirely human (and not divine) enterprise, a “construct” designed by the unassisted reason of man.³⁰⁵

On some intuitive level, this appears sharply at odds with a theological approach. It seems plausible to assume that a relatively just institutional scheme of society might most effectively be secured and upheld by a state-authority which has an unquestionable divine mandate and sufficient power to impose on all citizens the constraints that are required to hold that society together, – and make well-ordered and peaceful coexistence possible. Perhaps well-orderedness can most efficiently be secured by a political “Obrig-keit”, which is supposed to have *both* a divine legitimate right *and* also the required power to rule. In some respect such a view, although fundamentally different from either modern or classical contractarian approaches, might be considered most “realistic”. Before considering more thoroughly the Rawlsian view and his idea of an overlapping consensus, I should therefore like to consider a theological approach, according to which society should most properly be “configured” not from the bottom up but from the top down, by state-authorities deriving their ultimate authority from God, not from those governed. In doing so I take my point of departure from Honecker’s conception of social ethics, – especially his considerations concerning the Lutheran “Obrigkeits”- theology.

4.2. Political rule – based on a divine mandate

In his approach to “Das Staatsverständnis in der evangelischen Theologie”³⁰⁶ Martin Honecker starts by considering Biblical material. As usual when referring to Bible-texts his aim is not to engage in scriptural exegesis. Instead he is most concerned about the actual and proper *use* of sacred texts; he considers it particularly important to prevent any kind of misuse and ideological overinterpretation of the texts. This aim is reflected in the characteristic way Honecker proceeds in his discussion of state-ethics in *Grundriß der Sozialethik*:

“Eine Staatslehre findet sich im Neuen Testament nirgendwo. Es geht allein um das Verhalten des Christen als Bürger gegenüber den Trägern politischer Herrschaft. Neben der Hauptbelegstelle Röm 13,1-7 sind für das Staatsverständnis zu beachten:

³⁰⁵ Unaided reason in this connection is primarily to be understood as the reason that is not guided by (the Word of) God.

³⁰⁶ M. Honecker, *Grundriß der Sozialethik* (1995), p.307.

Die Bergpredigt mit der Unbedingtheit des Liebesgebotes (Mt. 5,43ff, Feindesliebe) und der Forderung des Gewaltverzichts. Die *clausula Petri* (Act 5,29) beschränkt alle irdischen Ansprüche durch die Forderung des Gehorsams gegenüber Gott. In der Apokalypse 13 verkörpert die politische Macht eine dämonische Bedrohung. Eine Begründung einer Staatslehre durch Röm 13 enthält eine Überinterpretation des Textes, wie die Auslegungsgeschichte zeigt. Röm 13 wurde als die Einsetzung der Obrigkeit durch Gott in der traditionellen katholischen Auslegung mit Hilfe einer Naturrechtsmetaphysik interpretiert. Das Luthertum findet in Röm 13 den Beleg für die Einsetzung des Staates als Gottesordnung. Eine dämonologische Deutung sieht in der ‘Gewalt’ (ε)cousi/a) eine Engelsmacht (G.Dehn, O. Cullmann) und relativiert damit die Staatsmacht eschatologisch. Karl Barths christologische Auslegung bezieht auch den Staat in den Herrschaftsbereich Christi ein. Tatsächlich kann man Röm 13 jedoch überhaupt nicht für eine Staatstheorie in Anspruch nehmen. Im Kontext von Röm 12 und Röm 13,8-10 (Liebesgebot) ist Röm 13,1-7 Paränäse. Paränäse ermahnt den Christen zum richtigen Verhalten. Die eschatologische Relativierung des Staates erlaubt bei Paulus keine Vernachlässigung und Mißachtung der Bürgerpflichten. In profaner Verwaltungssprache werden von ihm darum Funktionen und Leistungen römischer Staatsverwaltung beschrieben. Eine Auskunft über das Wesen des Staates wird aber nicht gegeben.”³⁰⁷

Here is no thorough text-analysis, but evidence of Honecker’s primary interest in preventing ideological misuse of Bible-texts as well as texts from the church-history. Considering, for example, the key-role that Rom. 13 has played in the field of politics and state ethics throughout history, Honecker’s sobriety seems much to the point.

Honecker does not delve deeply into Rom.13,1ff., nor shall I do so here. Nevertheless, one can hardly overlook that in Rom. 13,1ff., St.Paul, although primarily intending to give practical advice (“Paränäse”) to Christians faced with the problem of double-loyalty, nevertheless makes some assumptions concerning the state-institution as such. Behind the power of the state-authorities the Christian should discern the power of God the Almighty. Christians could therefore trust in the providence (and power) of the almighty God. State-authorities could, regardless of the explicit ideology they express, be considered the “servants” of God³⁰⁸, – with an exclusive right to use the “sword” according to their mandate.

The term “sword” as used here symbolises power, the physical “coercive” power (potentia coactiva), which includes the legitimate right to enforce directives that are considered necessary for the common good, and to use legal “sanctions” (penalties, impris-

³⁰⁷ M. Honecker, *Grundriß der Sozialethik* (1995), p.307f.

³⁰⁸ In Rom.13,4 it is even clearly said about the state that “Jeouα ga\r diakono/j e)stin soi\ ei)j to\ a)gaJo/n.” The state is God’s “*diakonos*” in bringing vital goods to people.

onment and sometimes even capital punishment) to uphold the order of society. In advising Christians St. Paul makes certain assumptions about state-ontology.³⁰⁹

One might with a certain right say that St. Paul, when claiming obedience towards the state-authorities, draws upon reasons that should be plausible to the readers. And the reasons he gives for such obedience are of two kinds: First there is the mere fact that the state disposes over the coercive powers of society and therefore should be feared. And then it is emphasised that the power that belongs to the earthly political institutions, is ultimately grounded in the authority and power of the highest God, “for there is no authority (e)cousi/a) except from God, and those that exist have been instituted by God.”(Rom.13,1b) Thus worldly power is more or less directly derived from divine power, and the Roman authorities are therefore to be recognised by the Christians, “for rulers are not a terror to good conduct, but to bad” (Rom.13,3a). St.Paul thus takes for granted that the state has an exclusive and even *theologically* legitimate right to use coercive power to safeguard the common good.³¹⁰ It seems as if St. Paul at least draws upon and furthers an implicit state-ontology, that is thereby given a certain theological status. Society is to be ruled by state-authorities that have their ultimate mandate from God himself.

However, Honecker’s main point is that St.Paul, when advising Christians in issues concerning their political conduct and loyalty towards the governmental authorities, makes use of conventional state-metaphysics, that is made theologically productive. The mere fact that there are also other and very different perspectives on the state-authorities within the New Testament (cf. Apc. 13) is itself a major reason why Honecker finds it urgent to emphasise that:

“Die in sich eine sehr große Spannweite repräsentierenden Aussagen über die Stellung des Christen zur politischen Macht – neben Röm 13 steht Apk. 13 – erlauben es jedenfalls nicht, eine *biblische Staatslehre* zu formulieren. Alle Aussagen zur politischen Macht im Neuen Testament sind usuell, allgemein üblich. Auch lag in der Urchristenheit aus vielen Gründen (eschatologische Naherwartung, staatliche Verfolgung, Missionssituation etc.) der Gedanke an eine Ausübung von Statsgewalt

³⁰⁹ Most likely St.Paul draws upon (Stoic) ideas that were widely approved of in the political culture of his own time.

³¹⁰ Some theologians have throughout history contested the view that the right to use coercive power belongs exclusively to the political “Obrigkeit”, holding instead that it was in principle the right of the church to use both swords. The doctrine of the two kingdoms, however, as elaborated within a Lutheran context, distinguishes the two powers clearly.

durch Christen völlig fern. Nach der konstantinischen Wende mußte deshalb das Staatsverständnis neu bestimmt werden. Die eusebianische Reichstheologie erneuerte Ideen eines sakralen Königtums, des Cäsaropapismus. Der Westen griff dagegen auf naturrechtliche Anschauungen zurück. *Augustin* verband in dem geschichtstheologischen Entwurf 'De civitate dei' in Unterscheidung und Zuordnung die zwei Herrschaftsverbände politisches Gemeinwesen und Kirche zu einem spannungsvollen Miteinander. Thomas von Aquin griff auf aristotelische Gerechtigkeitsvorstellungen zurück und verpflichtete die politische Macht auf das Gemeinwohl³¹¹

By emphasising the conventional character of the state-ontology implied in certain Bible-texts, Honecker undermines the theological legitimacy of making these ontological aspects a normative part of Christian social ethics.

Of course it would be entirely beyond the horizon of St. Paul to raise a more principled discussion as to whether state-power could also be legitimated by general consent from those governed. But the relation of church and individual Christians to the concrete phenomenon of political "power" was in no way unproblematic.

Let me insert here that the phenomenon of power had to be considered over and over again by the church and its theologians, as the forms of power shifted. Christian theology has had to reflect on the legitimacy as well as on the practical use of political power throughout its whole history. Not least was the church confronted with the immense task of reconciling the ideas of worldly power and divine power, – for human beings are always to respect (and fear) not just the "sword" of the state, but even more the power of God.

The power of a holy God may appear as a "mysterium tremendum et fascinosum". God's power may be viewed as numinous and incalculable, but the leading perspective is nevertheless more that of God, as a moral world-ruler. The idea that God's own power, when he is acting as the governor of the world, can be considered an "ordained power", not just an "absolute power", makes the task of reconciling the power of the divine world-ruler and the power that genuinely belongs to worldly state-authorities or sovereigns easier from a moral point of view. The "ordained power" of God is morally qualified and predictable, and the worldly governors as servants of God, are therefore supposed to rule in accordance with moral principles and "ordained" (constitutional)

³¹¹ M. Honecker, *Grundriß der Sozialethik* (1995), p.308.

law.³¹² From this there were only a few discrete steps to accepting that people were in their moral right to assess the governmental rule from the perspective of morality and law, and even withdraw their support towards cruel governors, thereby rendering the government illegitimate.³¹³

³¹² The very distinction between God's "potentia absoluta" and his "potentia ordinata" is taken from the medieval theological discussion about the power of God. Cf for instance the chapters on Duns Scotus (II,3, p.47ff.) and William of Ockham (II,4, p.58ff.) in H. Syse; *Natural law, Religion, and Rights. An exploration of the relationship between natural law and natural rights, with special emphasis on the teaching of Thomas Hobbes and John Locke* (1997). Under the perspective of "absolute power" God's power might be considered unbounded, incalculable and even numinous. Under the perspective of "ordained" power, however, God can be seen as a ruler who has bound himself to act in accordance with firm laws and reliable principles. God will usually not break the ordinary course of events, neither will he act arbitrarily. Making analogies to the political domain this would mean that an absolute power, i.e. a power that is neither restricted nor regulated by any law, might be contrasted to a power ordained and restricted according to essential constitutive principles, laws and moral rules. This way of drawing structural parallels between an ordained divine power and a political power restricted by constitutional principles can for instance be found in S. Holmes, *Passions and Constraint. On the Theory of Liberal Democracy* (1995). Dealing with the issue "Why a Will Can Be Bound to Itself" (p.150ff.) Stephen Holmes employs the theological idea of God binding himself, when he discusses a main objection to the liberal idea that people can impose on themselves really binding constitutional laws. He starts with the objection: "Self-rule is logically impossible, ... because no man can have coercive powers over himself. Moreover, the essence of a fundamental law is that no one has the right to abolish it: but how is it beyond human power if it has been made by someone? Liberal constitutionalism is absurd because no political community can voluntarily create a legal framework today that it cannot arbitrarily alter tomorrow. A higher law necessarily and obviously presupposes a superior will enforcing obedience. How can people view with reverence a rule they created by choice? Liberal democracy represents a vain attempt at bootstrapping. Constitution making is the futile endeavor of a purely human will to device a law that can, preposterously enough, oblige that very same will. But such efforts will be unavailing. Without an external enforcer, people (singly and collectively) cannot be prevented from breaking their promises. As a result, constitutional obligations can be imposed only by a higher will or a 'binding God'. This argument is interesting. But it is less orthodoxy Christian ... For one of the distinguishing features of Christianity, in contrast to pagan religions, is the idea of God who *can* bind himself. This innovative concept, in fact, seems to have been an important intellectual precondition for the emergence of constitutionalism in the West, that is, the improbable modern idea of a self-binding human community...." [And Holmes suggests that Jean Bodin, who was certainly not a liberal, was the first to realise this] "... To my knowledge, the first sustained attempt to adopt this classic theological argument, making it applicable to the political organization of human communities, occurs in the *Six livres de la république*. Bodin sometimes asserts that no sovereign can be bound by promises he makes to himself. But his basic position, as we have seen, is much more flexible than this rigid stipulation would suggest. At the heart of his treatise is a list of restrictions that every sovereign should, and indeed must, impose upon himself. There was nothing unfamiliar about this idea, for Christian theology itself devoted elaborate attention to the concept of a self-binding highest power. Bodin's political theology, in fact, is explicitly based on a loose analogy between God's self-binding and the self-binding of the political sovereign: constitutional restrictions are less *limits on*, than *expressions of*, sovereign freedom and power." *Passions and Constraint*, p.150f. For a further discussion of the implications of distinguishing between God's "potentia absoluta" and his "potentia ordinata" see also F. Oakley, *Omnipotence, Covenant, & Order. An Excursion in the History of ideas from Abelard to Leibniz*, (1984), especially from p. 47.

³¹³ There were in fact influential medieval and late-medieval theologians, who gave some premises for a more modern view, since they did for instance not consider it a revolt against the divine order if political power was to be *legitimated* not exclusively by reference to "divine metaphysics" but as much through the consent of the people. (Ockam). But such a "liberal" view was theologically controversial. For it might be seen as conflicting with the theological view that the state-monopoly concerning the use of the (coercive) powers of society, could ultimately be legitimated only by reference to a divine mandate.

Let me now return to Honecker's view. His approach to the Lutheran Reformation closely parallels his method of handling biblical texts in matters concerning state and society. Although Honecker is in many respects taking over central *hermeneutical* "devices" from the Lutheran Reformation, he very clearly realises that:

“Die Reformation hat im Widerspruch zum Mittelalter keine neue Staatslehre entworfen. *Luthers Schrift Von weltlicher Obrigkeit*, 1523, ist weder die erste neuzeitliche Staatslehre noch ein politischer Traktat, sondern seelsorgerliche Gewissensberatung. Gegen die überkommene Zuordnung von geistlicher und weltlicher Macht begründet Luther unter Berufung auf Röm 13 die Autorität der politischen Macht folgendermaßen: Das Amt der Obrigkeit ist unmittelbar von Gott eingesetzt und damit allein Gott Rechenschaft schuldig, es wird nicht durch die Kirche verliehen. Die Unterscheidung der zwei Reiche befreit die weltliche Obrigkeit aus klerikaler Bevormundung. Die Weltlichkeit und Eigenständigkeit der Obrigkeit und politischen Herrschaft wird biblisch, paulinisch begründet und hierdurch zugleich relativiert. Die Obrigkeit wird dabei personal gedacht: Der Oberherr ist Landesherr, Landesvater. Eine solche personalistische Sicht der Obrigkeit ist patriarchalisch. Da die philosophische Begrenzung der Staatstheorie durch das Naturrecht entfällt, stärkt Luthers Obrigkeitsverständnis in der Folgezeit faktisch die politische Souveränität. Anders als bei *Calvin* war bei Luther die Staatsform und die Verfassung kein eigenes Thema. Der moderne Staat ist in Geschichte und Theorie *erst* nach der Reformationszeit entstanden. Luthers politische Anschauungen sind vorneuzeitlich. Sowohl die paulinische Paränese von Römer 13 wie Luthers Obrigkeitslehre sind nur begrenzt auf die neuzeitliche Wirklichkeit des Staates übertragbar.”³¹⁴

One of the main reasons for the unquestionable status afforded to the phenomenon of “Obrigkeit” within the state-ethics of the Lutheran tradition, is that this term was used in representative Bible translations of the key text of Rom. 13,1ff.³¹⁵ And it is not just in

³¹⁴ M. Honecker, *Grundriß der Sozialethik* (1995), p.309.

³¹⁵ The German Bishop, Otto Dibelius, ascribes to Luther the idea of introducing the notion “Obrigkeit” in the translation of Roman 13,1ff: “Als Martin Luther auf Wartburg das Neue Testament übersetzte und dabei zu Römer 13 kam, übersprang er in seiner genialen Selbstherrlichkeit alles, was es bis dahin an Verdeutschungen dieser Stelle gegeben hatte. Die deutschen Bibeln, die vor Luthers Übersetzung erschienen waren – sie sind heute in der Stuttgarter Landesbibliothek in großer Vollständigkeit beieinander –, lesen es anders. Die meisten dieser Bibeln stammen aus Oberdeutschland, aus Straßbourg, Augsburg und Nürnberg. Sie haben sämtlich – mit ganz belanglosen Abweichungen – den Text: ‘*Ein jeglich sel sey underthenig den höhern gewalten.*’ Dazu kommen vier niederdeutsche Bibeln aus Cöln, Lübeck und Halberstadt. Diese sagen es ebenso, nur in anderer Mundart: ‘*En jewelike sele da sy underdanich den hoghesten ghewaldighen.*’ Das also war im vor-lutherischen Deutschland die Tradition gewesen. Es war die getreue Wiedergabe der lateinischen Vulgata: ‘*Omnis anima potestatibus sublimioribus subdita sit.*’ Und diese lateinische Übersetzung gab ihrerseits den griechischen Urtext wortgetreu wieder. Luther ignorierte dies alles und schrieb: ‘Jedermann sei untertan der Obrigkeit, die Gewalt über ihn hat.’ Er konnte nicht ahnen, was für bedeutsame Folgen diese seine Übersetzung haben sollte.” Otto Dibelius, *Obrigkeit*, Kreuz Verlag, Suttgart/Berlin 1963. p.53f. The Greek text does in fact not refer to State (in Singularis), at least not directly: “PaVsa ysuxh\ e)cousi/aij u(perexou/saij u(potasse/sJw. ou) ga\r e)stin e)cousi/ai ei) mh\ u(po\ Jeouq, ai(de\ ouAasai u(po\ Jeouq tetagme/nai ei)si/n. w(/ste o(a)ntitasso/menoj thq e)cousi/a? thq? touq Jeouq diataghq? a)nte/sthken, oi(de\ a)nJesthko/tej e(autoi;q kri/ma lh/myontai.” In a modern German Bible-translation Roman 13,1f. is translated as follows: “Jeder soll sich der Ordnungsmacht des Staates

the German language that the Obrigkeits-conception is maintained and strengthened through a Bible-translation. In the Norwegian language as well one can find a clear equivalent to the German term “Obrigkeit”.³¹⁶ Characteristic of the Obrigkeits-theology is that state-authority is seen and assessed in analogy with family-authority as shown, for example, in Luther’s explanation of the fourth commandment in the Catechism (the extended version):³¹⁷

“In dieses Gebot gehöret auch weiter zu sagen von allerlei Gehorsam gegen Oberpersonen, die zu gepieten und zu regieren haben. Denn aus der Eltern Oberkeit fleußet und breitet sich aus alle andere. ... Also daß alle, die man Herrn heißet, an der Eltern Statt sind und von ihm Kraft und Macht zu regieren nehmen müssen. Daher sie auch nach der Schrift alle Väter heißen, als die in ihrem Regiment das Vateramt treiben und väterlich Herz gegen den Ihren tragen sollen. Wie auch von Alters her die Römer und andere Sprachen Herrn und Frauen im Haus Patres et Matres familias, das ist Hausväter und Hausmutter genennet haben. Also auch ihre Landsfürsten und Oberherrn haben sie Patres patriae, das ist Väter des ganzen Lands geheißt, uns, die wir Christen sein wollen, zu großen Schanden, daß wir sie nicht auch also [als-so] heißen oder zum wenigsten dafür halten und ehren.”³¹⁸

This was not an unusual perspective, as can be seen from the well known book, *Patriarcha*, written by Robert Filmer.³¹⁹

fügen. Denn es gibt keine statliche Gewalt, die nicht von Gott verliehen wird. Wer sich also gegen die staatliche Gewalt auflehnt, widersetzt sich der Anordnung Gottes und wird dafür bestraft werden.” *Die Bibel in heutigen Deutsch*, Deutsche Bibelgesellschaft Stuttgart, 1982. In the English text, Revised Standard Version, 2nd Edition 1971 (which is the English text I usually refer to, when quoting from The New Testament), is Rom.13,1f. translated as follows: “Let every person be subject to the governing authorities. For there is no authority except from God, and those that exist have been instituted by God. Therefore he who resists the authorities resists what God has appointed, and those who resist will incur judgment.”

³¹⁶ The Norwegian term “Övrighet” is a direct equivalent to “Obrigkeit”. In the revised 1930-edition, that was commonly used within the Norwegian church until 1978, Roman 13,1f. was translated as follows: “Hver sjel være lydige mot de foresatte øvrigheter! for det er ikke øvrighet uten av Gud, men de som er, de er insatt av Gud, så at den som setter seg imot øvrigheten, står Guds ordning imot; men de som står imot, skal få sin dom.” But now – in the edition authorised in 1978 – the same verses are translated as follows: “Enhver skal være lydige mot de myndigheter han har over seg. Det finnes ingen myndigheter som ikke er fra Gud, og de som er ved makten, er insatt av Gud. Den som setter seg opp mot dem, står derfor imot Guds ordning, og de som gjør det, skal få sin dom.”

³¹⁷ Honecker refers to Luther’s use of the fourth commandment. “Seit der Reformation wurde staatliche Autorität patriarchalisch begründet. Sie genoß den Schutz des vierten Gebotes. Die Obrigkeit und nur sie allein, ist von Gott eingesetzt. Macht entfaltet sich nach diesem patriarchalischen und personalen Verständnis von Staatsautorität nur von oben nach unten. Machtausübung von unten her ist undenkbar. Im Staat stehen sich zwei Positionen gegenüber: Die Obrigkeit und die Untertanen. Deren Verhältnis wird nach Tugenden Befehl und Gehorsam geordnet.” M. Honecker, *Konzept einer sozialetischen Theorie. Grundfragen evangelischer Sozialetik* (1971), p.147

³¹⁸ M. Luther’s “Großer Katechismus”, *Die Bekenntnisschriften der evangelisch-lutherischen Kirche* (1967), p.596.

³¹⁹ A main reason why *Patriarcha* (most likely written between 1635 and 1642) has got so well known, is that it was strongly attacked by John Locke in *The First Treatise of Government*. (According to Locke

There is, however, no theological reason for giving such a patriarchal approach a normative status according to Honecker: “Eine Auskunft über das Wesen des Staates wird aber nicht gegeben”. Luther gives advice (Paränäse) to those living under the sovereignty of different kinds of worldly authorities. Even in his most famous book on the issue of “politics”, *Von weltlicher Obrigkeit*, Luther’s primary intention is to give advice to Christians in relation to the state-authorities they were actually facing. In doing so, however, Luther simultaneously makes some implicit assumptions concerning the nature, the power and the legitimacy of the “Obrigkeit”. And there is one such assumption, that seems to be implied in Luther’s words: that society cannot be properly ordered and legitimated by the mere consent from those governed.

According to Honecker, however, Luther’s main intention is to distinguish clearly between the power of the church and the power of the state. The *nature* of the power exercised by the Obrigkeit is very different from the kind of power that belongs essentially to the Church. While the power of the church is “spiritual”, derived from the authority inherent in the Word of God, the power of the Obrigkeit is by its very nature coercive power.³²⁰ These two kinds of power, each of which is legitimate in the contexts where it appropriately applies, should not be confused. But just as decisively as it is underlined that it would be contrary to the Christian *nature* of the church to use coercive power to promote its own goals, it is equally to be taken for granted that there has to be an institution with a legitimate right to order society and with sufficient power to settle laws, punish evildoers and maintain effectively certain constraints on the selfishness of individuals and groups. Thus there should be a clear distinction between the *kind* of power that is legitimately to be exercised by the church and the *kind* of power that is legitimately to be exercised by the state.³²¹ Church and conscience should not be ruled

there is a significant and decisive difference between the power that belongs to family-fathers and the power that belongs to state-leaders. Capital punishment can for instance not legitimately be carried out by the father.)

³²⁰ I use the phrase “coercive power”, referring thereby to the mere capacity for coercion that the state has, as far as it has at its own disposition the required coercive means and the legitimate right to use them. But there are also many other aspects of power, for instance the *authority* of those who are entitled to command other people, and there is the kind of power consisting in a (legitimate) capacity to influence effectively the distribution of rights, duties and social goods among the citizens. The power of state-authorities can therefore not merely be qualified as coercive power. And it is also quite obvious that the Church has considerable power in many respects of the word, although the monopoly to use coercive power (to use the “sword”) belongs exclusively with the state. And that is my point here.

³²¹ Cf. *Confessio Augustana*, article XXVIII, that sets out like this: “Von der Bischofen Gewalt ist vor Zeiten viel und mancherlei geschrieben, und haben etliche unschicklich den Gewalt der Bischofen und das

by use of the “sword”, and society as such could not be ruled merely by principles directly derived from the Christian gospel. Just preaching the “word” of God would not do in the field of politics, and it would be very naïve to ignore the fact that there are other aspects of the human nature than just fair-mindedness and altruism that also have to be taken into account when ordering society. In *Von weltlicher Obrigkeit* Martin Luther makes this strikingly clear in a well-known “parable”:

“Wollte man darum sich das Wagnis zutrauen, ein ganzes Land oder die Welt mit dem Evangelium zu regieren, so ist das ebenso, wie wenn ein Hirte Wölfe, Löwen, Adler und Schafe in *einem* Stall zusammentäte und jedes frei unter den andern gehen ließe und spräche: ‘Da weidet euch und seid rechtschaffen und friedlich untereinander; der Stall steht offen, Weide habt ihr genug, Hunde und Prügel braucht ihr nicht zu fürchten.’ Da würden wohl die Schafe Frieden halten und sich in dieser Weise friedlich weiden und regieren lassen; aber sie würden nicht lange leben, und kein Tier würde von dem anderen erhalten bleiben.”³²²

The reason why this “parable” is so relevant is obviously that there are in society both righteous and unrighteous persons, selfish and unselfish individuals. And it is also a well-known fact that even a few evil persons might be sufficient to destroy the peace of society as a whole. Taking this “realistic” approach one might better accept the social need for a central institution, an “Obrigkeit”, with the *mandate* and the *power* to keep individuals in line. And one might also understand why Luther would certainly consider rule by consent a mere utopian (and even dangerous) idea.

However, seeing the modern state mainly under the perspective of an “Obrigkeit” in Luther’s sense of the word, would in Honecker’s opinion provide us with a very narrow and even anachronistic perspective on the state. In *Grundriß der Sozialethik* Honecker therefore criticises the attempt made by Otto Dibelius to apply the “Obrigkeits-idea” to

weltlich Schwert untereinander gemenget, und sein aus diesem unordentlichen Gemenge sehr große Kriege, Aufruhr und Empörung erfolgt, aus dem, daß die Bischöfen im Schein ihres Gewalts, der Ihnen von Christo gegeben, nicht allein neue Gottesdienst angerichtet haben und mit Furbehaltung etlicher Fälle und mit gewaltsamen Bann die Gewissen beschwert, sonder auch sich unterwunden, Kaiser und Könige zu setzen und entsetzen, ihres Gefallens; welchen Frevel auch lange Zeit hiervor gelehrte und gottfürchtige Leute in der Christenheit gestraft haben. Derhalben die Unsern zu Trost der Gewissen gezwungen sind worden, den Unterschied des geistlichen und weltlichen Gewalts, Schwertes und Regiments anzuzeigen, und haben gelehrt, daß man beide Regiment und Gewalten, um Gottes Gebots willen, mit aller Andacht ehren und wohl halten soll als zwei höchste Gaben Gottes auf Erden.” *Die Bekenntnisschriften der evangelisch-lutherischen Kirche* (1967). I shall later more thoroughly consider some aspects of the so called doctrine of the two kingdoms.

³²² M. Luther, *Von weltlicher Obrigkeit. Wie weit man ihr Gehorsam schuldig sei* (1523 Calwer Luther-Ausgabe 1965), p.22.

modern societies.³²³ Even in the 20th century bishop Dibelius still holds both that:

- only an “Obrigkeit” (instituted by God) can have the required authority. And therefore even the modern kind of democracy should be considered problematic.
- Christians are not bound to be obedient towards an illegitimate state. (The experiences with the “Nazi-authorities” obviously contributed to this view.)

According to Honecker, however, there is no cogent reason why political *authority* should be bound to patriarchal state-forms. And Honecker emphasises that the modern problem of legitimacy cannot be solved simply by reference to St. Paul or Luther, especially since they were not so much concerned with the legitimacy of their respective states as with the question how Christians should comply with the existing state-authorities.³²⁴

It cannot be denied that Honecker himself can still consider the modern state-institution as instituted by God, – with a mandate to exercise proper “Staatsgewalt und politischer Macht”:

“Christlicher Glaube anerkennt jedoch die Notwendigkeit von Staatsgewalt und politischer Macht, um dem Bösen willen. Deshalb bejaht er das Prinzip der ‘Staatlichkeit’, als Gottes Setzung, als *ordinatio divina*.”³²⁵

From a theological perspective the state-institution should be considered an “*ordinatio divina*”. God, the Creator of heaven and earth, uses the political institutions of society in upholding the world he has created. But even if this theological perspective on the state-authority is also maintained by Honecker, he simultaneously stresses that the existing state-ontologies, that might for instance be taken as a conventional and implicit part of the reflections made by St. Paul (Rom.13) or St. John (Apc.13) or Luther (Von weltlicher Obrigkeit), have no far-reaching theological significance. The theological signifi-

³²³ Cf. M. Honecker, *Grundriß der Sozialethik* (1995), p.335f. See also Otto Dibelius, *Obrigkeit* (1963).

³²⁴ Dibelius was sometimes criticised for using Rom.13 for political legitimacy-purposes, but sometimes he was in fact also criticised for the tendency to consider all “totalitarian” states, not just the Nazi-state, as theologically illegitimate states, falling outside the class of legitimate states taken into account by St. Paul in Rom. 13. Dibelius’ critique of totalitarianism in politics might seem very much to the point. Nevertheless, he is criticised by Honecker who objects that the questions, raised by Dibelius, concerning theological legitimisation of political institutions, should not be answered merely on the basis of a thorough exegesis (of texts like Rom.13,1ff), or be settled definitely by reference to the theology of Martin Luther. In so far Honecker is right. But by raising the problem of legitimacy so sharply, Dibelius has at least made mere “state-positivism” very problematic from a theological point of view.

³²⁵ M.Honecker, *Grundriß der Sozialethik* (1995), p.337.

cance reaches hardly beyond a mere “daß”; – that there has to be state-authorities with a power that is sufficient to limit selfishness, and that the state-authority is ordained by God, the Creator. Since theological political ethics and moral advising have to be addressed, it has to be related to the problems caused by actual state-authorities. Taking “the fact of” actual political institutions as the point of departure for parenetical advice does, however, not mean that particular state-authorities are theologically idealised. There is, according to Honecker, no sacrosanct state-form elaborated either by St. Paul nor by St. Augustine nor by Luther.³²⁶ And accordingly one cannot use particular Bible texts in a theological “consecration” of strictly hierarchical state-forms or in a principled rejection of democracies built on the principle of rule by consent.

It follows that there may in theological social ethics be considerable elasticity regarding the form of state-institutions. And it also follows that there is no ideal or normative theological state-model that must be approximated in order for state-authorities to gain theological support or recognition from a Christian point of view.³²⁷ If a distinction between “the fact of” and “the essence of” state-authority, as introduced by Honecker, is ignored, it might in practice lead us to give legitimacy³²⁸ to factual state authorities and actual schemes of society in a way that runs the risk of confusing merely empirical issues with theologically normative ones.³²⁹ Although Honecker takes state-authority as such as an “*ordinatio divina*”, this does not lead him to treat any particular state-form,

³²⁶ According to Honecker it is for instance typical of modern Catholic theology that the varieties of state-forms are recognised without giving up the idea that the state should be considered “eine Institution der sittlichen Ordnung. Dabei hat die Institution des Staates als solche ihren Grund im absoluten Naturrecht: ... Die Staatsform ist nach dem Sündenfall, also nicht von Ewigkeit her angeordnet. Damit bleibt bei der konkreten Ausgestaltung der Staatsordnung ein Entscheidungsspielraum. Demokratische Willenseinigung und Vertragstheorien haben ihren Platz bei der Begründung der konkreten Staatsordnung. Denn die Verfassung des einzelnen Staates ist nicht durch das Naturrecht vorgeschrieben und festgelegt.” M. Honecker, *Grundriß der Sozialethik* (1995), p.311f.

³²⁷ There might nevertheless be certain minimum-criteria that legitimate political authorities must fulfil, in accordance with St. Paul’s general premise, that “... rulers are not a terror to good conduct, but to bad”. (Rom. 13,3a). Rom.13 represents in itself an example of a state-authority (although pagan) that could be approved of as legitimate, while Apc. 13 gives an example of a state-authority that has to be considered illegitimate. The issue of legitimacy – in a religious perspective – is also illustratively dealt with in Dan.7.

³²⁸ “Die christliche Gemeinde und die einzelnen Christen sind nicht vordringlich nach einem eigenen materialen theologischen (‘theoretischen’) Beitrag zur politischen Theorie gefragt, der in der Regel doch nur legitimatorischen Zwecken dienen würde oder dienstbar gemacht würde.” M.Honecker, *Grundriß der Sozialethik* (1995), p.337.

³²⁹ Most kinds of state-metaphysics tend in fact towards state-positivism, which is in my opinion clearly seen by Honecker: “Die Theologie der Ordnungen versteht menschliche Verhältnisse als Stiftungen Gottes. Daß in ihnen Gottes erhaltende Gnade wirksam ist, kann man wohl glauben. Aber man kann diesen Glauben nicht zur gesellschaftlichen Legitimation vorhandener Institutionen verwenden.” M. Honecker, *Konzept einer sozialetischen Theorie. Grundfragen evangelischer Sozialethik* (1971), p.2.

whether found in the Bible, church history or in the modern world, as having a sacrosanct status.

Nevertheless, Honecker himself in fact considers democracy to be the state-form that corresponds most appropriately to such human capacities, duties, rights, needs and values that are vital in a theological perspective.³³⁰ Even if he is not idealising democracy, Honecker can say that there is within Christian faith itself an affinity to democracy with its built-in control of central state-power and with its basic respect of freedom of conscience.³³¹

The preceding discussion and Honecker's position within it can be succinctly stated as follows:

First, any theological perspective on society, which takes its point of departure from the “state-theology” of the Bible or the Reformation, faces the *hermeneutic* problem of the historical distance. The pagan state-institution that St. Paul had in mind or the Christian “Obrigkeit” that Martin Luther refers to, have in fact changed fundamentally, which implies that the state-ontology that was referred to, cannot any longer be taken as the decisive point of departure, – at least not in modern western societies.

It is worth noting both that the term “Obrigkeit”, introduced in the Bible-translation and the state-theology by Luther, is given no normative theological significance, and that Honecker finds it necessary to make the rather trivial statement that Luther did not know the modern notion of *state*. One has to agree with Honecker that political models and devices “ursprünglich entworfen für ein einheitliches ‘Corpus christianum’, in welchem

³³⁰ Honecker says very openly: “Mit der Annahme, daß Demokratie am besten den Rechtsstaat sichern kann, habe ich bereits implizit mich gegen die These entschieden, daß es eine bessere, d.h. den menschlichen Möglichkeiten und Schwächen angemessenere Staatsform geben könne, welche die Rechte des einzelnen so weit als überhaupt möglich zu gewährleisten vermag. Man kann sich zwar bessere Staatsformen vorstellen; aber diese Vorstellungen abstrahieren von der Frage der Realisierbarkeit in der geschichtlichen und gesellschaftlichen Situation. Dieser Einwand besagt freilich nicht, daß das im angelsächsischen Bereich entwickelte Modell der liberalen rechtsstaatlichen Demokratie so vollkommen ist, daß es überhaupt nicht mehr verbessert werden kann...”, M. Honecker, *Konzept einer sozialetischen Theorie. Grundfragen evangelischer Sozialetik* (1971), p.168.

³³¹ But after he has emphasised that Christian faith recognises the fact that there has to be political power, even coercive power, and that the state authority could be taken as an “ordinatio divina”, Honecker, however, stresses that the coercive power of the state should be taken as “begrenzt durch die Macht Gottes, durch die Macht des Gewissens und durch die Macht des Glaubens. Von daher hat christlicher Glaube notwendig eine Affinität zu gemäßigten Staatsformen und zur Kontrolle der Macht, zur Demokratie, also zu den Garantien des Rechtsstates und zu vorstaatlichen Menschenrechten.” M. Honecker, *Grundriß der Sozialetik* (1995), p. 337

es noch keinen staats- und kirchenfreien Raum gab”³³² cannot automatically be considered appropriate and normative in modern societies that might be pluralistic, secularised and also dependent on the consent of the citizens.³³³

Second: There is within the context of those forms of theological social ethics which focus strongly on the mandate of the “Obrigkeit”, a natural tendency to promote a strict *hierarchical* (and *patriarchal*) perspective on society. Strictly hierarchical societies might sometimes be conceived of in a theocratic way. Even if the rulers are not taken to be above the law of God nor in a privileged position beyond the claims of natural law, they are often supposed to be in control of positive law. Therefore hierarchical societies are not safeguarded against tyranny, and theocracy might soon be transformed into some kind of ecclesiocracy, – given the instant need for mediating and interpreting God’s will.³³⁴

Third: Conceiving of authority in strictly personal categories, as is natural within a patriarchal view, might weaken the rights, liberties and safety of ordinary people. For there is no reason to believe that a sovereign ruler should be less subject to sin, selfishness and human weaknesses than most human beings. It is therefore of importance that (coercive) power is publicly and continually controlled, – as is to a wide extent the case in modern democratic societies. I think that Honecker rightly stresses that the basic organisational scheme of a society has to express an elementary respect for the integrity of each person within that society.³³⁵

Fourth: It is well worth noticing that the Lutheran reformation also seeks to distinguish between different institutionalisations of power and authority. There are *two kinds of*

³³² Martin Honecker: *Konzept einer sozialetischen Theorie. Grundfragen evangelischer Sozialetik*, Tübingen 1971, p.8f.

³³³ Of course one might say that Honecker is just referring to some facts, that are without doubt characteristic of modern societies. And mere facts (of this kind) do not necessarily imply an “ought”. Let me, however, in this connection just underline that Honecker obviously means that we *ought* not try to restore a political idea of a “corpus christianum” based on a strictly hierarchical scheme of society, even if there should be a possibility that such ideas could be realised or enforced.

³³⁴ As previously mentioned it might be astonishing to see how Rawls – as a liberal – can assess some “hierarchical” schemes of society rather positively. In recent time he has distinguished between hierarchical societies “of good standing” and “tyrannical and dictatorial regimes [which] cannot be accepted as members in good standing of a reasonable society of peoples”. Cf. J. Rawls, “The Law of Peoples”, *On Human Rights. The Oxford Amnesty Lectures 1993* (1993), p.42f.

³³⁵ Honecker emphasises very strongly “daß der einzelne vor Gott unendlich wertvoll ist (Mt 10,29-31; 18,10-14); diese Anschauung vom unantastbaren Recht der Person muß auch im politischen und gesellschaftlichen Bereich geltend gemacht werden.” M. Honecker, *Konzept einer sozialetischen Theorie. Grundfragen evangelischer Sozialetik* (1971), p.166.

power that should not be confused. Thus Confessio Augustana XXVIII for instance attests to the view that there should in principle be a significant difference between the power of the Obrigkeit (princes) and the power of the Church (bishops). But a very sharp distinction might be problematic, – at least in practice.³³⁶

Fifth: I think that Honecker plausibly criticises the more unreflected acceptance of *state-metaphysics*³³⁷ so often enmeshed in theological ethics, and he has convincingly cut off speculative legitimacy-projects taking their point of departure from particular Bible-texts like Rom. 13,1ff.³³⁸ Even if one should want to re-establish an Obrigkeits-structure much like the one we can find in Luther's works and which we might also discern in Rom.13, such a project is to be considered empirically unrealisable and theologically dubious. It is also well worth noticing that the crucial question for St. Paul seems not so much to be whether regimes are "Christian" or not, whether they stick to Christian doctrines or not. He refers to the existing regime and its factual capacity to support good conduct and punish evildoers. And in fact St.Paul avoids the question whether more particular criteria should be established for deciding when regimes are to

³³⁶ What makes the case even more difficult is that one can obviously distinguish along different lines. One can separate mainly between the different authorities holding institutionalised power in society. I think this is a main approach to power in CA XXVIII. One can also start by examining the different aspects of power inherent in the very notion itself. Then one might separate mainly along the lines of mere authority and naked force, as does for instance J. P. Mackey in his book about *Power and Christian Ethics* (1994). James P. Mackey can therefore very correctly "see power as something that oscillates between its twin forms of force and authority."(p.12) Taking the two extremes of power to be the naked (and immoral) force on the one side, and on the other side the mere authority, which can only be accepted and approved of willingly and for good reasons, I think it would be rather appropriate to say that *both* the Church *and* the state might be seen as oscillating between those two extremes. Of course the Church should, as far as it reflects the gospel, approximate the pure "power by authority position", but this will never to the full extent be the case in practice. And a more urgent question arises: Why shouldn't this approximation to the "power by authority position" be an ideal for the state as well, – at least for democratic state-authorities? It need not be considered a necessity that state-power should tend towards a "power by naked force position". If one is also taking state-power "as something that oscillates between its twin forms of force and authority", it seems obvious that state-authority might even to a decisive extent be dependent on the willing recognition from those governed. This should not render a distinction between Church-power and State-power futile, but might nevertheless illustrate the complexity of the phenomenon of power, both in relation to the church and to the state.

³³⁷ A metaphysics of the state is concerned with "das Geheimnis des göttlichen Waltens, daß sich die göttliche Erhaltungsgnade auch mitten durch das zwielfichtige Handeln der Menschen hindurch zu beweisen vermag.", M. Honecker, *Konzept einer sozialetischen Theorie. Grundfragen evangelischer Sozialetik* (1971), p.156. As already suggested, state-metaphysics is mainly concerned with the essence (das Wesen) of the state, as opposed to the actual functions of the state.

³³⁸ "Aus Glaubenssätzen und biblischem Zeugnis ist keine Staatsform herzuleiten. Der gegenwärtige Staat ist in seiner konkreten Erscheinung ein Gebilde der Geschichte." M.Honecker, *Grundriß der Sozialetik* (1995), p.337.

be considered (il)legitimate.³³⁹

Sixth: Honecker's ideas about the nature of a just society corresponds to a large extent to Rawls' idea of society as a fair³⁴⁰ system of co-operation. And Honecker's criticisms of a comprehensive theological *state-ontology* would certainly be approved of by Rawls as well, since this kind of state-metaphysics may hamper the idea of society as a system of fair *co-operation*. Honecker's tendency towards a mere "daß" in respect of the divine orderedness and mandate of the state, can very well correspond with a search for the most *reasonable* and fair "was" in respect to a substantial ordering of the basic structure of society as a joint co-operative venture.³⁴¹ The idea of society as structured from the top down, and an "alignment" of the citizens from the side of the powerful "Obrigkeit" – regardless of an eventual consent given by the governed themselves – should simply not be used to elaborate the *Christian* version of state-metaphysics. At least I think that one has to take openly into account what Honecker clearly stresses:

“Das neuzeitliche Staatsverständnis hat ein wechselvolle Geschichte hinter sich. Entscheidend war, verglichen mit dem Mittelalter, die Emanzipation des Staatslehre von Kirche und Theologie. Der Zweck des Staates und die Staatsziele werden rein innerweltlich begründet. Der moderne Staat ist in Europa ein Ergebnis der Säkularisierung. Toleranz und Religionsfreiheit sind Ausdruck der Säkularität des Staates. Da der Staat nicht auf einer Setzung Gottes, sondern auf dem Willen des Bürgers beruht, werden nun Vertragsideen wichtig.”³⁴²

4.3. Rule by consent

4.3.1. The contract argument

Now it may be asked: Is it possible to find a way of legitimating the institutional scheme of society by the consent of the people that is at least as effective as the religious legitimation was and has the required authority? Such questions have fueled the search for an appropriate *shared* basis (and a common moral ground), that has got so manifest in the

³³⁹ This is the problem of Apc.13. And also of Dan. 7. Bringing Apc 13 into consideration, Honecker not least demonstrates *that* there are very different kinds of state-*forms* within the perspective of The New Testament itself.

³⁴⁰ Justice is quite clearly an aim to be (at least approximately) secured by the central institutions of society. And Honecker characteristically adds: “Während eine metaphysische ontokratische Staatslehre Gerechtigkeit als ewige Ordnung begreift, wird sie im gesellschaftlichen Prozess zu suchen und zu verwirklichen. Die Gerechtigkeit liegt nicht vor, sie kann nur das Ergebnis eines demokratischen Consensus sein.” M. Honecker, *Konzept einer sozialetischen Theorie. Grundfragen evangelischer Sozialethik* (1971), p.160f.

³⁴¹ And therefore he very much intends to avoid “Eine kerygmatische Einschärfung ethischer Grundsätze und jede Form von autoritärer Moralvermittlung...” M. Honecker, *Grundriß der Sozialethik* (1995), p.IX.

contract-tradition.

Some theologians in modern societies, such as Martin Honecker, have clearly emphasised that an appropriate political “Willensbildung kann nur gelingen im Konsens der betroffenen Bürger”.³⁴³ By emphasising this so strongly Honecker takes his orientation mainly from the bottom up and shares at least some fundamental premises with a “voluntaristic” contractarian view (to which he explicitly refers just a few times). For a contract to be valid, and binding on the parties, it must appropriately express the will of the contractors. The kind of agreement among citizens that is provided for in treaties or contracts, is supposed to express the *active will* of the parties. The contract can be considered a mutually binding agreement, giving rise to specific obligations, only if the involved parties have entered voluntarily into it. (The problem of a more tacit consent will be touched upon later).

One can find, for instance in the Bible, examples of covenants (“contracts”) where God as one of the parties has taken the initiative in establishing it and has also set forth the terms and the content to be agreed upon.³⁴⁴ In the Bible one can, however, find other kinds of covenants too, as for instance the “treaty of friendship” established between David and Jonathan (1.Sam.20) or the “treaty” between David and the tribes of Israel, before he is anointed king over Israel. This treaty is of great interest, and particularly deserving of some consideration in as much as it reflects a form of social contract made within the framework of a theocracy.

“So all the elders of Israel came to the king to Hebron: and king David made a league³⁴⁵ with them in Hebron, before the Lord: And they anointed David king over Israel.” (2.Sam.5,3)

The fact that David was already appointed king by God himself did not prevent the people from entering into a mutually binding agreement, a covenant, with him.³⁴⁶ In this

³⁴² M. Honecker, *Grundriß der Sozialethik* (1995), p.317.

³⁴³ M. Honecker, *Grundriß der Sozialethik* (1995), p.337.

³⁴⁴ This is for instance the case in the covenant between God and Abraham in Gen. 17,1ff. where God binds himself to fulfil a promise to the man he has especially blessed and elected, and where Abraham’s obligation according to the terms of the covenant was to be obedient (for instance what concerns circumcision).

³⁴⁵ The word used in the hebrew text is “*berit*”, the usual term for *covenant*.

³⁴⁶ This might indeed seem surprising within the theocratic scheme of the ancient Israel. But there is obviously no conflict between the crucial fact that David was already appointed by God to be the new

context, it may also be of interest to note that the son of king Salmon was rejected by most of the tribes of Israel who had originally gathered in Schechem to anoint him a king upon the death of his father. When the son of Salmon, Rehabeam, however, refused to lighten the people's burdens, they refused to recognise him as king and appointed Jeroboam instead. (1.King.12)

From a theological point of view, the thought that sovereigns ruled not just according to a mandate given directly by God, but also on certain terms set by the people, is not an entirely illegitimate one. Supporting Pope Gregory the VII against Henry IV, Manegold of Lautenbach writes for instance in a very frequently cited text:

“King is not a name of nature but a title of office: nor does the people exalt him so high above it in order to give him the free power of playing the tyrant in its midst, but to defend it from tyranny. So soon as he begins to act the tyrant, is it not plain that he falls from the dignity granted to him? Since it is evident that he has broken the contract by virtue of which he was appointed. If one should engage a man for a fair wage to tend swine, and he finds means not to tend but to steal them, would one not remove him from his charge? ... Since no one can create himself emperor or king, the people elevates a certain one person over itself to this end, that he govern and rule it according to right reason, give each one his own, protect the good, destroy the wicked, and administer justice to every man. But if he violates the contract under which he was elected, disturbing and confounding that which he was established to set in order, then the people is justly and reasonably released from its obligation to obey him.”³⁴⁷

The idea of theologically consistent contractual limits on sovereignty was in no small way a product of the Reformation and Counter-Reformation as oppressed groups like the Huguenots sought biblical sources upon which to base contractarian ideas.³⁴⁸ But these are not the only roots.

In his study of the development of social contract theory, J.W Gough has given an ac-

king of Israel and the fact that David also had to enter into a mutually obligating “league” with the tribes of Israel, who were also to recognise him.

³⁴⁷ I have quoted from M. Lessnoff’s Introduction in: *Social Contract Theory*, (ed. M. Lessnoff, 1990), p.5.

³⁴⁸ When facing severe oppression by the state, they developed the model of a “double contract” to legitimate their resistance to the king. Inspired by the Old Testament they meant that the king had a double obligation. First he was contractually bound by the covenant between God and the king. And then he was contractually bound by the covenant between the people and himself. For this view they could refer to the fact that even the great Jewish king, David, also had to be recognised by the people. If the king is disobedient to God and also breaks the mutual obligation with the people, one has the right of disobedience. Let it en passant be remarked that the Lutheran Church did not develop any contractarian theology like this.

count of contractarian motifs within the Greek (and Roman) political thought.³⁴⁹ He found contractarian motifs already among the Sophists, with their tendency to see law and political institutions as a result of convention rather than as a scheme essentially grounded in nature itself.³⁵⁰ In Plato's *Republic* this view, held by Glaucon, is dealt with by Socrates.³⁵¹ In another way the contract-thought is taken up in *Crito* (51D-52A; 52C-53A; 50c), and here the thought is that Socrates, by choosing to live in Athens, has *in fact* entered into a covenant, implying an allegiance to abide by the laws of Athens. A kind of tacit consent.

And Aristotle (*Politics*, iii, 1280b10) also refers to the Sophists as the typical representatives of those considering the law to be *merely* a kind of contract.³⁵²

There are, then, many different kinds of "contracts", but in political contract-philosophy one need focus on just two main-types. Using Gough's terminology, the first may be classified as the contract of submission (which is also called a "contract of govern-

³⁴⁹ Cf. J.W.Gough, *The Social Contract. A critical Study of its Development* (1967).

³⁵⁰ "In the hands of some of the Sophists, however, the contrast of nature and convention led to a radically individualistic standpoint. The idea of a state of nature, in which individual men moved freely in pursuit of their own ends, was contrasted with civil society, in which man's natural freedom was hampered by laws. This state of nature might be portrayed as a poetical golden age in the distant past, from which man had fallen, but more usually it was regarded as a state of war (like the state of nature in Hobbes) in which every one was in competition and potential conflict with every one else. From this conception it was but a short step to the social contract. Every one in the state of nature was in danger of being injured by his neighbours, and therefore men made a contract or bargain (sunJh/kh, or o(mologi/a, are the Greek words most often used) with one another, by which each man undertook to refrain from injuring his neighbour, provided that his neighbour in return would refrain from injuring him. Thus laws were made, based on this convention between individuals, and with them came the idea of justice and the difference between right and wrong." J.W.Gough, *The Social Contract. A critical Study of its Development* (1967), p.9f.

³⁵¹ In *Republic*, Book II, Socrates is concerned with the question set forward by Glaucon: "Socrates, is it your desire to seem to have persuaded us or really to persuade us that it is without exception better to be just than unjust?" (357A). And then the "realistic" approach of Glaucon is explicated more thoroughly: "So that when men do wrong and are wronged by one another and taste of both, those who lack the power to avoid the one and take the other determine that it is for their profit to make a compact with one another [notice the Greek medium form: cunJe/sJai a)llh/loij] neither to commit nor to suffer injustice; and that this is the beginning of legislation and of covenants between men, and that they name the commandment of the law the lawful and the just, and that this is the genesis and essential nature of justice – a compromise between the best, which is to do wrong with impunity, and the worst, which is to be wronged and be impotent to get one's revenge. Justice, they tell us, being mid-way between the two, is accepted and approved, not as a real good, but as a thing honoured in the lack of vigour to do injustice, since anyone who had the power to do it and was in reality 'a man' would never make a compact with anybody neither to wrong nor to be wronged; for he would be mad." Plato, *The Republic*, Book II, 359A,B. Cf. also Plato's *Laws*, 889E.

³⁵² Contrary to the Sophists providing us with a "picture of the natural man striving for his own ends, Plato presents us with an account of an organized society in which every man has his 'station and its duties', with the implication that it is only in such a life that the nature of man can find its fullest expression. Aristotle's refutation of the sophists is essentially similar." J.W.Gough, *The Social Contract. A critical Study of its Development* (1967), p.13.

ment”) and the second, as the genuine social contract (the “social contract proper”). The terminology here is taken from Gough but, obviously, both terminology, and the aspects meant to be emphasised, may differ. John Locke, for example, uses the notion “compact” for the genuine social contract. Or one might choose to distinguish between a horizontal (constituting a people) and a vertical contract (establishing a government). The former is taken as the true contract of association by Jean-Jacques Rousseau.³⁵³

Using another terminology one might also very properly distinguish between moral and merely prudential kinds of contract. Of even greater significance when dealing with modern kinds of contractarianism, is the distinction between a hypothetical and a real contract.³⁵⁴

For the moment, however, I just prefer to distinguish between “social contract” and “submission contract”, since this distinction covers very well the two types of basic “contract” that have in fact played a considerable role in matters of political legitimacy and political obligation.³⁵⁵ While the former kind of contract might have the greatest

³⁵³ In chapter 16 of his well-known book on the social contract he takes up the problem of establishing an executive power after the legislative power has been well established by the people as the “sovereign” of the state. And he writes: “Since the citizens are all made equal by social contract, everyone can prescribe what everyone else should do, whereas no one has the right to require another to do anything he does not do himself. Now it is precisely this right, indispensable for imparting life and movement to the body politic, that the sovereign gives the prince in instituting the government. Some have claimed that this act of establishment was a contract between the people and the leaders it gives itself, a contract by which the two parties stipulated the conditions under which one party obligates itself to command and the other to obey. It will be granted, I am sure, that this is a strange way of making a contract! ... There is only one contract in the state; it is that of the association; and that one by itself excludes any other. It would be impossible to imagine any other public contract that would not violate the first one.” Quoted from the English translation; “On Social Contract or Principles of Political Right”, *Rousseau’s Political Writings*, (eds. A. Ritter and J. Conaway Bondanella, 1988), p.145f.

³⁵⁴ These aspects of modern contractarianism, which are a vital part of the Rawlsian approach, shall be considered more closely later, but let me now just suggest that the way one combines different perspectives on the social contract, might serve to underline various aspects of a contractual agreement, yielding different kinds of contractarianism. Let me illustrate this as follows: If we are just focusing on the aspects “real” versus “hypothetical” and “moral” versus “prudential”, there will for instance be four different combinations, yielding rather different kinds of contractarianism:

a real contract for prudential reasons,

a real contract for moral reasons.

a hypothetical contract for mere prudential reasons,

a hypothetical contract for moral reasons,

The latter comes closest to the kind of contract that Rawls has in mind, as we shall see.

I am indebted to Thomas Pogge for pointing to the different possibilities of *combining* the various aspects. There might be more complex ways of combining if additional relevant aspects are also introduced.

³⁵⁵ To the terminology see; J.W.Gough, *The Social Contract, A critical Study of its Development* (1967), p.2f. If using German terminology, one might appropriately distinguish between “Gesellschaftsvertrag” and “Herrschaftsvertrag”. If using French terminology, one might distinguish between “pacte d’association” and “pacte de gouvernement”. But even if the notion of contract is used in both cases, Gough’s way

weight within a modern democratic perspective, the latter might historically be the primary one: The submission contract was primarily taken as a treaty between two parties. These two parties might, as suggested, be the sovereign on the one hand and the people (or groups of the people) on the other hand.³⁵⁶ In settling the appropriate terms of co-operation and obligation between the governor and the governed the governor had an obligation to protect those subject to his rule and provide elementary justice, – not to oppress them. And the people, seen as the other contractarian part, had to obey and comply with the political rule on the terms settled. The aim of this contractarian approach is to settle and to regulate properly the relation between the ruler and the ruled. Within the perspective of a genuine social contract, the “Konsens der betroffenen Bürger”³⁵⁷ is the real problem. It is the relation between the various co-existing parties that has to be settled in the genuine social contract. In this connection one, of course, has to decide on the kind of government which can properly maintain the terms inherent in the social contract in a way that can be approved of by all the contractors. There might be remnants of the submission-contract built into the proper social contract.

The growing emphasis on the genuine social contract-scheme corresponds very closely to the great shift in outlook that has increasingly dominated the modern era. According to Wolfgang Kersting³⁵⁸ this shift entailed the break-up of the classic alliance between an Aristotelian Sittlichkeits-morality and a Stoic-Christian norm-morality. Kersting views Machiavelli and Hobbes as two of the most prominent persons behind this shift. The shift implies that the individual, originally taken to be embedded in “polis”, the laws of which he had to conform with, changed his ground-perspective, such that an individualism developed according to which the institutions had to be arranged in accordance with individual interests and needs. Institutions were no longer taken as given, they had to be legitimated, to conform with the basic interests of the persons living under them. It was basically left with the consenting individuals to provide institutions with basic legitimacy. But individual interests differed in fact to a con-

of viewing the latter is quite clear: “Properly this has nothing to do with the foundation of the state, but, presupposing a state already in existence, it purports to define the terms on which it is to be governed: the people have made a contract with their ruler which determines their relations with him.” (p.3).

³⁵⁶ The Sovereign might also be God, while the other part is the elected people. In this case we might most appropriately prefer to use the notion of *covenant*.

³⁵⁷ M. Honecker, *Grundriß der Sozialethik*, (1995), p.337.

³⁵⁸ Cf. W. Kersting, *Die politische Philosophie des Gesellschaftsvertrags* (1994).

siderable extent. The contract philosophy was an appropriate medium for handling questions of basic agreement among parties with highly different, but also with vital concurrent interests.

The contract-argument proceeds in three stages:

- The so called “state of nature” is taken as the point of departure.
- The contractual “substance”, i.e. the content of the treaty, is worked out.
- The very institutional scheme, that the contract is aiming for, is legitimated, justified, assessed or (re)established.

The way the first stage is elaborated, gives the decisive premises for elaborating the content of the contract within stage two. And the second stage gives the substantial criteria for the institutional arrangements in stage three (and thereafter for the assessment of an actual institutional scheme).

As can easily be shown, the first stage is a crucial one. It provides both the vital social premises (e.g., that there is a more or less dominant scarcity, unrestrained liberty or virtual war between the parties), and crucial presuppositions about the original human nature (for instance that human beings are originally free and equal and primarily interested in self-preservation).

One usually traces the modern contract-tradition back to the 17th century, – although the idea of grounding a politically ordered society on a basic contract was not created *ex nihilo* by Enlightenment-philosophers. As suggested above, elements of a contractarian way of thinking about the foundation of society can be traced back to Greek philosophy, and some aspects of this approach can even be found within old religious traditions.

John Rawls clearly employs the contract-tradition. In renewing this tradition he is indebted to contractarian philosophers like Thomas Hobbes, John Locke, Jean Jacques Rousseau and also Immanuel Kant. However, it would lead me far beyond the focus of my thesis to elaborate thoroughly the kind of contractarian philosophy elaborated by each of these thinkers. Throughout the presentation and discussion of the Rawlsian approach, I shall, however, explicitly refer to the “classical” contractarians when it seems of special interest and is appropriate for clarifying the Rawlsian approach. But

before considering Rawlsian contractarianism, let me now turn to a *dilemma* within the social-contract-tradition as such:

As suggested, a contractual agreement might be taken to express a *real* consensus, as an agreement established by real persons or parties as a historical event. Such a kind of contractual agreement is well known from daily life, for instance in the case of marriage, or when existing nations join together for political and economic purposes in a league established and confirmed through certain “ceremonies” and the signing of documents.

It is, however, hard to imagine that people – as a historical event – actually once established a real social contract, thereby in the most fundamental way settling the very institutional scheme of society in the first place. It is not to be supposed that citizens – as an act of establishing an ordered society – have in fact given their explicit consent in matters of constitutional essentials, elementary political procedures, distributive justice and the institutional scheme as such.³⁵⁹ This is pointed out by David Hume who held the belief that individuals had once founded an ordered society as such by entering into a real social contract binding on all citizens, to be a fiction. Historically there never was an “original state” where the conditions for establishing such a real contract were at hand. Rather, one might say that the use of contract-terminology in itself presupposes a rather well-developed society with a political structure and a system of law. The contract model takes its strength by transforming arguments from an already established field of law to the field of politics by the means of analogy.

Moreover, even if somebody really does accept that there once was a situation where an original contract was in fact recognised by real persons, – how can this contract be made binding on new generations of citizens in new kinds of situations? The idea of a binding social contract, securing the legitimacy of a scheme of society, initially agreed upon (and signed?) in an original state of nature, is just that; – an *idea*, which in some essential respect might apply by analogy.

³⁵⁹ Of course one might in modern societies find cases where real persons are invited to give their explicit consent in what concerns “treaties” about basic questions and constitutional essentials. Treaties are established or rejected all the time in modern societies. But this is something quite different from establishing an initial contract in an original position on the very foundation and basic structure of society. There are neither plausible historical reasons nor political indications for assuming that real persons have once established such a social contract, settling the very institutional scheme of society in the first and most fundamental place.

On the other hand, Hume's strong objection that there is no historical evidence or indication that real persons ever actually entered into a basic social contract, does not render contractarianism a meaningless doctrine or futile endeavour. This indicates that the mere historical aspect is not the most important. The assumption that there once was a historical state of nature, which was brought to an end when real parties decided to sign a basic contract, is obviously not a necessary premise for maintaining contractarianism. I think that the vital moral assumption inherent in the contractarian approach, is of greater importance. That ground-assumption is;

“...that an obligation, to be really binding, must be freely assumed by the parties bound. The choices, wisely considered, may be inevitable when human nature is taken into account, but the compulsion is an inward one, flowing from the interests and the motives of the man himself. In the final analysis obligation cannot be imposed by force, but is always selfimposed. It was this conviction which made all obligation appear under the guise of a promise; what a man promises me may reasonably be held to, since he has himself created the obligation by his own act. In the larger question of a man's obligation to the community in which he lives, it was common to say that there was *no* rational way to conceive the obligation, except by attributing it to a promise. Whether such a covenant were historical or a methodological fiction, as Kant afterwards said, made little difference; in either case all binding obligation had to be represented as self-imposed.”³⁶⁰

Thus the contract-situation is conceived of as a situation of self-imposed obligation, established through fundamental promises that can be taken as mutually binding on the parties. Since the social contract, entered upon by all the parties, is the most fundamental one, by which society as such is established, it seems quite obvious that society as well as the governmental institutions of society, are made by man and for man.³⁶¹ Accordingly the social contract might be taken as an appropriate means of limiting the power of kings, princes and governors, as can for instance be seen in the political philosophy of John Locke.

Thomas Hobbes³⁶², however, made the contract a means of defending (a nearly) absolute power. How could that be possible? To understand Hobbes approach one has to take into consideration that self-preservation, the very upholding of biological existence, is taken as the strongest motivational force of human beings. Consequently, individuals,

³⁶⁰ G.H.Sabine and T.L.Thorson, *A History of Political Theory* (fourth edition, 1973), p. 398f.

³⁶¹ The genuine social contract has priority to all kinds of submission-contracts.

living completely in an unorganised state of nature, can be expected to pursue what they consider essential to secure their own existence, – even at the cost of others. A permanent and dangerous conflict with ones' neighbours is the obvious result of granting all human beings the unrestricted “right” and “freedom” to secure their own interests. In such a situation no one has any guarantee that he will succeed and survive.³⁶³

Now, Hobbes' main point is that individuals living under such “natural” conditions, might be expected to leave the dangerous state of nature willingly, if they could just establish some kind of ordered way of coexisting that would be less dangerous and more advantageous for each of them. Thus they can be expected to give up something of great value in order to attain what they consider even more essential. Hobbes therefore supposes that individuals, to avoid the danger of total individual “liberty” in a mere state of nature, would be willing to accept even strong constraints on their own freedom, including constraints on the practising of religion, provided of course that all the others likewise accept such limitation of their freedom, and provided that this limitation of an individual “right” to all things could effectively be arranged and maintained.

“Hence it follows that a man should be willing, when others are so too, as far forth, as for peace, and defence of himself he shall think it necessary, to lay down this right to all thing; and be contented with so much liberty against other men, as he would allow other men against himself. For practical purposes the whole weight of this law is borne by the clause, ‘when others are so too’, since it would be ruinous to grant liberty to others if they would not grant the same to you. Thus the prime condition of society is mutual trust and the keeping of covenants, for without it there can be no certainty of performance, but there must be a reasonable presumption that others will meet you on the same ground.”³⁶⁴

To guarantee this mutuality, an ordered society should be founded upon a binding cove-

³⁶² I shall here not discuss the problem how far Thomas Hobbes – in spite of the obviously illiberal features of his conception – might nevertheless be considered one of the main founders of “liberalism”.

³⁶³ “Since individuals are roughly equal in strength and cunning, none can be secure, and their condition, so long as there is no civil power to regulate their behavior, is a ‘war of every man against every man’. Such a condition is inconsistent with any kind of civilization: there is no industry, navigation, cultivation of the soil, building, art, or letters, and the life of man is ‘solitary, poor, nasty, brutish, and short’. Equally there is neither right nor wrong, justice nor injustice, since the rule of life is ‘only that to be every man’s that he can get; and for so long as he can keep it’.” G. H. Sabine and T. L. Thorson, *A History of Political Theory* (fourth edition, 1973), p. 429. It is well worth noticing that this is Hobbes’ perspective on those living in a state of nature. This does not imply that people, as we know them from real life, should be considered entirely egoistic and non-moral persons. Thanks to education and the socialisation not least within the framework of the family, there will in the actual society always be civilised persons with a high moral standard, just as there will also be persons that are not civilized. But the moral virtues and benevolent attitudes of some individuals are not a sufficient basis for establishing a well-ordered society.

³⁶⁴ G. H. Sabine and T. L. Thorson, *A History of Political Theory* (fourth edition, 1973), p. 432.

nant, which means that it has to be grounded on the *consent* of all the different parties pursuing their various interests. But Hobbes also sees quite clearly that a mutual trust and a mutual readiness to make contracts and keep promises will not alone be sufficient to maintain peace and safety in the long run. Just as the contractors could be supposed to pay a rather high price for peace and protection, thereby “sacrificing” to a very wide extent the liberty that belonged naturally to them in the state of nature, Hobbes takes for granted that they would also take further steps to make the contract really binding and effective, which, Hobbes argues, entails willingly and rather unconditionally handing over their original “rights” to a “sovereign”, with sufficient power to guarantee their safety. As a result of mere rational calculation individuals concerned with self-preservation should prefer existence in an ordered society under civil government to existence in an unordered and dangerous state of nature. Provided that all are doing it, it is certainly not irrational for the parties;

“to conferre all their power and strength upon one Man, or upon one Assembly of men, that may reduce all their wills, by plurality of voices, unto one Will: which is as much as to say, to appoint one Man, or Assembly of men, to beare their Person; and every one to owne, and acknowledge himself to be Author of whatsoever he that so beareth their Person, shall Act, or cause to be Acted, in those things which concerns the Common Peace and Safetie; and therein so submit their Wills, every one to his Will, and their Judgments, to his Judgment. This is more than Consent, or Concord; it is a reall Unitie of them all, in one and the same Person, made by Covenant of every man with every man, in such manner, as if every man should say to every man, *I Authorise and give up my Right of Governing my selfe, to this Man, or to this Assembly of men, on this condition, that thou give up thy Right to him, and Authorise all his Actions in like manner.* This done, the Multitude so united in one Person, is called a COMMON-WEALTH, in latine CIVITAS. This is the Generation of that great LEVIATHAN... And in him consisteth the Essence of the Commonwealth; which (to define it,) is *one Person, of whose Acts a great Multitude, by mutuall Covenants one with another, have made themselves every one the Author, to the end he may use the strength and means of them all, as he shall think expedient, for their Peace and Common Defence.* And he that carryeth this Person, is called SOVERAIGNE, and said to have *Soveraigne Power*; and every one besides, his SUBJECT.”³⁶⁵

The great Leviathan³⁶⁶, the absolute state-power, is required to keep the inhabitants of

³⁶⁵ T. Hobbes, *Leviathan*, (ed. R. Tuck, 1991), p. 120f. (*Leviathan* was first published 1651).

³⁶⁶ “Leviathan (hebr. Liwjatan), ein im Buch Hiob (Kap. 40 und 41) neben dem Landtier Behemoth genanntes Seeungeheuer, war ursprünglich wohl ein Gott der babylonischen Mythologie. Im Mittelalter lebte das Symbol in christlich-theologischen und jüdisch-kabbalistischen Traditionen fort. In der christlichen Überlieferung geriet der L. bald in der Nähe der apokalyptischen Tiere und wurde mit dem Satan selbst identifiziert... Erst mit Thomas Hobbes’ ‘Leviathan’ (1651) tritt das anti-politisch-theologische Symbol aus dem Dunkel der Geheimlehren als antitheologisch-politische Allegorie ins Zwielficht der

the country in awe, to direct their acts towards the common good and enforce the laws of the country. The rule of the government is therefore to be conceived of as nearly absolute. Since self-preservation is the supreme aim, one can better understand that people are expected to live with the Hobbesian Leviathan, at least as far as Leviathan does not himself bring them into mortal danger, but protects them from violent death. Having first appointed a sovereign, the absolute sovereignty could not just be withdrawn.³⁶⁷ The Hobbesian covenant has paved the way for the great Leviathan.

John Locke for his part sets quite another tone in *Two Treatises of Government*³⁶⁸. He too takes the scheme of society to be based on consent from persons who have to coexist and co-operate. But the contract-situation conceived of by Locke is obviously taken to be quite different from the state of nature as described by Hobbes. The state of nature is not in the same way taken by Locke to be continually threatened by a war of all against all. Since, according to Locke, a fundamental “right to life, liberty, and estate” is prior to positive law and institutional arrangements³⁶⁹, a basic “compact” among those living in the state of nature incorporates moral standards and can be a powerful instrument for assessing existing political institutions from an original moral point of view. The nearly absolute power that Hobbes ascribes to Leviathan is thereby broken or at least clearly limited.

But why should people make a social covenant at all according to Locke? Let me just

politischen Philosophie und Polemik. Für Hobbes ist ‘magnus ille L.’ als eine mythische Totalität von Gott, Mensch, Tier und Maschine die Verkörperung von politischer Einheit: ‘Non est potestas super terram quae comparetur ei.’ (Motto aus Hiob 41,24: ‘Auf Erden ist seinesgleichen niemand.’ dtsh. nach M.LUTHER.)” *Historisches Wörterbuch der Philosophie* (1989), Vol.5, column 254

³⁶⁷ According to Hobbes people should – as made clear – be supposed to be willing to accept heavy constraints on their freedom for the sake of internal peace. If the sovereign, however, turns out to be so tyrannical that he really threatens life and self-preservation, even Hobbes should admit that the government should better be removed by those so threatened, since it has obviously forfeited its most eminent task. Or better: They should just stop obeying such a state-power instead of removing the institution as such.

³⁶⁸ *Two Treatises of Government* was probably written in the years 1680-1683 and published in 1689. The first treatise is entirely directed against Sir Robert Filmer’s book “*Patriarcha*”, (published about 1650). The second treatise is reckoned as the most important, being of the greatest long-term value. I have used the first modernised version based on Locke’s corrected text in the third edition, originally published in 1698.

³⁶⁹ They are prior in the sense that even in the original situation it is the case “That all individuals are endowed by their creator with a right to life, liberty, and estate, aside from all reference to their social and political associations, [but this] is certainly not a proposition for which any empirical proof can be given. There seems to be no way whatever to prove it; it must stand, as Thomas Jefferson said, simply as self-evident, an axiom from which social and moral theorems can be deduced, but which in itself is more obvious than any other ethical principle. Probably this is what Locke believed.” G. H. Sabine and T. L. Thorson, *A History of Political Theory* (1973), p. 488.

give one of the primary reasons: Locke (like Hobbes) takes it as a characteristic feature of the state of nature that there is unconstrained individual “freedom”. Even if Locke conceives of human nature of man differently than Hobbes, Locke clearly sees that insoluble conflicts might arise in the state of nature. And so he makes it clear that the aim of ordered society, as opposed to the mere state of nature, is;

“...to avoid, and remedy those inconveniences of the state of nature, which necessarily follow from every man’s being judge in his own case, by setting up a known authority, to which everyone of that society may appeal upon any injury received, or controversy that may arise, and which everyone of the society ought to obey; wherever any persons are, who have not such an authority to appeal to, for the decision of any difference between them, there those persons are still in the state of nature.”³⁷⁰

Note that it is foremost the ordered scheme of society as such that is constituted by the completely voluntary “compact” among the parties in the original situation, and this founding of a society has to be followed up by establishing governmental power.³⁷¹

Since the compact by which an ordered society is founded as well as the establishing of governmental rule, depends on an original consent from the side of the people, it seems plausible to claim that people are also entitled to withdraw their consent if the government oppresses them and sets aside their elementary rights. Therefore, when the executive and even the legislative power are no longer being used by the government to protect natural rights and property, it should be considered legitimate for the citizens to deny their support, thereby rendering the government illegitimate. This is the “revolutionary” aspect of Locke’s theory.³⁷² Governmental power should, in effect, always be

³⁷⁰ J. Locke, *Two Treatises of Government* (ed. M. Goldie 1993), p.158. *Two Treatises of Government* was written in the years 1680-1683 and published in 1689.

³⁷¹ “Such a power can arise only by consent, and though this may be tacitly given, it must be the consent of each individual for himself. For civil power can have no right except as this is derived from the individual right of each man to protect himself and his property. The legislative and executive power used by government to protect property is nothing except the natural power of each man resigned into the hands of the community, or resigned to the public, and it is justified merely because it is a better way of protecting natural rights than the selfhelp to which each man is naturally entitled. This is the original compact by which men incorporate into society; it is a bare agreement to unite into one political society, which is all the compact that is, or needs be, between the individuals, that enter into, or make up a commonwealth.” G. H. Sabine and T. L. Thorson, *A History of Political Theory* (1973), p. 490.

³⁷² In modern democratic societies clear procedures for withdrawing support are institutionalised. Nevertheless, I think that John Locke’s political writings, although conceived of in a political situation very different from ours, are in some respects still of great importance. When reading “*The second Treatise of Government*”, one gets the impression that it can never be easy for the citizens to fundamentally withdraw support, making the actual government illegitimate. Just as private persons should not be their own judges, it is also difficult to imagine that the citizens, or a majority of citizens, should be judges in their own sake when it comes to the question whether one should get rid of the existing government. Therefore Locke frequently emphasizes that there might be many situations when those suffering from political injustice have no other possibility but appealing to heaven. “The people have no other remedy in this, as in all other

reckoned as the power of free and equal citizens *as a collective body*. The very idea of a basic contract securing the elementary rights and obligations for the members of society, provides us with a powerful instrument for limiting and controlling institutionalised power and for regulating mutual obligations, as can most clearly be observed in the political philosophy of John Locke.

John Rawls may consider John Locke as one of his predecessors in political philosophy. But even if Locke as well as Hobbes avoids the naïvism of making the social contract an actual historical event signed by real persons, both of them are according to Rawls, “bound to be substantially affected by contingencies and accidents of the as-if just historical process which has no tendency to preserve or to move toward background justice.”³⁷³ Rawls uses Locke to illustrate this point, pointing to the fact that;

“He [Locke] assumes that not all members of society following the social compact have equal political rights: citizens have the right to vote in virtue of owning property so that the propertyless have no vote and no right to exercise political authority. Presumably the diverse accumulations of the as-if just historical process over generation has left many without property through no fault over their own.”³⁷⁴

cases, where they have no judge on earth, but to appeal to heaven. For the rulers, in such attempts, exercising a power the people never put into their hands (who can never be supposed to consent, that anybody should rule over them for their harm) do that, which they have not a right to do. And where the body of the people, or any single man, is deprived of their right, or is under the exercise of a power without right, and have no appeal, on earth, there they have a liberty to appeal to heaven, whenever they judge the cause of sufficient moment.” (p. 201). But nevertheless John Locke also sees the possibility that the people might be definitely best served “when the government is dissolved, ... erecting a new legislative, differing from the other, by the change of persons, or form, or both as they shall find it most for their safety and good.” (p.226). But he is convinced that this will not happen very frequently and easily: “Secondly, I answer, such revolutions happen not upon little mismanagement in public affairs. Great mistakes in the ruling part, many wrong and inconvenient laws, and all the slips of human frailty will be borne by the people, without mutiny or murmur. But if a long train of abuses, prevarications, and artifices, all tending the same way, make the design visible to the people, and they cannot but feel, what they lie under, and see, whither they are going; ‘tis not to be wondered, that they should then rouse themselves, and endeavour to put the rule into such hands, which may secure to them the ends for which government was first erected...” (p.229) John Locke, *Two Treatises of Government* (1689, ed. M.Goldie1993). Although cautious, Locke is here obviously providing legitimacy for the Revolution that brought William of Orange to the throne.

³⁷³ J. Rawls, *Political Liberalism* (1993), p.287.

³⁷⁴ J. Rawls, *Political Liberalism* (1993), p.287. But Locke might have avoided such an approach: “The constraints that Locke imposes on the as-if historical process are not strong enough to characterize a conception of background justice acceptable to free and equal persons. This can be brought out by supposing that the social compact is to be made immediately following the creation of human beings as free and equal persons in the state of nature. Assuming that their situation with respect to one another suitably represents their freedom and equality, and also that (as Locke holds) God has not conferred on anyone the right to exercise political authority, they will presumably acknowledge principles that assure equal basic (including political) rights for all throughout the later historical process. This reading of Locke’s view makes it an as-if nonhistorical doctrine...” *Ibid* p. 287f.

However, Rawls himself holds that his own contractarian approach avoids the different kinds of weaknesses, most usually and plausibly pointed to in the debate about contractarianism.³⁷⁵

Contractarian consensus is without doubt seen by Rawls as the outcome of a *hypothetical* “contract”, to be established by imaginary persons, which means that Rawlsian contractarianism is used mainly for the sake of argument. Thereby he avoids naïve historicism as well as the kind of social contingencies brought in by Locke and Hobbes. Used as a thought experiment, the contractarian argument is a powerful device for arguing matters of *actual* politics and ethics, and for setting the fairness of the very institutional scheme of society on the agenda. Rawls contractarian approach (which also bears influence from Kant³⁷⁶) should clearly be considered hypothetical and paradigmatic rather

³⁷⁵ I have earlier in this chapter referred to the kind of critique set forth by David Hume. In *Political Liberalism*, (pp.285-288) Rawls also considers the critique set forth by Hegel against the idea of an “initial” social contract. And Rawls finds it necessary “to show that the original position construction, which uses the idea of the social contract, is not open to the cogent objections that idealists raised to the contract tradition of their day. Thus Hegel thought that this doctrine confused society and the state with an association of private persons; that it permitted the general form and content of public law to be determined too much by the contingent and specific private interests and personal concerns of individuals; and that it could make no sense of the fact that it is not up to us whether we are born into and belong to our society. For Hegel the doctrine of social contract was an illegitimate and uncritical extension of ideas at home in and limited to (what he called) ‘civil society’. A further objection was that the doctrine failed to recognize the social nature of human beings and depended on attributing to them certain fixed natural abilities and specific desires independent from, and for theoretical purposes prior to, society.” J. Rawls, *Political Liberalism* (1993), p. 285f. Rawls is of the opinion that neither Hobbes nor Locke would be able to answer this idealist critique. But Rawls defends himself against this kind of critique by stressing both the basic institutional aspect of justice as fairness and by taking the social nature of man very consciously into account: “I have attempted to reply to these criticisms first by maintaining that the primary subject of justice is the basic structure of society, which has the fundamental task of establishing background justice. ... Finally, I have indicated how justice as fairness can accommodate the social nature of human beings. At the same time, since it proceeds from a suitably individualistic basis (the original position is conceived as fair between free and equal moral persons), it is a moral conception that provides an appropriate place for social values without sacrificing the freedom and integrity of the person.” *Ibid.* p.286.

³⁷⁶ I will not here consider Kant’s use of contract-ideas more thoroughly. Let me, however, mention that Kant, especially in *Die Metaphysik der Sitten* (1797), employs contractarian ideas : After having given a kind of typology of contracts, and having applied it both to commercial, political, familial and ethical issues, “He also discusses the founding of a state in terms of the idea of an original contract, as ‘the act by which a people forms itself into a state’ (MM p.315 ...). In this contract, everyone exchanges their ‘external freedom’ for ‘civil freedom’. Three distinct contracts are in fact undertaken in the formation of the state: the first is between future citizens in which ‘each complements the others to complete the constitution of a state’ (MM p.315 ...); the second is between the people and a superior, the contract of ‘subordination’; and the third is between the superior and the people through which ‘each subject is apportioned his rights’ (MM p.316 ...); The idea of this original contract provides a regulative idea by which ‘to think of the legitimacy of the state’ (MM p.315 ...) and thus ‘involves an obligation on the part of the constituting authority to make the *kind of government* suited to the idea of the original contract’ (MM p.340 ...). Kant extends this original contract within a state to that between states, proposing a ‘league of nations’ based on an association of sovereign authorities.” H. Caygill, *A Kant Dictionary* (1995), p. 133f. (The page-references in Caygill’s Dictionary refer to the German ‘Academy Edition’). It is important here

than real and empirical.

4.3.2. Rawls' use of the contract-argument

As emphasised, the fundamental social contract should not be taken as an ordinary historical event of a distant past, – the theory of the social contract should better be transformed into an ideal and highly hypothetical regulative idea to be carried out as a thought-experiment with a considerable paradigmatic force. The latter approach to contractarianism is the concern of John Rawls.

“What I have attempted to do is to generalize and carry to a higher order of abstraction the traditional theory of the social contract as represented by Locke, Rousseau, and Kant. In this way I hope that the theory can be developed so that it is no longer open to the more obvious objections often thought fatal to it.”³⁷⁷

And Rawls indeed converts the contract-model into a powerful “hypothetical” device. The “classical” stages of the contract-argument can, however, still be discerned in Rawls' hypothetical conception:

- 1 The state of nature is constructed by Rawls as an *original position*, where the contract-parties can be supposed to come to a unanimous decision on which principles should most appropriately count as the normative ground and the final court of appeal in questions concerning the basic terms of their association.
- 2 The original choice-situation, as conceived of by Rawls³⁷⁸, is designed to produce the *substantially best outcome* by a mere procedural course of action. The substantial outcome of a contractarian agreement made on these premises provides us, according to Rawls, with principles of justice, suitable for securing fundamental liberties, elementary rights and fair terms' co-operation for all the parties.
- 3 The substantial principles arrived at in the original position can expectedly serve as a widely acceptable normative ground for assessing, justifying and (re)arranging the very *institutional scheme* of society.

to notice that the contract is taken by Kant to provide us with a regulative idea by which we can properly think of the legitimacy of the state.

³⁷⁷ *A Theory of Justice* (1971), p. VIII

³⁷⁸ As we shall see Rawls is constructing an idealised imaginary contractarian situation by modelling into it the appropriate premises that are required for the fictitious contractors to arrive at an agreement about “essentials” that is assumed to be both unanimous, maximally fair and binding on all parties.

By modelling the intuitions about justice with which people are most familiar, into the very structure of the original position in a way that will necessarily be reflected in the decisions about the ordering of society made by the contractors, Rawls intends to ground the institutional scheme of society on principles of justice that will prove widely recognisable and most justifiable. This means that ordinary ideas of fairness are given a decisive role in the very construction of the initial situation and will expectedly influence the decisions taken by the contractors. The substantial principles, agreed upon by the contractors, are even supposed to follow *strictly* from (i.e. be logically entailed by) the premises given in the very structure of the initial situation as such.³⁷⁹

Of course, one might say that the second of the three stages sketched above – deciding on and spelling out in detail the substantial principles of justice – is the most crucial one. However, I shall not analyse the principles of justice as *specified* by Rawls nor the relation between these substantial principles. Neither shall I analyse in detail the conception of justice as fairness elaborated in *A Theory of Justice*.³⁸⁰ There are good reasons for limiting this part of my dissertation to the required minimum: Rawls' theory of justice has been intensively discussed since *A Theory of Justice* was first published and the amount of literature on this issue is therefore immense. Dealing thoroughly with the notion of justice as such, and trying to give a full account of Rawls' theory of justice, would by far exceed the limited space being at my disposal in this dissertation. Since the idea of justice, as elaborated by Rawls, is nonetheless such an important and integrated part of his theory as such, I cannot entirely avoid the issue of justice, even if I cannot contribute very much to furthering the debate in this field. I shall therefore draw upon the most obvious outcome of this debate, as far as this is necessary for my own purpose. One cannot discuss Rawls' consensual ideas without referring to the idea of justice as fairness.

³⁷⁹ I prefer to use the terminology “follow *strictly* from” here. Rawls himself seems to be even stronger about this, saying that the premises built into the original situation should be such that “arguments from such premises can be fully deductive ... We should strive for a kind of moral geometry with all the rigor which this name connotes”. *A Theory of Justice* (1971), p.121. But simultaneously he admits that “Unhappily the reasoning I shall give will fall far short of this, since it is highly intuitive throughout. Yet it is essential to have in mind the ideal one would like to achieve.” *Ibid*, p.121.

³⁸⁰ There is certainly an immense quantity of literature on Rawls' conception of justice as such. As far as I considered it necessary for my thesis, I have in chapter 1 and 2 of my dissertation given a short review of his theory of justice, as specified in the two principles of justice, and I have also given an account of the way Rawls' conceives of the circumstances of justice. Thereby I can all the way refer to the principles of justice and to the very idea of justice as fairness.

Just as I cannot go very deep into the theory of justice as such, I cannot now thoroughly use the principles elaborated in the original position for assessing concrete institutional schemes either.

Since my primary concern is the possibility of arriving at a *unanimous* decision on a morally grounded framework that can be accepted by the diverse parties in pluralist societies as fair, I shall now concentrate rather thoroughly on the first of the three stages mentioned above; the initial situation, assumed to make the unanimous decision possible.

4.3.3. Behind a veil of ignorance

It is appropriate for my purpose to begin with a more thorough overview of Rawls' modelling of the so called "original position", that is called "Rawls' most favored interpretation of the contract"³⁸¹. My overview and my comments now refer mainly to chapter III in *A Theory of Justice*, where Rawls develops his idea of the "original position" most extensively.³⁸²

The "original position" is conceived of by Rawls as a constructed choice situation where imaginary parties are provided with the task of choosing³⁸³ decisive principles of justice that can serve as the shared basis when the terms of social coexistence are to be settled.

Outside the original position, i.e. in real societies, people face very complex social circumstances, have particular interests and social attachments, different kinds of beliefs, opposing conceptions of the good life, and each of them has an immense amount of particular information and knowledge coming from many different sources. In such a "real" and complex situation the difficulty of arriving at a unanimous decision about principles of fairness, distributive guidelines and constitutional essentials is obvious (and if the parties should really succeed in coming to an agreement about these things, the result would most likely be trivial).

³⁸¹ Cf. R. Dworkin: The Original Position in: *Reading Rawls. Critical Studies on Rawls' A Theory of Justice*, (Ed. N. Daniels, 1975), p.43.

³⁸² One might also refer to Lecture I, § 4. "The Idea of the Original Position" and Lecture VIII, § 4. "The Original Position" in J. Rawls, *Political Liberalism* (1993), pp.22-28 and pp. 304-310.

³⁸³ According to Rawls the parties are assumed to choose from a list of different conceptions of justice, among others the Rawlsian "two-principles'-conception", classical and average utilitarian conceptions,

By contrast, in a hypothetically modelled original position, which is in many respects a simplified constructed model, the number of variables can be kept low. Such an initial choice-situation has to be modelled in a way that makes the (fictitious) contractors concentrate just on the most essential terms of coexistence. Rawls is very explicit about this, emphasising that the original position has to be structured in a way that may plausibly provide us with the most appropriate principles of justice by pure procedural proceeding.

To make clear which function the idea of an original position has according to Rawls, there are three points that I believe should be stressed:

First: The heading of this chapter, “*The veil of ignorance*” is chosen to indicate an important characteristic of the initial situation as conceived of by Rawls. More than anything else, the so-called “veil of ignorance” is used by Rawls as a means of modelling the original position in a way which makes it possible to focus on those terms that are most essential for elaborating shared principles of justice.

In constructing the original position Rawls clearly realises that “somehow we must nullify the effects of the specific contingencies which put men at odds and tempt them to exploit social and natural circumstances to their own advantage.”³⁸⁴ And that is just the function that the veil of ignorance has; – to “nullify the effects of specific contingencies”. By placing the parties of the original position behind a “veil of ignorance”, Rawls restricts the amount of knowledge that the contractors can be permitted to have. There can be supposed to be among the contractors a radical lack of knowledge about the social place and status real persons would have in real society. Let me here insert the remark that it seems most appropriate to consider the contractors of the “original position” as *representatives* of citizens or groups of citizens within real society, as Rawls himself does in his later writings. Thus the contractors are entrusted with the task of securing the best available outcome for those they are representing.

The parties in the original position have no knowledge about the actual social situatedness or about the natural assets, for instance, intelligence, physical abilities and psycho-

egoistic conceptions, intuitionistic conceptions and mixed conceptions. Cf. *A Theory of Justice* (1971), p.124.

³⁸⁴ *A Theory of Justice* (1971), p.136

logical characteristics of those represented.³⁸⁵ And there are many particular things concerning the “real” society that they don’t know either, for instance what political government there is in the country, what economic and cultural level the society has achieved. Neither do the contractors know what religious beliefs or moral doctrines the represented persons really honour. In short: By placing the contractors within the original position behind a “veil of ignorance” Rawls has systematically ruled out from the initial choice-situation the kind of contingencies and particularities that are so often the source of interest-conflicts between people.

But, by eliminating sources of conflict between people from consideration, I believe that Rawls exposes himself to the critique that he simply takes some values for granted. For instance, Rawls assumes that the value of *equality* is highly recommendable, morally acceptable and to be taken as fundamental when designing the choice-situation. Thus Rawls assumes that he is morally justified in systematically limiting the parties’ insights into precisely those economic, religious and political inequalities and kinds of social differences that might at the very outset unfairly influence the contractual outcome in terms of the ground-decisions about constitutional essentials and basic justice. By reducing particular contingencies in the way Rawls does, the parties are as far as possible to be *equally* situated when they settle upon the fairest institutional scheme for all citizens. And, in fact, Rawls draws the conclusion that is near at hand, saying that:

“... it is clear that since the differences among the parties are unknown to them, and everyone is equally rational and similarly situated, each is convinced by the same arguments. Therefore, we can view the choice in the original position from the standpoint 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.”³⁸⁶

By introducing the “veil of ignorance” Rawls makes it very clear that the original position is a “construct”, a thought-experiment that all persons in real societies, provided they have a normal capacity of abstraction and reasoning, should be able of reproduce simply by trying to set particular interests, contingent circumstances and

³⁸⁵ A person in the original position does not even know “the special features of his psychology such as his aversion to risk or liability to optimism or pessimism”. *A Theory of Justice* (1971), p.137 This is an implication of introducing a “veil of ignorance” that is in no way unproblematic since Rawls elsewhere obviously assumes that the parties in the original position have a certain psychological constitution. They are for instance supposed to be rather risk-averse persons.

³⁸⁶ *A Theory of Justice* (1971), p.139

special life-plans aside (for a while). By introducing the idea of a “veil of ignorance”, thus bringing the parties of the original position in a situation with restricted insight, Rawls will force the contractors, since they cannot know what the social position and particular interests of the persons they represent might be, to choose principles of right not just for the benefit of their “clients”, but necessarily also for the benefit of everyone else as well.

Second: It can be discussed how thick the “veil of ignorance” really is according to Rawls. How much of the circumstances that apply in the empirical world is really ruled out? How much are the parties supposed to know about the political reality they are making decisions for? Shouldn’t they have at least some knowledge about the kind of empirical problems that really actualise the quest for fundamental principles of justice?

These questions can best be answered by examining how far the so called circumstances of justice are supposed to apply in the original position. As already stated (in Chapter II) the circumstances of justice are those circumstances of conflicting and coinciding interests that really call for the virtue of justice. There are some objective and general background-circumstances that citizens in real societies are faced with and which the parties in the original position are likewise assumed to have in mind: Therefore one should suppose that there is certain background information about the circumstances prevailing in the “real world”, which has to be reflected in the original position as well. The modelled original situation might be simplified, non-complex and focusing merely on the most essential aspects, but it should not be conceived of in a way which is misleading or false. For example, according to Rawls, the contractors have to take the fact of moderate scarcity as an important premise.

The contractors are also supposed to have a general insight into aspects of things which matter subjectively. Although the contractors themselves do not honour any particular conception of the good, pursue specific life plans or have any special moral allegiances, they are aware of the role that such things generally play in real life.³⁸⁷ In a similar way the parties in the original position are aware of the role that natural relations, family-

³⁸⁷ Rawls assumes that the parties’ “goodwill stretches over at least two generations ...having a desire to further the welfare of their nearest descendants”. *A Theory of Justice* (1971), p.128. The further problems raised by this assumption cannot be pursued here.

bonds etc. play in connection with concrete lifeplans and individual conceptions of the good in real life, but they are nevertheless themselves “assumed to take no interest in one another’s interest”.³⁸⁸ In short: The contractors are supposed to know that different people have various commitments, that they honour diverse conceptions of the good and have different social interests, but they themselves have only an insight in the *general* features of those particular, empirical circumstances.³⁸⁹

Third: When Rawls models the original position, he cannot avoid making some assumptions about the “nature” of the contractors. Are they conceived of as moral persons, are they altruistic or egoistic? And why are they conceived of as entirely autonomous individuals without any constitutive ties and deep attachments to other persons? Aren’t the agents of the Rawlsian original position considered merely self-interested rational agents, as Wolfgang Kersting for instance supposes?³⁹⁰ How fair is it, however, to take Rawls’ image of the contractors as a decisive indication of his conception of man as such?

I cannot answer all these questions thoroughly, but let me stress the following:

One might see the contractors as persons in a state of social “amnesia” who face the task of settling the terms of coexistence for all of the members of the society to which they shall themselves return. As already suggested, however, it seems more appropriate to consider the contractors of the original position as mere *representatives* of citizens or groups of citizens within real society. In so far the contractors are entrusted with the task

³⁸⁸ In this connection Rawls emphasises that “the postulate of mutual disinterest in the original position is made to insure that the principles of justice do not depend upon strong assumptions. Recall that the original position is meant to incorporate widely shared and yet weak conditions. A conception of justice should not presuppose, then, extensive ties of natural sentiment. At the basis of the theory, one tries to assume as little as possible.” *A Theory of Justice* (1971), p.129. With considerable right the contractors may be characterised as “detached selves”.

³⁸⁹ According to Michael J.Sandel Rawls is pressured to resort to a “notion of the original position which includes as part of its description an empirical account of characteristic human circumstances ... And so it would appear that the two aspirations of Rawls’ theory, to avoid both the contingency of the existing desires and the alleged arbitrariness and obscurity of the transcendent, are uncombinable after all, the Archimedean point wiped out in a litany of contradictions.” M. J. Sandel, *Liberalism and the Limits of Justice* (1990, first published 1982), p.40. Thus Sandel means that Rawls tries to combine elements that are too disparate to be combined, namely a Humean empirical approach and a Kantian transcendental approach.

³⁹⁰ Wolfgang Kersting takes the man of the original position to be the typical rational and self-interested “homo oeconomicus” and therefore he emphasises that “Die Grundthese ist, daß sich Gerechtigkeitsprinzipien auf der Basis des rationalen Selbstinteresses gewinnen lassen, sofern dieses unter gewissen einschränkenden Idealbedingungen agiert. Auch der rechtfertigungstheoretische Kontraktualismus stützt sich auf ein Vertragsinhaltsargument der ökonomischen Rationalität.” *Die politische Philosophie des Gesellschaftsvertrag* (1994), p.268.

of securing the best available outcome for those they represent. This perspective enables us to understand the important, but very limited role the contractors have. And we can better see why the parties of the original position are supposed to be disinterested in the sense that they have no deeper interest in the interests of other persons. Michael Sandel, however, takes this as an indication of a deeper individualism in Rawls' philosophy as a whole.³⁹¹ Individual man is fundamentally seen as prior to the ends he has, and to his social attachments and to the conceptions of the good that he pursues.

This may be right in one respect: The persons of the original position are certainly not conceived of as benevolent, as having particular moral attachments, or belonging to a network of complex relations. But if one really intends to give a fair presentation of Rawls' conception of man, one should in my opinion not draw strong conclusions from the image he gives us of the contractors in the original position. The contractor is nothing but a fictional construct situated in a hypothetically modelled original position. The contractors can be supposed to have identical interests, what means that they are able of focusing only on the essential *general* features that are of the greatest importance when settling the institutional life-conditions for all members of society in the most impartial way.

By denying the contractors nearly all information about *particular* interests and special social circumstances, the parties have no basis any longer for bargaining, promoting special interests or for manipulating others in certain directions. The deliberation of all parties may be mainly similar. Conceiving of the "inhabitants" of the original position in this way means that Rawls has quite deliberately presented us, not with some "real" persons, but in a sense with "detached selves", without thereby claiming that he has provided us with the true conception of man. But by abstracting from particular attachments and special interests, he hopes that a contract, conceived of in a hypothetical original position, might be decided without really reflecting the relative strength, power and bargaining advantage that some of the contracting parties might really have. Con-

³⁹¹ Not "individualistic" in the sense that what counts is the right for each to pursue his own interests. But Sandel points to another and deeper kind of individualism: "All interests, values, and conceptions of the good are open to the Rawlsian self, so long as they can be cast as the interests of a subject individuated in advance and given prior to its ends, so long, that is, as they describe the objects I seek rather than the subject I am. Only the *bounds* of the self are fixed in advance. But this suggests a deeper sense in which Rawls' conception is individualistic." M. J. Sandel, *Liberalism and the Limits of Justice* (1990, first published 1982), p.62.

ceiving of the contractors in this (“thin”) way serves a certain aim in Rawls’ theory.

Even the kind of bargaining which is usually associated with the formation of business contracts is missing in Rawls construction of the original position. Moreover, the Rawlsian “contract” is obviously formed in a situation where the different aspects of power are deliberately reduced to an absolute minimum, – although I suppose that the parties might be well aware of the general features of political power and the conflict potential of society. There is a far cry from the virtual war that we find within Hobbes’ description of the state of nature. The agents of the Rawlsian original position are nonetheless different from the agents in a Hobbesian state of nature in an important respect: there is no envy between the parties within the Rawlsian original position. However, one has to stress, that these contractors do not present us with the Rawlsian conception of man as such. And whether one takes them as representing “clients” or as persons who – in a state of widespread social “amnesia” – are planning for their own lives, it is quite clear that their sole task is to seek the highest possible degree of primary goods.³⁹² In so far as this is true, they may be considered as self-interested as the Hobbesian man in the state of nature. They might also be considered fully rational agents, – able of “taking effective means to ends with unified expectations and objective interpretation of probability”.³⁹³ The contractor is the typical “homo oeconomicus”.

And “homo oeconomicus”, when situated under a veil of ignorance in a Rawlsian original position, is expected to take the *maximin-principle* as the most rational guideline for making vital decisions about the most appropriate conception of justice. Rational contractors, being in a situation where they have no insight into the social situatedness, the particular interests, the power and the status of those who shall really live with the contract, will, according to Rawls, tend to choose the principles that are best for their “clients”, even if they should happen to be among those who are worst off in society. In

³⁹² I recall that the primary goods, “are things which it is supposed a rational man wants whatever else he wants. Regardless of what an individual’s rational plans are in detail, it is assumed that there are various things which he would prefer more of rather than less. With more of these goods men can generally be assured of greater success in carrying out their intentions and advancing their ends, whatever these ends may be. The primary social goods, to give them in broad categories, are rights and liberties, opportunities and powers, income and wealth. (A very important primary good is a sense of one’s own worth...) It seems evident that in general these things fit the description of primary goods. They are social goods in view of their connection with the basic structure; liberties and powers are defined by the rules of major institutions and the distribution of income and wealth is regulated by them.” J.Rawls, *A Theory of Justice* (1971), p.92.

short, the maximin-strategy aims at achieving the best of the worst.³⁹⁴ Being uncertain about the real situation of their “clients”, the contractors will hardly play hazard with the destiny of the persons they represent. In a situation of uncertainty – each of them has to act as if he should settle principles of justice for a “society in which his enemy is to assign him his place”.³⁹⁵

Wolfgang Kersting finds Rawls' assumption that rational man should be as risk-averse implausible. Kersting believes that this assumption is both psychologically and empirically unjustified.³⁹⁶ In my opinion however, from a “contract-internal” perspective the maximin-strategy should hardly be considered implausible. For one, it is a fact that some groups are clearly disadvantaged in real society, and the contractors are supposed to have general knowledge about that. With clear reference to Rawls' *A Theory of Justice* (p.154), Thomas Pogge underlines appropriately that there are at least three conditions that should be fulfilled before one can consider the maximin-rule a rational principle:

- “1. Der beste Schlimmstfall ist erträglich und es ist nicht besonders wichtig, besser abzuschneiden.
2. Durch jede der anderen Optionen kann es zu unerträglichen Ergebnissen kommen.
3. Bei diesen anderen Optionen läßt sich die Wahrscheinlichkeit solcher unerträglicher Ergebnisse nicht abschätzen.”³⁹⁷

³⁹³ J.Rawls, *A Theory of Justice* (1971), p.146

³⁹⁴ There is a “bias” of perspective built into the maximin-strategy as such. The focus is necessarily directed towards the worst-off. Pogge uses a biblical allusion to underline this aspect of “Rawls’s commitment to the maximin idea. In analogy to the biblical idea of morality – ‘Whatever you have done to one of the least of these my brethren, that you have done to me’ (Matthew 25.40) – the ranking of feasible alternative basic structures is to depend upon the worst social position each of them tends to produce.” T. W. Pogge, *Realizing Rawls* (1991, first printing 1989), p.110. (Of course the essential christological implications of this central diaconical text are not taken more thoroughly into consideration here.)

³⁹⁵ J.Rawls, *A Theory of Justice* (1971), p.152.

³⁹⁶ And he concludes that: “Die leidliche Rationalität unseres Alltagsleben verdanken wir der Tatsache, daß wir nicht dieses hasenherzig-mißtrauische Entscheidungstemperament besitzen und die Maximin-Regel weitgehend unangewendet lassen.” W. Kersting, *Die politische Philosophie des Gesellschaftsvertrag* (1994), p.280. And Kersting seeks support from Harsanyi, whom he quotes: “‘Wenn jemand wirklich auf diese Weise handelte, er würde bald in einer Irrenanstalt landen’ (Harsanyi. Can the Maximin Principle Serve as a Basis for Morality, in: *Essays on Ethics, Social Behavior, and Scientific Explanation*, Dordrecht - Boston: Reidel 1976, 37-63;40).” *Ibid.* p. 281.

³⁹⁷ T. W. Pogge, *John Rawls* (1994), p. 74. Pogge also asks whether a “Maximittelregel” (that the highest average-score would be preferable) might be preferable to Rawls’ maximin-approach, and he then states most plausibly that: “Die von einem Durchschnittskriterium selektierte Grundordnung könnte einer Minderheit ganz enorme Lasten aufbürden – z.B. eine Religion verbieten, Sklaverei erlauben oder gar

There is in Rawls' theory a close correspondence between the way the original position is constructed and the principles of justice as fairness as a natural outcome. Thus, there is also a connection between the use of the maximin-rule and the difference-principle, which also addresses the situation of those worst off, saying that social inequalities should be approved of only if they are "to the greatest benefit of the least advantaged members of society".³⁹⁸

In itself, the maximin-rule is not a moral principle; it is a principle of rationality, but the original position is constructed in such a way that the application of the maximin rule, as the most rational, makes it irrational for the parties, even if they may be self-interested persons, to utilise merely egoistic and non-moral principles. This aspect is clearly emphasised by Kersting, when he says about the model of the original position that:

"Sie zwingen der ökonomischen Rationalität eine moralisch-transsubjektive Perspektive auf, der die ökonomische Rationalität sich beugen muß, ohne dabei jedoch selbst moralisch werden zu müssen. Rawls überlistet den klugen Egoisten; er lockt ihn in eine Situation, in der dieser moralisch agieren muß, ohne es zu bemerken. Das Lehrstück vom Schleier der Unwissenheit bildet die moralphilosophische List, mit der Rawls' Gerechtigkeitstheorie die ökonomische Rationalität für ihre Zwecke ein-

Gladiatorenkämpfe zulassen – sofern diese Lasten hinreichend vielen anderen zugute kämen. (Ob das Kriterium eine derartige Grundordnung selegiert, hängt von hundertei empirischen Umständen ab und läßt sich wahrscheinlichkeitsmäßig nicht einmal ungefähr abschätzen). Solcherlei Lasten sind völlig unerträglich für Personen, die die drei höherrangigen Interessen haben. Um den ersten Fall herauszugreifen...: Jede Partei muß davon ausgehen, daß die von ihr vertretene Person eine Konzeption des Guten hat, zu der etwa religiöse und ethische Verpflichtungen gehören können. Solche Verpflichtungen werden in der Regel als unverzichtbar empfunden. Ein gläubiger Mensch würde die Freiheit, seiner Religion gemäß zu leben, um keinen Preis verkaufen oder riskieren. Wenn aber ein Leben ohne Gewissensfreiheit für manche unerträglich ist, dann dürfen auch die Parteien diese Freiheit nicht auf Spiel setzen, wenn sie ein Kriterium wählen können, das diese Freiheit unbedingt sichert. ...Also werden sie, zum Schutz der ihnen anvertrauten Interessen, der Maximinregel folgen und Rawls' Kriterium einem Durchschnittskriterium vorziehen." T.W.Pogge, *Ibid*, p. 76f.

³⁹⁸ Let me now briefly recall the two principles of justice:

"1. Each person has an equal right to a fully adequate scheme of equal basic rights and liberties, which scheme is compatible with a similar scheme for all.

2. Social and economic inequalities are to satisfy two conditions: first, they must be attached to offices and positions open to all under conditions of fair equality of opportunity; and second, they must be to the greatest benefit of the least advantaged members of society."

J. Rawls, "Justice as Fairness: Political not Metaphysical"; *Philosophy and Public Affairs* (Vol.14, No.3, 1985), p.227. (There are many different formulations of the two principles). Splitting the second principle into an opportunity-principle (the first part) and a difference-principle (the second part), it can easily be seen that the difference-principle as such corresponds to the maximin-principle. In both cases the focus is on the least-advantaged. The question whether the Rawlsian conception should be considered supportable from the point of view of Christian social ethics depends to a wide extent on the substantial elements of his conception of justice. In a theological perspective should the difference principle, and the role that the maximin-rule plays in this connection, therefore be considered important. Thomas Pogge's question, whether "Rawls lets his lexical priority of the basic liberties (the first principle of justice) undermine his priority concern for the least advantaged" is a crucial question from the perspective of theological social ethics too. Cf. T.W.Pogge, *Realizing Rawls*, (1991, first printing 1989), p. 10.

spannt, und dieser bleibt gar nichts anderes übrig, als das Geschäft der Gerechtigkeit zu betreiben, obwohl sie nach wie vor auf Vorteilsmaximierung aus ist.”³⁹⁹

Although the contractors themselves are strategic rationalists, aiming for the highest possible “score” (the most of primary goods) for their clients, the very structure of the original position is biased towards a moral outcome. Thus, Rawls’ conception of justice does not ultimately end up as an egoistic theory.⁴⁰⁰

In the original position the contractors are in all respects *fairly* situated. This fair situatedness of the parties is necessarily reflected in the unanimous principles of justice, hence the notion of justice as *fairness*. What makes the initial situation fair is mainly the following features:

- The parties are equally situated. (Since social contingencies are ruled out, the parties are all equals and have the same amount of liberty).
- All of them have the same knowledge about the society they are providing a contract for (for instance that it is a society where moderate scarcity applies).
- They have no insight in the *particular* interests of their “clients” (although they know that their clients have higher-order interests that are fundamental to them and should therefore not be sacrificed.)⁴⁰¹
- And as free and equally situated, and with the same strictly focused and limited knowledge, the parties are concerned about the distribution of the primary goods that are supposed to be essential for realising any kind of higher-order interest.

As already suggested Rawls claims that the conceptions of justice, which are reckoned

³⁹⁹ W. Kersting, *Die politische Philosophie des Gesellschaftsvertrag* (1994), p. 273f.

⁴⁰⁰ And so Rawls himself adds that: “Since the persons in the original position are assumed to take no interest in one another’s interests (although they may have a concern for third parties), it may be thought that justice as fairness is itself an egoistic theory... Now this is a misconception. For the fact that in the original position the parties are characterized as not interested in one another’s concerns does not entail that the persons in ordinary life who hold the principles that would be agreed to are similarly disinterested in one another. Clearly the two principles of justice and the principles of obligation and natural duty require us to consider the rights and claims of others. And the sense of justice is a normally effective desire to comply with these restrictions. The motivation of the persons in the original position must not be confused with the motivation of persons in everyday life who accept the principles that would be chosen and who have the corresponding sense of justice.” J. Rawls, *A Theory of Justice* (1971), p. 147f.

⁴⁰¹ There are three higher-order interests, mentioned by Rawls, namely the two connected with the development and the exercising of the two moral powers (man’s capacity for a sense of justice and his

as possible “candidates” to be chosen by the contractors in the original position, first have to pass through a *filter*. This means, according to Rawls, that the enlisted “candidates” should conform to certain formal constraints; they should be general, apply universally, be in accordance with the publicity condition, be able of bringing competing demands in order; and they should provide us with a final court of appeal in our practical reasoning.⁴⁰² By introducing the “veil of ignorance” Rawls succeeds in modelling the original position in a way that makes the parties satisfy these criteria in their unanimous choice of basic principles of justice for a coexistent society.⁴⁰³

Rawls’ problems are not completely solved by constructing a fictive initial situation, modelled as entirely fair, that might produce the most adequate principles of justice by pure procedural rationality.⁴⁰⁴ One might still ask: what are the reasons for modelling

capacity for a conception of the good) and there is also “a third higher-order interest to guide them”. J. Rawls, *Political Liberalism* (1993), p.74.

⁴⁰² The formal constraints on the conception of right that passed the filter for being possible candidates of choice in the original position are as follows: **1)** The principles arrived at has to be general. (“...it must be possible to formulate them without the use of what would be intuitively recognized as proper names, or rigged definite descriptions.”), **2)** The principles are to be universal in application (“They must hold for everyone in virtue of their being moral persons.”), **3)** A conception of right must accord with the publicity condition. (“The point of the publicity condition is to have the parties evaluate conceptions of justice as publicly acknowledged and fully effective moral constitutions of social life.”), **4)** A conception of right must impose an ordering of conflicting claims. (“This requirement springs directly from the roles of its principles in adjusting competing demands.”), **5)** Then there is the condition of finality. (“The parties are to assess the system of principles as the final court of appeal in practical reasoning.”). Cf. J. Rawls, *A Theory of Justice* (1971), pp.130-136.

⁴⁰³ But let it be added that Rawls, especially in *Political Liberalism*, has made it clear that the conception of “justice as fairness” exactly as elaborated by himself, should not in any exclusive sense be considered the only possible agreed basis for coexistence and cooperation. In *Political Liberalism* he emphasises that “each of us must have, and be ready to explain, a criterion of what principles and guidelines we think other citizens (who are also free and equal) may reasonably be expected to endorse along with us. We must have some test we are ready to state as to when this condition is met. I have elsewhere suggested as a criterion the values expressed by the principles and guidelines that would be agreed to in the original position. Many will prefer another criterion. Of course, we may find that actually others fail to endorse the principles and guidelines our criterion selects. That is to be expected. The idea is that we must have such a criterion and this alone already imposes very considerable discipline on public discussion. Not any value is reasonably said to meet this test, or to be a political value; and not any balance of political values is reasonable. It is inevitable and often desirable that citizens have different views as to the most appropriate political conception, for the public political culture is bound to contain different fundamental ideas that can be developed in different ways. An orderly contest between them over time is a reliable way to find which one, if any, is most reasonable.” J. Rawls, *Political Liberalism* (1993), p. 226f. Here Rawls is without doubt rather weak concerning the more substantial principles, which can appropriately be expected to play the basic unifying role in pluralist societies (and be taken as the focus of an overlapping consensus).

⁴⁰⁴ Rawls himself stresses that: “The idea of the original position is to set up a fair 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.” J. Rawls, *A Theory of Justice* (1971), p.136. And in *Political Liberalism* Rawls explains what characterises a purely procedural way of establishing principles of justice as follows: “The essential feature of pure procedural justice, as opposed to perfect procedural justice, is that what is just is specified by the outcome of the procedure, whatever it may be. There is no prior and already given criterion against

the original position just as Rawls does? I believe Wolfgang Kersting has this problem in mind when emphasising that:

“Die begründungstheoretische Leistungsfähigkeit des Vertrags ist prinzipiell begrenzt; die Vertragstheorie vermag nicht auf eigenen Füßen zu stehen, sie bedarf immer fremden systematischen Beistandes. Der Grund findet sich in der mangelnden obligationstheoretischen Autarkie des Vertrages selbst.”⁴⁰⁵

4.3.4. Contract-external premises

I have suggested that the Rawlsian contract-argument cannot stand alone. Although it may be considered a good model of “explication”, it is nonetheless subject to some of the objections usually directed towards social-contract-arguments. In Rawls’ case it might be objected that the “covenant” achieved by fictive persons in a highly hypothetical contract-situation should hardly deserve the name contract. At least there is no (real) person who has “signed” (or agreed to in any meaningful sense) anything at all.

Thus the contract made in the Rawlsian original position is not what one would generally consider to be a valid or legitimate contract, and the way in which it is formed is so abstract and hypothetical that one wonders whether Rawls would do better without it. And indeed, the contract-construction seems to play a minor role in Rawls’ later writings. But it is still vital, – for instance in *Political Liberalism* (1993). There are certain crucial aspects of the idea of an organisation of society based on consent that are most appropriately figured out by the means of a social contract.⁴⁰⁶ Rawls identifies two of

which the outcome is to be checked. ... Pure procedural justice means that in their rational deliberations the parties do not view themselves as required to apply, or as bound by, any antecedently given principles of right and justice. Put another way, they recognize no standpoint external to their own point of view as rational representatives from which they are constrained by prior and independent principles of justice. This models the idea that when citizens are fairly situated with respect to one another, it is up to them to specify the fair terms of social cooperation in light of what they each regard as to their advantage, or good. Recall ... that those terms are not laid down by some outside authority, say by God’s law; nor are they recognized as fair by reference to a prior and independent order of values known by rational intuition.” J. Rawls, *Political Liberalism*, p.73. Cf. also *A Theory of Justice* (1971), § 14.

⁴⁰⁵ W. Kersting, *John Rawls zur Einführung* (1993), p.115.

⁴⁰⁶ The contractualism, as conceived of by Rawls, guarantees both that the scheme of society can be taken as settled by the parties themselves, and that it can be arranged under conditions that are maximally fair. “How are fair terms of cooperation to be determined? Are they simply laid down by some outside authority distinct from the persons cooperating? Are they, for example, laid down by God’s law? Or are these terms to be recognized by these persons as fair by reference to their knowledge of an independent moral order? For example, are they recognized as required by natural law, or by a realm of values known by rational intuition? Or are these terms established by an undertaking among persons themselves in the light of what they regard as their reciprocal advantage? Depending on which answer we give, we get a different conception of social cooperation. Justice as fairness recasts the doctrine of the social contract and adopts a form of the last answer. ...” J. Rawls, *Political Liberalism* (1993), p.22f.

the main reasons for maintaining the idea of a contract arrived at within the framework of a hypothetical original position:

First: There is no better way of handling the problem of justifying the basic structure itself. Rawls recognises that;

“... agreements in everyday life are made in some more or less clearly specified situation embedded within the background institutions of the basic structure. Our task, however, is to extend the idea of agreement to this background framework itself. Here we face a difficulty for any political conception of justice that uses the idea of contract, whether social or otherwise. The difficulty is this: we must find some point of view, removed from and not distorted by the particular features and circumstances of the all-encompassing background framework, from which a fair agreement between persons regarded as free and equal can be reached.”⁴⁰⁷

The contract-construction is the most appropriate way of modelling a *fair* initial situation.

Second: The original contract-position is a representative device by virtue of which the principles that are selected can be supposed to be valid from the point of view of those being represented:

“The idea is to use the original position to model both freedom and equality and restrictions on reasons in such a way that it becomes perfectly evident which agreement would be made by the parties as citizens’ representatives.”⁴⁰⁸

I think Rawls has given good reasons for maintaining the contract-instrument, – as an important explicatory and representative device.⁴⁰⁹

Even if the device of the contractarian original position might have a considerable explanatory force, Wolfgang Kersting holds that the idea of a contract is not necessary for

⁴⁰⁷ J. Rawls, *Political Liberalism* (1993), p. 23.

⁴⁰⁸ J. Rawls, *Political Liberalism* (1993), p. 26.

⁴⁰⁹ Let me here add that Ronald Dworkin holds that the contractarian conception in itself is at least providing us with an appropriate method of achieving a consensus and is also an adequate instrument for advancing equality and liberty. And so he considers Rawls’ theory a “right-based theory” (in contrast to “duty-based” and “goal-based theories”) and explains its characteristic in this way: “Right-based theories are ... concerned with the independence rather than the conformity of individual action. They presuppose and protect the value of individual thought and choice. ... It is for this reason that the social contract is so important a feature of Rawls’ methodology. It signals that his deep theory is a right-based theory, rather than a theory of either of the other two types. The social contract provides every potential party with a veto: unless he agrees, no contract is formed.” R. Dworkin: “The Original Position”, in: *Reading Rawls*, (ed. N. Daniels, 1975), p.42. Another issue is that Dworkin obviously means that “the importance, and even the existence, of this veto is obscured in the particular interpretation of the contract that constitutes the original position”. (*Ibid.* p.42). In my opinion the point of Rawls is, however, to guarantee a fair “antecedent veto-right” that is morally based and thereby deeper than vetos based merely on actual selfinterest. *Ibid.* p.46f.

the conception of justice as elaborated by Rawls.

Kersting may be right that it is not a strictly necessary part of a Rawlsian conception of justice. It is, however, a model that is highly appropriate for grasping (and accepting) the main features of justice as *fairness*. When stressing that the contract-argument can in no way stand alone, I think that Kersting raises an important concern. The social-contract-idea cannot by itself justify what it aims at making rationally evident. Rationality is relative to a certain (value-laden) framework.⁴¹⁰ This means that a strict contract-internal perspective has to be supported by a normative contract-external argument that provides for the *binding* character of the contractarian agreement.

In respect to the contract-external premises, which have a decisive impact upon the design of the original position, one may sometimes get the impression while reading Kersting, that he holds that “Rawls sich bei ihrer Formulierung rhapsodisch aus einem Fundus moralischer Intuitionen bedient hat.”⁴¹¹ But this kind of criticism is hardly justified; Rawls' contractarianism is supported by a coherent and convincing-argument. Without doubt he aims at establishing a conception of justice that can be justified by being coherent with our considered judgements, beliefs, principles and knowledge.⁴¹²

Thus Rawls tries to justify his design of the original position by modelling it in a way that he believes matches the considered convictions of justice and fairness that people

⁴¹⁰ “Verträge können rational oder irrational sein; rationale Verträge sind effektive Kooperationsmittel; sie beruhen auf einer nutzbringenden Instrumentalisierung der vertragsspezifischen normativen Qualitäten und weisen ein vorteilhaftes Verhältnis von Leistung und Gegenleistung auf. Freilich kann die Rationalitätsbeurteilung bei den beteiligten Parteien aufgrund der Relativität der Rationalität unterschiedlich ausfallen.” W. Kersting, *Die politische Philosophie des Gesellschaftsvertrags* (1994), p.49. But let it be said that Kersting immediately adds: “Jedoch müssen die Verträge des Kontraktualismus so konzipiert sein, daß ein universales, für alle Beteiligten gleichermaßen zutreffendes Rationalitätsurteil gesichert ist. Aus vertragsmoralischer Perspektive können Verträge gültig oder ungültig sein. Wenn ein Vertrag gültig ist, dann kann er seine interne Normativität entfalten; wenn er ungültig ist, bricht seine interne Normativität zusammen, vermag er keine Verpflichtungen und Ansprüche zu erzeugen.” *Ibid*, p.49.

⁴¹¹ W. Kersting, *Die politische Philosophie des Gesellschaftsvertrags* (1994), p. 120.

⁴¹² He makes it quite clear that “A conception of justice cannot be deduced from selfevident premises or conditions on principles; instead, its justification is a matter of the mutual support of many considerations, of everything fitting together into one coherent view.” J.Rawls, *A Theory of Justice*, Oxford University Press, 1971, p.21. (The very notion of “coherence” actualises difficult philosophical problems concerning the issues of justification and truth, – problems that cannot be considered here. Let it however, be made clear that a coherence-view in matters of justification is in any case more demanding than just seeking logical consistency. This can be noticed in *The Cambridge Dictionary of Philosophy* taking its point of departure “from the following intuitive idea: a coherent system of belief is one in which each belief is epistemically supported by the others, where various types of epistemic support are recognized, e.g. deductive or inductive arguments, or inferences to the best explanation.” Cf. M. DePaul’s article on “Coherentism” in *The Cambridge Dictionary of Philosophy*, Ed. Robert Audi, 1995, p.134.)

with a normal sense of justice are supposed to hold. Rawls makes it quite clear that “we shall find a description of the initial situation that both expresses reasonable conditions and yields principles which match our considered judgments duly pruned and adjusted. This state I refer to as reflective equilibrium.”⁴¹³

This means that our considered moral judgements – and especially the judgements in which persons with a normal sense of justice have the greatest confidence – play a decisive role in the construction of the original position, and thereafter take shape in the principles of justice agreed upon. Let it, however, be added that our considered judgements may be of two kinds. There are the more substantial judgements we make in concrete cases, and there are the more general judgements we make. The principles of justice, as conceived of by Rawls, are supposed to match both kinds of considered judgements, but it is obviously the general judgements alone that Rawls has employed when weaving the “veil of ignorance”.

The relation between our ordinary considered judgements and the overarching principles that we also hold is supposed to be dynamic and dialectic, each subject to continuous evaluation and adjustment. The principles we honour are supposed to be continually modified to reflect our considered judgements, and our considered judgements subject to revision in the light of coherence-furthering principles. In this process of mutual adjustment of principles and considered judgements, there is no reason to believe that a definite and non-revisable state of perfect reflective equilibrium will ever be achieved.

I shall not discuss Rawls’ method of seeking reflective equilibrium further than this is required to state two things that are of special importance in a theological perspective:

First: This method of continually seeking a reflective equilibrium implies that an ultimate, objective and non-revisable truth⁴¹⁴ about the right order of society, founded on some kind of “Letztbegründung”, is not to be given.

Second: The built-in dialectic in the Rawlsian process of seeking reflective equilibrium also implies that Rawls’ conception is somehow to be grounded in moral common-sense judgements. In the end it is not homo oeconomicus, but moral man, endowed with a

⁴¹³ *A Theory of Justice* (1971), p.20. He explains this by adding that a “reflective equilibrium ... is an equilibrium because at last our principles and judgments coincide; and it is reflective since we know to what principles our judgments conform and the premises of their derivation.” *Ibid*, p. 20.

⁴¹⁴ “I do not claim for the principles of justice proposed that they are necessary truths or derivable from

sense of justice, who sets the premises⁴¹⁵. Thus one can solve the problem built into the very structure of contractarianism, – that it cannot be justified by itself. In the end I think that Rawls in fact solves the contractarian dilemma by taking his point of departure from aspects of common-sense-morality, – beyond the contract-situation as such. As far as I can see, it is possible to find clear support for this conclusion also in Kersting’s recent writings on Rawlsian contractarianism:

“Eine normativ-kontraktualistische politische Philosophie kann darum nicht den Anspruch erheben, letztbegründete und objektiv gültige Grundsätze zu entwickeln. Sie muß sich damit begnügen, die Gerechtigkeitsvorstellungen ihrer Zeit in Gedanken zu fassen. In ihrer explikatorischen Leistung untersteht sie stets der Kontrolle durch die common-sense-Moralität. Nur insoweit die von ihr an die Wirklichkeit herangetragenen normativen Grundsätze mit unseren fundamentalen moralischen Überzeugungen harmonieren, vermag die politische Philosophie zu überzeugen.”⁴¹⁶

Rawls is certainly not interested in systematically elaborating a common sense morality as such. His aim, as emphasised in his later writings, is clearly *political*. What seems nevertheless to be the case, is that in developing a conception of political liberalism aiming at principles for a just scheme of society, that can be the focus of an overlapping consensus, Rawls draws heavily on vital aspects of a common-sense morality. This is in itself an important conclusion to reach here.

4.4. A basic consensus for the political domain.

4.4.1. Varieties of consensus

I have considered the original position which is characterised as “Rawls’ most favored interpretation of the contract”⁴¹⁷. Rawls has constructed a contract-situation where the parties can plausibly be supposed to come to a *unanimous* decision on principles of justice, a decision that reflects the *fairness* built into the very structure of the original situation. I have also taken one step “backwards”, to ask whether Rawls’ modelling of the original position can itself be justified. And I found that the way Rawls designs the

such truths.” J.Rawls, *A Theory of Justice* (1971), p. 21.

⁴¹⁵ This corresponds to the way Rawls after all takes the “reasonable” to be prior to the “rational”. But since Rawls takes vital and general aspects of common (sense) morality to be woven into the “veil of ignorance” within the original position, instead of considering common-sense morality a personal moral quality of the contractor, he can still maintain the view that the contractors act on pure proceduralism.

⁴¹⁶ W. Kersting, *Die politische Philosophie des Gesellschaftsvertrags* (1994), p. 284.

⁴¹⁷ R. Dworkin in *Reading Rawls. Critical Studies on Rawls’ A Theory of Justice* (ed. Norman Daniels, 1975), p.43.

original position could be justified only insofar as it draws upon our most reliable moral judgements. The principles that the contractors are supposed to agree upon will then reflect moral concerns built into the original position, which in turn reflects our most reliable general moral judgements. Such reliable moral considerations are especially drawn upon when weaving the “veil of ignorance”.

The in-depth attention given to Rawls' conception of justice as fairness since the publication of *A Theory of Justice* in 1971 clearly indicates the interest generated by Rawls' theory (very much conceived of as an alternative to utilitarianism). However, the unanimous decision of Rawls' contractors on principles of justice suitable for consolidating a well-ordered society, have in no way been met with a unanimous acclamation in the ordinary philosophical, ethical and political debate. Immense political conflicts and controversies still remain. And one might ask: How can fair principles of co-operation, settled upon in a hypothetical contractarian situation, be *endorsed* by all groups, safeguarded, and made stable in modern societies that are in fact characterised by a deep pluralism and a diversity of comprehensive doctrines (as shown in chapter 3)? In his recent writings Rawls is very much aware of this problem, as he makes quite clear in the introduction to *Political Liberalism*:

“To explain: The serious problem I have in mind concerns the unrealistic idea of a well-ordered society as it appears in *Theory*. An essential feature of a well-ordered society associated with justice as fairness is that all its citizens endorse this conception on the basis of what I now call a comprehensive philosophical doctrine. They accept, as rooted in this doctrine, its two principles of justice. Similarly, in the well-ordered society associated with utilitarianism citizens generally endorse that view as a comprehensive philosophical doctrine and they accept the principle of utility on that basis. Although the distinction between a political conception of justice and a comprehensive philosophical doctrine is not discussed in *Theory*, once the question is raised, it is clear, I think, that the text regards justice as fairness and utilitarianism as comprehensive, or partially comprehensive, doctrines. Now the serious problem is this, A modern democratic society is characterized not simply by a pluralism of comprehensive religious, philosophical, and moral doctrines but by a pluralism of incompatible yet reasonable comprehensive doctrines. No one of these doctrines is affirmed by citizens generally.”⁴¹⁸

This means that Rawls now realises that his conception of justice as fairness in itself constitutes a comprehensive doctrine and is, therefore, but one of many such competing doctrines in a pluralistic society. He makes it clear that in *A Theory of Justice* he did not

⁴¹⁸ J.Rawls, *Political Liberalism*1(993), p.xvi.

distinguish clearly enough between “a moral doctrine of justice general in scope” and “a strictly political conception of justice”.⁴¹⁹ A *political* conception of justice should not be conceived of as a comprehensive doctrine. Yet, given the radical pluralism of modern societies, it is difficult to conceive of how one can achieve political consensus on a non-trivial conception of justice.

Before considering the role played by the idea of an “overlapping consensus” in Rawls’ political theory, I want to be a bit more explicit about the notion of “consensus” as such, which is subject to various uses in modern philosophical and political discourse. The term “consensus” connotes something more than contractarian consent. *Websters Encyclopedic Unabridged Dictionary of the English Language* provides us with different meanings⁴²⁰ of the term:

- general agreement or concord.
- majority decision.

The first of these definitions of “consensus” comes closest to my immediate understanding of the word as used by both Rawls and Honecker. But there is obviously more

⁴¹⁹ J.Rawls, *A Theory of Justice* (1971), p.xv. The consequence of this is that Rawls finds it necessary to recast his theory, although the main ideas are preserved.

⁴²⁰ It might in this connection be informative to see how *Webster’s Dictionary* deals with the notions consensus (of opinion), consent and related terms: “CONSENSUS OF OPINION is felt by many grammarians and teachers to be a redundancy, but it is so only if CONSENSUS is taken in the sense of ‘majority of opinion’, rather than its equally valid – and according to available evidence, earlier – sense of ‘accord or general agreement’.”(p. 312) Thus it is underlined in Webster’s Dictionary that there is a certain evidence for taking **consensus** in the meaning of “accord or general agreement” There are, however, indeed many terms that might be used to express such a general agreement. The term **accord** is sometimes used. To **accord** can, if following Webster’s Dictionary, be taken to mean: **a)** to be in agreement or harmony; agree. **b)** to make to agree, or correspond; adapt. **c)** *Archaic.* to settle , reconcile. As a noun **accord** could mean: **a)** consent or concurrence of opinions or wills; agreement. **b)** an international agreement, settlement of questions outstanding among nations. And the term **consent** is very often used in different contexts. **To consent** might be taken to mean: **a)** to permit, approve, or agree; comply or yield. **b)** to agree in sentiment, opinion, etc.; be in harmony. As a noun **consent** could mean: **a)** permission, approval, or agreement; compliance; acquiescence. **b)** agreement in sentiment, opinion, a course of action, etc., **c)** *Archaic.* accord, concord, harmony. Faced with the different nuances of meaning that these terms have, it seems not to be of very much help to take a merely terminological point of departure when elaborating the idea of consensus for the political field. I think that it will be more appropriate for my purpose if I just take my point of departure from within the very conception of Rawls. This is the best way to proceed, especially since the notion of an overlapping **consensus** without doubt should be taken as a “terminus technicus” conceived of within the framework of Rawlsian political liberalism. When this is made clear I can also use related terms, as for instance terms like **acquiescence**, which expresses a more passive attitude. But sometimes I will also use the term **tacit consent** to express the more passive acquiescence. Very often, however, it is sufficient simply to use the more general (and less precise) term **agreement**. Cf. *Websters Encyclopedic Unabridged Dictionary of the English Language*. (1994-edition).

to say beginning with a rough distinction made between;

- active consensus, where the agreement is explicitly affirmed by the parties,
- passive consensus, where an outcome is taken to be approved of if no party has blocked it.

It is a question how far the latter, which might also be characterised as *tacit consent*, can really be taken as a kind of consent, that might be of any use in issues of politics.⁴²¹

In addition, the problem of *consensus* can hardly be discussed irrespective of the kind of substantial issues one aims at agreeing upon. *Nicholas Rescher* holds that in matters of value, belief and conduct agreement is not only difficult to achieve, it is likely to be impossible. In *Pluralism. Against the Demand for Consensus* (1993), Rescher presents us with the following account of consensus:

“Consensus is a matter of agreement. But people can of course agree or disagree on many different sorts of things – not beliefs and opinions alone, but also tastes, wishes, desires, goals, and so on. In particular, one must distinguish between agreement regarding what is to be thought, what is to be done, and what is to be prized. For consensus – agreement among diverse individuals or groups – can prevail in all three of these arenas: the theoretical/cognitive, which is concerned with agreement or disagreement in matters of *belief*, the practical/pragmatic, which is concerned with agreement or disagreement with respect to *action*; and the evaluative/axiological, which is concerned with matters of *value*. All these issues clearly play a major role in the larger human scheme of things.”⁴²²

I think Rescher's distinctions between an agreement (or disagreement) concerning what is to be prized, to be done and to be thought, is helpful although I would emphasise that these different levels cannot always be completely separated. I believe that it is especially urgent to underline that an agreement in matters of value normally also implies an agreement in matters of knowledge and belief.

It is generally considered easier to achieve consensus on essential issues within the hard sciences like physics and chemistry than it is within the so-called “soft sciences” such as ethics and politics. A more in-depth discussion of this issue in terms of the different

⁴²¹ In *Crito*, however, one can for instance see how Socrates argues that a citizen of Athens, by remaining in the “polis”, tacitly accepts the laws of the state. Plato, *Crito*, xiii (p. 15f), (ed. J. Adam, 1961).

⁴²² N. Rescher, *Pluralism. Against the Demand for Consensus* (1993), p. 5.

scientific disciplines is obviously well beyond the scope of this paper.⁴²³

But I do think that Rescher has plausibly argued that “value-consensus” might be among the kinds of consensus that it would be hardest (and most unrealistic) to attempt or achieve in modern societies. That is a main reason why he titles his book about pluralism “against the demand for consensus”. He views with scepticism any claim that citizens in modern democratic pluralistic societies may be capable of arriving at a shared moral basis for establishing the just organisation of society.⁴²⁴

In spite of the fact of deep pluralism, and in spite of Rescher’s arguments “against the demand for consensus” in matters of moral value, moral issues are obviously playing an increasing role in political debate. This may indicate that many people involved in

⁴²³ Cf. to this problem K. E. Tranøy, *Vitenskapen – samfunnsmakt og livsform* (1986). Tranøy is obviously more nuanced about these things: “Et påfallende trekk ved moderne vitenskap er enighet blant fagfolk på samme fagområde. Ganske særlig gjelder dette for naturvitenskapene og for vitenskaper som matematikk og logikk. Sammenfallende syn og meninger er en vesentlig forutsetning for at vitenskaps-samfunnet skal være en sosial realitet. *Enighet* er likevel neppe det beste ordet for å beskrive en slik sosialt befestet og varig, men ikke evigvarende vitenskapelig opinionsdannelse. Konsensus er kanskje bedre. Men det er uklart hva forskjellen er mellom *konsensus* og *enighet*. Og det er slett ikke på forhånd klart *hva* vitenskapsfolk innen ett og samme fagfelt egentlig er enige om. Det er langt fra tilfelle at alle kompetente og meningsberettigede er enige om alt. De er også uenige om ganske mye uten at det gjør noe, så å si, uten at fagmiljøets funksjonsdyktighet kommer i fare.... *Konsensus* mellom fagfeller med hensyn til T (= en teori, påstand, hypotese eller liknende) foreligger når de enten aksepterer T eller er enige om at T er akseptable, dvs. at det er legitimt å akseptere og hevde T selv om de ikke selv vil gjøre det.” (p.207) ... Det gjør ikke så meget om X og Y er uenige om T hvis de er enige om normer de begge aksepterer, tillater både aksept og forkastelse, hevdning og nekting av T når slik hevdning og nekting er *begrunnet* slik at etterprøving og kritikk er mulig. Den enighet det her er snakk om, er i så fall like meget en enighet om idealer som om realiteter.” *Ibid*, p.208. What is important within the scientific community (as well as within the wider political society) is to establish a normative framework by a fundamental consent, within which concrete disagreements and even conflicts can be carried out in acceptable and reasonable ways according to basic rules.

⁴²⁴ And neither does he consider it necessary for a community to function well that it rests on a platform of agreed moral principles “The belief that consensus plays a leading role in matters of rational inquiry, decision, and evaluation is among the oldest and most pervasive ideas of philosophy. Consensus, various theorists have repeatedly urged, is somehow the touchstone of truth and the guarantor of correctness in matters of belief and of adequacy in matters of decision and action. Time and again, thinkers proceeding from very different points of view have reached the conviction that some sort of rationale or agency is at work that guides the community aright, at least over the long run. And in particular, from the early days of the subject in classical antiquity onwards, various philosophers have regarded communal agreement as a pivotal factor in the human quest for knowledge. There is good reason, however, to call into question this attractive but deeply problematic idea. ... There is thus much to be said on behalf of consensus as an epistemic touchstone. But, perhaps, unfortunately, much can also be said against it. Wise leaders, after all, do not ask their advisers for a collective opinion from which all element of dissent has been eliminated: they realize that the interests of understanding are best served by a complex picture that portrays the state of existing information and speculation – and ignorance! – in its full complexity. Dissensus and diversity can often play a highly constructive role in human affairs. It will, accordingly, be maintained here that contemporary partisans of consensus methodology seriously overestimate the need and desirability for according a central position to consensus, and that – in matters of inquiry and praxis alike – strong claims to cogency and appropriateness can be urged on behalf of a less consensus-oriented, more pluralistic

social cooperation, takes it for granted that there exist a moral “commonwealth” and they even hope that it shall be possible to arrive at some shared moral standards.⁴²⁵

Rawls, like the theologian Martin Honecker, places great importance upon the existence of some kind of stabilising consensus. This is evidenced by Rawls' usage of the social-contract-tradition. But as mentioned above, Rawls realises that reinterpreting the social-contract-doctrine, in effect, converting it into a kind of universal rational thought experiment, will not necessarily generate principles of coexistence and co-operation that people will have sufficient reasons to stick to and accept in the long run. The question is how a basic consensus can be brought about, endorsed and safeguarded. And it is also a question how far it can be supposed to reach.

4.4.2. Accepting a *modus vivendi*?

It might be easier to grasp Rawls' idea of an overlapping consensus if I start with an approach that differs from the genuine overlapping consensus that is his goal. Rawls emphasises “*that an overlapping consensus is quite different from a modus vivendi...*”⁴²⁶

One can think about a *modus vivendi* as a sort of agreement, brought about as a result of negotiations and bargaining between parties that have nearly the same amount of power. More precisely: The *modus vivendi* is an agreement supposed to reflect the relative bargaining strength that the parties in fact have. Adequate behaviour in such a context consists in living up to certain obligations that are the result of balancing self- and groupinterests in a way that can be accepted by all the parties involved. Although it may not be the optimum for any of the parties, it would not be advantageous for any of them

approach.” N. Rescher, *Pluralism. Against the Demand for Consensus* (1993), p.6f. In his book Rescher mentions John Rawls and especially Jürgen Habermas as “partisans of consensus”.

⁴²⁵ It is obviously the case in modern pluralistic societies that: “... i økende grad reises spørsmål og problemstillinger som har kontroversielle etiske og moralske implikasjoner. En ting er å oppnå enighet om den rette dosering av makroøkonomisk innsats og om hjelp til underprivilegerte og trengende, noe annet er det [å] oppnå enighet om hva som skal gjøres når det gjelder intrikate verdispørsmål. I dag må politikere ta stilling til de homofiles rettsstilling, til medisinske prioriteringer, spørsmålet om kvinnelige prester o.l.. Når spørsmålene er intrikate og dreier seg om livssyn, og beslutningsfatningen involverer etiske overlegninger og viser til ulike oppfatninger av det gode liv, er det mindre håp om å oppnå enighet. Det kan derfor se ut som om skeptikerne får rett. Det praktiske problem blir imidlertid å kunne fatte *bindende beslutninger* i en kompleks, verdi- og interesseheterogen verden uten at de forskjellige livsformers krav på autonomi krenkes. I et slikt perspektiv blir den offentlige deliberasjon ikke mindre viktig, selv om utsiktene til konsensus er heller små.” E. O. Eriksen, “Den politiske diskurs - fra konsensus til *modus vivendi*?”, *Den politiske orden*, (ed. E. O. Eriksen, 1994), p.98f.

to break with the settled standards. Establishing a *modus vivendi* might simply be considered the best alternative for all parties to avoid a state of “*omnium bellum in omnis*”. Rawls explains the characteristics of a *modus vivendi* as follows:

“A typical use of the phrase ‘*modus vivendi*’ is to characterize a treaty between two states whose national aims and interests put them at odds. In negotiating a treaty each state would be wise and prudent to make sure that the agreement proposed represents an equilibrium point: that is, that the terms and conditions of the treaty are drawn up in such a way that it is public knowledge that it is not advantageous for either state to violate it. The treaty will then be adhered to because doing so is regarded by each as in its national interest, including its interest in its reputation as a state that honors treaties. But in general both states are ready to pursue their goals at the expense of the other, and should conditions change they may do so. This background highlights the way in which such a treaty is a mere *modus vivendi*. A similar background is present when we think of social consensus founded on self- or group interests, or on the outcome of political bargaining: social unity is only apparent, as its stability is contingent on circumstances remaining such as not to upset the fortunate convergence of interests.”⁴²⁷

The thirty years’ war ended with what we can take as a typical example of a *modus vivendi*,— an ordered peace that was mostly considered advantageous for all parties.⁴²⁸

There are more modern examples. During the years of the “cold war” one might say that peace was safeguarded as a form of *modus-vivendi*-agreement. In an age of nuclear weapons it was advantageous for all parties to avoid as far as possible the kind of actions that might have lead to a world-war. Nor is such pragmatic *modus vivendi* reasoning unusual in theological social ethics. The theologian Walter Künneth, for one example, takes a similar approach in his treatment of ethics and the strategy of nuclear rearmament in Germany.⁴²⁹

⁴²⁶ J. Rawls, *Political Liberalism* (1993), p.147.

⁴²⁷ J. Rawls, *Political Liberalism* (1993), p.147

⁴²⁸ This is taken by Rawls himself as a typical example: “This becomes clear once we change our example and include the view of Catholics and Protestants in the sixteenth century. At that time there was not an overlapping consensus on the principle of toleration. Both sides held that it was the duty of the ruler to uphold the true religion and to repress the spread of heresy and false doctrine. In such a case the acceptance of the principle of toleration would indeed be a mere *modus vivendi*, because if either faith becomes dominant, the principle of toleration would no longer be followed. Stability with respect to the distribution of power is lacking.” J. Rawls, *Political Liberalism* (1993), p.148. There are two things that should be mentioned in this connection. First; that the peace was by far a result of the exhaustion of the parties. Second; that the *modus vivendi* is to be considered a good thing as far as it reached in that situation. There were obviously not sufficient resources for bringing about a deeper and more stable consensus between the parties.

⁴²⁹ In his dissertation about nuclear weapons and social ethics Trond Bakkevig summarizes the view held by Walter Künneth as follows: “Als Prinzip soll sich der Staat mit dem militärischen Mitteln ausrüsten, die der Bedrohung entsprechen, der er gegenübersteht. Wenn diese Bedrohung aus Atomwaffen besteht, muß folglich dem Staat die Freiheit eingeräumt werden, auch die eigene Armee mit solchen Waffen aus-

There are in history, however, shifting historical power-structures. History teaches that a mutually advantageous and contingent balancing of political power might very easily be disturbed, broken up and altered. When a power-structure shifts, it will perhaps not be considered advantageous from the perspective of the stronger party to continue complying with the previously established agreement. If the premises for the *modus vivendi* change, the treaty between the parties might itself be undermined. This was very clearly realised by Rawls and is therefore a main reason why he aims at removing such unstable *contingencies* when seeking an agreement on the more enduring principles of justice as fairness.

While Rescher took Rawls' ideas of consensus to be too "ideal", Rawls himself seems more concerned about refuting the criticism that "*the idea of social unity founded on an overlapping consensus on a political conception of justice ... is a mere modus vivendi.*"⁴³⁰ So Rawls finds it necessary to underline that:

"Finding a stable conception is not simply a matter of avoiding futility. Rather, what counts is the kind of stability, the nature of the forces that secure it."⁴³¹

The objection, however, that even a Rawlsian consensus will most likely end up in a kind of *modus vivendi* has at least two aspects:

- First it says that Rawls' conception is itself so "ascetic"⁴³² about substantial moral values, that it should most likely further moral indifferentism, thus undermining the very nature of the moral forces that could secure it.
- Then it says that Rawls' conception of justice as fairness to such an extent abstracts from substantial community-values, that it loses sight of the stabilising effect that

zurüsten." T. Bakkevig, *Ordnungstheologie und Atomwaffen* (1989), p.78. And Küneth finds support in utterances from a Spandauer Synode for such a "realistic" approach, as opposed to the view that "Die Nachfolge Christi schließt die Atomausrüstung aus ... Im Kontrast dazu stoßen wir auf die nüchternen Erwägungen jener, die ein 'bedingtes Ja' rechtfertigen zu können meinen. Schon die Spandauer Synode sah sich genötigt zu konzederen, 'daß Situationen denkbar sind, in denen in der Pflicht zur Verteidigung der Widerstand mit gleichwertigem Waffen vor Gott verantwortet werden kann'. Diese Konzeption wird von der Überzeugung getragen, daß 'eine Politik, die mit der Atombombe rechnet und sie in politisches Kalkül einstellt', keineswegs 'an sich schon einen Verstoß gegen den Glauben' darstellt (Wilhelmi). Weil es um die Erhaltung des Friedens durch das politisch-militärische Mittel der atomaren Abschreckung geht, ist diese Theorie und solches praktische Verhalten für Christen durchaus möglich.", W. Küneth, *Politik zwischen Dämon und Gott. Eine christliche Ethik des Politischen* (1961), p.264f.

⁴³⁰ J. Rawls, *Political Liberalism* (1993), p.145.

⁴³¹ J. Rawls, *Political Liberalism* (1993), p.142.

⁴³² Rawls is accused of advancing "scepticism" about the truth of substantial moral claims. This seems plausibly to be a natural consequence of his non-comprehensive approach to the pluralist-problem.

such a rootedness in stable values might provide.

These two objections are closely connected. And I think that both of them point to a dilemma in Rawls' conceptual framework.

It is evident that Rawls wishes to achieve more than a mere *modus vivendi* that will not provide any long term stability. Both in *Political Liberalism* and in the essay on *The idea of an Overlapping Consensus*⁴³³ Rawls stresses that the idea of an overlapping consensus is to be distinguished from less demanding and less stabilising views. The question is whether he really succeeds in doing so.

Stability depends according to Rawls on two things:

- that there is among the persons that makes the basic agreement the required readiness to stick to it not just for strategical or tactical reasons, – which implies that the agents themselves can be supposed to have sufficient moral resources and a normal sense of justice.
- that the agreement is in itself somehow connected to the vital moral doctrines normally flourishing within communities and associations.

These moral assumptions are of vital significance when Rawls now tries to take a step beyond the mere *modus vivendi*. Rawls' project is to take decisive steps beyond a ground-agreement based simply on relative bargaining-advantages in pluralist society. A “ground-consensus”, mainly conceived of as a project of balancing power, egoism and group-interests, will not solve the problem of instability, – even if it may be considered an appropriate first step to overcoming open conflicts. The distribution of power in society might rapidly change, as we saw, and if the very institutional scheme and the distributive mechanisms of society just reflect the contingent bargaining strength of the parties, it is a question whether a fair scheme of society can ever be maintained.⁴³⁴

⁴³³ J. Rawls, “The idea of an overlapping consensus”, *Oxford Journal of Legal Studies*, (Vol. 7, No 1, 1987). The essay is originally a revision of a lecture given at Oxford in 1986.

⁴³⁴ Erik Oddvar Nielsen tries in an interesting article to upgrade the aim of establishing a *modus vivendi* in modern societies, emphasising that there might be moral concerns for a *modus vivendi*, it does not just reflect contingent bargaining strength: “*Modus vivendi* betegner at deltakerne gjennom en slik diskusjon bare blir enige om en foreløpig overenskomst. Med dette skal vi ikke bare forstå en overenskomst som er slik at ingen av partene ser seg tjent med å bryte den. Det er ikke en overenskomst som kun er kommet i stand gjennom strategisk samhandling der advarsler og trusler brukes, slik den vanligvis forstås gjennom

However, when focusing on the nature of the forces capable of securing some common standards, rendering them fair, acceptable and well worth maintaining in the long run, Rawls obviously recognises that moral aspects, – both the moral doctrines normally flourishing within communities and associations as well as the citizens sense of justice, are of vital significance. Let me now take a further step beyond the mere *modus vivendi* to the kind of basic agreement in society that might best be characterised as a consensus on constitutional essentials.

4.4.3. An agreement on constitutional essentials?

After rejecting a mere *modus vivendi* as insufficient to secure enduring justice in modern societies, Rawls elaborates further “*steps to constitutional consensus*.”⁴³⁵ Urged by Kurt Baier⁴³⁶ Rawls asks whether a consensus on constitutional principles might be a more realistic goal than a consensus on a broad conception of justice. A constitutional consensus is supposed to be a kind of required minimum-agreement on those guidelines and rules that are most essential for fair coexistence, but “*it is not deep and it is also not wide: it is narrow in scope, not including the basic structure but only the political procedures of democratic government*.”⁴³⁷

Thus a constitutional consensus;

- has to provide for the constitutive rules for the governmental structure, thereby settling the fundamental rules for the powers of the legislature, executive and the judiciary, as well as rules for political election, democratic procedures, practising of the majority-principle (guaranteeing simultaneously the rights of minorities), and rules

forestillingen om en optimal likevekt som ingen av partene tjener på å ødelegge. Midlertidige overenskomster involverer i standardtilfeller et normativt minimumsgrunnlag, og er ikke kun uttrykk for en konvergens mellom konkurrerende interesser. De reiser straks krav om likeverdige kontraktsbetingelser, og om at pakten skal kunne rettferdiggjøres i henhold til et begrep om riktighet. Et *modus vivendi* skal her forstås som noe deltakerne ser som en *rimelig og akseptabel pakt* under de rådende forhold. Det er uttrykk for et *legitimt arrangement*. Det er ikke det aktørene ideelt kunne ønske seg, men det er det de kan godta og stå inne for i denne bestemte situasjonen. Aktørene har ulike grunner for å akseptere pakten, og kunne egentlig ha ønsket seg et annet resultat. De slår seg til ro med dette som en suboptimal, men likevel akseptabel løsning.” E. O. Nielsen, “Den politiske diskurs – fra konsensus til *modus vivendi*?” *Den politiske orden*, (ed. E. O. Nielsen), p.116f. The *modus vivendi* is obviously considered a fair compromise. I think that Rawls might also consider the *modus vivendi* to be justified in certain situations, as is made clear in the way he emphasises that the thirty years’ war was brought to an end by a typical *modus vivendi* arrangement, which was the most one could hope for under those circumstances.

⁴³⁵ J. Rawls, *Political Liberalism* (1993), p.158.

⁴³⁶ Cf. K. Baier: Justice and the Aims of Political Philosophy, *Ethics* 99 (July 1989).

⁴³⁷ J. Rawls, *Political Liberalism* (1993), p.159.

for public inquiry, for assessing evidence, etc. (There is a certain emphasis on the *procedural* aspects).

- has to clarify what basic rights and liberties (of individuals and minorities) in a society should be permanently guaranteed and so to say *be taken off the agenda* of daily political struggle and calculation of interests.

When the constitutional essentials are taken to cover these elements, they are certainly of the greatest importance. And there can be little doubt that Rawls considers a constitutional consensus to be a decisive “pact to maintain civil peace”⁴³⁸, since the constitutional is taken to cover the most basic freedoms:

“Whether the constitutional essentials covering the basic freedoms are satisfied is more or less visible on the face of constitutional arrangements and how these can be seen to work in practice. we can expect more agreement about whether the principles for the basic rights and liberties are realized than about whether the principles for social and economic justice are realized.”⁴³⁹

Moreover, a constitutional consensus on fundamental essentials, basic freedoms and elementary rights, can provide for a liberal “climate” that in many ways will favour co-operation and coexistence as such. Thus there might be an “educational” side-effect of the constitutional achievements that are secured in a society⁴⁴⁰, although the constitutional essentials might in themselves be mainly procedural and formal.

It should be noted that constitutional issues can be pursued differently by different persons. Jan-Erik Lane, among others, points to the considerable differences in framing one's constitutional focus. Maybe we can assume that the formal level, with an emphasis on written articles and settled procedures that safeguard the rights of individuals, groups and associations (simultaneously limiting the power of governmental authorities), might

⁴³⁸ “The constitution is, as it were, honored as a pact to maintain civil peace.” J. Rawls, “The Idea of Public Reason Revisited”, *The University of Chicago Law Review* (1997;3), p.781. This kind of civil peace would for instance be threatened if a group tried to change the constitution (with coercive force) so as to establish a religious hegemony, - since it would be unreasonable to expect that those suffering from such a constitutional change should voluntarily accept that their own religious doctrine is brought into danger.

⁴³⁹ J. Rawls, *Political Liberalism* (1993), p.229.

⁴⁴⁰ Rawls assumes that an effective safeguarding of constitutional essentials in society might “. . . tend to encourage the cooperative virtues of political life: the virtues of reasonableness and a sense of fairness, a spirit of compromise and a readiness to meet others halfway, all of which are connected with the willingness to cooperate with others on political terms that everyone can publicly accept.” J. Rawls, *Political Liberalism* (1993), p.163.

be of primary interest from the point of view of the constitutional lawyer, while the political scientist “is first and foremost interested in describing the real constitution, or how the country is actually ruled.”⁴⁴¹

Rawls clearly recognises that a consensus on certain constitutional essentials by itself is not sufficient to secure both institutional arrangements and effective distributive mechanisms, which are both fair and stable. A constitutional consensus is not *wide* enough to cover the field of basic justice, since its purpose is mainly to establish the minimal essential constitutional means for moderating rivalry and regulating the differences of interest according to acceptable guidelines and procedures. Neither is a constitutional consensus *deep* enough, since it is not grounded in fundamental ideas about persons, politics and society, A stable consensus has - somehow - to be morally rooted.

When Rawls accordingly takes a further step, proceeding from an agreement on a mere constitutional framework to a morally grounded consensus that has a wider aim and is more substantial and in some way also deeper⁴⁴², he faces considerable difficulties. For if the basic structure of society is to be regulated by a conception of justice that is both deeper and broader, covering also more complex questions of social justice than merely constitutional principles can comply with⁴⁴³, and is also supposed to be *morally*

⁴⁴¹ Cf. J-E. Lane, *Constitutions and political theory* (1996), p.12. In his instructive book on constitutions and political theory Lane also emphasises that “there exists nothing like a compact theory about constitutions. What there is is a set of ideas, concepts and models drawn from various disciplines that refer to constitutions, either the constitutions of the many countries in the world or to some ideal constitution or other.” (*Ibid*, p. 3). And he adds that “the word ‘constitution’ is ambiguous. It has two senses which are most often mixed up: ‘constitution meaning either a compact written document, comprising paragraphs with rules for the governance of the State, or ‘constitution’ standing for the regime, i.e. the real institutions in terms of which the State is actually operated. ‘Constitution’ as a ‘set of rules’ is an expression with double meanings: (1) constitutional articles in a written document or (2) constitutional institutions as they are actually practiced in ongoing state activities.” (*ibid*, p.5). Although the two levels are hardly to be separated by Rawls, I think we should say (if applying Lane’s distinction on him) that Rawls – even when he is underlining that the constitutional concern is mainly procedural and formal – is in fact very much concerned with “the second meaning of ‘constitution’, standing for the actual principles or maxims in terms of which the country is ruled. Except for States which suffer from anarchy or civil war or which are about to be dissolved or have just recently been founded, each state has a constitutional practice. This practice need not be in accordance with the formally enacted constitution nor must there be a single constitutional document giving guidance. ‘Constitution’ here refers not to a written document, but to the actual manner in which a country is ruled, the regime or the set of fundamental state institutions.” (*ibid*, p.9)

⁴⁴² “The outline is in two stages. The first stage ends with a constitutional consensus, the second with an overlapping consensus. The constitution at the first stage satisfies liberal principles of political justice. As a constitutional consensus, these principles are accepted simply as principles and not grounded in certain ideas of society and person of a political conception, much less in a shared public conception. And so the consensus is not deep.”, J. Rawls, *Political Liberalism* (1993), p.158.

⁴⁴³ This can be seen when turning to chapter IV, §§ 6-7 in *Political Liberalism*: “The constitutional consensus is not deep and it is also not wide: it is narrow in scope, not including the basic structure but only the political procedures of democratic government.” p. 159. One might ask whether a constitution should

grounded, Rawls' aim of achieving an "overlap" faces the accusation of being overly idealistic and utopian. Rawls indirectly admits as much when saying that we can expect more agreement in matters concerning the constitutional principles for securing elementary rights and liberties than in matters of basic justice, involving social and economic issues.⁴⁴⁴ One gets the impression that in seeking a consensus beyond the level of mere constitutional essentials, Rawls is to some extent leaning on the kind of comprehensiveness, which he has already rejected as inadequate for modern pluralist democracies. It seems unavoidable that Rawls' conception should be characterised as being at least partially comprehensive.

4.4.4. The idea of an overlapping consensus

4.4.4.1. The main features

A constitutional consensus, is without doubt fundamental, and might in itself provide for a liberal "climate" in favour of co-operation, coexistence and discourse in society. But let me now, nevertheless, follow Rawls' way from a constitutional towards a genuine overlapping consensus. Rawls asks:

not contain more, e.g. a specified list of basic rights and also particular constraints within economic life. Let me here recall that Rawls himself, at least in Lecture VI, §5 of *Political Liberalism*, in fact brings some of these elements into the "constitutional essentials" as such, saying that there are two "classes" of constitutional essentials which it is very urgent to settle: "There is the greatest urgency for citizens to reach practical agreement in judgement about the constitutional essentials. These are of two kinds: **a.** fundamental principles that specify the general structure of government and the political process: the powers of the legislature, executive and the judiciary, the scope of majority rule; and **b.** equal basic rights and liberties of citizenship that legislative majorities are to respect: such as the right to vote and to participate in politics, liberty of conscience, freedom of thought and of association, as well as the protection of the rule of law." J. Rawls, *Political Liberalism* (1993), p.227. But he does not just stress that there are two kinds of constitutional essentials, he also distinguishes between constitutional essentials on the one side and the principles that concern basic matters of distributive justice on the other side. The latter phenomena are of great importance, and Rawls is very much concerned with these things in his conception of political liberalism as well as in his theory of justice. But matters of distributive justice might admittedly be rather complex, and it might be much harder to establish a fundamental agreement about them. Unlike a merely constitutional consensus, an overlapping consensus, which is also concerned with wider issues of basic justice, is more demanding. It covers a wider field of issues and also goes deeper: "The depth of an overlapping consensus requires that its political principles and ideals be founded on a political conception of justice as fairness that uses fundamental ideas of society and person as illustrated by justice as fairness. Its breadth goes beyond political principles instituting democratic procedures to include principles covering the basic structure as a whole; hence its principles also establish certain substantive rights such as liberty of conscience and freedom of thought, as well as fair opportunity and principles covering certain essential needs." *Ibid*, p. 164.

⁴⁴⁴ This might also be explained as follows: One might expect more agreement in matters belonging within the perspective of the first principle of justice than in matters concerning social and economic equalities and differences. It seems as if the concern for constitutional essentials has a clear affinity towards the safeguarding of the fundamental liberties and rights subsumed under Rawls' first principle of justice (plus a basic social standard required for making use of these liberties and rights).

“What are the forces that push a constitutional consensus toward an overlapping consensus, even if supporting a full overlapping consensus is never achieved but at best only approximated? I mention some of these forces as they relate to depth, breadth, and how specific, or how narrow, the class of conceptions in the focus.”⁴⁴⁵

A constitutional consensus, when it is in place, will, as we have already seen, cover only a very limited range of the important common issues that have to be considered fundamental in a modern society. The constitution cannot be concerned with the whole of the basic structure of a society. Therefore a constitutional consensus will prove too narrow. There will always be new problems, which raise questions concerning basic justice; there will be a need for renewed amendments and an ongoing process of legislation. There are many vital issues which can not be resolved just by applying constitutional principles according to a set of formal rules and established procedures. There must also be an underlying idea of justice that is “sufficiently unified and cohesive”⁴⁴⁶, and which might serve as a common basis of reference for the different co-operating and coexistent persons and groups who enter the public forum. People are supposed to discuss issues of basic justice with one another, try to justify their standpoints, and thereby gain support for their views. This seems both required and desirable when persons leave their narrow circle and address a *broader* audience. When people have to explain publicly⁴⁴⁷ the meaning of their standpoints, they should be expected to give the best reasons they can for their decisions and position. And reason in itself relates in a way to *depth*, since constitutional essentials, procedural guidelines, practices and matters concerning social co-operation have to be defended, explained and interpreted. A conception of justice, applying to the whole institutional scheme of society should therefore have a certain *depth*. In specifying that the kind of consensus he aims at requires a certain *depth*, Rawls presupposes that shared political principles for a pluralist democracy can be grounded on a conception of justice that at least incorporates some explicit and fundamental ideas about society as well as about human beings as moral persons. Rawls is obviously not satisfied with just providing formal principles, guidelines and “procedures for moderating political rivalry within society.”⁴⁴⁸ So the consensus that Rawls considers it essential to aim for, is clearly more substantial than mere consensus on some consti-

⁴⁴⁵ J. Rawls, *Political Liberalism* (1993), p.165

⁴⁴⁶ J. Rawls, *Political Liberalism* (1993), p.166.

⁴⁴⁷ Rawls’ idea of public reason shall be discussed thoroughly in a later chapter.

⁴⁴⁸ J. Rawls, *Political Liberalism* (1993), p.158.

tutional essentials, – and therefore may be supposed to be more controversial.

From premises Rawls has himself laid down, it would therefore seem that the idea of establishing an overlapping consensus might be a very demanding project, at least if justice as fairness, which might unavoidably be regarded a rather *substantial* principle, is supposed to be the focal point of the “overlap”. For the claim that an overlapping consensus has to be *deeper, broader* and more *specific* than both a “modus vivendi” and a mere “constitutional consensus”, and simultaneously “non-comprehensive”, seems at the first glance to render the entire idea of an overlapping consensus implausible. At least there might be a built-in tension in Rawls’ standpoint. To see what Rawls’ main idea really is, however, and whether he succeeds in realising his demanding project in a plausible way, I will now consider more specifically the idea of an “overlapping consensus”.

The notion of “consensus” as such is dealt with earlier. Let me therefore now just state that Rawls seems to aim for an agreement that is more than just a tacit and relatively undemanding concurrence of moral and political standpoints and interests. Usually he presupposes that the essential principles of justice, which are taken as the focus of an overlapping consensus, are intentionally *endorsed* and *supported*. A consensus on a political conception of justice is therefore supposed to be *willingly* and *freely* established.⁴⁴⁹ Nor, it should be noted, is “consensus” to be viewed as the automatic product of a majority vote.

What Rawls aims at, is a consensus that is acceptable from the perspective of *all* the citizens, even though they may hold very different reasonable comprehensive doctrines.⁴⁵⁰ The very notion “*overlapping*” presupposes that the persons who are supposed to endorse an overlapping consensus, take disparate points of departure. But “overlap” does not only imply that there are considerable differences between the parties, – it also implies that there is something that the parties can be supposed to have in common.

⁴⁴⁹ As I shall later comment more thoroughly, however, Rawls sometimes comes closer to a more passive understanding, as for instance when he presupposes that religious “values can be understood so as to be either congruent with, or supportive of, or else not in conflict with, the values appropriate to the special domain of the political as specified by a political conception of justice.”, J. Rawls, *Political Liberalism* (1993), p,140

⁴⁵⁰ Let me recall that the term “overlapping consensus” is defined by Rawls in “Justice as Fairness: Political not Metaphysical” as “a consensus that includes all the opposing philosophical and religious doctrines likely

Therefore the term “overlapping” might lead us to think that Rawls seeks to find a lowest common denominator between all of the different religious, ideological, moral and philosophical comprehensive doctrines taken together, or that he is aiming at crystallising some elements of a core-morality, that might already be found within all the more complex and comprehensive doctrines that the endorsing parties honour. The idea of an overlapping consensus should accordingly be expected to rest on the optimistic assumption, that it is possible to *extract* from all comprehensive doctrines at least a minimum of shared moral principles (of justice), after having first carefully ignored all the particular elements that might be controversial.

But I think that Rawls’ idea of an overlapping consensus⁴⁵¹ is different, and also more complex.

First: The idea of the overlap as a minimum-extract from the different comprehensive doctrines that exist in society is not Rawls’ idea. Rawls does not take his point of departure directly from the different religious, philosophical or moral doctrines that already exist in society. When working out his idea of an overlapping consensus, he starts instead from some moral and philosophical ideas that are essential and fundamental within the political culture we in fact belong to.⁴⁵² And therefore Rawls is justified in saying that the content of an overlapping consensus “should be, so far as possible, presented as independent of comprehensive religious, philosophical, and moral doctrines ... as a ‘freestanding’ view ...”⁴⁵³ Not the lowest common denominator, but a “*freestanding*” view, that is what Rawls envisions. Any aspects of Christianity or other comprehensive views which play a role in this connection, do so only in an indirect way, – as more or less influential elements within the background-culture which serves Rawls as the main source in the development of an overlapping consensus.

Thereafter, however, Rawls hopes for support *from within* the different comprehensive

to persist and to gain adherents in a more or less just constitutional society.” *Philosophy and Public Affairs* (Vol.14; No.3, 1985) p.225f.

⁴⁵¹ Let it here be mentioned that the phrase “overlapping consensus” has got the status of a terminus technicus in Rawls’ recent writings. The term was hardly used in *A Theory of Justice*, and when it was used, its meaning was another one. Cf. Rawls’ own remark on this issue in *Political Liberalism*, p. xvii (note 5).

⁴⁵² One might say that Rawls in this way has made a certain adjustment, bringing him a bit closer to a communitarian point of view. But this is not so certain. Maybe he is simply explicating ideas that were already implicit in *A Theory of Justice*. I have already shown that Rawls, when elaborating his contractarian approach in *Theory*, took aspects from the background culture as crucial contract-external premises

doctrines, which are also related to and are at least in some respect more or less closely woven together with the background culture that is the first source for Rawls. After having first elaborated the “overlap” as a freestanding view, Rawls now assumes that it relates so closely to the comprehensive views, that it will be possible also to recognise the “overlap” from premises genuinely given within the reasonable comprehensive doctrines themselves. Accordingly Rawls can characterise the political conception of justice, which he aims at, as a *module*, designed to fit into, and to be supported by many different kinds of comprehensive moral doctrines.

“I assume all citizens to affirm a comprehensive doctrine to which the political conception they accept is in some way related. But a distinguishing feature of a political conception is that it is presented as freestanding and expounded apart from, or without reference to, any such wider background. To use a current phrase, the political conception is a module, an essential constituent part, that fits into and can be supported by various reasonable comprehensive doctrines that endure in the society regulated by it.its content is expressed in terms of certain fundamental ideas seen as implicit in the public political culture of a democratic society.”⁴⁵⁴

This is the way justice as fairness can be taken as the focus of an overlapping consensus and can also be supposed to fit together with and to be endorsable from the perspective of different comprehensive (religious) doctrines in a world where the comprehensive views should be considered essential to people.⁴⁵⁵ The comprehensive views which people honour, provide them in fact with the deepest and most vital motives for acting, although it is simultaneously the case that no one comprehensive view has any realistic chance of being *commonly* and *widely* recognised as the shared basis for co-operation and common life. For to emphasise it once more; it is obvious that religion, ideology or “philosophy as the search for truth about an independent metaphysical and moral order cannot . . . provide a workable and shared basis for a political conception of justice in a democratic society.”⁴⁵⁶ Rawls nevertheless hopes that religious people (and people holding other comprehensive views) will ultimately be able to support an “overlap” from within their own belief and ground-orientation, thus contributing to establishing a common basis for co-operation and coexistence in pluralist societies. It should in fact be possible both to maintain that a political (and moral) “overlap” can be established and

⁴⁵³ J. Rawls, *Political Liberalism* (1993), p.144.

⁴⁵⁴ J. Rawls, *Political Liberalism* (1993), p.12f.

⁴⁵⁵ Rawls in fact assumes that all citizens affirm a comprehensive doctrine.

⁴⁵⁶ “Justice as Fairness: Political not Metaphysical”, in: *Philosophy and Public Affairs* (Vol.14; No.3; 1985), p.230.

maintained regardless of the comprehensive doctrines that people hold, and simultaneously also stress that people are supposed to endorse an overlapping consensus from within their own religious view. That is Rawls' intention as expressed in *Political Liberalism*. He develops an "overlap" to fit closely with the diverse comprehensive views that people hold, an "overlap" that is, however, in a way independent of all kinds of comprehensive doctrines, challenging them and drawing on them simultaneously.

The overlapping consensus, which Rawls aims at, is supposed to be strictly *political* in its very nature. I think that is an important reason why it can be supposed to be endorsed from within *different* religious comprehensive doctrines, without really being identical in aim with any of them. But the political nature of an "overlap" also means that an "overlapping consensus" has to be conceived of as *limited* in aim. Rawls clearly and explicitly stresses that he aims at a strictly political "overlap" with a minimum of "metaphysical" ambitions⁴⁵⁷ :

"Thus, political liberalism looks for a political conception of justice that we hope can gain the support of an overlapping consensus of reasonable religious, philosophical, and moral doctrines in a society regulated by it. . . . Public reason – citizen's reasoning in the public forum about constitutional essentials and basic questions of justice – is now best guided by a political conception the principles and values of which all citizens can endorse. That political conception is to be, so to speak, political and not metaphysical."⁴⁵⁸

As I will show later Rawls is not very explicit about the meaning of "metaphysics". Nevertheless there can be little doubt that he tries as far as possible to avoid systematically "metaphysical" assumptions⁴⁵⁹, which he takes to be opposed to merely "political" principles for fair coexistence, which he hopes can be taken as the focus of an overlapping consensus in a modern pluralist society. It is certainly quite crucial according to Rawls that;

"Principles of justice can be argued for as valid, or desirable, or appropriate without reliance on any particular comprehensive view, though the validity of these principles will depend largely on their capacity to fit with an overlapping consensus of

⁴⁵⁷ Cf the two essays, written by John Rawls: The Idea of an overlapping consensus, *Oxford Journal of Legal Studies* (vol.7, Nr.1, 1987), pp.1-25. and "Justice as Fairness:Political not Metaphysical", in: *Philosophy and Public Affairs* (Volume 14, Nr. 3,1985), pp.223-251.

⁴⁵⁸ J.Rawls: *Political Liberalism* (1993), p.10.

⁴⁵⁹ So far it is sufficient to underline that Rawls, when characterising his conception as "non-metaphysical", obviously means that he does not aim at establishing universal truth, and that he does not rely on any divine or transcendent sources for the claims he sets forth in his theory.

comprehensive views. It is in this sense that Rawls argues that political philosophy need not be metaphysical. In a well-ordered society, a plurality of comprehensive views will support the basic political structure and ideas of justice (though some unreasonable comprehensive views will not).⁴⁶⁰

Briefly recapping:

- An overlapping consensus is in the first place to be established as a freestanding view, taking its point of departure from some vital premises given within the political culture itself.
- An overlapping consensus, which is supposed to be of any lasting value in pluralist societies, cannot make strong (negative or positive) assumptions in matters of religious truth or moral philosophy.
- An overlapping consensus, although a political achievement, is nevertheless supposed to be morally motivated and endorsable from premises that are genuinely in accordance with the different (religious) views that citizens freely affirm.

So far it is sufficient to say that the way Rawls has elaborated the idea of an overlapping consensus demonstrates both that he distinguishes rather sharply between a political perspective and the different non-political (or “metaphysical”) points of view.⁴⁶¹ Simultaneously, however, he also very closely relates the two perspectives. Although the “overlap” is in the first place conceived of as a “freestanding” view, the whole idea of establishing an overlapping consensus might be futile if not closely related to premises inherent in the comprehensive doctrines, which people hold and take as their most vital commitment. The question is whether an overlapping consensus can bear the tension built into it by Rawls, – since it is simultaneously considered both a freestanding conception and a “project” decisively dependent on support from within the comprehensive doctrines themselves.

4.4.4.2. Consensus by avoidance rather than by agreement?

I have shown that an overlapping consensus is to be based on support from within the different comprehensive doctrines. But it seems as if such a support might be achieved

⁴⁶⁰ K. Greenawalt: *Private Consciences and Public Reasons* (1995), p.107.

⁴⁶¹ I recall that the “metaphysical” includes both questions concerned with (ultimate) truth and with transcendence.

only by systematically avoiding issues that are supposed to be unacceptable from the point of view of comprehensive doctrines. One always has to take into consideration that comprehensive doctrines are strongly committed to truth, which might easily lead to conflicts.

It might be said, however, that Rawls to a wide extent succeeds in reducing the weight of comprehensive motives in politics, and especially those that are highly controversial, the truth of which can hardly be commonly recognised. And the doctrines he still needs are those that are intuitively taken for granted and widely *shared* as vital “cultural achievements” within the political culture itself.⁴⁶² Thus Rawls is without doubt developing an idea of political consensus that is rather weak and to a very wide extent free of metaphysical stumbling blocks.

In proceeding like this he employs a method, which he himself characterises as a *method of avoidance*. Rawls will avoid developing political liberalism as just another comprehensive system, for as already stated there is in pluralist, democratic societies hardly a possibility of making a particular comprehensive value-system the common basis of social co-operation. Rawls clearly realises that comprehensive religious and moral doctrines, in accordance with their own nature, normally have to make strong claims about truth, and it would be contrary to the very idea of politics to make religious “truths” an essential part of the basic political framework of society. Accordingly Rawls stresses that ideology, religion or “philosophy as the search for truth about an independent metaphysical and moral order cannot . . . provide a workable and shared basis for a political conception of justice in a democratic society.”⁴⁶³

For Rawls, a conception of justice for society as a whole should not be developed as a metaphysically and epistemologically demanding conception, but only as a strictly political and inclusive one. By avoiding a metaphysically demanding conception of justice, as far as it is possible, he can use the liberal principles of justice in establishing the institutional basis that society needs as a framework for fair co-operation among its free and equal citizens, – thereby avoiding the more specific and controversial metaphysical

⁴⁶² The principle of toleration can be taken as a typical example of such a “cultural achievement”. It is developed through hundreds of years of religious (and ideological) wars, but is to day widely recognised within most of the nations which suffered under those conflicts.

views that people may simultaneously be supposed to be strongly committed to.

Of course it would be rather naïve to believe that all kinds of “metaphysical”⁴⁶⁴ premises can be entirely removed from a political conception. And I think that Rawls realises this, as may be obvious from the way he himself defines justice as fairness, as a conception which is after all deeper and more demanding than a mere *modus vivendi* or a consensus on merely constitutional essentials. But nevertheless it is clear that Rawls, especially in his later writings, uses what he calls a “*method of avoidance*”, which means that he systematically reduces all kinds of reference to comprehensive truths and transcendent reasons to a minimum degree. For he realises rightly that if he does not succeed in doing so, the conception he works out would be comprehensive and “thick” in a way that might render it completely unsuitable as the focus of an overlapping consensus. But this does not mean that Rawls avoids all controversy. There are certainly political ideals, norms and assumptions built into his conception of justice as fairness, for instance assumptions concerning society as a system of social co-operation and assumptions concerning the moral nature of man, and there are norms safeguarding the fundamental rights of citizens, taken as free and equal human beings. In my opinion the “method of avoidance” as employed by Rawls is used just as a means to establish an “agreement” on an institutional scheme of society by removing as far as possible so called “metaphysical” stumbling blocks, which might unnecessarily block the kind of “overlap” required for political coexistence and social co-operation.

4.4.4.3. Setting vital issues off the agenda?

I have stressed that there are certain religious (comprehensive) “truths” that are neither to be denied nor affirmed from a political point of view. This avoidance of political reference to religious and metaphysical doctrines in no way implies any devaluation of religious “truth”, – it may rather be taken as a recognition of the limits of politics. If a consensus in matters of politics shall be established, Rawls considers it necessary to find agreed ways “to bypass religion and philosophy’s profoundest controversies”⁴⁶⁵, – the

⁴⁶³ “Justice as Fairness: Political not Metaphysical”, *Philosophy and Public Affairs*, (Vol.14; No.3; 1985), p.230.

⁴⁶⁴ However, I should once more recall that the “metaphysical” according to Rawls seems to include the deeper questions concerned with the (ultimate) truth about reality as such and about the nature of human beings, and it also includes the fundamental questions concerning a transcendent reality.

⁴⁶⁵ J. Rawls, *Political Liberalism* (1993), p.152.

kind of controversies that have earlier caused endless conflicts. Such a “bypass-operation” seems even more urgent in highly pluralist societies.

Erik Oddvar Eriksen, however, finds this way of avoiding sensitive questions and “bypassing” certain controversialities very problematic, especially in modern societies with their complex and overloaded agendas. The difficult question according to Eriksen is who has the power to write the agenda and to set issues off the agenda.⁴⁶⁶

It appears to me that Rawls’ emphasis upon the removal of certain issues from the *political* agenda, is not really intended to remove issues that are controversial or difficult from the political debate, just because they are too problematic. Nor is Rawls’ removal of these issues from the agenda a way of accepting that people should simply agree to disagree in matters of religion and metaphysics.

Rawls clearly intends more than a trivial “avoidance” of troublesome issues. It is characteristic of constitutional democracies that there are some issues and some fundamental achievements, which are considered too important to be made the subject of daily political struggle, and which should therefore not very often and very easily be changed or reversed. Most modern democratic societies no longer debate such matters as equal political rights and liberties for men and women, or the right of all citizens to vote and to a fair trial, as well as the freedom of conscience and the right to publicly express one’s personal and religious beliefs. Consensus about these things means that they are taken as constitutionally established and safeguarded. They are considered unquestionable by (nearly) all parties in society. The issue of slavery, once a disputed political theme, has for instance been removed from the political agenda in this sense, meaning that the political issue of slavery is no longer open to question, but considered resolved once and for all. It is to be taken for granted, – as an irreversible achievement, safeguarded by being set off the ordinary agenda of political bargaining. There is also a moral aspect that should not be overlooked in this connection – it should be considered a moral achievement as well that slavery is now taken as out of the question in the sense that it

⁴⁶⁶ And so Eriksen holds that “også interne avlastningsmekanismer på den politiske debatt, som Rawls ... ‘method of avoidance’ representerer, er problematiske i et demokrati. Denne metoden springer ut av tesen om en overlappende konsensus, og er uttrykk for hva deltakerne rasjonelt kan innse at de ikke kan bli enige om, og som de så ekskluderer fra dagsorden, som tidligere nevnt. Problemet med dette er at det reiser spørsmålet om hvem som har makt til til å definere ut/inn hva og hvilke kriterier som skal gjelde for grensedragningen.” E. O. Eriksen, “Den politiske diskurs - fra konsensus til *modus vivendi*?”, *Den politiske orden*, (ed. E. O. Eriksen, 1994), p.122.

should be considered morally impermissible⁴⁶⁷ There are in society many issues like this that are safeguarded by being removed from the ordinary political debate. Guaranteeing equal liberty of conscience for instance means that society has found a way of removing questions about religious faith off the political agenda, which implies a safeguarding of the freedom of conscience for each citizen. What Rawls really means by setting issues off the agenda is summed up by him as follows:

“To explain: When certain matters are taken off the political agenda, they are no longer regarded as proper subjects for political decision by majority or other plurality voting. In regard to equal liberty of conscience and rejection of slavery and serfdom, this means that the equal basic liberties in the constitution that cover these matters are taken as fixed, settled once and for all.”⁴⁶⁸

There is within the Rawlsian conception no “neutrality” in moral, legal and political, matters of this kind. Rawls really takes for granted that there are certain political positions or achievements which should be “taken as fixed, settled once and for all”, achievements which are now well worth fighting for if attacked again. Rawls does not, of course, provide us with a complete list of issues that deserve to be set off the agenda of ordinary political bargaining in this way. Nevertheless, I think that the weight of Rawls’ arguments in this connection should be recognised and supported, not least from the perspective of Christian social ethics, even if it is simultaneously important to prevent the premature removal of certain “achievements” from the ordinary political agenda.⁴⁶⁹

4.4.4.4. Keeping focus unsharp?

There has been an intensive discussion about Rawls’ specific principles of justice, – the first of which stresses the right to equal basic liberties, and the second of which focuses on equality/inequality and is divided into an “opportunity-principle” and a “difference-principle”. In his more recent publications Rawls appears to be more realistic about the difficulties in attaining an agreement on a precise conception of justice, including some specified principles, than he was when the conception of justice as fairness was first

⁴⁶⁷ Of course the so called “indisputable achievements” might be disputed, and even set on the ordinary political agenda again. But some basic achievements should nevertheless be constitutionally safeguarded in a way that makes it very difficult both to reverse and to change them and to make them the subject of political bargaining again.

⁴⁶⁸ J. Rawls, “The idea of an overlapping consensus” in: *Oxford Journal of Legal Studies* (vol.7, No.1, 1987),p. 14).

⁴⁶⁹ Maybe this might be one effect of the agitation from the side of some groups in society against an *unquestionable* right to abortion.

worked out by the means of a hypothetically modelled original “test-position”. He now emphasises that;

“... citizens are to conduct their fundamental discussions within the framework of what each regards as a political conception of justice based on values that the others can reasonably be expected to endorse and each is, in good faith, prepared to defend that conception so understood. This means that each of us must have, and be ready to explain, a criterion of what principles and guidelines we think other citizens (who are also free and equal) may reasonably be expected to endorse along with us. We must have some test we are ready to state as to when this condition is met. I have elsewhere suggested as a criterion the values expressed by the principles and guidelines that would be agreed to in the original position. Many will prefer another criterion.”⁴⁷⁰

Rawls’ revised position might be difficult to understand to a full extent. For it seems to imply that he now realises that the original position – constructed to provide us with appropriate principles of justice by a pure procedural line of decision – will not be taken by all as an appropriate device for specifying the most obvious principles of justice or for testing whether principles of justice can hold universally. There might be different reasons why people take another approach than Rawls has proposed when elaborating their conception of justice.⁴⁷¹ I need not go deeper into this problem. I believe, however, that Rawls would still consider the original position an appropriate philosophical “instrument” for testing whether principles of justice can be considered fair by all parties and can be supposed to hold universally. Rawls still holds that the conception of justice as fairness, as conceived of in *A Theory of Justice*, should be considered the *standard* example of a conception of justice to be taken as the proper focus of an overlapping consensus. But he now also adds that:

“Finally, as to how far an overlapping consensus is specific, I have for simplicity assumed all along that its focus is a specific political conception of justice, with justice as fairness as the standard example. There is, however, another possibility that is more realistic and more likely to be realized. In this case the focus of an overlapping consensus is a class of liberal conceptions that vary within a certain more or less narrow range. The more restricted the range, the more specific the consensus. ... When overlapping consensus is characterized this way, the role of justice as fairness will have a special place within conceptions defining the focus of the consensus.”⁴⁷²

⁴⁷⁰ J. Rawls, *Political Liberalism* (1993), p.226f.

⁴⁷¹ I have earlier pointed to the problem that when modelling the original position Rawls has to draw on certain contract-external premises that might not be as uncontroversial as assumed.

⁴⁷² J. Rawls, *Political Liberalism* (1993), p. 164.

In the text quoted above Rawls seeks a “possibility that is more realistic and more likely to be realized” than just grounding an overlapping consensus on premises of justice, elaborated by a specific philosophical procedure, resulting in two specific principles of justice. Rawls no longer sees the need for defining exact and strict principles of justice that must be recognised word for word, point for point as the focus of an “overlap”, – before an acceptable ground consensus can be brought about.⁴⁷³ Now he admits that the focus of an overlapping consensus need not be absolutely sharp – possibly it should rather be recognised as consisting of a class of *related* versions of justice. There is rather a “focal class” of conceptions of justice that might be taken as sufficiently focused to play the decisive role in rendering modern democratic societies well-ordered in a way that is acceptable from a liberal point of view.

It is at the same time important to see that Rawls now also takes into account the possibility that “a full overlapping consensus cannot, it seems, be achieved.”⁴⁷⁴ I think this is a reason why he now tries to make the premises for bringing about an overlapping consensus weaker. However, he also faces the possibility that the best one can achieve in the first place is a partial consensus, which he hopes might serve as a decisive first step towards a deeper and more enduring consensus. According to Rawls there might be good reasons for hoping that the experiences people have with constitutional regimes and with societies based on liberal principles and (relatively) just institutions will psychologically and practically help prepare the ground for achieving a genuine overlapping consensus.

“Gradually, as the success of political cooperation continues, citizens gain increasing trust and confidence in one another. This is all we need to say in reply to the objection that the idea of overlapping consensus is utopian.”⁴⁷⁵

This kind of growing confidence in one another as a precondition for a broad and fundamental consensus about fair terms of coexistence depends, however, to a wide extent on the capacity of liberal societies to provide for the *social* standards, required for citizens as free and equal to participate in society as a *fair* system of cooperation. If this

⁴⁷³ Let me, however, recall here that his first main work had the title “A Theory of Justice”. Rawls never intended to write **The** Theory of Justice. The difference between his position in *A Theory of Justice* and in *Political Liberalism* should after all not be exaggerated

⁴⁷⁴ J. Rawls, *Political Liberalism* (1993), p.168.

⁴⁷⁵ J. Rawls, *Political Liberalism* (1993), p.168

is not the case, the positive psychological effect caused by people's experiences with liberal regimes will hardly be as Rawls hopes.

The basic institutions in a well-ordered Rawlsian society are clearly supposed to provide effectively both for social security and for the respect of basic rights, liberties and toleration. A liberal society will, for instance, therefore safeguard the kind of basic rights and liberties that are necessary for religious worship. On the other hand an overlap on liberal premises will also allow for moral attitudes and liberties that might freely oppose religious faith and morality within reasonable limits. One cannot accept the Rawlsian form of fairness without including the latter possibility.

Even if Rawls is now opening up for a "focal class" of conceptions of justice that might be taken as sufficiently focused to be the core of an overlapping consensus, and even if the width of such a focal class might be considerable, it should be emphasised that the relevant conceptions of justice are still supposed by Rawls to be *liberal* in nature. What the actual conceptions of justice have in common, is that they are drawing on some moral values and cultural achievements, which are essential within the liberal tradition (as for instance the idea of toleration, human rights and the respect of individual liberty). Rawls is of the opinion that the political culture, to which he belongs, in fact offers favourable conditions for establishing an overlapping consensus on the basis of a family of conceptions of justice, – genuinely liberal in scope.

The objection that Rawls' view should be qualified as rather "utopian"⁴⁷⁶, as suggested for instance by Nicholas Rescher, – seems therefore hardly justified. One might even say that Rawls has become much more "realistic" in recent time. The way he allows for a certain "latitude" in terms of the focal class of adequate conceptions of justice, bears witness to his realistic and very strong concern for bringing about a shared platform for coexistence. In this connection one should bear in mind that Rawls also assumes that there is a certain "latitude" and "looseness" in most comprehensive doctrines. It is impossible once and for all to specify a complete set of Christian moral doctrines. There is a certain changeability, just as there is a certain flexibility and latitude.

Turning the focal point of an overlapping consensus into a 'focal class' the Rawlsian

⁴⁷⁶ Let it en passant be mentioned that the term "utopian" is obviously very complex. Philosophers like Ernst Bloch and theologians like Jürgen Moltmann have clearly stressed the motivating force of "utopian" thinking in politics (as well as in theological social ethics).

overlap might expectedly be more easily approved of from a religious point of view. A certain “latitude” both in Rawls’ idea of justice and in the Christian approach in matters of social ethics might reduce the possible or likely areas of conflict.

4.4.5. Rawls – parasitic on existing comprehensive doctrines?

Rawls and Honecker share an important premise. They are both of the opinion that the pluralism of modern societies is closely allied with human freedom, but nevertheless has to be limited in some way. Thus there has to be a common framework for coexistence and social co-operation.

I have discussed the way Rawls in a first stage employs the contractarian tradition to elaborate fundamental principles for the basic structure of society, – principles that might be considered fair by all. But I have also shown how Rawls has become increasingly concerned with the moral foundation of the very scheme of society, how it can be maintained and safeguarded as a fair institutional scheme. Rawls addresses this concern for “stability” through the elaboration of the idea of an overlapping consensus. In elaborating his idea of an overlapping consensus Rawls very clearly realises that principles for fair coexistence cannot be fundamentally at odds with the comprehensive views and belief-systems which people actually hold, but have to be endorsable *from within* these same diverse comprehensive views. In *Political Liberalism* Rawls clearly states that it is necessary for a liberal conception both to draw on the moral resources latent in the political culture and also to gain a *willing* support from within the comprehensive moral views. The idea is that:

“All those who affirm the political conception start from within their own comprehensive view and draw on the religious, philosophical, and moral grounds it provides. The fact that people affirm the same political conception on those grounds does not make their affirming it any less religious, philosophical, or moral, as the case may be, since the grounds sincerely held determine the nature of their affirmation.”⁴⁷⁷

Although the Rawlsian idea of an “overlap” is elaborated as a freestanding view, the “*from-within-principle*” says that the realisation of an overlapping consensus in society depends for its acceptability on premises genuinely given within the different kinds of reasonable religious and non-religious views which people hold. In principle Rawls

thereby makes the *support* from existing comprehensive doctrines a test to the plausibility of his conception as such.

“Thus, a conception of justice may fail because it cannot gain the support of reasonable citizens who affirm reasonable comprehensive doctrines; or as I shall often say, it cannot gain the support of a reasonable overlapping consensus. Being able to do this is necessary for an adequate political conception of justice.”⁴⁷⁸

And I think that the question of establishing an overlapping consensus with this aim had a considerable influence upon Rawls more recent recasting of his system of justice.

It is generally assumed that any conception of justice which forms the overlapping consensus cannot itself be comprehensive and deep. That is, it cannot provide us with a deeper justification for the “overlap” required in a pluralist society. This means, however, that when deeper reasons, or even “Letztbegründungen” are asked for, people must refer to the comprehensive doctrines they hold, – as far as these are indeed supportive of the “overlap”. This is the reason why Wolfgang Kersting holds that:

“Damit zehrt die politische Gerechtigkeit, die keine eigene Wahrheit besitzt, parasitär von den vielen Wahrheiten der umfassenden metaphysischen und moralischen Lehren. Der politische Philosoph Rawls arbeitet hier als Rechtfertigungspolitiker: Er delegiert die Rechtfertigungsaufgabe an die internen Begründungsstandards der bestehenden Überzeugungssysteme und verteilt so die Rechtfertigungslast auf viele Schultern. Rawls bemüht sich jedoch vergeblich, seine Gerechtigkeitskonzeption vom Verdacht des Hobbesianismus freizuhalten: Auch wenn sie keinen Modus vivendi der Klugheit vorschlägt, so formuliert seine Konzeption doch einen Modus vivendi der Moral, deren Verbindlichkeit von der politischen Philosophie als geschichtliches Faktum vorausgesetzt wird und deren Bewahrheitung privatisiert wird: Aus je eigenen Gründen stimmen die Anhänger der umfassenden moralischen und metaphysischen Theorien dem konstruktiven Vorschlag der Philosophen zu.”⁴⁷⁹

Kersting is right to the extent that the overlapping consensus, if it shall really be an “overlap”, cannot provide the comprehensive justification for itself. Rawls therefore leaves it to the representatives of each comprehensive doctrine to provide for the deeper justifying reasons, when such reasons are required or desirable. And he seems rather confident that the political conception of an overlapping consensus can and will be affirmed by people from within the context of the different comprehensive religious, moral and philosophical views that are most commonly held in democratic societies to day – and presumed to be reasonable.

⁴⁷⁷ J. Rawls, *Political Liberalism* (1993), p.147f.

⁴⁷⁸ J. Rawls, *Political Liberalism* (1993), p.36.

But I think that Rawls also aims at something more, that is not taken into consideration by Kersting. It is not just the deeper justification of the “overlap” that Rawls leaves to the comprehensive doctrines. I think that he also realises that there is within the comprehensive moral doctrines a deep moral commitment and a motivational force that should be of decisive value not just for bringing about an overlapping consensus in society, but even more for making the political “overlap” firm and *stable*. This is in my opinion one of the primary justifications for Rawls characterisation of the overlapping consensus as a *morally* grounded consensus. When characterising the Rawlsian “from-within-principle” as “parasitär”, one overlooks both the respect for the comprehensive doctrines and the anti-Hobbesian genuinely moral concern built into the very idea of an overlapping consensus. If Rawls succeeds in drawing adequately on the moral commitment inherent in the comprehensive moral doctrines, he will succeed in making the overlap stable, thereby overcoming the limitations of agreements based upon a mere *modus vivendi*. He aims at an overlapping consensus, which depends not just on a balancing of contingent power and interests, but is also upheld for genuinely moral reasons.

There are even more reasons why Rawls’ idea of an overlapping consensus should not so easily be taken as “parasitic” on existing comprehensive doctrines.

As discussed, the overlapping consensus is in the first place conceived of as a “free-standing” conception, which is, however, assumed to gain the support from the comprehensive doctrines. Even if one agrees with the objection that Rawls does not entirely succeed in developing his conception as a “freestanding” view, independent of comprehensive moral doctrines, this objection can hardly justify more than the obvious conclusion that Rawls is in fact drawing on some substantive shared premises, inherent in our political culture. This is an insight which in itself cannot justify the strong characterisation of his conception as “parasitic”.

Rather than characterising the idea of an overlapping consensus as “parasitic”, one might instead be justified in saying that a Rawlsian “overlap” does not just lean on the substantive morality of existing comprehensive doctrines, – it may also serve as a “filter”, sorting out those comprehensive views, which are at odds with fundamental values as defined by political liberalism. This “filter-function” is not unproblematic, but has to be taken clearly into account before characterising the Rawlsian conception as

⁴⁷⁹ W. Kersting, *John Rawls zur Einführung* (1993), p.229f.

“parasitic”. Rawls’ idea of an overlapping consensus might in fact be rather demanding.⁴⁸⁰ He requires something from the doctrines which are expected to be supportive of an overlapping consensus, even if he can simultaneously admit that the criteria for “filtering” out some comprehensive doctrines as incompatible with political liberalism have to be rather loose.⁴⁸¹

4.5. Lutheran social ethics – finding an approach to the question of political consensus.

As discussed in chapter 3, Honecker’s analysis of the pluralist society parallels in some respects that of Rawls. And both Rawls and Honecker agree that a shared moral framework or a common value-platform has to be established in society. Even if an overlapping consensus should be conceived of in a way that allows for highly different kinds of “Letztbegründungen”, it seems as if there also has to be at least a minimum of common moral ground and shared moral resources for an “overlap” to be successfully established and maintained. The question now is how theological social ethics should appropriately meet the problem of establishing and maintaining a morally grounded consensus, and especially how one should assess the Rawlsian solution, as presented in the idea of an overlapping consensus.

I. According to Honecker it should be emphasised that there is *in fact* among the citizens already some shared ground-values, and that acceptable laws are to a wide extent in place, and that there are also political institutions providing for the common good. All these things reflect that there already is a certain consensus about vital moral ideas, principles of justice and basic values, which are the outcome of a long historical

⁴⁸⁰ In this connection it might be instructive to see how Rawls himself describes a society where an overlapping consensus is realised in the most ideal way. In doing so he takes as an idealised assumption “that there is an overlapping consensus of all reasonable comprehensive doctrines (all agreeing on the political conception) and that there are no other doctrines in society. Then ... the following conditions hold: **a.** In appealing to reasons based on the political conception, citizens are appealing not only to what is publicly seen to be reasonable, but also to what all see as the correct moral reasons from within their own comprehensive view. **b.** They are also recognizing that one another’s comprehensive views are reasonable, even when they think them as mistaken. **c.** While people can recognize everyone else’s comprehensive views as reasonable, they cannot recognize them all as true, and there is no shared public basis to distinguish the true beliefs from the false.”; J. Rawls, *Political Liberalism* (1993), p.127.

⁴⁸¹ The question touched upon here, is the question whether comprehensive doctrines are *reasonable* or not.

process.⁴⁸²

Although Honecker may sometimes be questioning the very notion of “value” as such, he also stresses that there is – even in highly pluralist societies – a fundamental “Wert-system”, which society cannot be without.⁴⁸³ And Honecker can take a rather pragmatic approach to the actual value-system of society.

“Es gibt kein ‘für sich bestehendes Reich der Werte, ... einen echten Kosmos noetos, der ebenso jenseits der Wirklichkeit, wie jenseits des Bewußtseins besteht’ [Nicolai Hartmann, *Ethik* 1926. S.108]. Werte sind vielmehr Grundgegebenheiten des sozialen Zusammenlebens, die als Leitbilder faktisch anerkannt werden und als Normen des Handelns der Gesellschaftsmitglieder bestimmen oder bestimmen sollen. Das Wertsystem einer Gesellschaft beruht sowohl auf gesellschaftlicher Überlieferung wie auf der Anerkennung, dem Konsensus der Gesellschaftsmitglieder wie auf seiner motivbildenden Kraft. Sittliche, religiöse, politische Werte sind also jeweils der Gesellschaft vorgegeben und aufgegeben. Der Begriff ‘pragmatische’ Begründung meint dabei eine Einstellung, die von der faktischen Gegebenheit von Werten, Grundwerten ausgeht, deren theoretische Ableitung und Begründung jedoch bewußt offenläßt und offenhält. Diese pragmatische Begründung von Grundwerten ist der Natur der Sache ihrer Argumentation nach pluralistisch. Sie ist nicht genötigt, sich auf eine spezifische Argumentationsfigur der Wertbegründung und der Erkenntnistheorie festzulegen. Sie ist vereinbar mit ontologischer, utilitaristischer und emotivistischer Argumentation. Da sie nicht auf eine bestimmte Begründung der Werte festgelegt ist, ist sie auch offen für verschiedene Auslegungen auch der Grundwerte und deren Anwendung. Gerade wegen der pluralistischen Begründung der Grundwerte kann eine Grundwertauffassung zur Wertordnung einer weltanschaulich pluralistischen Gesellschaft werden.”⁴⁸⁴

Given this, it is enough to point out that Honecker desires to find a reasonable way to

⁴⁸² It might be worth mentioning that already Aristotle, in his *Rhetoric*, could utilise the observation that there is in fact often unanimous judgements in matters of morality within a society (at least among those in majority, or the wise, or the good; or among those whose judgement it is not possible to contradict). “Another topic is that from a previous judgement in regard to the same or a similar or contrary matter, if possible when the judgement was unanimous or the same at all times; if not, when it was at least that of the majority, or of the wise, either all or most, or of the good; or of the judges themselves or of those whose judgement they accept, or of those whose judgement it is not possible to contradict, for instance, those in authority, or of those whose judgement it is unseemly to contradict, for instance the gods, a father, or instructors...” *Rhetoric*, II. xxiii. 12, (Loeb Classical Library, 1926, reprinted 1991), p.309.

⁴⁸³ “Grundwerte und christliches Ethos” (Vortrag vor dem Politischen Klub in der Evangelischen Akademie Tutzing am 6.3.1976), in: *Sozialethik zwischen Tradition und Vernunft* (1977), pp.145-174. There is without doubt a difference in terminology between Rawls and Honecker (which seems to be independent of the fact that one of them uses the English language and the other one the German language). I don’t think that Rawls so easily would talk about “ground-values”, since Rawls’ notion of “values” is so closely linked to the different conceptions of the good. To me it seems as if Honecker – when dealing with problems like this – does not as clearly as Rawls distinguish between a teleological and a deontological level. But when this is made clear, one nevertheless has to admit that both Rawls and Honecker are very much concerned about a *common* morally based framework for coexistence and co-operation in pluralist societies.

⁴⁸⁴ *Sozialethik zwischen Tradition und Vernunft* (1977), p. 146f.

achieve a *workable* value-consensus in society without stressing the necessity of giving ultimate reasons, – agreeing also on some particular kinds of “Letztbegründungen”, which all parties can accept as true. Honecker’s pragmatic approach implies that a common value basis of society can be recognised theologically and also be considered justifiable from various philosophical, religious or non-religious points of view. Thus Honecker seems to come rather close to Rawls’ idea of an overlapping consensus.

But shouldn’t theology have more absolute norms and standards of its own for assessing the institutional scheme of society and for recognising or rejecting the moral values playing a role within the political domain? Certainly, but Honecker realises that questions like this might pose a dilemma for a Lutheran social ethics. Part of the problem is, according to Honecker, that the Lutheran church lacks an established tradition of natural law, which can be practically utilised, clearly interpreted and authoritatively applied (by the church-institution). And even applying the *sola-scriptura-principle* has become increasingly problematic (especially in matters of social-ethics) due to actual knowledge and insight into hermeneutic problems.⁴⁸⁵ It should therefore not be denied that the Lutheran church (and the Catholic church as well) faces some fundamental hermeneutic problems when conceiving of social ethics in modern societies.

“Das Verhältnis von Grundwerten und christlicher Ethik stellt vor das Problem eines theologischen Ansatzes von Ethik überhaupt. Während die katholische Moraltheologie ihre Normen begründet aus einem Naturrecht, ist der Ansatz evangelischer Ethik gegenwärtig umstritten und wird als problematisch erfahren. Auch zwischen der Grundwerteauffassung, wie sie dem Konsensus einer demokratischen Gesellschaft zugrundeliegt, und der katholischen Naturrechtsdoktrin kann es zu Spannungen und Gegensätzen kommen ... Evangelische Ethik steht hier vor größeren

⁴⁸⁵ In an article from 1984, concerned with problems arising when the church or representative committees within the church make utterances in matters which are set on the political agenda, Honecker discusses two central criteria often referred to by those giving such utterances. Statements should be both “Schriftgemäß” and “Sachgemäß”. And then he continues by discussing these criteria: “An dieser Darstellung seien zwei Fragen angeknüpft. Einmal: Sind die Kriterien Sachgemäßheit und Schriftgemäßheit zureichend? Und ferner: Wie ist das Verhältnis beider Kriterien zueinander zu verstehen? Weder das Kriterium Sachgemäßheit noch das Kriterium Schriftgemäßheit ist als solches zureichend präzise. Sachgemäßheit kann man sowohl das nennen, was machbar, was realisierbar, als auch das was menschlich zumutbar ist... Das Kriterium der Sachgemäßheit enthält also mehr Fragestellungen und Aspekte, als sich in dem *einen* Begriff zusammenfassen lassen. Es bedarf folglich einer näheren und genaueren Entfaltung. Dagegen ist das Kriterium der Schriftgemäßheit zunächst einmal nur ein formales Kriterium: Man kann es im Sinne eines unreflektierten Biblizismus verstehen. Dann stellt sich freilich das Problem der Auslegung und Vergegenwärtigung des Schriftwortes. Zu zahlreichen aktuellen politischen und ethischen Fragen ist außerdem ohne gewaltsame Umdeutung kein Bibelwort beizubringen. Will man nicht in exegetische Willkür verfallen, dann bleibt häufig nur noch das biblische Zitat als ornamentale Verzierung oder ganz allgemeiner Vorspruch. Außerdem gibt es zwischen Bibeltext und Gegenwart eine vilfältige Auslegungsgeschichte, von der man nicht absehen kann.” M. Honecker, “Sind Denkschriften ‘kirchliche Lehre’?”, *Zeitschrift für Theologie und Kirche* (1984), p.251f.

Problemen, sofern sie einem biblizistischen und exklusiv christozentrischen Ansatz folgt, nicht aber, wenn sie sich auf die Evidenz des Humanum beruft. Es liegt auf der Hand, einmal, daß in einer religiös und weltanschaulich pluralistischen Gesellschaft nicht eine biblische Legitimation ethischer Werte verbindlich gemacht werden kann. Dazu kommt, daß für eine Reihe aktueller und konkreter Probleme der Grundwerte gar keine Auskunft aus der Bibel zu erlangen ist. Denn diese Probleme lagen der gesellschaftlichen Situation wie der Lebenswelt der biblischen Autoren noch geschichtlich völlig fern. Allenfalls eine bestimmte Grundeinstellung läßt sich daher den biblischen Texten entnehmen.⁴⁸⁶

It is not difficult to agree roughly with Honecker's analysis. But even if one, as the result of such a view, should abstain from *theological* legitimation of particular political values or social projects in modern societies, Honecker has to admit that a certain "Grundeinstellung", essentially in accordance with the Bible, should be of some significance in matters of politics. But Honecker is really rather vague about what this should mean.⁴⁸⁷ But what Honecker certainly cannot approve of is an approach to the political, which assumes an exclusive set of religiously revealed understandings and unquestionable political insight, thereby bringing religious citizens in a privileged position of better knowledge in matters concerning social co-operation and the institutional framework to be shared by all citizens.

II. Let it here be stressed that the more "pragmatic" approach, taken by Honecker to the question of a value-consensus in society, is theologically motivated. The "co-operative attitude" he takes concerning the political ordering of matters of this world, can theologically be justified by reference to the central theological distinction between "law"⁴⁸⁸ and gospel". In a theological perspective it is, according to Honecker, the "*usus*-aspect"

⁴⁸⁶ M. Honecker, *Sozialethik Zwischen Tradition und Vernunft* (1977), p. 153.

⁴⁸⁷ Honecker suggests, with reference to Gerhard Ebeling, that there might be a certain approach in matters of social ethics and politics, which might be considered consistent with the Scripture. But he adds: "Dabei geht es um eine Grundorientierung, um die Grundlegung einer Lebensanschauung, deren Quelle die Bibel ist, die aber nicht das formale Kriterium der Schriftgemäßheit an jede einzelne politisch-ethische Aussage anlegen kann. Leitfrage wäre dann die Vereinbarkeit eines ethischen und politischen Handelns mit Evangelium und Glaube, aber nicht die Frage, wie dies im konkreten Sachverhalt aus Evangelium und Christuszeugnis im einzelnen zu begründen, abzuleiten sei." M. Honecker, "Sind Denkschriften 'kirchliche Lehre'?", *Zeitschrift für Theologie und Kirche* (1984), p.252.

⁴⁸⁸ I will put the term "law" in quotation-marks when it is used in the strictly *theological* meaning. Thereby I try to meet the double concern of Gerhard Ebeling who emphasises both that: "Die Theologie hat selbstverständlich über einer spezifisch theologischen Begriffsbildung zu wachen" and also that: "Dabei kann es sich nur in Ausnahmefällen um den Gebrauch theologischer Sondertermini handeln. Vornehmlich geht es um die theologische begriffliche Präzisierung von Wörtern, die auch sonst, im alltäglichen Leben sowie in anderen Wissenschaften im Gebrauch sind." G. Ebeling, *Wort und Glaube I* (1967), p.257. Ebeling also underlines "daß weder der biblische Sprachgebrauch in sich einhellig ist, noch der reformatorische mit diesem identisch ist, noch auch unsere eigene theologische Sprache einfach die der Bibel oder die der Reformation sein kann." *Ibid.*, 261.

of the law, which is primarily to be focused, not the question of its “Herkunft”. This supports the more pragmatic approach.⁴⁸⁹

Since one might theologically assume that what the “law” requires, has been written in the hearts of all human beings, God’s law should not be considered something entirely *new*, according to Honecker. It should not be considered a new moral codex with which all human beings are at the very outset supposed to be so unfamiliar that it must be taught them like a foreign language. From a substantial point of view is God’s law both universally recognisable and accessible to human reason.⁴⁹⁰ So far I think that Honecker comes rather close to Gerhard Ebeling, who even more strongly stresses that the characteristic of God’s “law” is not to be found in some particular substantial paragraphs or rules. What God’s “law” first of all focuses upon, is the capacity of man to comply with it. And so Ebeling emphasises that;

“...sofern man sagen kann, daß das Gesetz Erkenntnis wirkt, handelt es sich nicht um Erkenntnis des Guten, sondern um Erkenntnis der Sünde; nicht um Erkenntnis dessen, was geschehen soll, sondern um Erkenntnis dessen, was geschehen ist; nicht um Erkenntnis der offenen, sondern um Erkenntnis der ausgeschlossenen und verlorenen Möglichkeiten.”⁴⁹¹

It seems as if Honecker, just as Gerhard Ebeling, will avoid seeing the characteristics of

⁴⁸⁹ Let it, however, be added that it is theologically decisive that it is God who *uses* the “law” in different ways and for different purposes. He should be considered the ultimate logical “author”. God has to be taken both as the “lawgiver” and as the primary “user” of the law. The latter aspect is implicit in the last part of the formulations used in Romans 2,14f.: “When Gentiles who have not the law do by nature what the law requires, they are a law to themselves, even though they do not have the law. They show that what the law requires is written on their hearts.” (Quoted after Nestle-Aland *Greek-English New Testament*, 1979) Let it, however, be remarked that in a strict sense it is τὸ ἔργον τοῦ νόμου which is written into their hearts by the Creator.

⁴⁹⁰ “Denn nur wenn man davon ausgehen kann, daß die ethische Forderung allgemein bekannt ist, kann ihre universale Geltung behauptet werden. So kann Luther sagen ‘Nam lex iam adest, ist schon da. Lex prius adest in facto.’ [WA 39 I, 477,7].” M. Honecker, *Sozialethik zwischen Tradition und Vernunft* (1977), p. 154f. To avoid misunderstandings I want, however, to add: The fact that one takes as a decisive and general premise in theological social ethics “daß die ethische Forderung allgemein bekannt ist”, should of course not exclude the possibility that God might also address certain people in a particular way.

⁴⁹¹ G. Ebeling, *Wort und Glaube I* (1967), p.257 And so he also emphasises that: “Von daher kann das ins Herz geschriebene Gesetz nicht als ein spezifizierter Gotteskodex interpretiert werden, sondern nur als das Angegangensein von der schlechthinigen Fraglichkeit. Das ins Herz geschriebene Gesetz ist gewissermaßen das dem Menschen eingebrannte Fragezeichen: Wo bist du? Es wäre nun Sache einer ausgeführten Lehre vom Gesetz, aufzuzeigen, wie dieses dem Menschen eingebrannte Fragezeichen die ganze den Menschen angehende Wirklichkeit in Gang setzt und zur Sprache bringt, somit zur Interpretation der Wirklichkeit herausfordert und sich dann auch in positiven Gesetzen niederschlägt. So wird die lex ipsa allerdings nur in geschichtlicher Variabilität konkret. Aber jede positive lex ist darum auch notwendig dem kritischen Vorzeichen der lex ipsa zu unterstellen, d.h. des geschehenden Gesetzes, demgegenüber jedes positive Gesetz bloße Folge bzw. Interpretament ist. Damit gewinnen wir einen weiteren Hinweis auf die begriffliche Fassung von Gesetz im theologischen Sinne. Die dem Gesets primär angemessene Fragestellung ist die nach seinem Vermögen.” *Ibid.* p.290f.

the “law” of God mainly in certain substantial standards, thereby reducing it to a “Gesetzeskodex” which can be compared or contrasted to other law-codes or law-conceptions within society. Of course no law can be without a substantial content. For St. Paul the Jewish “tora” could mostly be referred to as the materialised “law”⁴⁹².

But I think that Honecker wishes to stress that from a merely substantial point of view the proprium of the “law”, taken in a genuinely theological sense, can never be found. Rather, from a merely substantial perspective one should accept that God’s “law” might manifest itself in the practice of individuals and different groups as well as in the very groundvalues and in the scheme and the laws of society.⁴⁹³ If basic standards of humanity (“das Humanum”) penetrate the ground-values and institutional scheme of society, why shouldn’t one say that *what* God wills for this world is – at least to some extent – articulated in the ground-scheme or in the institutionalised practice of society⁴⁹⁴, – even if no specific religious commitment is signalled.

III. It is required, however, to distinguish between two different ways the “law” can be *used*: an “usus theologicus legis” and an “usus politicus legis”. There is one aspect of this distinction, which should briefly be taken into account now, since it concerns the way the political domain is to be “limited” when seen in a theological perspective. When faced with God’s “law” persons are confronted with absolute and ultimate claims. This is the reason why Ebeling could say that “...sofern man sagen kann, daß das Gesetz Erkenntnis wirkt, handelt es sich nicht um Erkenntnis des Guten, sondern um Erkenntnis der Sünde...”⁴⁹⁵ In this context it has to be stressed that the theological notion of law

⁴⁹² This is made obvious by Ebeling when distinguishing between the understanding of “law” in St. Paul’s writings and in the theology of the Reformation: “Die am ehesten ins Auge fallende Verschiedenheit zwischen dem Paulinischen und dem reformatorischen *Gesetzesbegriff* ist die, daß Paulus unter no/moj normalerweise die Tora versteht, während die reformatorische Lehre vom Gesetz strenggenommen das jeden Menschen als Menschen angehende Gesetz meint.” G. Ebeling, *Wort und Glaube I* (1967), p.271. And he also makes it clear that: “Gewiss konnte Luther von dem grundsätzlichen christlichen Konsens seiner Zeit ausgehen, daß das Gesetz im strikten Sinne Gottes Gesetz ist und sich inhaltlich unbestritten in Texten wie den zehn Geboten, der Bergpredigt und dem Doppelgebot der Liebe darbierte.” G. Ebeling, “Usus politicus legis – usus politicus evangelii”, *Zeitschrift für Theologie und Kirche* (1982), p.331.

⁴⁹³ I think this is the reason why Honecker can write that: “Um über die Wirklichkeit ethisch und theologisch urteilen zu können, muß man diese zunächst einmal kennen und begreifen. Theologisch gesprochen: Um den usus politicus legis recht wahrnehmen zu können, muß man die Wirklichkeit, die konkrete Gestalt von Gesetz heute erkennen.” M. Honecker, “Sind Denkschriften ‘kirchlicher Lehre’?”, p.261, *Zeitschrift für Theologie und Kirche* (1984), p.261.

⁴⁹⁴ At least Honecker might be understood in this way when saying: “Eine solche theologische Auffassung der Grundwerte als eines Inbegriffs von Aspekten des Humanum entspricht der reformatorischen Lehre vom Gesetz.”, M. Honecker, *Sozialethik Zwischen Tradition und Vernunft* (1977), p. 154

⁴⁹⁵ G. Ebeling, *Wort und Glaube I* (1967), p.257

belongs within the wider distinction between law and gospel. Redemption from sin may be given in the gospel as proclaimed by the church.

But the way God uses his “law” is not necessarily in all respects to be interpreted, explained, mediated or canalised through the church-institution. And the distinction between an “*usus theologicus legis*” and an “*usus politicus legis*” reminds us that the “law” of God, as suggested already in Rom.2,14f, has more than just one particular “Sitz im Leben”. It is not another code of law which is revealed in the “*usus politicus*”, but it is another *use* of God’s “law”, – with another purpose and properly adjusted to another context.

“Aber im *usus politicus* soll das Gesetz ja nicht primär anklagen oder gar töten, sondern das Leben, wenn auch nicht schaffen, so doch pflegen. Deshalb muß die meist verengte Vorstellung vom *usus politicus legis* zu der ganzen Weite und zu dem Reichtum menschlicher Kultur hin geöffnet werden. Nicht etwa nur der christlichen.”⁴⁹⁶

This means that problems of social justice, political arrangements, liberties and rights might be properly handled theologically within the perspective of an “*usus politicus legis*”. Within this perspective one might aim at the best solutions given the realistically achievable and workable social arrangements available. From the perspective of “*usus politicus*” one is often faced with the question of more or less; this means that Honecker is ready to honour political projects as far as they in fact contribute to *more* justice in society. In moving from a strictly theological perspective on the “use of the law” to the perspective of an “*usus politicus legis*” Honecker in fact takes “absolutism” out of politics, making it a field of the relatively best.

“Damit relativiert die theologische Erkenntnis des Gesetzes alle Möglichkeiten menschlichen Handelns. Ethische Aufgabe kann es nicht sein, vollkommene Frei-

⁴⁹⁶ G.Ebeling, “*Usus politicus legis – usus politicus evangelii*”, *Zeitschrift für Theologie und Kirche* (1982), p. 333. And the text quoted continues as follows: “In der konkreten Ausgestaltung des *usus politicus legis* spielt in der Reformationszeit selbstverständlich noch die Idee des *Corpus Christianum* eine gewisse Rolle. Aber gerade Luther hat den *usus politicus legis* so konzipiert, daß jede Gestalt weltlicher Ordnung und Moral darunter fällt (innerhalb seines Gesichtskreises z.B. auch die Türken). Sein Grundverständnis hat sich von dem ohnehin damals schon brüchig werdenden *Corpus Christianum* unabhängig gemacht. Damit ist er dem Geschichtsverlauf weit vorausgeeilt. Wichtiger jedoch ist, daß selbst der Christ in seinem Handeln keine höhere Stufe erschwingt als die *iustitia civilis*, sofern man sie nicht leichtfertig zu etwas Minderem degradiert, sondern an der hohen, ja unüberbietbaren Aufgabe mißt, die Welt und das menschliche Leben inmitten der Kreatur zu erhalten.” *Ibid.* In his article “Sind Denkschriften ‘kirchliche Lehre’?”, *Zeitschrift für Theologie und Kirche* (1984) Honecker refers to Ebeling’s article, since Ebeling in his article applies the principle of an “*usus politicus legis*” on the so called “Friedensdenkschrift der EKD”.

heit, vollkommene Gerechtigkeit, vollkommene Solidarität zu verwirklichen und herzustellen, sondern allein mehr Freiheit zu ermöglichen, mehr Gerechtigkeit zu schaffen und mehr Solidarität zu verwirklichen. Indem eine theologische Deutung des Gesetzes an die Grenzen des auch ethisch Machbaren erinnert, relativiert sie alles gesellschaftliche Handeln. Relativieren heißt freilich nicht, gleichgültig und sinnlos machen. Vielmehr hält Theologie und Verkündigung gerade damit dazu an, das Relative in seiner Relativität unbedingt ernst zu nehmen. Denn gerade nur dann, wenn das Relative über sich hinausweist, ermöglicht es ein Handeln, das sich weder überschätzt noch verzweifelt resigniert.“⁴⁹⁷

Honecker might even appear to render all political arrangements and institutions a kind of “provisorium”. For the category of the “law” - in its “usus politicus” - applies to the present scheme of the world, which is fundamentally imperfect, marked by the power of sin and eschatologically relativised. In a world thus constituted, the relatively best is often the most one can properly aim for.

IV. According to Honecker the “usus politicus legis” should be clearly distinguished but not isolated from the “usus theologicus legis”. The notion of the “relative” is only meaningful in connection with an idea of the “absolute” which must be maintained.

Honecker takes the transition from the usus politicus legis to the usus theologicus legis to be existentially urgent.⁴⁹⁸ Thus the “usus politicus” might very well become transparent for an “usus theologicus legis” (the proper “use” of which is closely connected with the proclamation of the gospel). Human existence under the perspective of “usus politicus legis” will necessarily actualise questions, apories and dilemmas that cannot be solved with just political means.⁴⁹⁹ “Law” means in itself that human beings are confronted with standards, obligations, norms and not least the fundamental constraints of life itself. Thereby the “law” will also demonstrate that moral shortcoming, guilt and sin

⁴⁹⁷ M. Honecker, *Sozialethik Zwischen Tradition und Vernunft* (1977), p. 156.

⁴⁹⁸ In fact it seems as if Honecker is of the opinion that this “transition” should be considered (nearly) cogent for human beings, - provided they are honest. It might now be tempting also to mention that Rawls takes for granted that being a human being implies having some final ends (for instance of a religious nature or of a deeper philosophical kind), which can in no way be satisfied by merely political means. People necessarily have also (three) higher order interests, - the second of which is characterised as “a determinate conception of the good, that is, a conception specified by certain definite final ends, attachments, and loyalties to particular persons and institutions, and interpreted in the light of some comprehensive religious, philosophical, or moral doctrines.” J. Rawls, *Political Liberalism* (1993), p.74.

⁴⁹⁹ “Die lutherische Lehre betont daher, daß der theologische Gebrauch des Gesetzes, in Vergleich zum politischen, der eigentliche ist. Was aber heißt das? Die christliche Verkündigung hat auf Grenzen des Ethischen und des ethisch zu verantwortenden aufmerksam zu machen. Gerade am Phänomen des Ethischen brechen Probleme und Aporien auf, die ethisch nicht lösbar sind, ja die den Horizont des Ethischen sprengen. Der Mensch erfährt in der Begegnung mit dem ethischen Anspruch einen Absoluten Anspruch.” M. Honecker, *Sozialethik Zwischen Tradition und Vernunft* (1977), p. 155

belong inevitably to the *conditio humana*, – and it even reminds us that the ultimate boundary of man is death.⁵⁰⁰

Theological social ethics should always maintain a perspective which transcends the merely political and the strictly moral. Ultimately the “*usus politicus legis*” is therefore dialectically related to the gospel; – in the end the “law” has to abdicate from its hard rule, giving way to the mercy of God. Thus *theological* social ethics ultimately transcend a strictly political-moral perspective.⁵⁰¹ Pointing to the limits of the political (and the social-ethical) may be one of the most important political contributions that theology can bring. Theology should inevitably remind us of the very limits of politics.

So far, I will conclude by saying: When theology encounters phrases like “an overlapping consensus”, it will naturally interpret them in accordance with the models and hermeneutic keys with which theology is already well acquainted. And the theological notion of “law”, which should not be taken mainly as a code of laws and substantial paragraphs⁵⁰², might be transformed into a key-term within a theological hermeneutic – not just when concerned with the interpretation of Bible-texts – but also when approach-

⁵⁰⁰ “Wenn der Mensch sich an Grundwerten ausrichtet, so hat er Maßstäbe vor sich, hinter denen er stets und grundsätzlich zurückbleibt, denen er niemals und unbedingt zu genügen vermag. Die Realität des Menschseins setzt dem Unbedingten Grenzen. Schuld, Schicksal und Tod ziehen Grenzen.” M.Honecker, *Sozialethik Zwischen Tradition und Vernunft* (1977), p. 155

⁵⁰¹ There can be little doubt that Honecker stresses the (relative) autonomy of politics, – as well as of ethics more generally. One might therefore ask what the genuinely Christian contribution within these fields could appropriately be, according to Honecker: “Wie aber können Ethik [as well as politics] und Theologie dann überhaupt noch in Beziehung gebracht werden, wenn man die Autonomie der Ethik anerkennt? Dafür sehe ich zwei Ansätze. a) Die Frage ‘Why to be moral’, warum überhaupt ethisch verantwortlich handeln, ist eine Frage, die zwar *in* der Ethik selbst entsteht, aber nicht mehr *von* der Ethik beantwortet werden kann. ... Warum soll ich mich überhaupt rational, vernünftig, human verhalten? Eine Antwort auf diese Frage kann nicht mehr *nur* ethisch gegeben werden. Hier ist eine Antwort von einer metaethischen, einer metaphysischen oder theologischen Perspektive her möglich und wahrscheinlich sogar unvermeidlich. b) Der andere Ansatz geht aus von den Grenzen des Ethischen. Ethik umfaßt gerade nicht das Ganze menschlichen Lebens. Es gibt nämlich Phänomene menschlichen Daseins, die nicht mehr allein ethisch zu bewältigen sind durch verantwortliches und vernünftiges Urteilen und Handeln. Dafür sei verwiesen auf Schuld, Schicksal, Tod und Leiden, welche menschlichem Handeln Grenzen ziehen. Zur Einsicht in die Aufgabe und Verantwortung von Ethik gehört deswegen auch die Einsicht in die Grenzen der Ethik, des Ethischen.” M. Honecker, “Erfahrung und Entscheidung”, *Zeitschrift für Theologie und Kirche* (1978), p.501. What concerns the two “Ansätze” that according to Honecker transcend the merely ethical (and the merely political), the former “Ansatz” (concerned with the question ‘why be moral?’) is of less indirect importance within the field of politics than the latter “Ansatz”(concerned with the question about the existential limits).

⁵⁰² I think this is a main concern in Honecker’s writings, for which he seeks support from Gerhard Ebeling, whom he quotes, and from Martin Luther. “Gesetz ist ferner ‘für Luther nicht eine statuarische geoffenbarte Norm, zu der sich der Mensch so oder so verhält, sondern Gesetz ist für Luther eine existentielle Kategorie, in der die theologische Interpretation des faktischen Menschseins zusammengeballt

ing issues of social ethics.

More precisely: The very distinction drawn between “law and gospel” (including the distinction between the different *uses* of the theological notion of “law”), provides a means for distinguishing properly between the requirements of Christian faith and secular political action, and provides us with a “device” for interpreting and understanding consensual moral/political projects, – as developed for instance by Rawls.

I have now at least arrived at a theological “Ortsbestimmung”⁵⁰³ for handling theologically political and moral questions concerning a *shared* framework of coexistence and social co-operation. Ebeling gives an “Ortsbestimmung des Politischen” which is very much in accordance with Honecker’s approach. And it is an “Ortsbestimmung” which also maintains, as an ultimate perspective on the political domain, that it is subject to the will of God, simultaneously, however, making the actual ordering of society a *shared* task for all human beings, endowed as they are by their Creator with reason and moral sense.

There can be little doubt that Honecker’s conception of theological ethics assumes a basic confidence in human reason in matters of social ethics, – even if theological ethics can never ignore the apories, dilemmas, shortcoming and the selfishness arising within the political and social domain. But by employing the notion of an “*usus politicus legis*” as Honecker in fact does, one can at least make it very clear that the field of politics and social ethics should be considered *common ground*.⁵⁰⁴ And there is – theologically speaking. – reason to hope that it might be possible to agree upon some moral standards within the domain of the political.

ist.” [Cf. G. Ebeling: Wort und Glaube I, 3. Aufl. 1967, S.64f.]. *Sozialethik Zwischen Tradition und Vernunft* (1977), p. 154f

⁵⁰³ This term is taken – not directly from Honecker, but from Gerhard Ebeling. When discussing the phrase “*usus politicus legis*” within the wider framework of a distinction between law and gospel, he makes it clear that the “formula” is not developed to get a “...Neben- und Abstellgeleise für solcherlei Fragen der Weltverantwortung, welche die Theologie von sich abschiebt. Diese Formel ist vielmehr eine zentral theologische Ortsbestimmung des Politischen.” G.Ebeling, “*Usus politicus legis – usus politicus evangelii*”, *Zeitschrift für Theologie und Kirche* (1982), p.325.

⁵⁰⁴ The meaning of this cannot be that reference to religion, belief-systems and one’s comprehensive moral doctrines should entirely be excluded from the field of politics. These problems will be discussed more thoroughly later.

4.6. A consensus – backed up by common sense morality?

As far as I can see it may be possible to find in Rawls' theory, as expressed both in *A Theory of Justice* and in *Political Liberalism*, a double fundament⁵⁰⁵:

First there is the *constructivist* basis of his theory. He models hypothetically a contract-situation where a consensual basis for a common institutional framework can be *fairly* established – as a thought-experiment. In the hypothetically modelled original position, which provides us with a simplified constructed model, where the number of variables can be kept low, it should be possible to conceive of the most appropriate principles of justice for the scheme of social co-operation by pure procedural proceeding. Such an initial choice-situation has to be modelled in a way that makes the (fictitious) contractors concentrate just on settling the most essential and fair terms of coexistence, which can thereafter reasonable serve the testing of real political institutional schemes.

In addition Rawls hopes that there are among citizens, either they are religious or non-religious, *sufficient moral resources*, some shared intuitions about the right, an internalised set of natural duties, and not least a fundamental sense of justice, making it possible for people to secure a just scheme of society over time.

In concluding this chapter it is the second point that I primarily wish to stress. As already underlined, I did not find Wolfgang Kersting's critique of Rawls for being "parasitic" on existing doctrines correct, but it may be easier to follow Kersting when emphasising that Rawls is to a wide extent dependent on common-sense morality for developing the conception of justice. Kersting holds that;

“... die Gerechtigkeitsvorstellungen gar nicht aus dem rationalen Selbstinteresse gewonnen [sind], sondern aus den die Rahmenbedingungen der Verfassungsent-scheidung bestimmenden Fairneßvorstellungen des common sense. Die Interessenkalkulation der Verschleierte produziert genau die Gerechtigkeitsprinzipien, die in den Definitionsmerkmalen der Wahlsituation als a priori gültige moralische Korrek-tive individueller Vorteilssuche bereits eingelassen waren. Oder anders formuliert: Der Schleier der Unwissenheit entindividualisiert die Parteien des Urzustandes, ent-individualisiert das Individuum der ökonomischen Vernunft so gründlich, daß es aufs Haar dem allgemeinen Subjekt der vernunftbegründeten Moralphilosophie gleicht, dessen Position wir alle als vernünftige Wesen einnehmen können und ein-nehmen müssen, um eine unparteiische, moralische Betrachtungsperspektive auf

⁵⁰⁵ Of course both aspects are not equally stressed in both of these works.

unser eigenes Handeln und auf die Handlungen anderer zu gewinnen.⁵⁰⁶

According to Kersting common-sense-values are even necessary for the Rawlsian contract-argument to hold. And in Rawls' more recent writings he stresses even more than earlier the importance of taking the point of departure from certain values, achievements, norms and ideas already inherent in one's political culture. And it seems as if the idea of an overlapping consensus, elaborated by Rawls several years after he wrote *A Theory of Justice*, is as such basically rooted in common-sense morality.

I have stressed that the Rawlsian conception of an overlapping consensus is initially worked out independently of the existing comprehensive views, thereby making it possible that it could reflect some moral assumptions, which might be supposed to be *commonly* acceptable. Thus an "overlap" is not simply to be established by seeking the lowest common denominator between all the endorsing parties, i.e. the different comprehensive doctrines. For an overlapping consensus to be stable and hold it should in itself be *morally* grounded at the very outset. It has to be based both on elementary natural duties⁵⁰⁷, man's moral capacity *and* on a basic but thin theory of the good.⁵⁰⁸

As far as I can see Rawls' idea of an overlapping consensus draws heavily on the fact

⁵⁰⁶ W. Kersting, *Die politische Philosophie des Gesellschaftsvertrags* (1994), p. 274. The common-sense-perspective is very often stressed in Kersting's more popular book on Rawls too: "Rawls' dynamisiertes Kohärenzmodell verwickelt die wohlüberlegten Gerechtigkeitsurteile des Common sense und die philosophische, prinzipienlogische Explikation der ihnen zugrunde liegenden formalen und materialen moralischen Vorstellungen gleichermaßen in einen Lernprozeß. Common sense und philosophische Ethik arbeiten sich aneinander ab, bis ein Zustand erreicht ist, in dem moralische Common sense die philosophische Theorie als Explikation seiner Grundanschauungen akzeptiert und ihr damit zugleich natürlich auch lebensweltliche Unterstützung verschafft." W. Kersting, *John Rawls zur Einführung* (1993), p.121f.

⁵⁰⁷ The fact of natural duties (and rights) has obviously no explicit place in Rawls' latest book about *Political Liberalism*. A reason for that may be that Rawls assumes that "a feature of natural duties is that they hold between persons irrespective of their institutional relationship; they obtain between all as equal moral persons." *A Theory of Justice* (1971), p.115. And Rawls' main concern is obviously with the institutions of society. The phenomenon of natural duties is however far more explicated in *A Theory of Justice*: "The following are examples of natural duties: The duty of help [to] another when he is in need or jeopardy, provided that one can do so without excessive risk or loss to oneself; the duty not to harm or injure another, and the duty not to inflict unnecessary suffering. The first of these duties, the duty of mutual aid, is a positive duty in that it is a duty to do something good for another; whereas the last two duties are negative in that they require us not to do something that is bad. The distinction between positive and negative duties is intuitively clear in many cases, but often gives way. I shall not put any stress upon it. The distinction is important only in connection with the priority problem, since it seems plausible to hold that, when the distinction is clear, negative duties have more weight than positive ones." (*Ibid.* p.114). Elements of what one might call common (sense) morality are reflected in Rawls explanation of natural duties.

⁵⁰⁸ Men's conceptions of the good are countless, and so the conception of the right has to be settled prior to the good. Nevertheless Rawls sets out from a thin theory of the good, meaning that he initially has to

that there are among the citizens a sufficient sense of justice and, in fact, (culturally based) elements of a common morality. Of course these aspects are not thoroughly and philosophically discussed, systematically elaborated or integrated within Rawls' conception, – perhaps because he fears that to do so would render his liberal political conception unnecessarily comprehensive.⁵⁰⁹ But the conclusion seems nevertheless plausible: Rawls' conception of a morally grounded overlapping consensus is dependent on the fact of common (sense) morality, which is on vital points to be taken for granted.⁵¹⁰ Accordingly Rawls considers it appropriate that:

“... we turn ... to the fundamental ideas we seem to share through the public political culture. From these ideas we try to work out a political conception of justice congruent with our considered convictions on due reflection. Once this is done, citizens may within their comprehensive doctrines regard the political conception of justice as true, or reasonable, whatever their views allows.”⁵¹¹

Thus Rawls and Honecker share the basic assumption that there might exist a sufficient basis of shared moral resources upon which to establish and maintain a morally based political framework, – even in radically pluralist democracies, and even if an “overlap” cannot be expected to be substantially very “thick”. Although Rawls' project is rather limited (and focused), he draws, as far as I can see, nonetheless on aspects of a common-sense morality when setting out for a fair scheme of social co-operation based on consent.

4.6.1. EXCURSUS: Common-sense morality.

In drawing upon an assumption of *shared* moral resources as a basis for social co-operation, Rawls and Honecker place themselves firmly within a long tradition in Western philosophy (and theology). As human beings we are in possession of a *sensus communis*.⁵¹² Although the assumption of “sensus communis” has been differentiated and interpreted differently throughout history, nevertheless it might still provide us with

count with some primary human goods, like fundamental liberties, elementary rights and opportunities, material basics and a certain amount of self-esteem as universally accepted goods.

⁵⁰⁹ But this kind of comprehensiveness should not necessarily be controversial.

⁵¹⁰ A more general conclusion might be that the basic institutions of modern (welfare)societies are to a wide extent dependent on citizens moral sense if they shall properly fulfil their task.

⁵¹¹ J. Rawls, *Political Liberalism* (1993), p.150f.

⁵¹² Rawls does not explicitly go deeply into such ideas, most likely because it should have rendered his approach unnecessarily comprehensive, as already suggested. But in my opinion this might nevertheless

relevant background-material for understanding notions like “common reason”, “shared values”, “common sense of justice” or simply “common morality”. It might therefore be appropriate here to trace briefly the idea of “*sensus communis*” as it has developed along different lines:

- First there is the line focusing on the kind of “*sensorium*” that human creatures have in common. According to Aristotle (*De Anima*, II,1-2) the reports given by the five senses are to be organised, compared and held together by a superior sense, – a *sensus communis*. Thus the *sensus communis* is primarily seen as an “inner sense”, with the “synthetic” task of structuring and holding together the experiences we make when using our different senses. This “synthetic” process of inner ordering should fundamentally be taken to be essentially the same for all human beings.
- Secondly there is the line focusing mainly on the shared “*sententiae*” typical of rational beings. Stoic influence might sometimes be found here; as for instance in the assumption that man is endowed by nature (i.e. by God) with essential innate ideas (*koi/nai e)nnoi/ai*) of a highly moral significance. Although the Stoic inheritance might sometimes be obvious, this might, however, be characterised as a “modern line”, especially elaborated in the time following the age of Enlightenment with its confidence in a *ratio naturalis* and in the role of sound reason(ing). This is the line which is typically manifested by the so-called common-sense-tradition.

It is especially the “modern line”, that is of interest now. And I think that this line should also be divided into two sublimes:

- The idea of a *sensus communis* might be ascribed an essential role within *epistemology*. This means that commonly recognised knowledge is considered trustworthy and should accordingly be given an epistemological primacy, – thereby undermining radical scepticism. Common opinion can be taken as the most reliable indication of truth.⁵¹³ Since common opinion is trustworthy it should also outweigh merely private

be an appropriate point of departure when looking for some underlying premises for establishing a common platform, -thereby taking common reason as a shared basis.

⁵¹³ At the time of the Scottish school of the 18th century the common sense-philosophy was at its height. According to Thomas Reid, maybe the most prominent of these Scottish philosophers, common sense was assumed to provide us with the most reliable access to the truth. Reason should be closely allied with common sense. Representatives of the common-sense-philosophy sometimes applied this principle in matters of religion as well. Such elements within religion, which are considered contrary to our common

opinions that conflict with common sense.⁵¹⁴

- An appeal to *sensus communis* (common sense) might also be ascribed an essential role more specifically within the field of *morality*.⁵¹⁵ Common sense in the form of prudence or prudent behaviour, is considered essential for building and upholding a community or society. The possibility of reaching a moral consensus and arriving at shared opinions about standards of coexistence depends to a very wide degree on the force of common sense, which is therefore also considered fundamental for the readiness to honour common civic duties.

One might, however, appropriately distinguish between two views when considering the role that *sensus communis* plays in a moral connection:

- There is the *normative* view: As far as *sensus communis* is supposed to manifest itself in *sound* reason, *good* judgement and *recta ratio* as contrasted to *unsound*

sense and our sound *koi/nai e)nnoi/ai* should most appropriately be ruled out or revised. Thus common sense might even be taken as a reliable criterion for what should be disqualified as superstition and unreasonableness within religion and metaphysics. In matters of epistemological philosophy Reid reacted to Hume and therefore claimed that scientific knowledge had to be subordinated to sound common sense if it should in any way be possible to escape scepticism. Even George Berkeley saw it as a task to banish metaphysics and recall men to common sense. And it might with considerable right be said that: “Damit ist in England der Höhepunkt der Aufwärtung von ‘common sense’ als erkenntnistheoretischem Terminus erreicht: ‘common sense’ ist nun gleichbedeutend mit ‘the genuine uncorrupted judgement of all mankind’ [Berkeley: *Hylas* 3, p. 244] und steht für diejenigen Überzeugungen, die von allen Menschen zu allen Zeiten für wahr gehalten werden, über die also ein ‘common consent’ besteht.” Cf. *Historisches Wörterbuch der Philosophie*, (Vol. 9, 1995), p. 643. Immanuel Kant was critical of such a view, i.e.: he was critical of theories that tended to make common “applause” and merely conventional comprehensions a decisive criterion for truth. But Kant nevertheless emphasised that common sense might play a limited, but still important role in *practical* life. Let it now also be underlined that neither Rawls nor Honecker takes common-sense or conventional morality as sign of truth. Although both of them might honour a morally grounded consensus, neither of them defends a consensus-theory of truth.

⁵¹⁴ Within the field of religion this would mean that the widely recognised interpretation of the Christian doctrine might be used against private readings and against those referring to particular “revelations”.

⁵¹⁵ It might in this connection be worth mentioning that Giambattista Vico stressed the practical aspect of *sensus communis* in a way that in many respects sounds “modern”. In *Historisches Wörterbuch der Philosophie* (Eds. J. Ritter und K. Gründer, 1995), p. 644, it is underlined that Vico was of the opinion that *sensus communis* “bezieht sich vielmehr auf den Willen und erschließt den Menschen die ‘umane necessitá o utilitá’ [G. Vico: *Principj di una scienza nuova*, 1725, *Opere*, hg. G. Gentile/F. Nicolini (Bari 1914-41), 4/2,11], die ewigen Wahrheiten hinsichtlich ihres Handelns. Als ein solches spontanes praktisches Prinzip ist der s.c. ‘il criterio insegnato alle nazioni dalla provvidenza divina’ [Ibid. 4/2,13], ein allgemeiner Sinn für das Rechte und wird folglich nicht nur Quelle des Naturrechts, sondern zum Prinzip sozialer Tugend überhaupt.” I cannot here pursue these issues of common sense any further, let it nonetheless be mentioned that Henry Sidgwick for instance utilises an idea of common sense when developing his moral theory. An intuitive common-sense morality is taken for granted. And in earlier times the Earl of Shaftesbury can be considered an example of a philosopher taking common sense to imply a “sense of Publick Weal, and of the Common Interest; Love of the Community or Society, Natural Affection, Humanity, Obligingness, or that Sort of Civility, which rises from a just Sense of the common

reason, bad judgement and false use of ratio, “common-sense” based morality is taken to be genuinely normative.⁵¹⁶

- There is also the *conventional* view: Common-sense-morality can be taken to express the moral opinions (sententiae) that most people in society *in fact* hold. For even in pluralist societies there seems to be at least some moral principles and norms that most people actually share.⁵¹⁷ This might appropriately be characterised as an “average” common-sense-morality, a more or less coherent system of conventional standards.

Since both theological social ethics (Honecker) and political liberalism (Rawls) obviously relate more or less explicitly to common-sense-morality, I think that this widely shared moral basis might even be ascribed an intermediate function, for instance as an important station en route between a comprehensive theological view characterised as Christian and a liberal position like the Rawlsian one. Although vague and substantially flexible, it is in a way prior to both of them and something that both of them refer to and utilise. But simultaneously it has to be added that common sense morality is indeed vague.

Immanuel Kant finds for instance, when writing about common sense in “Kritik der Urteilskraft”⁵¹⁸, that much of what is honoured as a manifestation of *sensus communis*,

Rights of Mankind, and the natural Equality there is among those of the same Species.” The quotation is taken from *Historisches Wörterbuch der Philosophie*, (Vol. 9, 1995), p. 644.

⁵¹⁶ There are highly different ways of explaining the normative role of “common-sense”. It might be combined with some version of traditional natural law. Or it might be part of a religious moral view, according to which all human beings - simply by being created by God – are supposed to be endowed by the Creator with a capacity of participating in the divine logos and in the eternal moral law, what means that they are supposed to have an innate capacity for knowing what is right and what is in accordance with God’s will, – simply by using the moral capacities they have got, i.e. sound reason. But since common-sense insight is vague and is often taken by religious people to be disturbed by sin, there might be a need for advice, interpretation and guidance (for instance by the church). Of course such ways of clarifying the implications of common-sense morality would end up with highly comprehensive – and most likely rather controversial – moral doctrines. Therefore Rawls might for instance combine the common-sense approach with the contract-idea, which is assumed to provide for the binding character of the agreement. In passing, let me say that there seems in any case to be much more to common-sense-morality than just an empirical interest in finding out (by means of statistical surveys) what most people *actually* believes.

⁵¹⁷ Such values might be identified by using value-surveys.

⁵¹⁸ I use the edition of Kant’s works in 10 volumes, published by Wissenschaftliche Buchgesellschaft (WBG), Darmstadt, 1968. *Kritik der Urteilskraft*, Vol. 8, pp. 237 - 625. (The first edition of *Kritik der Urteilskraft* was published in Berlin 1790, the second revised edition in 1973 and the third revised edition in 1799. All these editions are reflected in the WBG-edition). The chapter that I particularly refer to in this connection is “§ 40. Vom Geschmacke als einer Art von sensus communis”, pp.388-392.

is just an expression of “das vulgare, was man allenthalben antrifft”.⁵¹⁹

Both Rawls and Honecker, who draw heavily on the fact of common-sense-morality, are very much concerned about avoiding merely “applauding” conventional morality, when seeking a shared basis for an overlapping consensus in modern societies. They are both aiming at common standards, which can be morally binding on all parties, independent of the shifting “applause” of convention.

⁵¹⁹ This critique from the side of Immanuel Kant might be well worth considering: “Der gemeine Menschenverstand, den man, als bloß gesunden (noch nicht kultivierten) Verstand, für das geringste ansieht, dessen man nur immer sich von dem, *welcher* auf den Namen eines Menschen Anspruch macht, gewärtigen kann, hat daher auch die kränkende Ehre, mit dem Namen des Gemeinsinnes (sensus communis) belegt zu werden; und *zwar* so, daß man unter dem Worte gemein (nicht bloß in userer Sprache, die *hierin* wirklich eine Zweideutigkeit enthält, sondern auch in mancher andern) so viel als das vulgare, was man allenthalben antrifft, versteht, welches zu besitzen schlechterdings kein Verdienst oder Vorzug ist.” Cf. I. Kant, *Kritik der Urteilskraft*, (§ 40), 1790, (WBG, 1968, Vol. 8), p. 389.

5. CHRISTIAN FAITH – PUBLIC REASON

5.1. *The problem*

Both Honecker and Rawls agree that a clear distinction has to be made between political (public) reason and Christian faith⁵²⁰ (or between “the things that are Caesar’s and ... the things that are God’s.” Cf. Matt. 22,21).

Honecker therefore draws on the doctrine of the two kingdoms as a suitable theological hermeneutic key for distinguishing properly. Let it here be emphasised that the distinction between the two realms – in a complex way – reflects the fundamental distinction between law and gospel as discussed in the previous chapter⁵²¹ (where an “Ortsbestimmung” for dealing theologically with Rawls’ consensual efforts was given).

Employing the doctrine of the two kingdoms seems, at first sight, to make it relatively easy to support Rawls’ idea of an overlapping consensus from a comprehensive theological position. For Rawls’ main thesis is that even if the different parties in modern pluralist societies might disagree fundamentally in matters of comprehensive moral doctrines and religious truth, it might nonetheless be possible for them within the political domain to arrive at some shared principles and standards that all parties can recognise as a *reasonable* basis for social coexistence. The idea of the *reasonable*, as a commonplace, is crucial in Rawls’ conception.

⁵²⁰ Let it, however, at the very outset be made quite clear that neither Honecker nor Rawls are just concerned about the relation between faith and reason in general, – as a typical problem within the field of philosophy of religion. They are concerned about practical reason as a means of solving shared problems which people within modern societies are facing.

⁵²¹ This complexity is for instance very clearly marked by G. Ebeling in his “Leitzätze zur Zweireichelehre”: “Das Verhältnis der Unterscheidung zwischen Gesetz und Evangelium zur Unterscheidung der beiden Reiche wäre verfehlt, wenn man dabei an eine Aufteilung in zwei Texte und an deren Verteilung auf zwei Wirklichkeitssektoren dächte, anstatt zu bedenken, daß das Evangelium nicht ohne das Gesetz und das Gesetz nicht ohne das Evangelium verstanden werden kann, daß sich darum mit der Verkündigung des Evangeliums stets Auslegung des Gesetzes auf seinen zweiten (geistlichen), aber auch auf seinen ersten (politischen) usus hin verbindet und deshalb mit der *iustitia fidei* stets die Befreiung zu rechter *iustitia civilis*, so daß man es in beiden Reichen mit Gott und seinem Liebeswillen zu tun hat, aber eben deshalb auf der Hut sein muß, nicht etwa das Evangelium in ein Gesetz der Welt zu pervertieren und so das Reich der Welt gar als Inbegriff des Evangeliums zu proklamieren.” G. Ebeling, *Wort und Glaube III* (1975), p.583f. Cf. M. Honecker, *Sozialethik zwischen Tradition und Vernunft* (1977), p.194. What concerns Honecker’s own approach, he makes it several times quite clear that he seeks support in Ebeling’s interpretation and application of the doctrine of the two kingdoms: “Sie stellt vor ‘die fundamentaltheologische Frage’, wie die Wirklichkeit des Wortes Gottes in der Wirklichkeit der Welt zu verantworten sei. Notwendig ist die Zweireichelehre daher um des Evangeliums willen. Sie ist dabei zugleich konkrete Einübung der Unterscheidung von Gesetz und Evangelium.” M. Honecker, *Sozialethik zwischen Tradition und Vernunft* (1977), p.180.

The doctrine of the two kingdoms, if really taking the worldly realm as a domain of political reason, would seem to go well with the idea of grounding an overlapping consensus which can be recognised by different parties as reasonable. Both Honecker and Rawls would stress the need to refrain from confusing genuinely religious doctrines with strictly political and reasonable conceptions. In a political context Honecker can, as strongly as Rawls, therefore open up for “die Bildung eines ethischen Konsensus durch rationale Diskussion...”⁵²²

At the same time, both Honecker and Rawls simply assume that people will most likely strive to achieve coherence between their religious and political commitments – relating somehow their commitment in matters involving political values to the comprehensive religious doctrine they hold.⁵²³ Thus it should be emphasised that the doctrine of the two kingdoms does not just help us keep things apart. Gerhard Ebeling, to whom Honecker often refers, seems right when he stresses that the doctrine of the two kingdoms gives an “Anleitung, das Verhältnis des Christen zu Welt gesamttheologisch zu bedenken.”⁵²⁴

When focusing on the doctrine of the two kingdoms, I will therefore consider both the question *how* the two “realms” are most properly to be distinguished and *how* they are to be related. And, in particular, I discuss what Honecker means when emphasising that “Das weltliche Regiment ist ein Regiment der Vernunft.”⁵²⁵ This approach may be of importance for the participation in political (public) reasoning? In modern pluralist well-ordered democracies a shared forum of public *reasoning* is of the greatest importance, since it makes it possible to deal with conflicts and handle common issues on terms that *all* citizens may reasonably endorse.

5.2. Distinguishing and relating ...

Citizens might be expected to support a political conception or endorse a political overlap *because of* the religious view they hold.⁵²⁶ But, simultaneously, religious and

⁵²² M. Honecker, *Sozialethik zwischen Tradition und Vernunft* (1977), p.200.

⁵²³ In Rawls’ case this can especially be observed in his most recent writings.

⁵²⁴ G.Ebeling, *Wort und Glaube III* (1975), p.574.

⁵²⁵ M. Honecker, *Grundriß der Sozialethik* (1995), p.20.

⁵²⁶ In his book about Rawls, Thomas Pogge rightly emphasises that: “Religiöse Menschen sollen nicht ihrer Religion zum Trotz, sondern ihr zuliebe kulant sein. Andererseits ist fraglich, ob man realistisch darauf hoffen kann, daß Menschen ihre religiöse, moralische oder philosophische Weltanschauung im Rawlsschen Sinne verstehen werden.” T. W. Pogge, *John Rawls* (1994), p. 138. (To be “kulant” is

strictly political approaches should, as I have emphasised, not be confused. I think that this raises the problem of drawing a distinction and establishing a proper correlation between a comprehensive (religious) view and a (liberal) political conception.

5.2.1. The doctrine of the two kingdoms – a suitable theological hermeneutic key?

According to Honecker the doctrine of the two kingdoms provides us with a proper *theological* point of departure for approaching the domain of the political. But he can also add that it should not be taken as the only and exclusive scheme for understanding theological social and political ethics properly.⁵²⁷ There are also various viable approaches to interpreting and applying the doctrine of the two kingdoms, and it is therefore difficult to offer a clear formulation of what should be considered the genuine Lutheran approach to this “doctrine”.⁵²⁸ And the growing amount of literature on this subject is overwhelming.⁵²⁹

according to Pogge to live up to a duty of civility, – a phenomenon which I shall later more thoroughly deal with. “Kulant”=“entgegenkommend” according to *DUDEN Deutsches Universal-Wörterbuch*, Munksgaards Ordbøger 1984, p.748.).

⁵²⁷ According to Honecker “wäre es ein Mißverständnis, wenn die Besinnung auf die Bedeutung der Zweireichelehre für eine evangelische Sozialethik dahingehend interpretiert würde, als schließe das andere mögliche Ansätze aus. Eine Pluralität theologischer Begründungen und Ansätze in der Sozialethik scheint mir unvermeidbar, theologisch sogar zulässig zu sein... Nicht alle theologischen Konzeptionen sind miteinander vereinbar, auch wenn man in Anschlag bringt, daß viele Alternativen, beispielsweise die emphatisch behauptete von Zweireichelehre und Königsherrschaft Christi, aber auch die von Zweireichelehre und Gesellschaftsdiakonie oder von Zweireichelehre und Eschatologie, in ihrer Zuspitzung konstruiert und auf die Gegenüberstellung von Schlagworten reduziert sind. Die Zweireichelehre ist also sicherlich nur *eine* theologische Voraussetzung evangelischer Sozialethik.” M. Honecker, *Sozialethik zwischen Tradition und Vernunft* (1977), p.176f.

⁵²⁸ “Inzwischen gibt es ganz verschiedene Typen der Deutung der Zweireichelehre, die manchmal nur die Berufung auf denselben Begriff gemeinsam haben. In der Zweireichethematik überschneiden sich nämlich verschiedene Fragestellungen. Es geht einmal um das Recht, sich auf Luthers theologische Weltdeutung berufen zu können. Die Zweireichelehre gilt dann als genuin lutherische Gesellschaftstheorie, also ein konfessionelles proprium, um dessen richtige Inanspruchnahme der Streit geht. Zum anderen wird die Zweireichelehre zugleich zur Interpretationskategorie heutiger Weltdeutung. Schließlich wird der Begriff Zweireichelehre polemisch verwendet, um eine als unpolitisch abgelehnte Kirche und Theologie zu brandmarken. Angesichts dieses Sachverhalts sprach schon 1957 *Johannes Heckel* vom ‘Irrgarten der Zweireichelehre’, *Gerhard Sauter* von einem ‘unentwirrbaren Problemknäuel’.” M. Honecker, *Grundriß der Sozialethik* (1995), p.14f.

⁵²⁹ It is due to the “rediscovery” of the doctrine of the two kingdoms in the 20th century that the amount of literature has grown so immensely. The book *Reich Gottes und Welt* (Wege der Forschung, CVII, Wissenschaftliche Buchgesellschaft, 1969) gives for instance an overview over how fast an intensive debate developed, - with a great amount of literature and articles on the issue. Honecker states that: “Im 19. Jahrhundert war eine ‘Zweireichelehre’ weithin unbekannt. Sie wurde im 20. Jahrhundert wiederentdeckt.” M. Honecker, *Grundriß der Sozialethik* (1995), p.14. But as can for instance be seen in a documentation of the “Umdeutungen der Zweireichelehre in 19. Jahrhundert”, *Texte zur Kirchen und Theologiegeschichte 21* (1975, eds. U.Duchrow, W.Huber, Louis Reith), the ideas inherent in the doctrine of the two kingdoms were in no way entirely neglected in the 19th century.

The terminology in itself does not provide us with a clear key to a right interpretation of the doctrine, as Honecker himself realises, even if there are certain features that should be taken as an integrated and permanent part of a doctrine of two realms.

It can hardly be denied that the terminology of the doctrine of the two kingdoms is ambiguous, and the ground-idea(s) not very perspicuous. And this is even more obvious from the fact that Luther himself appears to treat the more “spatial” term, *Reich*, as being interchangeable with the more “military” term *Regiment*. Thus the idea of two “kingdoms” can alternate with the idea of two “regiments”. Honecker on his part, however, sees no special reason to draw significant theological conclusions from the change of terminology.⁵³⁰

The doctrine of the two kingdoms cannot be understood independently of the *historical*

⁵³⁰ “Man kann folglich nicht eine Zweireichelehre von einer Zweiregimentenlehre unterscheiden. Regiment bedeutet Herrschaftsweise wie Herrschaftsbereich. Eine Studie der VELKD spricht von einer ‘zweifachen Regierweise’ Gottes. Man muß also die ganze Unbestimmtheit und Weite des Wortes ‘Reich’ beachten will man die Zweireichelehre nicht schematisierend interpretieren und mißdeuten.” M. Honecker, *Grundriß der Sozialethik* (1995), p.16. In this Honecker disagree for instance with Ulrich Duchrow, who takes the shift in terminology to be highly significant, as can for instance be seen in Duchrow’s study over Luther’s theology in *Christenheit und Weltverantwortung. Traditionsgeschichte und systematische Struktur der Zweireichelehre* (1970): “Man kann Luther den Vorwurf nicht ersparen, daß er durch ständig wechselnde *Begriffe* und terminologische Überschneidungen es seinen Lesern nicht leicht macht, den Gesamtkomplex des Reichsthemas zu überschauen, zumal er im einzelnen Fall stets nur Ausschnitte des Ganzen behandelt. Es scheint tatsächlich an vielen Stellen, als ob sich Reiche und Regimente einfach deckten, nicht zuletzt an der grundlegenden Stelle in ‘Von weltlicher Obrigkeit’ [WA 11,249,24ff.]. Außerdem spricht er unterschiedslos von zwei Reichen im Blick auf regnum dei und regnum diaboli einerseits und geistlichem Regiment und weltlichem Regiment andererseits. In letzterer Bedeutung ist besonders seine Rede vom Reich Gottes zur Rechten und zu Linken bekannt geworden. Ich habe bisher zur Verdeutlichung der Unterscheidung meist im Anschluß an die verschiedenen Traditionselemente von zwei civitates (regna = Herrschaftsverbände) einerseits und von zwei (drei) potestates (Gewalten, Regimenten, Institutionen) andererseits gesprochen. Will man eine einfache Bezeichnung als Reichelehre festhalten, so sollte man in Zukunft von *Dreireichelehre* sprechen, um die Dreiheit von *zwei Reichen Gottes und Reich des Bösen* deutlich zu machen. Da man aber damit keineswegs die Gesamtstruktur von Luthers Denken ausgedrückt hätte, sondern diese erst sichtbar wird, wenn man das weltliche Regiment im Zusammenhang der drei Regimente mit ihren jeweils zugeordneten menschlichen Ämtern sieht, sollte man von Reichs- und Regimentenlehre, Reichs- und Gewaltenlehre oder Reichs- und Institutionenlehre sprechen. Damit müßte man freilich anders als Luther den Begriff des Reichs auf die civitates eingrenzen, was Luther selbst nicht konsequent getan hat. Wie man sich terminologisch auch entscheiden mag, sachlich ist es von ausschlaggebender Bedeutung, daß es bei der Frage des weltlichen Regiments *nicht* um die *Person*, sondern um das *Werk* geht. Die Person gehört wie der Glaube vor Gott, das Werk wie die Liebe vor die Welt und die Menschen. Hat man einerseits die primäre Verknüpfung des regnum dei und regnum diaboli mit der Ebene der Person und des Glaubens und andererseits die primäre Verknüpfung des weltlichen Regiments mit der Ebene des Werks und der Liebe klar erkannt, so stellt sich bereits von Luthers Grundsatz, der Rechtfertigungslehre her die Frage der politischen Verhältnisse nicht auf der Ebene der Person, sondern des Werks.” (pp. 525-527). Here it seems as if Duchrow on his part is very much aware of the fact that he is to some extent really schematizing the texts of Luther.

situation within which it originally developed.⁵³¹ But this should not prevent us from reinterpreting it. In his most thorough discussion of the doctrine of the two realms, Honecker makes it quite clear “daß nicht eine historische Untersuchung, sondern eine vergegenwärtigende Reflexion beabsichtigt ist und daher vieles historisch Bedingte gar nicht zur Sprache kommt.”⁵³² Honecker intends a reinterpretation of the doctrine of the two kingdoms in the development of his theory of social ethics and in addressing specific questions concerning actual political value-formation. I take the same approach.

Let it be noted, however, that the mere fact that *Confessio Augustana*, with its central place among “Die Bekenntnisschriften der Evangelisch-Lutherischen Kirche”, draws on a distinction between the two “realms” (in Art. XVI and especially in XXVIII), secures a central and lasting place for this theological “doctrine” within the social ethics of Lutheran Churches.⁵³³

The doctrine of the two kingdoms has been intensely debated throughout the 20th century, as may be expected given the background of political crises and the apories⁵³⁴ which are raised thereby within Churches and within theological social ethics.

⁵³¹ Honecker emphasises that it is important to be very much aware of the historical background of the doctrine of the two kingdoms: “Zu beachten ist zunächst, daß die Unterscheidung der zwei Reiche bei *Luther* von der Kritik an mittelalterlichen Vorstellungen eines *corpus Christianum* und an der weltlichen Herrschaft von Papst und Bischöfen ausging. Die reformatorische Unterscheidung der zwei Reiche ist abgrenzend auf dem Hintergrund der mittelalterlichen Gesellschaftstheorie zu begreifen.” M. Honecker, *Grundriß der Sozialethik* (1995), p.14. But Honecker does for instance not discuss himself “in welcher Weise *Luther* einerseits auf *Augustin*’s Unterscheidung von *civitas dei* und *civitas terrena* fußt, andererseits die mittelalterliche Zweiswerter- und Zweigewaltenlehre zur Voraussetzung hat, gegen welche er sich kritisch abgrenzt.” M. Honecker, *Sozialethik zwischen Tradition und Vernunft* (1977), p. 217.

⁵³² M. Honecker, *Sozialethik zwischen Tradition und Vernunft* (1977), p.179f.

⁵³³ The doctrine was for instance taken in the Norwegian church during the time of the Nazi-occupation as a basis for opposing legitimately the Nazi-government. Cf. T. Austad, *Kirkens Grunn. Analyse av en kirkelig bekjennelse fra okkupasjonstiden 1940-45* (1974), (I can especially refer to Article V of “Kirkens Grunn”. Cf. T. Austad, p.30f.).

⁵³⁴ In his theological conception Honecker is very much concerned about what he characterises as the aporia of theological social ethics: “Diese Aporie einer theologischen Sozialethik steht hinter meinem ersten Versuch einer Neubestimmung ihres Ansatzes [*Konzept einer sozialetischen Theorie. Grundfragen evangelischer Sozialethik* (1971)]. Die Aporie entsteht aus dem Widerspruch von gesellschaftlichen Anforderungen einerseits und theologischen Ansprüchen andererseits. Sie führt vor das Dilemma, daß von sozialwissenschaftlicher Seite überhaupt die Möglichkeit einer theologischen Sozialethik bestritten wird, weil Theologie prinzipiell ohne Gesellschaftsbezug sei ... Beide Positionen machen, wenn auch von verschiedenen Perspektiven aus, auf dieselbe Aporie aufmerksam. Sie ist nun freilich keine spezifische konfessionelle, sondern eine generelle Aporie einer wie immer begründeten theologischen Soziallehre, die sich darum oft in einer traumatischen Suche nach dem ‘christlichen Proprium’ gesellschaftlichen und politischen Handelns äußert. Die Aporie ist deswegen nicht primär ein Problem der Praxis, sondern ein theoretisches Problem und sollte auch als solches erkannt werden.” M. Honecker, *Sozialethik zwischen Tradition und Vernunft* (1977), p.201f.

Nevertheless, Honecker himself takes the doctrine of the two kingdoms as a proper theological key in matters actualising the “Gesellschaftsbezug” of Christian faith (and of churches). Although I wrote initially that the “doctrine” can hardly be put into one formula, I will nonetheless try to do so now, – taking my point of departure from a scheme elaborated by Honecker which attempts to provide a pedagogic structure to some of the main ideas inherent in this specific model of the Reformation.⁵³⁵

“Schematisch kann man den Unterschied beider Reiche (Regimente) so darstellen:

	<i>Geistliches Regiment</i>	<i>Weltliches Regiment</i>
Regierweise:	durchs Wort, ohne Schwert	Schwert
Betroffene:	diejenigen, die fromm und gerecht werden wollen	die Bösen
Forum:	vor Gott (coram deo)	vor der Welt (coram mundo)
Ausübende (Träger):	Predigtamt	weltliche Obrigkeit
Ziel:	Ewiges Leben	Äußerer Friede
Wirkung:	geistliche Gerechtigkeit (iustitia spiritalis)	weltliche Gerechtigkeit (iustitia civilis)
Reichweite:	Person für sich (Christperson)	Person für andere im Amt (Welperson) ⁵³⁶

This table provides no more than a brief schematic account of some of the more general features that may be taken as historically and factually typical of the doctrine of the two kingdoms. Such a scheme might – in spite of the obvious lack of details and nuances, provide us with a basis for drawing special attention to some relevant aspects, which can thereafter be more thoroughly elaborated and discussed below.

⁵³⁵ Honecker states that “Die Zweireichelehre gilt als spezifisch reformatorisches Modell einer Zuordnung und Unterscheidung von Glauben und Weltverhalten, Evangelium und weltlicher Realität.” And immediately he adds that “Die Zweireichelehre Luthers ist zunächst aus der historischen Situation der Reformationszeitalters heraus zu verstehen. Luther hat mit ihrer Hilfe die Unabhängigkeit der weltlichen Gewalt von der geistlichen Gewalt begründet: Die Autorität der ‘Obrigkeit’, des ‘Staates’ ist nicht von der geistlichen Gewalt verliehen, also damals durch den Papst und die Bischöfe, wie die Zweigewaltenlehre des Mittelalters lehrte, sondern unabhängig davon von Gott selbst eingesetzt. Die Zweireichelehre tritt damit für eine ‘Entklerikalisierung’ der Welt ein.” M. Honecker, *Das Recht des Menschen. Einführung in die evangelische Sozialethik* (1978), p. 156.

⁵³⁶ This scheme is taken from M. Honecker, *Das Recht des Menschen. Einführung in die evangelische Sozialethik* (1978), p. 157.

The doctrine of the two kingdoms has a wider scope than just to serve as a theological “Grundformel einer politischen Ethik”⁵³⁷, even if it cannot be denied that the political implications are obvious enough. In the most fundamental way the domain of the political is thereby qualified as a “von Gott selbst zugewiesene Ort des Dienstes.”⁵³⁸ But the very ground-distinction, expressed in the doctrine of the two realms, is simultaneously fundamental and crucial insofar as it also prevents “die Auflösung der Theologie in Politik.”⁵³⁹ According to G. Ebeling (to whom Honecker often refers), the question “wie das Evangelium als Evangelium zu Gehör kommt” should be considered the most fundamental concern of the doctrine of the two kingdoms.⁵⁴⁰

A doctrine of *two* realms should effectively prevent a confusion of the gospel with strictly political obligations or with other purely “worldly” concerns. But it bears emphasising that both the keeping apart and the relating of the two realms are settled theologically through one and the same “Fundamentalunterscheidung”⁵⁴¹, as most basically expressed in the underlying dialectic between law and gospel. Thus Honecker

⁵³⁷ Honecker refers in this connection to Ebeling’s theses about the doctrine of the two kingdoms: “Ausgegangen sei in den folgenden Überlegungen, wie heute die Zweireichelehre interpretiert werden kann, vom hermeneutischen Verständnis der Zweireichelehre wie es G. Ebeling dargestellt hat. Für ihn ist die Zweireichelehre keine ethische Doktrin, erst recht nicht die Grundformel einer politischen Ethik, sondern das ‘Grundproblem der Dogmatik selbst’.” M. Honecker, *Sozialethik zwischen Tradition und Vernunft* (1977), p.180.

⁵³⁸ M. Honecker, *Sozialethik zwischen Tradition und Vernunft* (1977), p.218. Let it en passant be mentioned that the political perspective implied in the doctrine of the two kingdoms is a very wide one: “Sie enthält implizit bereits eine ‘Theologie der Welt’, eine theologische Würdigung der weltlichen (und politischen) Existenz der Christen.” *Ibid.*, p.218. Honecker emphasises the wide understanding but he has simultaneously in mind that the understanding of *the political* might also be more limited (as is for instance the case in political liberalism). Often I mark the difference between a wide and a more limited perspective on *the political* by using the phrase “strictly political” when concerned with Rawls’ political liberalism.

⁵³⁹ M. Honecker, *Sozialethik zwischen Tradition und Vernunft* (1977), p.218.

⁵⁴⁰ Cf. G.Ebeling’s article on “Die Notwendigkeit der Lehre von den zwei Reichen”, where he takes the doctrine of the two kingdoms as a fundamental theological distinction, closely related to the distinction between law and gospel: “Wenn die Lehre von den zwei Reichen in dieser Zuordnung zur Lehre von Gesetz und Evangelium verstanden sein will, dann steht dabei nicht irgendein Teilaspekt der Theologie, sondern das Fundamentalproblem der Theologie zur Debatte. Dieses Fundamentalproblem ist, schlicht gesagt, dies: wie das Evangelium als Evangelium zu Gehör kommt.” *Wort und Glaube I* (1967), p.410.

⁵⁴¹ The very notion “Fundamentalunterscheidung” is taken from Gerhard Ebelings article on “Das rechte Unterscheiden”(1987) published in *Wort und Glaube IV* (1995), where he among other things is very much concerned about “die Unterscheidung von Gesetz und Evangelium ... um das Evangelium als Thema der Theologie rein zu halten, muß das Gesetz dabei sein, jedoch in klarer Erfassung seiner Unterschiedenheit vom Evangelium. Die Theologie wird eben dadurch zu Pseudo-Theologie, daß sie es unterläßt, in sich selbst jene Fundamentalunterscheidung auszutragen. In dieser Deutlichkeit ist es sonst nie erfaßt worden: Was für die Theologie und das Theologesein konstitutiv ist, besteht in einer besonderen Weise des Unterscheidens. Sie gehört unabdingbar zur Sache der Theologie und zu rechter Wahrnehmung theologischer Verantwortung und Urteilskraft.” p.423.

– as already mentioned – takes the doctrine of the two kingdoms as an appropriate “Einübung der Unterscheidung von Gesetz und Evangelium.”⁵⁴²

In passing I would mention that the term “Fundamentaltheologie”, as used by Honecker and Ebeling, might itself sometimes be considered problematic in a Lutheran context.⁵⁴³

Without descending into the details of this debate (discussing for instance how far a Lutheran approach draws on the subject of “Fundamentaltheologie” as elaborated in a Catholic context), I will explain the programmatic double concern that Honecker and Ebeling have:

- In the “Fundamentaltheologie” traditional dogmatic and ethics are to be reconsidered from the point of view of what is taken as the most fundamental ground of Christian faith/theology itself.⁵⁴⁴ There is an inner-theological integrative concern, – i.e. the need for a theological discipline to counteract the atomism and specialisation stemming from the many topical divisions within contemporary theology.⁵⁴⁵
- But “Fundamentaltheologie” also reflects the terms of modernity in so far as it takes into account that “certainty”, – even about the most fundamental matters referred to in theology, has become profoundly problematic.⁵⁴⁶

⁵⁴² M. Honecker, *Sozialethik zwischen Tradition und Vernunft* (1977), p.180.

⁵⁴³ It will be beyond my scope here, however, to consider more thoroughly Honecker’s and Ebeling’s use of the notion of “Fundamentaltheologie”. I would instead like to refer to Ebeling’s article on the issue, “Erwägungen zu einer evangelischen Fundamentaltheologie” (1970), published in *Wort und Glaube IV* (1995, pp.377-419). And let me also add that the deeper and more fundamental perspective on the doctrine of the two realms, as stressed in Honecker’s (and Ebeling’s) fundamental-theological approach, should be suitable when considering Rawls’ demand for a support of an overlapping consensus *from within* the Christian doctrine itself (as well as from within other comprehensive doctrines).

⁵⁴⁴ “Das Fundamentum organicum ist die Schrift, also etwas, mit dem man umgehen, das man wie ein Werkzeug gebrauchen soll. Und das fundamentum substantiale ist Christus. Das kann ja nur heißen: nicht ein christologisches Dogma, sondern der lebendige Christus selbst; Fundament also verstanden als Inbegriff und Ursprung *des* Lebens, mit dem die Theologie zu tun hat, als lebenspendendes Leben.” G. Ebeling, *Wort und Glaube III* (1975), p.409.

⁵⁴⁵ G. Ebeling himself presents “Drei Postulate für die Aufgabe evangelischer Fundamentaltheologie. ... Das eine Postulat lautet: Integration theologischer Arbeit in die Sache der Theologie. Es wird nachgerade zum Ärgernis, daß die Spezialisierung und Multiplizierung theologischer Arbeit die Theologie selbst zum Verschwinden zu bringen droht. ... Ein zweites Postulat lautet: Konzentration des Christlichen auf den Grund des Glaubens. ... Endlich ein letztes Postulat: Lokalisation des Glaubens im natürlichen Leben.” Cf. “Erwägungen zu einer evangelischen Fundamentaltheologie” (1970) in G. Ebeling, *Wort und Glaube IV* (1995).

⁵⁴⁶ “Die Auseinandersetzung mit der Neuzeit nötigt die Theologie, sich mit dem traditionellen Theologieverständnis auseinanderzusetzen und über ihr eigenes Wesen Rechenschaft zu geben. Ob dabei die Frage nach der inneren Einheit und Struktur der Theologie als Wissenschaft im Vordergrund steht, wie das unter dem Stichwort ‘Enzyklopädie’ der Fall ist, oder ob die Bedrängnis durch die Anfechtung der Zeit die ‘Apologetik’ im herkömmlichen Sinne als in erster Linie dringlich erscheinen läßt oder ob der theolog-

The theological “Fundamentalunterscheidung”, as exposed in the distinction between two realms, serves – as underlined – to protect the gospel from being politically exploited, but Honecker simultaneously very clearly emphasises that the doctrine has “Folgerungen für die Ethik und die politischen Existenz der Christen...”⁵⁴⁷ Therefore Honecker can also take “die Zweireichelehre durchaus als die reformatorische Form ‘politischer’ Theologie...”⁵⁴⁸ This does, however, not mean that the doctrine of the two kingdoms provides us with a “scheme” for configuring and ordering the domain of the political according to divine instructions. “So verstanden kann sie [die Zweireichelehre] darum nicht das vorgegebene Ordnungsschema einer Sozialethik sein, sondern wird zu deren Hermeneutik, die sich im Vollzug theologischer Sozialethik selbst zu bewahren hat.”⁵⁴⁹ The doctrine of the two kingdoms expresses a fundamental theological distinction which provides us with an interpretative perspective applicable to different political schemes and practises. The very “Fundamentalunterscheidung”, as expressed in the theological distinction between two kingdoms, does not prescribe one particular political outcome. Therefore, the “Fundamentalunterscheidung” as presented by Honecker, is not incompatible with pluralism.

When considering the doctrine of the two kingdoms, however, one should really ask what is primarily to be distinguished. Different concerns (which might be combined in various ways) might be pursued:

Man kan “unterscheiden: **a**) das Verhältnis von Reich Christi und Reich der Welt oder das Verhältnis geistlich-weltlich überhaupt; zwischen der Christenheit bzw. den Erwählten und der Welt besteht ein exklusives, ein äonisches Verhältnis; zwei Reiche im Sinne der Interpretation Johannes Heckels stehen sich ausschließend gegenüber; **b**) das Verhältnis von ecclesia und politia (Mittelalter: sacerdotium und Imperium, Neuzeit: Kirche und Staat): hier besteht ein institutionelles Verhältnis; die beiden Größen erscheinen in dieser Dimension nicht als exklusiv, sondern als inklusiv und können als Regimente verstanden werden; **c**) das Verhältnis von persona privata und persona publica, die der Christ je als einzelner ist: in dieser Dimension handelt es sich um ein existenzielles Verhältnis, um zwei Hinsichten derselben

ischen Prinzipienlehre in Gestalt einer ‘Fundamentaltheologie’ der Primat zuerkannt wird, in allen Varianten geht es um das Gewißheitsproblem, das die christliche Theologie in der Neuzeit überfallen hat.” G. Ebeling, *Wort und Glaube IV* (1995), p.403. I think that Ebeling’s “diagnosis” in fact supports the view held by Rawls, – that citizens of modern societies cannot any longer be unified by taking the truth of any particular comprehensive doctrine for certain.

⁵⁴⁷ M. Honecker, *Sozialethik zwischen Tradition und Vernunft* (1977), p.182.

⁵⁴⁸ Cf. his most thorough article on the doctrine of the two kingdoms, “Zweireichelehre und Sozialethik” in *Sozialethik zwischen Tradition und Vernunft* (1977, pp.174 - 278), p.218.

⁵⁴⁹ M. Honecker, *Sozialethik zwischen Tradition und Vernunft* (1977), p.182f.

Person, sofern der Christ einerseits für sich selbst lebt und andererseits für andere zu handeln hat, hier herrscht weder ein exklusives, noch ein inklusives, sondern ein Identitätsverhältnis. Die folgenden Überlegungen gehen aus von der dritten Einsicht, der existentiellen Betroffenheit des Christen durch zwei Bezüge. Sie verengen damit unbestreitbar die historische Fragestellung der Zweireichelehre, indem sie besonders auf den anthropologischen Aspekt eingehen. Daher ist ausdrücklich gesagt, daß nicht eine historische Untersuchung, sondern eine vergegenwärtigende Reflexion beachtlich ist...⁵⁵⁰

The different perspectives are to be maintained simultaneously, it is more a question of how they are to be weighted and balanced. And Honecker stresses especially the third of the three perspectives.

a) In a strictly *teleological* perspective one might stress the transcendent telos, thereby throwing the scheme of this world clearly into relief, – making the contrast between the coming ai)w/n and the scheme of *this* world sharp and clear. This does not imply that the aim of maintaining the common good of the present world, upholding (internal) peace and providing for social justice and political order should be ignored, but political values and ends are then clearly to be relativised. Thus the doctrine of the two kingdoms might be considered a means of distinguishing sharply between the eschatological good and the *relative* goods of this world.

b) In an institutional perspective the doctrine of the two kingdoms provides a means of properly understanding the relation between the state-institution and the church.⁵⁵¹ This relation might be very complex, since the state, as the most important institution within the worldly realm, should theologically be seen as participating in God's governing of

⁵⁵⁰ M. Honecker, "Zweireichelehre und sozialetik" in M. Honecker, *Sozialetik zwischen Tradition und Vernunft* (1977), p.179.

⁵⁵¹ Let it, however, be remarked that Honecker himself can simultaneously underline that: "Für den Christen stellt sich die Zweireichelehre jedoch nicht dar als Theorie über das Verhältnis von Staat und Kirche oder als Theorie theologischer Geschichtsschau oder ähnliches, sondern als Frage nach der Vereinbarkeit seines Glaubens an Christus als Herrn mit ethischen Anforderungen und politischen Verpflichtungen." M. Honecker, "Thesen zur Aporie der Zweireichelehre", *Zeitschrift für Theologie und Kirche* (1981), p.138. Nonetheless can Honecker himself refer to the doctrine of the two kingdoms when seeking theological "Kriterien zur Abgrenzung des Auftrages der Kirche von den Aufgaben des Staates ... Im 20. Jahrhundert wurden in Auseinandersetzungen mit staatlichen Totalitätsansprüchen zwei Interpretationsmodelle entwickelt, nämlich die sog. Zweireichelehre und das Bekenntnis zu Königsherrschaft Christi. Beide Modelle haben Vorzüge und Schwächen. Sie sind deshalb nicht alternativ, sondern sich gegenseitig befragend und korrigierend zu interpretieren. ... [In any case] sind die jeweiligen Grenzen von kirchlichem Auftrag und staatlichen Aufgaben zu beachten. Der Staat hat keinen Anspruch auf die Herrschaft über die Gewissen. Die Kirche verfehlt und verdirbt ihren geistlichen Auftrag, wenn sie selbst staatliche Funktionen ausübt oder politische Sachkompetenz mit theologischer Autorität verwechselt und vermischt. Die Zuordnung der Abgrenzung zwischen kirchlichem Handeln und die Wahrnehmung gemeinsamer Aufgaben ist Aufgabe der Kirchenpolitik." M. Honecker, "Der Auftrag der Kirche und die Aufgabe des Staates", *Essener Gespräche zum Thema Staat und Kirche* (1991), p.78.

the world, while the church is both a community of those truly believing in Christ, and *also* an organisation within the worldly realm, involved in politics, economics and legal-structures in the same way as other associations.

In ruling the world and fulfilling his aim God employs political authorities as well as the church-institution in his service. It is therefore a crucial *theological* assumption that God has both “regiments” in his hand. But the doctrine of the *two* kingdoms nevertheless implies that the mandate of the state-institution and the church-institution should not be confused. It should be obvious that the institutional aspects of the doctrine of the two realms are of great importance.

c) But there is in Honecker’s works nonetheless the most serious concern about what he characterises as the anthropological⁵⁵² perspective, – as can clearly be seen in his most thorough article on the doctrine of the two kingdoms in *Sozialethik zwischen Tradition und Vernunft* (1977), where he emphasises that: “Die Thematik der Zweireichelehre kann heute nur verständlich werden, wenn es gelingt, sie als Beschreibung einer Grund-situation des Menschseins zu formulieren.”⁵⁵³

This means that Honecker, like Ebeling, takes the doctrine of the two kingdoms first and foremost as an appropriate key to understanding the so called “forum-situation” of man⁵⁵⁴, as standing simultaneously “coram-deo” and “coram-mundo”.⁵⁵⁵ Thus the doctrine of the two kingdoms should most properly be characterised as a “two-relations-doctrine” rather than a “two spheres-doctrine”.⁵⁵⁶

⁵⁵² Using the term “anthropological” and “Anthropologie” i refer to *theological anthropology*, the theological doctrine of man.

⁵⁵³ M. Honecker, *Sozialethik zwischen Tradition und Vernunft* (1977), p.183.

⁵⁵⁴ “Die Zweireichelehre wird damit zur hermeneutischen Anleitung für das betroffene Subjekt, zwischen verschiedenen Bezügen zu unterscheiden, dem Bezug auf Gott hin und dem Bezug auf die Welt.” M. Honecker, “Thesen zur Aporie der Zweireichelehre”, *Zeitschrift für Theologie und Kirche* (1981), p.137.

⁵⁵⁵ Cf. to this dual-relation also M Honecker, *Grundriß der Sozialethik* (1995): “Der Begriff Zweireichelehre bezeichnet einen komplexen Sachverhalt: Es geht um die Stellung des Menschen vor Gott und vor der Welt, coram deo und coram mundo, coram hominibus. Diese Unterscheidung hat ihren Ort in der Fundamentaltheologie. ... In der Zweireichelehre geht es um eine Fundamentalunterscheidung: Worauf kommt es vor Gott und worauf vor der Welt an?” (p.15). The distinction is crucial, since the two relations should not be confused, but it should nonetheless be added that in the existence coram mundo is the coram deo-perspective not excluded, while an existence coram deo, rightly understood, also implies the relation coram-hominibus.

⁵⁵⁶ Especially Dietrich Bonhoeffer has in his book “*Ethik*“ (1949, An English translation, *Ethics*, is published at Collins Clear-Type Press, London and Glasgow, 1955.) objected to the Lutheran doctrine of the two kingdoms that it tends to divide the world into two spheres, a kind of criticism that is not quite to the point according to Honecker: “Es geht also nicht um eine statische Abgrenzung zweier Bereiche, zweier Räume, zweier Zuständigkeiten. D.Bonhoeffers Polemik gegen ein Denken in zwei Räumen versteht

Like Ebeling again, Honecker in fact takes a genuinely theological approach to the domain of the political, since both the keeping apart as well as the way of connecting the two “realms” have, as we saw, to be settled through one and the same “fundamental-theologischen” approach. In this context the recognition of the political realm as “ein Regiment der Vernunft”⁵⁵⁷ cannot be considered simply a pragmatic adjustment to essential terms of modernity, but must be taken as based on a principled “Fundamental-unterscheidung” which is essential within theology itself.⁵⁵⁸ This further implies that upholding a forum of political *reason*, due to the distinction between the two realms, should be considered essential from a theological point of view.⁵⁵⁹ Honecker is of the opinion that his interpretation of the doctrine of the two kingdoms is very much in accordance with Luther’s own theology:

“Er [Luther] betont ferner an anderen Stellen, daß im weltlichen Reich die *Vernunft* die Maßstäbe setze. Das weltliche Regiment ist ein Regiment der Vernunft. In der Welt ist folglich die Vernunft das höchste Gut. In der Gottesbeziehung ist die Vernunft hingegen blind und sogar irreführend.”⁵⁶⁰

‘Reich‘ in diesem Sinne als Bereich, Sphäre des Einflusses oder der Zuständigkeit.” M.Honecker, *Grundriß der Sozialethik* (1995), p.15f. Bonhoeffer’s critique applies, however, to certain misinterpretations of the doctrine of the two kingdoms that might still be influential and widely approved of. These kinds of misinterpretations belong to what G. Ebeling characterises as “die trivialsten Verzerrungen”: “Die hohe Anforderung der Zweireichelehre an die Fähigkeit , geschichtlich und theologisch zu denken, gibt vor allem in einer Zeit, welcher beides abhanden zu kommen droht, zu verhängnisvollen Mißverständnissen Anlaß. Die trivialsten Verzerrungen seien im voraus als solche plakatiert: als handle es sich um zwei (räumlich, zeitlich oder personell) getrennte Bereiche; als wolle die betonte Unterscheidung die hier waltenden Lebensbeziehungen zerreißen, anstatt sie als solche zur Geltung zu bringen; als werde die Welt aus der Abhängigkeit von Gott und der Glaube aus der Weltverantwortung entlassen; als handle es sich um die Konkurrenz (oder den Kompromiß) zweier Moralgesetze oder gar um die Trennung von Moral und politik.” G. Ebeling, “Leitsätze zur Zweireichelehre”, *Wort und Glaube III* (1975), p.575f. Honecker and Ebeling very clearly avoid taking the doctrine of the two kingdoms as a theological means for an “Abgrenzung zweier Bereiche, zweier Räume”. But even if the mostly used terms, as for instance “two kingdoms” and “two realms”, might give an occasion to “die trivialsten Verzerrungen”, I shall still use these terms, just as Honecker and Ebeling do, instead of speaking about the “two-relation-doctrine”. The traditional terminology is well settled.

⁵⁵⁷ M. Honecker, *Grundriß der Sozialethik* (1995), p. 20.

⁵⁵⁸ Honecker makes it quite clear that “Die Unterscheidung der zwei Reiche verweist auf die Unterscheidung von Vernunft und Glaube, von Gesetz und Evangelium.” M. Honecker, *Grundriß der Sozialethik* (1995), p.17.

⁵⁵⁹ Let it, however, be added that Honecker is very much aware of the problems and the “Strukturwandel der Öffentlichkeit”

⁵⁶⁰ M. Honecker, *Grundriß der Sozialethik* (1995), p.20. Let it be remarked here that in his analysis of “Traditionsgeschichte und systematische Struktur derZweireichelehre” Ulrich Duchrow has given a very thorough documentation of the role that “reason” is supposed by Luther to play within the political realm. A ground for seeking very strongly to avoid anarchy and chaos is according to Duchrow the clear assumption , which Luther shared with most citizens; that “die Vernunft, die eigentlich das Szepter im weltlichen Regiment führen muß, kommt im akuten Zustand des Kampfes aller gegen alle nicht mehr zu Gehör.” U. Duchrow, *Christenheit und Weltverantwortung. Traditionsgeschichte und systematische Struktur der Zweireichelehre* (1970), p.496.

It should be made quite clear that Honecker does not confine himself to a merely instrumental way of understanding reason (*ratio*), but takes reason to be closely allied with an ideal of “humanity”.⁵⁶¹ Referring to Descartes, Honecker can simultaneously stress that: “Nichts in der Welt ist gleichmäßiger unter den Menschen verteilt als der gesunde Verstand.”⁵⁶²

According to Honecker reason is primarily to be taken as a means of communication, providing us with *shared* resources for discussing matters of common interest, – and a means for justifying to one another (controversial) standpoints in matters of public importance.⁵⁶³ Thus, Honecker writes:

“Vernunft nenne ich zunächst ganz pragmatisch das Mittel einer Verständigung, und zwar einer einsichtigen Verständigung zwischen verschiedenen Menschen.”⁵⁶⁴

Honecker seems to share with Rawls the crucial assumption that an attempt to derive norms for the strictly political and public field from a *particular* comprehensive doctrine instead of setting out from *shared* reason in matters of public interest may be considered not just exclusive, but also authoritarian⁵⁶⁵ and perhaps even a rather arrogant⁵⁶⁶ project.

⁵⁶¹ Honecker therefore criticises the view that reason is merely a means of finding the most efficient way of realising ends that cannot in themselves be rationally defined or justified. “Solche nur instrumentell verstandene Vernunft sichert aber keineswegs Humanität. Effiziente Lösungen können durchaus inhumane, unmenschliche Wirkungen und Folgen zeitigen und in den Dienst inhumaner Zwecke gestellt werden. Gegen einen solchen nur instrumentellen Gebrauch von Vernunft ist daran festzuhalten und ausdrücklich darauf aufmerksam zu machen, daß Vernunft von Humanität nicht zu trennen ist, ja daß die Aufgabe und das Ziel von Vernunft die Verwirklichung von Menschlichkeit ist.” M. Honecker, *Sozialethik zwischen Tradition und Vernunft* (1977), p.206.

⁵⁶² M. Honecker, *Sozialethik zwischen Tradition und Vernunft* (1977), p.205.

⁵⁶³ This means that reason, as referred to by Honecker, “bezeichnet nicht eine ‘ewige’ Vernunft”. M. Honecker, *Sozialethik zwischen Tradition und Vernunft* (1977), p.205. Honecker makes it very clear that: “In meinen Erwägungen ist Vernunft jedoch nicht als universales, ontologisches Prinzip verstanden, an dem Kraft ihrer Natur alle Menschen teilhaben, sondern als regulatives Idee, als Postulat. Der Appell an die Vernunft enthält nichts anderes als die Aufforderung an jedermann, Verständigung mit seinen Mitmenschen zu suchen, und zwar mit Mitteln der Vernunft und Rationalität, und damit besagt die Berufung auf die Vernunft die Absage an alle ohne das Bemühen vernünftiger Verständigung vorgenommenen Wahrungen von Eigeninteressen mit Hilfe von Gewalt und Macht. Vernunft ist Aufgabe. Gerade bei Luther liegt nicht eine Vernunftontologie vor, sondern ein praktisches Verständnis von Vernunft. Ein praktisches Verständnis von Vernunft schließt die Frage nach allen Menschen gemeinsamen Grundwerten ein. Diese Grundwerte sind freilich nicht vorgegebene universale, zeitlos gültige, festgelegte Normen ... , sondern Orientierungshilfen, über die Menschen vernünftig sollten verständigen können.” M. Honecker, *Das Recht des Menschen. Einführung in die evangelische Sozialethik* (1978), p. 165f

⁵⁶⁴ M. Honecker, “Das Problem der Eigengesetzlichkeit”, *Zeitschrift für Theologie und Kirche* (1976), p.121.

⁵⁶⁵ “Dazu kommt als Problem jeder nicht auf rationale Evidenz hin angelegten Ethik, daß sie ‘autoritär’, als bloße Setzung wirkt, also auf eine der ethischen Sachanforderung fremde Autorität sich berufen muß.” M. Honecker, *Das Recht des Menschen. Einführung in die evangelische Sozialethik* (1978), p. 30.

Reason has to be taken as a shared means, making it possible for people to come to an agreement about common standards and reasonable premises for social co-operation. Shared terms of social co-operation can be settled and maintained by means of (public) reason, – guided by an elementary principle of reciprocity.⁵⁶⁷

In stressing so clearly the “Orientierung ethischer Forderungen am Maßstab der Vernunft...”⁵⁶⁸ in matters belonging within the worldly realm, Honecker in no way takes it for granted that reason will more or less *automatically* lead us to agreed substantial standards recognised by all as true.⁵⁶⁹ Instead Honecker expects that, by itself, reason should further pluralism rather than consensus in matters involving substantial values.⁵⁷⁰

⁵⁶⁶ What I have in mind here is the way Honecker criticises both Barthianism and Augustinianism, the former for not being able of assessing properly morals and ethics produced by Non-Christians and the latter for taking the virtues of Non-Christians as “glänzende Laster”. M.Honecker, *Das Recht des Menschen. Einführung in die evangelische Sozialethik* (1978), p.30.

⁵⁶⁷ It is just consequent when Honecker in the lines preceding his scheme of the doctrine of the two kingdoms (as presented above) clearly stresses that: “Das geistliche Reich wird vom Evangelium, das weltliche Reich von der Vernunft bestimmt; das weltliche Reich ist in dieser Hinsicht ein Vernunftreich. Die Forderungen der Vernunft kann man auch ohne Christus erkennen. Ihr Maß ist die Goldene Regel Mt 7,12.” M. Honecker, *Das Recht des Menschen. Einführung in die evangelische Sozialethik* (1978), p. 156f. Reason can expectedly reflect also what it would be *reasonable* for others to accept, from their point of view. Let it now be added that Rawls on his side is also drawing very decisively on an idea of reciprocity as essential in public reasoning, – as can be clearly observed not least in *The Idea of Public Reason Revisited* (1997).

⁵⁶⁸ Honecker is thereby criticising the Barthian approach – with its emphasis on the need for “preaching” (social) ethics. “Wenn aber das Verkündigungsgeschehen als solches keine Unterscheidungskriterien an die Hand gibt, dann bleibt zu fragen, ob nicht doch die Orientierung ethischer Forderungen am Maßstab der Vernunft sinnvoll bleibt. Denn das Urteil der Vernunft steht prinzipiell jedem Menschen zu. Es ist kein Privileg eines kerygmatischen Vollzugs oder prophetischer Voraussicht.” M. Honecker, *Das Recht des Menschen. Einführung in die evangelische Sozialethik* (1978), p. 29.

⁵⁶⁹ In this respect I think that Honecker might be in accordance with Luther’s view, as explained by Ulrich Duchrow. The mere use of ratio does not in itself lead to right answers. There might be very different opinions about *what* shall count as reasonable. “Fragt man nach den Hauptbestimmungselementen des ‘regnum rationis’ bei Luther, so fällt zunächst der häufige Gebrauch des Begriffs ‘Billigkeit’ (aequitas) auf. Dieser meint ein Eingehen auf Personen, Umstände und zeitgeschichtliche Besonderheiten, die durch das abstrakte geschriebene Recht nicht in den Blick kommen können. Sie entspricht der freien Vernunft und soll Meisterin der geschriebenen Gesetze und ungeschriebenen Gewohnheiten sein. ... Die Vernunft ... denkt für Luther nicht von einem unveränderlichen Prinzip aus, sondern fragt nach dem Nutzen für den Mitmenschen im Rahmen des gemeinsamen Ganzen, welches das weltliche Regiment steuern soll. Damit sind *Gemeinnutz* und *Friede* als die entscheidenden Orientierungspunkte der Vernunft und ihrer ‘kybernetisch’-politischen Funktion anvisiert...” U. Duchrow, *Christenheit und Weltverantwortung. Traditionsgeschichte und systematische Struktur der Zweireichelehre* (1970), p.498f.

⁵⁷⁰ But this problem can according to Honecker not be solved by introducing an “absoluten christlichen Ethik”: “Hinsichtlich der Möglichkeit einer christlichen Begründung sozialetischer Imperative, welche konkrete soziale, wirtschaftliche oder auch politische Fragen betreffen, ist Skepsis angebracht. Entweder sind solche sozialetischen Imperative, wenn sie gesamtgesellschaftliche Verbindlichkeit beanspruchen wollen, evident; dann bedürfen sie jedoch einer besonderen christlichen Begründung nicht mehr. Oder sie berufen sich auf den Anspruch einer absoluten christlichen Ethik, können dann aber nicht für die Gesamtgesellschaft Verbindlichkeit beanspruchen.” M. Honecker, *Sozialethik zwischen Tradition und Vernunft* (1977), p.203f.

Moreover, *what* counts as reasonable in matters of politics and social ethics is revisable, – which paves the way not for relativist attitudes as much as for the idea of improvement.⁵⁷¹ In any case, according to Honecker there are certain limits to what can be achieved by (moral) reasoning.⁵⁷² Thus Honecker’s social ethics does not allow for a practical “deification” of human reason.⁵⁷³ Notwithstanding the limits and the historical embeddedness of human reasoning, nor ignoring how easily human ratio can be misused and misguided, it is the free use of reason which makes social co-operation, communication and public debate possible. This is essential for the very understanding of reason according to Honecker.⁵⁷⁴ A human society has no alternative to seeking the *reasonable* in matters of public interest.

“Aus der Krise der Vernunft rettet keine Flucht in Irrationalismus, in Unvernunft. Sie zwingt vielmehr geradezu zur Besinnung auf Vernunft, auf die Möglichkeiten, Gefährdungen und nicht zuletzt die Verantwortlichkeit der Vernunft. ... Der Streit um das Vernünftige kann ja auch nur wieder mit der Vernunft ausgetragen werden. Oft genug besteht jedoch die Neigung, den Streit nicht durch die Vernunft zu beenden, sondern gewaltsam zu entscheiden. Vernunft wird mit Unvernunft blockiert.”⁵⁷⁵

⁵⁷¹ Thus Honecker opens up for a *cumulatave* perspective both in politics, science and social ethics: “Die geschichtlichkeit der Vernunft führt dazu, daß das Maß vernünftiger Einsichten wachsen kann. In die Vernunft gehen geschichtliche Erfahrungen und geschichtlich gewonnene Erkenntnisse ein. Vernunft ist eben, weil sie die Vernunft eines geschichtlichen Menschen ist, nicht fertig, sondern offen und damit wandlungsfähig.” M. Honecker, *Sozialethik zwischen Tradition und Vernunft* (1977), p.206. The very notion of *cumulative*, which I find appropriate for characterising Honecker’s view, as exposed here, is not taken from Honecker, but from Richard Boyd, who uses it in a different context, characterising “scientific reasearch as cumulative by successive approximations to the truth”. Cf. R. Boyd, “How To Be a Moral Realist”, *Moral Discourse and Practice* (1997), p.111.

⁵⁷² One consequence to be drawn from this insight is that: “Strukturen und Institutionen sind jedoch deswegen nicht einfach aus Vernunft abzuleiten oder rational zu konstruieren. Sie sind geschichtlich vorgegeben als objektivierte Lebenszusammenhänge. Aber es ist durchaus möglich, ihre Lebensdienlichkeit, ihre Funktionsfähigkeit, sowohl in technischer als auch in humaner Hinsicht zum Gegenstand vernünftiger Erörterungen zu machen.” Cf. “Das Problem der Eigengesetzlichkeit”, *Zeitschrift für Theologie und Kirche* (1976), p.122. Honecker obviously wishes to avoid a misunderstanding of his own position when emphasising that: “Die Vernunft ist nicht die schlechthinnige ‘Basis’ der Moral, aber sie ist das alleinige Mittel, mit deren Hilfe zwischen verschiedenen Moralien ein Konsensus über gemeinsame ethische Verhaltensweisen zu erreichen ist.” *Ibid.* p. 121.

⁵⁷³ In accordance with this Honecker can add: “Sie werden meinen Überlegungen zur Ethik entnommen haben, daß ich keine direkte ‘Theologisierung’ der Vernunft anstrebe und insofern für eine autonome Ethik eintrete.” M. Honecker, “Erfahrung und Entscheidung”, *Zeitschrift für Theologie und Kirche* (1978), p.499.

⁵⁷⁴ This remains a crucial concern in Honecker’s conception of social ethics, and once more he seeks support for his view in Luther’s theology: “Luther vertritt also keineswegs eine Allzuständigkeit der Vernunft. Aber sie ist das Mittel der Verständigung für eine kommunikative Ordnung und damit für die Grundlegung einer universalen humanen Rechtsgemeinschaft.” M. Honecker, *Das Recht des Menschen. Einführung in die evangelische Sozialethik* (1978), p. 163.

⁵⁷⁵ M. Honecker, *Sozialethik zwischen Tradition und Vernunft* (1977), p.206.

A more thorough analysis of the limitations and burdens of reason is undertaken below. For now, it is sufficient to conclude that Honecker, in his conception of social ethics, shares the Rawlsian concern for securing through public reasoning the *fairest* possible political scheme, within which individuals (and groups) can participate in social co-operation. By employing the Lutheran “Fundamentalunterscheidung” Honecker can seek a reasonable “justice coram mundo”(iustitia civilis) without confusing it with the theological concern for “justice coram deo” (iustitia spiritualis).⁵⁷⁶

5.2.2. Rawls’ dualism?

If defining the “worldly realm” so clearly as a domain of shared (political) *reason*, it seems as if one has to establish a sharp divide between the domain of the political and the sphere of religion. This may seem to fit quite well with Rawls’ approach, since a main concern for Rawls is to elaborate a conception of *political* liberalism that can be seen as fundamentally *independent* of particular comprehensive doctrines.⁵⁷⁷ Thereby he might tend to establish a kind of “dualism” between a strictly *political* approach on the one side and the many points of view of comprehensive doctrines on the other side. This “dualism” between the political domain and a so called “metaphysical” domain, is especially prominent in Rawls’ later writings, and is evident in his book about “*Political Liberalism*” (1993).

The title of *Political Liberalism* is in itself programmatic. *Political* liberalism is contrasted, not just to *religious* doctrines, but also to comprehensive and more “metaphysical” kinds of liberalism. The Rawlsian kind of “dualism” between a *metaphysical* perspective and a strictly *political* perspective is apparently thought necessary to further broad communication and equal citizenship and to make public reasoning and consensual efforts viable. Rawls therefore stresses that;

“citizens’ reasoning in the public forum about constitutional essentials and basic questions of justice – is now best guided by a political conception the principles and values of which all citizens can endorse... That political conception is to be, so to speak, political and not metaphysical. Political liberalism, then, aims for a political

⁵⁷⁶ Let it also be added that corresponding to the two kinds of justice there also have to be two kinds of power that should in no way be confused. This is a main concern in *Confessio Augustana* XXVIII.

⁵⁷⁷ But he simultaneously makes it clear that “The dualism in political liberalism between the point of view of the political conception and the many points of view of comprehensive doctrines is not a dualism originating in philosophy. Rather, it originates in the special nature of democratic political culture as marked by reasonable pluralism.” J. Rawls, *Political Liberalism* (1993), p.xxi.

conception of justice as a freestanding view. It offers no specific metaphysical or epistemological doctrine beyond what is implied by the political conception itself.”⁵⁷⁸

This “dualism” between a *political* approach and *metaphysical* doctrines is demonstrated in the most obvious way already in Rawls’ essay with the programmatic title *Justice as Fairness: Political not Metaphysical* (1985).⁵⁷⁹ Where Rawls previously focused upon some general and wider problems of a theory of morality, his aim now is strictly *political* and he is now critical of certain aspects of the conception of justice he elaborated in *A Theory of Justice* (1971).⁵⁸⁰

But what does Rawls really mean when using the expression “*political not metaphysical*” about the basic theory of justice? According to Rawls a strictly *political* conception of justice has three characteristic features:

First; it is defined as political by the issue involved, i.e. the *subject* of the conception, which is the basic institutional structure of society. This means, however, that “political” should not be contrasted to “moral”. Rawls still aims at elaborating a moral⁵⁸¹

⁵⁷⁸ J. Rawls, *Political Liberalism*(1993), p.10.

⁵⁷⁹ *Philosophy and Public Affairs*, 1985, Vol. 14, No 3.

⁵⁸⁰ “One thing that I failed to say in *A Theory of Justice*, or failed to stress sufficiently, is that justice as fairness is intended as a political conception of justice.... In particular, justice as fairness is framed to apply to what I have called the ‘basic structure’ of a modern constitutional democracy.” J. Rawls, “Justice as Fairness: Political not Metaphysical”, *Philosophy and Public Affairs* (1985, Vol. 14, No 3), p. 224. Let me add, however, that Brian Barry belongs to them who “wish to maintain that the later Rawls attributes to the Rawls of *A Theory of Justice* errors that he did not in fact commit. What exactly was wrong with *A Theory of Justice*, according to Rawls? In a nutshell, his answer is that the theory contained in the earlier book constituted a ‘comprehensive philosophical doctrine’.... The essential point seems to be that ‘no distinction is drawn between moral and political philosophy’, so that ‘a moral doctrine of justice general in scope is not distinguished from a strictly political conception of justice’ (*PL*, p.xv). However, Rawls himself insists that, while justice as fairness is a political conception, it is also a moral conception. The political is thus not to be contrasted with the moral. Rather, the political is a subset of the moral, defined by its limited subject matter. Thus, Rawls says that ‘while [a political] conception [of justice] is, of course, a moral conception, it is a moral conception worked out for a specific kind of subject, namely for political, social, and economic institutions’ (*PL*, p.11). On this definition of the political, it is hard to see why *A Theory of Justice* should not be said to contain a political conception of justice.” Brian Barry, “John Rawls and the Search for Stability”, *Ethics* (1995, vol.105, No.4), p.876f.

⁵⁸¹ Rawls clearly makes moral assumptions what “concerns the subject of a political conception. While such a conception is, of course, a moral conception, it is a moral conception worked out for a specific kind of subject, namely, for political, social, and economic institutions. In particular it applies to the ‘basic structure’ of society ... By the basic structure I mean a society’s main political, social, and economic institutions, and how they fit together into one unified system of social cooperation from one generation to the next.” J. Rawls, *Political Liberalism* (1993), p.11. Let it now be added that the use of the term “moral” in this context means that political values are taken to express ideals, principles, standards and norms that can be assessed from an ethical point of view. Cf. *Political Liberalism*, p.11 (note 11). To avoid misunderstandings, let it, however, also be added that Rawls’, when characterising the political conception as

conception, but it is a moral conception developed for the institutional political scheme as such, it is not a “morally comprehensive” theory designed to cover nearly all kinds of subjects and human phenomena that can be morally assessed.

Second; a strictly political conception of justice is defined as political by its special “*mode of presentation*” which means that it is to be presented in a way that neither refers to nor depends upon a particular comprehensive doctrine or religious ground-view, but can entirely be argued for in terms of public reason. This accords with what I have stressed earlier, namely, that the Rawlsian conception is meant to be “free-standing”. However, although “freestanding”, the political conception is simultaneously conceived of as a “module” which can fit within the various reasonable doctrines.⁵⁸²

Third; a strictly political conception of justice presents itself as political by taking its point of departure from politically vital values inherent in *the shared political culture*.⁵⁸³ But of course it should be added that metaphysics, religion and comprehensive moral theories have significantly influenced the background culture which is such a decisive source for Rawls when a *political* conception is to be elaborated. Even if Rawls is just drawing on *certain* fundamental ideas, the very fact that he sets out from the shared background-culture indicates that the “dualism” between a political conception and the comprehensive doctrines that have to a wide extent shaped the (political) culture, cannot be drawn too sharply.

What is most characteristic of Rawls’ strictly *political* conception is, as far as I can see, that it is entirely guided by the idea of society as a fair system of co-operation between free and equal persons. This means for instance that;

“In their political thought, and in the context of public discussion of political questions, citizens do not view the social order as a fixed natural order, or an institutional hierarchy justified by religious or aristocratic values. Here it is important to stress that from other points of view, for example, from the point of view of

moral, also finds it necessary to stress that “justice as fairness is not intended as the application of a general moral conception to the basic structure of society, as if this structure were simply another case to which that general moral conception is applied.” J. Rawls, “Justice as Fairness: Political not Metaphysical”, *Philosophy and Public Affairs* (1985, Vol. 14, No 3), p. 225.

⁵⁸² Rawls makes it quite clear that “the political conception is a module, an essential constituent part, that fits into and can be supported by various reasonable comprehensive doctrines that endure in the society regulated by it.” J. Rawls, *Political Liberalism* (1993), p.12.

⁵⁸³ “The third feature of a political conception of justice is that its content is expressed in terms of certain fundamental ideas seen as implicit in the public political culture of a democratic society.” J. Rawls, *Political Liberalism* (1993), p.13.

personal morality, or from the point of view of members of an association, or of one's religious or philosophical doctrine, various aspects of the world and one's relation to it, may be regarded in a different way. But these other points of view are not to be introduced into political discussion."⁵⁸⁴

Over and over again Rawls makes a point of explaining what it means to say that political liberalism as a political conception is not dependent on and need not refer to any morally comprehensive, religious and metaphysical ideas.⁵⁸⁵ I think that Rawls repetitive insistence that the conception of justice be understood as political and *not metaphysical* reflects two underlying concerns:

Rawls first concern, when trying to establish principles of justice that might guide the coexistence and social co-operation of all citizens in the most fair way, is to bypass the controversies inherent in most comprehensive doctrines, – with their strong and usually also controversial commitment to *truth*.

“...Philosophy as the search for truth about an independent metaphysical and moral order cannot; I believe, provide a workable and shared basis for a political conception of justice in a democratic society. We try, then, to leave aside philosophical controversies whenever possible, and look for ways to avoid philosophy's long-standing problems. Thus ...we try to avoid the problem of truth and the controversy between realism and subjectivism about the status of moral and political values”.⁵⁸⁶

As suggested earlier, Rawls is in a way setting the question of *truth* (in matters of religion, moral doctrines and “philosophy's longstanding problems”) in brackets when concerned with questions of basic justice and constitutional essentials for the political

⁵⁸⁴ J. Rawls, “Justice as Fairness: Political not Metaphysical”, *Philosophy and Public Affairs* (1985, Vol. 14, No 3), p.231.

⁵⁸⁵ Rawls starts the essay about *Justice as Fairness: Political not Metaphysical* very programmatic by saying: “In this discussion I shall make some general remarks about how I now understand the conception of justice that I have called ‘justice as fairness’ (presented in my book *A Theory of Justice*). I do this because it may seem that this conception depends on philosophical claims that I should like to avoid, for example, claims to universal truth, or claims about the essential nature and identity of persons. My aim is to explain why it does not. I shall first discuss what I regard as the task of political philosophy at the present time and then briefly survey how the basic intuitive ideas drawn upon in justice as fairness are combined into a political conception of justice for a constitutional democracy. Doing this will bring out how and why this conception of justice avoids certain philosophical and metaphysical claims. Briefly, the idea is that in a constitutional democracy the public conception of justice should be, so far as possible, independent of controversial philosophical and religious doctrines. Thus, to formulate such a conception of justice is to be political, not metaphysical.” J Rawls, “Justice as Fairness: Political not Metaphysical”, *Philosophy and Public Affairs* (1985, Vol. 14, No 3), p. 223. I think this essay may be Rawls' attempt to answer to the critique set forth by Michael Sandel in his book about *Liberalism and the Limits of Justice* (1982).

⁵⁸⁶ J. Rawls, “Justice as Fairness: Political not Metaphysical”, *Philosophy and Public Affairs* (1985, Vol. 14, No 3), p.230.

society. I think this is most characteristic of political liberalism as a non-metaphysical conception. For metaphysics is usually concerned with the essential questions of ultimate truth, while a *political* conception of justice is mainly practical.⁵⁸⁷

It would, however, certainly be naïve to claim that a political (and moral) conception could be elaborated entirely without metaphysical premises. And Rawls seems after all to be aware of that⁵⁸⁸. So I think it might be more in accordance with his genuine intention just to say that he aims at presenting a political theory of justice that is as metaphysically unambitious as a practical political conception can possibly be. And this is the only way he can hope that a *political* conception might be endorsable from the point of view of highly different metaphysical, religious and philosophically comprehensive doctrines, each with their own strong claims about truth.

The second concern that Rawls has when conceiving of a strictly *political* liberalism, is to avoid the more ambitious political aims that might also be an inherent part of some political ideologies, rendering the political perspective the dominating one. Rawls is in fact limiting the domain of the political, thereby opening up sufficient space for the “non-political” spheres of life.⁵⁸⁹ According to Rawls the domains of the

⁵⁸⁷ “Thus, the aim of justice as fairness as a political conception is practical, and not metaphysical or epistemological. That is, it presents itself not as a conception of justice that is true, but one that can serve as a basis of informed and willing political agreement between citizens viewed as free and equal persons.” J.Rawls, “Justice as Fairness: Political not Metaphysical”, *Philosophy and Public Affairs* (1985, Vol. 14, No 3), p. 230.

⁵⁸⁸ And the very notion of “metaphysics” is in itself not clear according to Rawls. And so he underlines that “Part of the difficulty is that there is no accepted understanding of what a metaphysical doctrine is. One might say ... that to develop a political conception of justice without presupposing, or explicitly using, a metaphysical doctrine, for example, some particular conception of the person, is already to presuppose a metaphysical thesis: namely, that no particular metaphysical doctrine is required for this purpose. One might also say that our everyday conception of persons as the basic units of deliberation and responsibility presupposes, or in some way involves, certain metaphysical theses about the nature of persons as moral or political agents. Following the method of avoidance, I should not want to deny these claims. What should be said is the following. If we look at the presentation of justice as fairness and note how it is set up, and note the ideas and conceptions it uses, no particular metaphysical doctrine about the nature of persons, distinctive and opposed to other metaphysical doctrines, appears among its premises, or seems required by its argument. If metaphysical presuppositions are involved, perhaps they are so general that they would not distinguish between the distinctive metaphysical views – Cartesian, Leibnizian, or Kantian; realist, idealist, or materialist – with which philosophy traditionally has been concerned. In this case, they would not appear to be relevant for the structure and content of a political conception of justice one way or the other.” J.Rawls, “Justice as Fairness: Political not Metaphysical”, *Philosophy and Public Affairs* (1985, Vol. 14, No 3), p. 240 (note 22).

⁵⁸⁹ It is for instance important for Rawls to emphasise that “In this respect political liberalism is sharply different from and rejects Enlightenment Liberalism”, which left a very limited room for what Rawls calls “orthodox Christianity”. Cf. J. Rawls, “The Idea of Public Reason Revisited”, *The University of Chicago Law Review* (1997;3), p.804.

associational⁵⁹⁰, the personal and the familial should be considered the most typical examples of the “non-political” domains of life.⁵⁹¹ These “non-political” spheres of life are not to be considered less important or less valuable than the domain of the strictly political⁵⁹² and are to be safeguarded by the very political scheme and the basic institutions of society. The comprehensive views that citizens hold, and the affectional attitudes that belong within the associational, familial and personal sphere, are in no way to be considered second-rate to the strictly political concerns. Political liberalism should not be conceived of in a way that permits for putting different spheres of life in a hierarchical order in a way that makes the domain of the strictly political overarching in all respects. It should be clearly at odds with political liberalism if the “non-political” spheres were entirely subordinated to the domain of the political. The political scheme and basic institutions of a well-ordered liberal society, should be conceived of to “allow sufficient space for ways of life worthy of citizens devoted allegiance”.⁵⁹³ It is charac-

⁵⁹⁰ Churches are for instance supposed to belong to the domain of the “associational”.

⁵⁹¹ “The political is distinct from the associational, which is voluntary in ways that the political is not; it is also distinct from the personal and the familial, which are affectional, again in ways the political is not. (The associational, the personal and the familial are simply three examples of the nonpolitical; there are others).” J Rawls, *Political Liberalism* (1993), p.137. This way of holding apart the “spheres” of the political and the non-political by the means of a strict limitation of the domain of the political, is not uncontroversial from a theological point of view. For a theological approach to “the political” I can for instance refer to: P. Frostin, *Politik og hermeneutik. En systematisk studie i Rudolf Bultmanns teologi med särskild hänsyn til hans Luthertolkning* (1970). The scope of “the political” is here much wider than it seems to be in Rawlsian liberalism. Frostin will reactualise an Aristotelian approach to politics, as opposed to the understanding within modern liberalism (libertarianism): “Särskilt på två punkter avviker Aristoteles’ uppfattning från många moderna politiska teorier, i det första betraktelsesättet och i uppfattningen av människan som en politisk varelse, politikens zoon. ... Den politiska teorien måste låta sin målsättning präglas av en uppfattning om människan och vad som hör till ett mänskligt liv. Politikens telos är att söka utforma samhället så att det i största möjliga utsträckning uppfyller samhällsmedborgarnas behov som människor. Genom denna humanistiska inriktning av politiken undviker Aristoteles en konflikt mellan samhällets och den enskilda medborgarens telos. Han är därför främmande för den nutida distinktionen mellan privat och offentligt. Samhället är en koinonia ... Inom liberalismen har man, under bibehållande av åtskillnaden mellan etik och politik, sökt eliminera denna konfliktrisk [mellan statens och individens intressen] genom att skilja mellan en privat och en offentlig sfär. Till statens uppgifter hör att garantera medborgaren rätt till ett privatliv genom att ge honom vissa friheter som privatperson, t.ex i fråga om religionen. Förverkligandet av dessa friheter är en politisk fråga men hur medborgaren väljer att använda dem är inte en politisk fråga utan hör – enligt liberalismen – till hans privatliv. Den strävar därför att begränsa statens makt. Politiken blir därmed en begränsad sektor av det mänskliga livet.” (pp.3-5). Let it, however, just be stressed that political liberalism as conceived of by Rawls, does not aim at separating politics from ethics or keeping the public so sharply apart from the so called private sphere, as is obviously the case in the kind of liberalism focused by Frostin.

⁵⁹² “We need not consider the claims of political justice against the claims of this or that comprehensive view; nor need we say that political values are intrinsically more important than other values and that this is why the latter are overridden. Having to say that is just what we hope to avoid...” J. Rawls, *Political Liberalism* (1993), p.157.

⁵⁹³ J. Rawls, *Political Liberalism* (1993), p.210. Let me just remark that Rawls also holds that “the principles of a liberal conception of justice realize political values and ideals that normally outweigh whatever other values oppose them.” *Ibid.*, p.209. It cannot be denied that Rawls – even within the framework of a

teristic of political liberalism, as conceived of by Rawls, that it leaves a central place for the ways and spheres of life that are essential of civil society.⁵⁹⁴ The distinction between “the political” and “the non-political” is first of all a matter of scope and the scope of the political is rather narrow, which means that:

“we must be prepared to accept the fact that only a few questions we are moved to ask can be satisfactorily resolved [by political means]. Political wisdom consists in identifying those few, and among them the most urgent.”⁵⁹⁵

However, this limitation in scope that is typical of a *political* liberal conception, does not prevent Rawls from claiming simultaneously that “justice as fairness is complete as a *political* conception”.⁵⁹⁶ Saying that a political conception is complete does not mean that it covers all issues, religious, metaphysical and moral, in breadth and depth. As far as I can see, it just means that the political ideas required for establishing and maintaining a common framework for co-operation and coexistence among citizens are generated independently of premises taken from any particular comprehensive doctrine, and can on its own provide us with the answers we need for settling the *political* issues of basic justice and constitutional essentials. This is also the reason why Rawls can also suppose that “the political conception can win our initial allegiance more independently of our comprehensive views and prior to conflicts with them”.⁵⁹⁷

The claim that Rawlsian liberalism assumes a “dualism” (the term used by Rawls himself) between the *political* and the *metaphysical* or between the *political* and the *non-political*, seems justified. But in the essay, that Rawls published in 1985, where this “dualism” is focused so sharply in the very title, one also realises that most of the essay is in fact not concerned with “dualism”, but instead with ways of *relating* the two domains. It seems as if Rawls – when conceiving of political liberalism – is eager not just to keep the (religious and moral) comprehensive doctrines at an arm’s length when

liberal society – is ready to put at least some constraints on the comprehensive (religious) doctrines that citizens in pluralist societies might hold.

⁵⁹⁴ Civil society covers phenomena, that are not to be directly governed by state-authority or ruled by market-mechanisms. There are fields where state and market, as far as possible, should avoid interfering with associational affairs and individual freedom. I cannot here give an account of the recent discussion about “civil society”, but let me nonetheless refer to J. L. Cohen & A. Arrato: *Civil Society and Political Thought* (1992). (Swedish translation, Daidalos/Göteborg, 1993).

⁵⁹⁵ J. Rawls, *Political Liberalism* (1993), p.156.

⁵⁹⁶ J. Rawls, *Political Liberalism* (1993), p.207.

⁵⁹⁷ J. Rawls, *Political Liberalism* (1993), p.208.

elaborating political values, but also aims at relating his political conception and the comprehensive doctrines properly.

Modifying his “dualism”, the question gets urgent: *how* to distinguish and *how* to relate in a proper way? Rawls raises this question in *Political Liberalism* (Lecture IV, § 8). And his aim, when doing so, is not to define narrow criteria which theological or comprehensive doctrines more generally have to pass before they are worthy of being accepted or integrated within a philosophical or political perspective. Rather he is concerned with understanding how citizens, holding religious (and other) comprehensive doctrines, can possibly endorse the central political values upon their own premises.

But there is one crucial presupposition made by political liberalism, namely that the comprehensive (Christian) doctrines themselves are reasonable. The idea that religion should comply properly with an ideal of *reasonableness*, seems to be part of the liberal tradition from the very beginning and is for instance clearly expressed both by John Locke and Immanuel Kant, two philosophers who have clearly influenced Rawls. Let us therefore continue with a brief look at how this idea is expressed by Locke and Kant. Thereafter I can show how Rawls differs from his two liberal “predecessors”.

5.3. Claiming the “reasonableness of Christianity”

It seems as if only so called *reasonable* comprehensive doctrines” can be supposed to fit properly within the political scheme of a liberal society. What then about religious and Christian views and doctrines? Can they so easily be supposed to conform with such a claim? I will now consider more thoroughly the liberal demand for “reasonableness”, and in doing so I find it appropriate to distinguish the Rawlsian approach on the one side from the approach of Kant and Locke on the other side.

5.3.1. Following in the footsteps of Locke and Kant?

In his claim for reasonableness Rawls might at the first glance seem to be very much in line with traditional liberalism. In 1695 John Locke published his book on “*The Reasonableness of Christianity*”.⁵⁹⁸ Locke’s main question(s) here can be formulated as fol-

⁵⁹⁸ I have used both John Locke: *The reasonableness of Christianity*, as edited, abridged, and introduced by L.T.Ramsey, Adam & Charles Black, London 1982 and also the unabridged version edited by George W. Eving (1965), Regnery Gateway, Washington, D.C.

lows: What in particular can reasonably be believed as belonging to Christian faith and how far and in what way can there be genuine knowledge about religion?

Locke's way of raising the question about the reasonableness of Christianity should in no way just be considered a side-track within philosophy since man can after all be considered a deeply religious being. It is therefore not surprising that Locke also deals with the problem of the reasonableness of (the Christian) religion in his central main work *An Essay Concerning Human Understanding*. (1693). He realised clearly that the reason for lack of agreement in matters of religion might lie with ourselves. It was therefore urgent to examine our own abilities, and see what kind of "objects" human understanding was able of dealing properly with.⁵⁹⁹

It might now be appropriate to turn directly to Bk. IV, Ch. 17, §§ 23-24, of *An Essay Concerning Human Understanding* where Locke makes the following distinction between "above, contrary, and according to reason".⁶⁰⁰

"23. *Above, contrary, and according to reason.* By what has been before said of reason, we may be able to make some guess at the distinction of things into those that are according to, above, and contrary to reason. 1. According to reason are such propositions whose truth we can discover by examining and tracing those ideas we have from sensation and reflection; and by natural deduction find to be true or probable. 2. Above reason are such propositions whose truth or probability we cannot by reason derive from those principles. 3. Contrary to reason are such propositions as are inconsistent with or irreconcilable to our clear and distinct ideas. Thus the existence of one God is according to reason; the existence of more than one God, contrary to reason; the resurrection of the dead, above reason. Above reason also may be taken in a double sense, viz. either as signifying above probability, or above certainty: and in that large sense also, contrary to reason, is, I suppose, sometimes

⁵⁹⁹ In "The epistle to the reader" at the very outset of *An Essay Concerning Human Understanding* (1693) John Locke addresses the reader as follows: "Were it fit to trouble thee with the history of this Essay, I should tell thee, that five or six friends, meeting at my chamber, and discoursing on a subject very remote from this, found themselves quickly at a stand by the difficulties that rose on every side. After we had awhile puzzled ourselves, without coming any nearer a resolution of those doubts which perplexed us, it came into my thoughts, that we took a wrong course; and that, before we set ourselves upon inquiries of that nature, it was necessary to examine our own abilities, and see what objects our understandings were or were not fitted to deal with. This I proposed to the company, who all readily assented; and thereupon it was agreed, that this should be our first inquiry." *An Essay Concerning Human Understanding* (1693) p.xiv (version published by Prometheus Books 1995).

⁶⁰⁰ I have used the edition published 1995 by Prometheus Books, Amherst/New York. For the direct quotations, however, I may sometimes have used the CD/Rom-version of John Locke's *An essay concerning human understanding* that is included in "*Kant im Kontext. Werke auf CD Rom*", Karsten Worm InfoSoftWare 1996 (distributed by Wissenschaftliche Buchgesellschaft, Darmstadt). The cd-version is also checked in relation to the written text.

taken.”⁶⁰¹

It might be well worth noticing that the resurrection of the dead (and the fall of some of the angels) are taken by Locke to be above reason. The existence of one God, however, is entirely according to reason; while the belief that there exists more than one God is held by Locke to be clearly contrary to reason. This means that Christian faith, according to Locke, might very well be *above* reason and even exceed what should be considered most probable by most people, but according to Locke is nevertheless “reason and faith not opposite, for faith must be regulated by reason”.⁶⁰² In a way we must simply *understand* the propositions to which we are expected to consent of faith. We should all the way make use of “the light and faculties God has given” (*Essay IV*, Ch.17, § 24) to us, thus making us rational creatures, also accountable for the mistakes following from not using our reason. No one can claim to be inspired by God, no one can ask for assent of faith, if the proposition he utters is “contradictory to our clear intuitive knowledge”.⁶⁰³

According to Locke there are good *reasons* for accepting the Christian religion. And so Christian religion should very appropriately be characterised as reasonable. But it is also important for Locke (due to his empirical orientation) to emphasise that religious beliefs are very much dependant on “outward signs”.⁶⁰⁴ Locke therefore holds that;

“... the revealed truths which the Christians are to believe are those propositions to which the assent of faith is asked on the credit of the proposer as coming from God. In short, says Locke, we have to believe the revealed truths of the Christian faith on the credit of Jesus of Nazareth, and the outward signs which make such belief reasonable are two: (1) fulfilment of the prophecies about Messiah and (2) the performance of miracles.”⁶⁰⁵

⁶⁰¹ J. Locke, *An Essay Concerning Human Understanding*, 1693/1995, (IV, 17, § 23).

⁶⁰² Cf. J. Locke, *An Essay Concerning Human Understanding*, 1693/1995, (IV, 17, § 24).

⁶⁰³ *An Essay Concerning Human Understanding*. 1693/1995. Bk. IV, 18, § 5 (Cf. also “*The Reasonableness of Christianity*”, p.11). In this connection it might be interesting to see how Locke uses the story that St. Paul “was rapt unto the third heaven”. He does not deny that this might have happened, but he underlines that St. Paul could in no way talk intelligibly about these things in a way that exceeds the mere “that”: “Thus whatever things were discovered to St. Paul, when he was rapt up into the third heaven; whatever new ideas his mind there received, all the description he can make to others of that place, is only this, That there are such things, ‘as eye hath not seen, nor ear heard, nor hath it entered into the heart of man to conceive.’” (IV, 18, § 3).

⁶⁰⁴ And so he tries to reconcile his perspective on Christian faith with his epistemological empirical approach.

⁶⁰⁵ I.T. Ramsey, “Editor’s Introduction” [to *The Reasonableness of Christianity*] in *The reasonableness of Christianity with A Discourse of Miracles and part of A Third Letter Concerning Toleration* (published 1958), p.12f.

Locke is well aware of the boundaries of reason and respects the nature of faith. Nevertheless, the two should be related, but simultaneously distinguished in a way that does not make them rivals. After having summarised the boundaries of reason, Locke makes this very distinction clear:

“... From these things thus premised, I think we may come to lay down the measures and boundaries between faith and reason: the want whereof may possibly have been the cause, if not of great disorders, yet at least of great disputes, and perhaps mistakes in the world. For till it be resolved how far we are to be guided by reason, and how far by faith, we shall in vain dispute, and endeavour to convince one another in matters of religion. ...

Reason, therefore, here, as contradistinguished to faith, I take to be the discovery of the certainty or probability of such propositions or truths which the mind arrives at by deduction made from such ideas, which it has got by the use of its natural faculties; viz. by sensation or reflection.

Faith, on the other side, is the assent to any proposition, not thus made out by the deductions of reason, but upon the credit of the proposer, as coming from God, in some extraordinary way of communication. This way of discovering truths to men, we call revelation.”⁶⁰⁶

By claiming the “reasonableness of Christianity” Locke obviously aims at different things, but the following aspects of his thoughts are noteworthy in this connection:

First: We do not find in Locke’s conception a triumph of ratio over faith. He is aware that reason alone might not take us very far, and moreover, that reason often fails us.⁶⁰⁷

- Sometimes we simply have no ideas, and accordingly our reasoning stops.
- Sometimes our ideas are obscure, confused or imperfect.
- Sometimes we lack the intermediate ideas required to come to the right conclusions.
- Often we proceed upon the wrong principles, bringing ourselves into absurdities and contradictions.
- Often we employ doubtful terms and “uncertain signs”.

Thus Locke is well aware of the difficulties that reason has to comply with, – and cannot entirely overcome.

⁶⁰⁶ J. Locke, *An Essay Concerning Human Understanding*, 1693/1995, (IV, 18, § 1-2.)

⁶⁰⁷ “Reason, though it penetrates into the depths of the sea and earth, elevates our thoughts as high as the stars, and leads us through the vast spaces and large rooms of this mighty fabric, yet it comes far short of

Second: Despite pointing to the limits of reason, the mere title of Locke's book "*The Reasonableness of Christianity*" suggests that Locke risks the rationalisation of Christian doctrine itself. However, Locke leaves the central aspects of Christology and even the miracles largely intact.⁶⁰⁸ He holds that when Jesus arrived, the label of Messiah, given by the prophets hundred of years earlier fitted perfectly. And the miracles that Jesus carried out, were taken as outward manifestations of his divinity. One just need eyes to see with to realise that Christ was representing God.⁶⁰⁹ The very reasonableness of Christianity depends on a recognition of the fact that the gospel itself can not be taken to appeal merely to an "ontological peculiarity of which we have no echoes elsewhere."⁶¹⁰ And while Locke emphasises that "reason must be our last judge and guide in everything"⁶¹¹, he does not deny the mystery of the gospel, arising from the fact that there is something in Christianity, that is above reason and that transcends a narrow empirical approach.

Third: Locke is obviously sympathetic towards the Christian religion as such. This means, however, that there may even be clear "dogmatic" implications and theological concerns found in Locke's philosophy. (When claiming for instance that the belief in one God is according to reason while the belief in several gods is contrary to reason, one can understand why he was also accused of having sympathy with the theological concern of Socianism.)

Immanuel Kant's philosophy leaves us with a different impression than Locke's treatment of reason does, although there are parallels. Kant too is seriously concerned with the question of the reasonableness of religion.

I cannot do more here than touch upon some aspects of Kant's philosophy which ad-

the real extent of even corporeal beings. And there are many instances wherein it fails us..." J. Locke, *An Essay Concerning Human Understanding*. (1693, IV, 17, § 9).

⁶⁰⁸ When reading *The Reasonableness of Christianity*, however, it might strike the reader that most of it is not held in a typical philosophical language. In most of the book, he uses a clearly religious way of expressing himself, and Locke insists that his intention is to interpret the Scriptures strictly in accordance with their own intention.

⁶⁰⁹ According to I.T.Ramsey one should be careful in ascribing to Locke a "rude empiricism". Instead "Locke preserves both the reasonableness as well as the mystery and the distinctiveness of the Christian faith." I.T. Ramsey, "Editor's Introduction" in *The reasonableness of Christianity with A Discourse of Miracles and part of A Third Letter Concerning Toleration* (published 1958), p. 16.

⁶¹⁰ I.T. Ramsey, "Editor's Introduction" in *The reasonableness of Christianity with A Discourse of Miracles and part of A Third Letter Concerning Toleration* (published 1958), p.17.

⁶¹¹ John Locke, *An Essay Concerning Human Understanding*, 1693/1995, (Book IV, 19, § 14)

dress the “reasonableness” of the Christian religion. Nor can I delve into the ways in which Kant's views changed over the course of his life. For present purposes, I will mainly take my point of departure from Kant's “*Religion innerhalb der Grenzen der Blossen Vernunft*”, (a relatively late work, published in 1793, when Kant was almost 70 years old).⁶¹² The very title of the book indicates that Kant took a rather reductionist approach to (Christian) religion which he seems to treat as being conceived of entirely within a framework settled by autonomous reason.

There are three things that I want to stress in this connection:

First: The title that Kant has chosen for his most central book on religion might at the first glance give the impression that reason as such is relatively firm and unproblematic.⁶¹³ But that may not be the case. Before unfolding the (Christian) religion within the limits of *reason* alone, it should be focused on the limits of reason itself, what Kant does in his philosophy. Reason itself is not to be taken as unproblematic within Kantian philosophy, as Kant clearly emphasises in the introduction to his “*Kritik der reinen Vernunft*”:

“Die menschliche Vernunft hat das besondere Schicksal in einer Gattung ihrer Erkenntnisse: daß sie durch Fragen belästigt wird, die sie nicht abweisen kann, denn sie sind ihr durch die Natur der Vernunft selbst aufgegeben, die sie aber auch nicht beantworten kann, denn sie übersteigen alles Vermögen der menschlichen Vernunft.

In diese Verlegenheit geräth sie ohne ihre Schuld. Sie fängt von Grundsätzen an, deren Gebrauch im Laufe der Erfahrung unvermeidlich und zugleich durch diese hinreichend bewährt ist. Mit diesen steigt sie (wie es auch ihre Natur mit sich bringt) immer höher, zu entfernteren Bedingungen. //AVIII// Da sie aber gewahr wird, daß auf diese Art ihr Geschäfte jederzeit unvollendet bleiben müsse, weil die Fragen niemals aufhören, so sieht sie sich genöthigt, zu Grundsätzen ihre Zuflucht zu nehmen, die allen möglichen Erfahrungsgebrauch überschreiten und gleichwohl so unverdächtig scheinen, daß auch die gemeine Menschenvernunft damit im Einver-

⁶¹² I refer mostly to “*Religion within the Limits of Reason alone*”, translated by Theodor M. Greene and Hoyt H. Hudson, Harper & Brothers, New York, 1960. Sometimes, however, I shall rather refer to a German edition of Kant's works, published by Wissenschaftliche Buchgesellschaft (WBG), Vol.7, Darmstadt 1968.

⁶¹³ Choosing a title for a book on religion that so clearly lets reason define the framework, might seem odd. About the choice of title for this work Onora O'Neill very appropriately remarks: “On reflection, I believe that a large part of the difficulty in making sense of Kant's choice of title for this work is that we remain surprisingly unclear about his conception of reason. This is surprising because the theme of reason is surely at the centre of Kant's work. Yet many discussions of his work investigates the role of reason in cognition or in morality, or even in the task of connecting the two, but seem to avoid direct questions about what reason is and how its authority may be vindicated...” Onora O'Neill, *Within the Limits of Reason*, (Article in manuscript), p.2. (An earlier and less developed version of this article appeared in German with the title “Innerhalb der Grenzen der Vernunft” in: *Kant über Religion*, ed. Friedo Ricken and Francois Marty, Kohlhammer, Stuttgart, 1992, pp. 101-111.)

ständnisse steht. Dadurch aber stürzt sie sich in Dunkelheit und Widersprüche, aus welchen sie zwar abnehmen kann, daß irgendwo verborgene Irrthümer zum Grunde liegen müssen, die sie aber nicht entdecken kann, weil die Grundsätze, deren sie sich bedient, da sie über die Gränze aller Erfahrung hinausgehen, keinen Proberstein der Erfahrung mehr anerkennen. Der Kampfplatz dieser endlosen Streitigkeiten heißt nun Metaphysik.⁶¹⁴

Thus the role of theoretical, empirical and practical reason is clearly restricted according to Kant. And neither can “speculative reason” take us any further. It is well known how Kant rejects attempts to “prove” God’s existence; – such “proofs” can in no way count as valid proofs. We can have no sensuous intuitions about God that fit within our rational concepts, – i.e. within the categories of reason that belong to us as human beings.

Second: Man has a dual nature and should be considered both a ‘sensible’ and an ‘intelligible’ being. As part of the “phenomenal” world, i.e. as a physical being, man is subject to the physical laws of nature. As such a being he is not free. As an intelligible being, however, he can be supposed to participate in the “noumenal” world and is thereby to be considered essentially free. Speculative reason may realise this, but its hypotheses are nevertheless highly uncertain. Practical reason, however, can conform to the freedom of the noumenal world in quite another way.

Therefore practical reason can comply with the claim of morality. An idea of moral obligation only makes sense within the noumenal sphere. Obligation implies freedom. And freedom is illusory if man is considered as only an integrated part of the empirical world. Thus morality makes sense only with reference to a noumenal world, – where the very idea of moral freedom applies. Freedom means both a capacity of practical reason to conform with genuinely moral obligations and an “inner” independence of the empirical necessities of the “phenomenal” sphere.⁶¹⁵

According to Kant, morality has to be taken as an indisputable fact. But morality’s deepest ground remains unknown to us. It is a holy mystery that cannot be fully penetrated by reason and made an ordinary object of knowledge. Morality is apriori.

According to Kant’s view, as elaborated in *Religion innerhalb der Grenzen der bloßen Vernunft*, morality contains an inherent idea of the highest good, – and even an idea of a moral lawgiver and ruler over the world – that transcends what man can have unfailing

⁶¹⁴ I. Kant, *Kritik der reinen Vernunft* (1771), (p.11. in WBG-edition, 1968, Vol.3)

knowledge about.

“Weil der Mensch die mit der reinen moralischen Gesinnung unzertrennlich verbundene Idee des höchsten Guts (nicht allein von Seiten der dazu gehörigen Glückseligkeit, sondern auch der notwendigen Vereinigung der Menschen zu dem ganzen Zweck) nicht selbst realisieren kann, gleichwohl aber darauf hinzuwirken in sich Pflicht antrifft, so findet er sich zum Glauben an die Mitwirkung oder Veranstaltung eines moralischen Weltherrschers hingezogen, wodurch dieser Zweck allein möglich ist....

Diese Idee eines moralischen Weltherrschers ist eine Aufgabe für unsere praktische Vernunft. Es liegt uns nicht sowohl daran, zu wissen, was Gott an sich selbst (seine Natur) sei, sondern was er für uns als moralische Wesen sei; wiewohl wir zum Behuf dieser Beziehung die göttliche Naturbeschaffenheit so denken und annehmen müssen, als es zu diesem Verhältnisse in der ganzen zur Ausführung seines Willens erforderlichen Vollkommenheit nötig ist (z.B. als eines unveränderlichen, allwissenden, allmächtigen etc. Wesens), und ohne diese Beziehung nichts an ihm erkennen können.

Diesem Bedürfnisse der praktischen Vernunft gemäß ist nun der allgemeine wahre Religionsglaube der Glaube an Gott 1) als den allmächtigen Schöpfer Himmels und der Erden, d.i. moralisch als heiligen Gesetzgeber, 2) an ihn, den Erhalter des menschlichen Geschlechts, als gütigen Regierer und moralischen Versorger desselben, 3) an ihn, den Verwalter seiner eignen heiligen Gesetze, d.i. als gerechten Richter.⁶¹⁶

Kant postulates a moral order in the universe which ultimately guarantees a certain correspondence between people's morality (virtue) and their ultimate happiness. The idea of a morally good God as a just lawgiver, governor and judge is required by practical reason in its concern with the moral law. One might say that Kant who so strongly emphasises the autonomy of morality at the very outset, in the end brings morality and religious belief together again. This, in my opinion, is clearly evident in *Religion innerhalb der Grenzen der bloßen Vernunft*. And my point now is just this; – to demonstrate how religion in the end serves the maintenance of the moral order, and is thereby in a way required for the sake of practical reason itself.

Third: There were influential contemporaries who considered *Religion innerhalb der Grenzen der bloßen Vernunft* a dangerous work from a theological and Christian point of view because of its obvious implications not just for morality in the most narrow sense of the word, but for central issues within Christian dogmatic as well. After having

⁶¹⁵ I cannot here discuss the difficult problem how it is possible for Kant to conceive of man as simultaneously both morally free and physically not free.

⁶¹⁶ *Religion innerhalb der Grenzen der bloßen Vernunft* (1793), III; 198-199, (p.806f. in WBG-edition, 1968, Vol.7)

been approved of by the official censors in Berlin, the first part of *Religion innerhalb der Grenzen der bloßen Vernunft* was published in *Berlinische Monatschrift* (1792). But thereafter the second part of the work was stopped by the censors. And this decision was even confirmed in a special letter from the king. Kant's stated aim was simply to present the Christian religion clearly to people in a way that might really be meaningful to them. And indeed, – a reader of *Religion innerhalb der Grenzen der bloßen Vernunft*, must admit that Kant is well acquainted both with Scriptural exegesis, with Christology, Church-dogma and, last but not least, with issues within philosophy of religion such as the problem of evil, a problem that he discusses thoroughly in the book. There can be little doubt that Kant held (the Christian) religion in high esteem, despite his ambiguity towards pietism and ecclesiastical authorities. Moreover, Kant employs the most central religious symbols (as for instance “the kingdom of God”) within a framework that is primarily defined by a moral perspective and by human reason.

“Man kann aber mit Grunde sagen: ‘daß das Reich Gottes zu uns gekommen sei’, wenn auch nur das Princip des allmählichen Überganges des Kirchenglaubens zur allgemeinen Vernunftreligion und so zu einem (göttlichen) ethischen Staat auf Erden allgemein und irgendwo auch öffentlich Wurzel gefaßt hat: obgleich die wirkliche Errichtung desselben noch in unendlicher Weite von uns entfernt liegt. Denn weil dieses Princip den Grund einer continuirlichen Annäherung zu dieser Vollkommenheit enthält, so liegt in ihm als in einem sich entwickelnden und in der Folge wiederum besamenden Keime das Ganze (unsichtbarer Weise), welches dereinst die Welt erleuchten und beherrschen soll.”⁶¹⁷

As far as I can see Kant tends to ascribe to religion first of all an *instrumental* value, in the way he subordinates it to morality⁶¹⁸ and in the significance ascribed to it as a shared moral resource within the wider framework of public life. It seems as if we might be justified in saying that Kant, when claiming the reasonableness of Religion, simultaneously makes rather strong assumptions about the very substance of the Christian religion as such, assumptions that imply a certain “reductionism” in terms of the nature of (the Christian) religion, – what is already suggested in the very title of *Religion innerhalb der Grenzen der bloßen Vernunft*.

The purpose of my brief accounts of Kant's *Religion innerhalb der Grenzen der*

⁶¹⁷ *Religion innerhalb der Grenzen der bloßen Vernunft* (1793), III; 172, (p.786 in WBG-edition, vol.7)

bloßen Vernunft and Locke's *The Reasonableness of Christianity* is twofold:

- to show that Locke and Kant stressed (and claimed) the reasonableness of the Christian religion in a way that was not without substantial implications for religion itself, – and,
- that Locke and Kant convincingly point to the limits of theoretical as well as practical reason, while taking into account that there are elements of genuine religion that are above reason and by far transcend what reason can comprise.

And now the question is how can Rawls, who is without doubt influenced both by Locke and Kant, and, like them, also claims the “reasonableness” of (the Christian) religion, avoid making similarly strong and controversial (reductionist) assumptions about religion as such. The very idea of the “reasonableness” of (the Christian) religion, which Rawls shares⁶¹⁹, seems in any case to imply that there might also be some (religious) doctrines which are not reasonable. When claiming the reasonableness of the (religious) doctrines, Rawls will, however, avoid making the same kind of rather strong substantial assumptions about religion itself as is made by Locke and especially by Kant. The question is how this may be possible.

5.3.2. Rawls' demand for reasonableness

It can clearly be observed that Rawls is very careful not to define the reasonableness of religion or of Christianity in the “doctrinaire” way Locke and Kant did. Their treatment of religion is one reason, I assume, why Rawls – although influenced by both of them – considers Locke and Kant to be typical representatives of liberalism conceived of as a comprehensive doctrine.⁶²⁰ Rawls wishes to avoid the rather strong assumptions about

⁶¹⁸ When religion does not belong within the field of theoretical reason, and when the possibility of making it part of speculative reason is radically limited, there seems to be no other way left than giving religion its place within the field of practical reason.

⁶¹⁹ Rawls says that he is indebted to Wilfried Hinsch for realising how important the idea of *reasonable* comprehensive doctrines is within political liberalism. Cf. J. Rawls, *Political Liberalism* (1993), p.59 (Note 12).

⁶²⁰ There can be no doubt that the “later” Rawls considers both Locke and Kant as representatives of a liberalism conceived of as a (controversial) comprehensive doctrine. Neither Kant nor Locke can, according to Rawls, comply with an elementary requirement, which a workable conception of political justice must satisfy, namely that “such a conception must allow for a diversity of doctrines and the plurality of conflicting, and indeed incommensurable, conceptions of the good affirmed by the members of existing democratic societies.” J.Rawls, “Justice as Fairness: Political not Metaphysical”, *Philosophy and Public Affairs* (1985, Vol. 14, No 3), p. 225. But let me now nonetheless add that it might be discussed

religion they made, and it is one of the primary reasons he introduces a “method of avoidance”.

However, if a distinction between reasonable and non-reasonable doctrines, that Rawls considers so important, is to be of any use at all, it is necessary that there be some criterion of “reasonableness” by which to judge whether to include a given comprehensive doctrine as “reasonable” or exclude it as “unreasonable”. If we are to understand what it means for something to be included or excluded we must more thoroughly examine the notion of the “reasonable”⁶²¹ as employed in Rawls’ conception of political liberalism.

5.3.2.1. Distinguishing between the rational and the reasonable

To understand how Rawls uses the notion of the “reasonable”, it might be of interest to notice how he distinguishes “the reasonable” from “the rational”. In *Political Liberalism* (Lecture II: § 1) Rawls explicitly focuses on the distinction between “The Reasonable and the Rational”.⁶²² We will start with the latter notion (the rational), – which will make it easier afterwards to give an account of the distinctive marks of the former. According to Rawls there are three things that make agents rational, – namely that:

- they can use their judgement in seeking ends that are peculiarly their own.
- they are capable of adopting the most effective means to achieve their ends.

whether Kant – as far as his *political* philosophy is concerned – provides us with comprehensive values that are doctrinally more demanding than those launched by Rawls himself. Freedom is for both of them the quite essential value. And I think that it is important to see that Kant in correspondence with the distinction he makes between “legality” and “morality” also distinguishes two kinds of freedom: “Within Kant’s moral theory there are two main types of freedom: inner freedom and outer freedom. Inner freedom is the primary subject of Kant’s ethical theory, while outer freedom might be considered the primary subject of Kant’s theory of justice. External freedom in the most general sense is independence of constraints imposed by others, but from a normative perspective it is divided into two further categories: ‘rightful’ external freedom, which is freedom of action circumscribed by laws of justice, and ‘lawless’ or ‘wild’ external freedom, which is the unrestrained, anarchic liberty of the state of nature.” A. D. Rosen, *Kant’s Theory of Justice* (1996), p.7. I think that the distinction Kant makes within the latter (external) freedom is important, because an “external freedom, which is freedom of action circumscribed by laws of justice” is the only kind of freedom that can be compatible with the similar freedom of others. Of course Kant goes far more thoroughly than Rawls into ethical theory as such, but as far as the *political* perspective is concerned, I think that Kant may after all come rather close to Rawls.

⁶²¹ Let me here insert the remark that the distinction between reasonable and non-reasonable (or unreasonable) doctrines corresponds with Rawls’ way of distinguishing reasonable pluralism from pluralism as such. The problem of the “reasonable” is clearly actualised in both places. In a way the discussion of the reasonable now connects to and deepens issues of chapter 3 about pluralism.

⁶²² See J. Rawls, *Political Liberalism* (1993), pp.48-54.

- they have a capacity to decide how well the different ends they pursue cohere.

What merely rational agents obviously lack according to Rawls, is the moral ability required for engaging in fair social co-operation. Merely rational agents might even be characterised by Rawls as “psychopathic”.⁶²³

Rawls holds that there are also three important features that make agents reasonable, – namely that:

- they are motivated to honour fair terms of co-operation.
- they accept a duty to appeal to public reason and explain to one another the reasons they have for their decisions and their attitudes in matters of common interest.⁶²⁴
- they have insight in the nature and limits of their own political judgement.⁶²⁵

The main point here is that reasonable persons can be supposed to propose principles defining *fair* terms of co-operation, and that they are also ready to implement the required standards for establishing such terms and to abide by them, – provided that others are willing to do the same.⁶²⁶ The idea of “the reasonable”, which they stick to, should be considered *morally* qualified in a way that “the merely rational” is not. Societies characterised by *reasonable* pluralism consist mainly of *reasonable* citizens who are

⁶²³ “What rational agents lack is the particular form of moral sensibility that underlies the desire to engage in fair cooperation as such, and to do so on the terms that others as equals might reasonably be expected to endorse. I do not assume the reasonable is the whole of moral sensibility; but it includes the part that connects with the idea of fair social cooperation. Rational agents’ approach being psychopathic when their interests are solely in benefits to themselves.”, J. Rawls, *Political Liberalism* (1993), p.51. And in a footnote Rawls tries to explain this “defect” of merely rational agents by referring to a remark made by Immanuel Kant: “Rational people lack what Kant calls in the Religion, Ak, VI:26, ‘the predisposition to moral personality’ ...” *Ibid.*, p.51.

⁶²⁴ I will introduce and discuss thoroughly the idea of public reason at the end of this chapter.

⁶²⁵ What I refer to here is Rawls’ requirement that all citizens – participating in public life and debate – should accept certain “burdens of judgment”, as shall soon more thoroughly be taken into consideration.

⁶²⁶ A reciprocal premise is taken as essential, as can also be seen in Rawls’ most recent essay, where the criteria for reasonableness are even more clearly specified: “citizens are reasonable when, viewing one another as free and equal in a system of social cooperation over generations, they are prepared to offer one another fair terms of cooperation according to what they consider the most reasonable conception of political justice; and they agree to act on those terms, even at the cost of their own interests in particular situations, provided that other citizens also accept those terms. The criterion of reciprocity requires that when those terms are proposed as the most reasonable terms of fair cooperation, those proposing them must also think it at least reasonable for others to accept them, as free and equal citizens, and not as dominated or manipulated, or under the pressure of an inferior political or social position. Citizens will of course differ as to which of these conceptions they think the most reasonable, but they agree that all are reasonable, even if barely so.” J. Rawls, “The Idea of Public Reason Revisited”, *The University of Chicago Law Review* (1997;3), p.770.

holding reasonable doctrines, – and are honouring an idea of *fair* coexistence. A fundamental moral idea of *fair* co-operation can be realised by reasonable persons in the midst of the radical diversity of modern societies, – even if a reasonable pluralist society should be “neither a society of saints nor a society of the self-centred.”⁶²⁷

According to Rawls, however, the rational and the reasonable have to work in tandem. And the one is not to be derived from the other.⁶²⁸ Most appropriately one should therefore say that there is a complementarity between the reasonable and the rational which means that people should be supposed to behave both as rational agents and as reasonable co-operative citizens.

We have now met the reasonable agent, – as distinguished from the merely rational person. And we have simultaneously learned that the idea of the “reasonable”, which is so central in Rawls’ conception, is genuinely morally laden, – implying an idea of fair co-operation. And the idea of social co-operation is closely connected with the role ascribed to the public in Rawls’ theory.

5.3.2.2. The reasonableness of doctrines according to Rawls

I have tried to make clear the essential features of *the reasonable* and *the rational* by distinguishing the characteristic attitudes of rational and of reasonable *agents*. Turning to *Political Liberalism* it seems to me as if the criteria for defining persons as “reasonable” are more specific than the criteria Rawls uses for defining comprehensive doctrines as reasonable (or unreasonable).

In *Political Liberalism* reasonable *doctrines* have three main features:⁶²⁹

- they cover elementary philosophical, moral or religious aspects of life within an intelligible view. (Thus “a reasonable doctrine is an exercise of theoretical reason”.⁶³⁰)
- they display the most significant values in life, and give guidelines for how to balance them when they conflict. (Thus “a reasonable doctrine is also an exercise of

⁶²⁷ J. Rawls, *Political Liberalism* (1993), p.54.

⁶²⁸ And so Rawls openly corrects a mistaken remark that he made in *A Theory of Justice*, (p.16), where he made the theory of justice as fairness decisively dependent on a theory of rational choice.

⁶²⁹ Cf. J. Rawls, *Political Liberalism* (1993), p.59.

⁶³⁰ J. Rawls, *Political Liberalism* (1993), p.59

practical reason”.⁶³¹)

- they draw upon a particular tradition, what gives them a certain stability and a basic continuity over time. This continuity, however, does not render reasonable doctrines unrevisable.⁶³²

These criteria of reasonableness are satisfied by many different and even competing doctrines reflecting highly different historical backgrounds, representing more than one intelligible (and coherent) perspective on human life and displaying highly different ways of balancing moral values. One does therefore well in considering reasonable pluralism an integrated and persistent part even of a well-ordered society. But Rawls clearly admits that his “account of reasonable comprehensive doctrines is deliberately loose”, and I have in chapter 3 suggested that the reason for this is that Rawls will obviously as far as possible avoid disqualifying particular (religious) doctrines as unreasonable for political reasons.⁶³³

But the question is whether his account of reasonable comprehensive doctrines is too loose and vague to be of any use. Rawls is, however, more specific in his recent writings. He now stresses that the idea of a reasonable overlapping consensus of comprehensive doctrines requires;

“that all of these doctrines, both religious and nonreligious support a political conception of justice underwriting a constitutional democratic society whose principles, ideals, and standards satisfy the criterion of reciprocity. Thus, all reasonable doctrines affirm such a society with its corresponding political institutions: equal basic rights and liberties for all citizens, including liberty of conscience and the freedom of religion.”⁶³⁴

⁶³¹ J. Rawls, *Political Liberalism* (1993), p.59

⁶³² Thomas Pogge summarises the three features of a *reasonable* comprehensive doctrine as follows: “Eine umfassende Lehre ist vernünftig, wenn sie den Anforderungen der theoretischen und praktischen Vernunft gerecht wird, also zumindest konsistent und verständlich ist, und in einer Tradition steht, die sich, wenn überhaupt, auf von innen her plausible Weise fortentwickelt.” T. W. Pogge, *John Rawls* (1994), p.144.

⁶³³ Let me just recall what Rawls himself makes explicitly clear, – namely that his “...account of reasonable comprehensive doctrines is deliberately loose. We avoid excluding doctrines as unreasonable without strong grounds based on clear aspects of the reasonable itself. Otherwise our account runs the danger of being arbitrary and exclusive. Political liberalism counts many familiar and traditional doctrines – religious, philosophical, and moral – as reasonable even though we could not seriously entertain them for ourselves, as we think they give excessive weight to some values and fail to allow for the significance of others. A tighter criterion is not, however, needed for the purposes of political liberalism.” J. Rawls, *Political Liberalism* (1993), p.59f.

⁶³⁴ J. Rawls, “The Idea of Public Reason Revisited”, *The University of Chicago Law Review* (1997;3), p.801.

Rawls makes it clear that comprehensive doctrines that cannot “affirm such a society with its corresponding political institutions” are to be considered unreasonable.⁶³⁵ (He does not say, however, how unreasonable doctrines are to be dealt with in a liberal society.)

But Rawls does not claim that reasonable comprehensive doctrines have to be liberal. (They should nonetheless satisfy the elementary criterion of reciprocity). Neither does he claim that transcendent values should ultimately be subordinated to political values. He entirely accepts that reasonable comprehensive doctrines, as for instance religious doctrines, might have another ranking of values than implied in a conception of political liberalism. The reasonableness of religious doctrines is nevertheless obvious in that they make it possible to endorse the most vital political values and institutions on internal premises, thereby honouring fair “worldly” arrangements. In recent time Rawls becomes very explicit about this:

“In a reasonable comprehensive doctrine, in particular a religious one, the ranking of values may not be what we might expect. Thus suppose we call transcendent values such values as salvation and eternal life – the *Visio Dei*. This value, let’s say, is higher, or superior to, reasonable political values of a constitutional democratic society. These are worldly values and therefore on a different, and, as it were lower, plane than those transcendent values. It does not follow, however, that these lower yet reasonable values are overridden by the transcendent values of the religious doctrine. In fact, a reasonable comprehensive doctrine is one in which they are not overridden, it is the unreasonable doctrines in which they are. This is a consequence of the idea of the politically reasonable as set out in political liberalism. Recall §3.2 where it was said: In endorsing a constitutional democratic regime, a religious doctrine may say that such are the limits God sets to our liberty.”⁶³⁶

Rawls is still defining a “reasonable (religious) doctrine” in a way that makes it possible to include most religious doctrines as reasonable, but he has now also got workable criteria for excluding some as unreasonable. Simultaneously it should be repeated that the way he understands the notion of reasonableness avoids quite effectively the “doctrinaire” implications (and the reductionism in matters of religion) which can be found in more comprehensive versions of liberalism. But simultaneously “transcendent

⁶³⁵ Rawls once more draws on the principle of reciprocity, – making it a distinguishing mark of unreasonable doctrines that: “Their principles and ideals do not satisfy the criterion of reciprocity, and in various ways they fail to establish the equal basic liberties. As examples consider the many fundamentalist religious doctrines...” J. Rawls, “The Idea of Public Reason Revisited”, *The University of Chicago Law Review* (1997;3), p.801.

⁶³⁶ J. Rawls, “The Idea of Public Reason Revisited”, *The University of Chicago Law Review* (1997;3), p.801f.

values” and “worldly values” cannot be kept very sharply apart. There are overlapping concerns opening the possibility of mutual support as well as of conflict.

5.4. Claiming the reasonableness of politics?

As discussed above, Honecker quite clearly emphasises the significance of appealing to political *reason* in matters of social ethics and social co-operation (simultaneously, however, he reminds us of the *limits* of reason). By stressing the role of human reason Honecker declares the political domain a “moral commonwealth”. This means for instance that churches are not in the privileged situation that they can draw on an esoteric knowledge in matters belonging within the “worldly kingdom”. In so far Honecker has an important *theological* concern. But thereby it seems as if both Honecker and Rawls come very close to underpinning an “Eigengesetzlichkeit” of the political domain;

- the former by stressing that churches (and Christians) have *no privileged insight* in substantial matters belonging within the domain of politics,
- the latter by stressing the “freestandingness” of a *political* conception,
- and both of them by claiming the *reasonableness* of politics.

From a theological as well as from a liberal point of view it seems unsatisfactory to draw a sharp line of demarcation between “the two realms”. One has to find some way of relating them properly. Before considering Honecker’ way of relating within the doctrine of the two kingdoms, aiming at a “*Vermittlung*” between the two realms, I should like to address the problem of “Eigengesetzlichkeit” more thoroughly in order to timely present some appropriate background-material for the further discussion.⁶³⁷

5.4.1. “Eigengesetzlichkeit” – modified?

The notion of “Eigengesetzlichkeit” is often associated with the Lutheran doctrine of the two kingdoms⁶³⁸, and serves to stress the “autonomy” of different spheres of life, – not

⁶³⁷ Rawls’ way of “relating” will be considered when introducing the idea of public reason (chapter 5,6) and especially when discussing the problem of practising a duty of civility (chpt.6). The problem of “relating” is also clearly actualised by the so called “from-within-principle”.

⁶³⁸ Let it, however, be emphasised that the problem of “Eigengesetzlichkeit” is not just to be considered an isolated or peripheral aspect, but concerns various fundamental issues within Lutheran theology. “Das Stichwort Eigengesetzlichkeit verweist gewiß präzise auf Grundsatzüberlegungen reformatorischer Theologie wie die Unterscheidung von Gesetz und Evangelium, der beiden Reiche Gottes, des regnum mundi und des regnum Christi, der Unterscheidung von christlichem Glauben und profaner Vernunft. Es kann

least of which is the political sphere. The idea of an “Eigengesetzlichkeit der Lebensgebiete” which is so characteristic of the modern age, is described as follows in the great theological encyclopaedia “*Die Religion in Geschichte und Gegenwart*”:

“Was mit der sog. E.d.L. [Eigengesetzlichkeit der Lebensgebiete] gemeint ist, ist nicht ohne weiteres eindeutig. Es kann gedacht werden an den seit der Aufklärung deutlichen Prozess der Ablösung aller Lebensgebiete von der christlichen Religion und Theologie, von der biblischen Offenbarung und der kirchlichen Tradition. Für die Wissenschaft und alle ihre Zweige, für die Ethik, für die Staatslehre und die Staatsleitung oder für das Recht sind nicht mehr biblische Normen und Prinzipien maßgebend, sowohl was das Erkennen als auch was das Handeln betrifft, sondern den Sachgebieten selbst immanente Gesetze und Normen.”⁶³⁹

The way Honecker employs the doctrine of the two kingdoms seems to a certain extent actually to further the “Eigengesetzlichkeit” of the worldly regiment, – at least in a modified form.⁶⁴⁰ Honecker sharply criticises fundamentalism, overrules all tendencies of theocratic politics, avoids the derivation of political principles or programs exclusively from Christian revelations, and does not pay much attention to a religiously inter-

jedoch nicht losgelöst vom politischen und wirtschaftlichen Gebrauch in Theorie und Praxis des Lutherums und also von seiner konkreten Anwendung betrachtet werden, wobei zunächst völlig dahingestellt bleiben mag, ob solche Anwendung – verglichen mit Luther selbst - zu Recht oder zu Unrecht erfolgte. Das Problem der Eigengesetzlichkeit kehrt dabei unter historischer Perspektive wieder vor allem als die Frage nach dem Verhältnis von Politik und Theologie, von Gesellschaft und Kirche in der deutschen Geistes- und Sozialgeschichte des 19. Jahrhunderts. ... Die Thematik der Autonomie der Lebensgebiete verbindet sich sodann mit dem Gedanken der Verweltlichung, Verselbständigung, Entklerikalisierung von Wirtschaft, Politik, Kultur, also mit der Säkularisierungsthematik.” M. Honecker, “Das Problem der Eigengesetzlichkeit”, *Zeitschrift für Theologie und Kirche* (1976), p. 95.

⁶³⁹ *Die Religion in Geschichte und Gegenwart* (RGG), Bd. II (1958), p.354. In RGG the problem of the so called “Eigengesetzlichkeit” is further sharpened by the question: “Stehen Staat und Wirtschaft in dem Sinne unter eigenen, etwa gar naturhaft-zwangsmäßigen Gesetzen, daß das christliche Liebesgebot oder überhaupt irgendeine ethische Norm hier völlig außer Kraft gesetzt sind? Das hieße: Im politischen Leben gilt die Staatsräson und geht es um den Erwerb und die Steigerung von Macht, in der Wirtschaft um den Erwerb von Gütern und dem höchstmöglichen Gewinn. Da der Christ einerseits unter dem Gebot der unbedingten Gottes- und Nächstenliebe steht, andererseits als Staatsbürger politisch handeln und, um sein Leben zu fristen, wirtschaftend tätig sein muß, führt er danach eine Doppelexistenz. Amts- und Person-sphäre sind auseinandergerissen, wobei noch zu fragen ist, welcher konkrete Raum für die Person-sphäre, in der das Liebesgebot gilt, überhaupt bleibt. Die Lage in der heutigen ev. Ethik ist, da der Gedanke einer Doppelexistenz vor Gott absurd erscheint, so, daß maßgebende Theologen (Barth, Thielicke, Söe u.v.a.) die ganze Vorstellung von der E.d.L. [Eigengesetzlichkeit der Lebensgebiete] scharf zurückweisen, und zwar auch und vor allem deshalb, weil die Königsherrschaft Christi und der Anspruch des Wortes Gottes auf die ganze Wirklichkeit unseres Lebens durch sie akut gefährdet sind. Da die Lehre von der E.d.L., namentlich wo sie innerhalb der luth. Theologie verhandelt wird, regelmäßig auf Luthers sog. Lehre von den beiden Reichen ...bezogen ist, ist diese Lehre Luthers mit in eine Krise gekommen.” (RGG, II, p.355).

⁶⁴⁰ However, Honecker clearly admits that a doctrine of the two kingdoms, closely connected with an idea of “Eigengesetzlichkeit” for the worldly regiment, has in many cases in fact proved disastrous, for instance during the second world war. It might therefore be very hard nowadays to defend even the slightest idea of “Eigengesetzlichkeit”. But Honecker nonetheless also seems to be worried about the consequences of re-

preted natural law tradition. And Honecker clearly stresses the role of *reason* in social ethics, and in matters belonging within the worldly “realm”. The way Honecker draws upon the doctrine of the two kingdoms may fit very well within a Rawlsian perspective, since Rawls stresses that his conception, as strictly political, is to be elaborated as a *freestanding* conception.

Before arriving at a conclusion concerning the problem of “Eigengesetzlichkeit” (and the “freestandingness” of the domain of the political) I would like to consider more specifically Honecker’s article on “*Das Problem der Eigengesetzlichkeit*”.⁶⁴¹ In this article Honecker starts by underlining that the very notion of “Eigengesetzlichkeit” is far from clear and “daß darunter sehr verschiedenartige Einzelfragen sich verbergen”.⁶⁴² He realises, however, that whatever the precise meaning of the term, the problem of “Eigengesetzlichkeit” is appropriately to be considered within a *modern* setting.⁶⁴³ The German term has become more or less a “terminus technicus” first in the twentieth century⁶⁴⁴, although the problems covered by the term “Eigengesetzlichkeit” are actualised much earlier, not least in the 19th century, in connection with the debate about the social impact of the Reformation theology. But it seems in any case obvious that the notion of “Eigengesetzlichkeit” can only be fully understood within a modern context. And Honecker ascribes to Max Weber the main responsibility for introducing the term into the modern debate.⁶⁴⁵ Thereafter, the idea of “Eigengesetzlichkeit” was embraced by theo-

jecting entirely the very idea of “Eigengesetzlichkeit”. It may appropriately be asked whether the concern inherent in the idea of “Eigengesetzlichkeit” is somehow to be maintained, – at least in a modified form.

⁶⁴¹ M. Honecker, “Das Problem der Eigengesetzlichkeit”, *Zeitschrift für Theologie und Kirche* (1976), pp.92-130.

⁶⁴² “In heutigen sozialetischen Texten wird das Wort ‘Eigengesetzlichkeit’ häufig gebraucht. Dabei verbindet sich mit dem *Begriff* sofort die Vorstellung von einer bestimmten sozialetischen *Theorie*; freilich ist man sich oft genug dessen nicht bewußt, daß der *Begriff* nicht eindeutig bestimmt und festgelegt ist und daß *Begriff* und *Theorie* nicht notwendig deckungsgleich sind. Die Formulierung meines Themas ‘Das Problem der Eigengesetzlichkeit’ ist also bereits Ausdruck einer Verlegenheit, nämlich der Verlegenheit, daß weder der *Begriff* präzise definiert noch die *Theorie* so klar ist, wie man es sich wünscht. Es läßt sich vielmehr zeigen – und zwar haben dies bereits andere getan –, daß darunter sehr verschiedenartige Einzelfragen sich verbergen.” M. Honecker, “Das Problem der Eigengesetzlichkeit”, *Zeitschrift für Theologie und Kirche* (1976), p.92.

⁶⁴³ “Der Gedanke einer Eigengesetzlichkeit von Politik, Wirtschaft und der einzelnen Lebensgebiete ist, wie schon gesagt, ein typisch neuzeitlicher Gedanke, ein Gedanke der Aufklärung. Zwar hat Luther betont, daß das weltliche Regiment ‘sein eigen Wesen’ habe [WA 51, 238,16]. Aber dieses Eigenwesen des weltlichen Regiments ist umgriffen vom Gesetz Gottes.” M. Honecker, “Das Problem der Eigengesetzlichkeit”, *Zeitschrift für Theologie und Kirche* (1976), p.105.

⁶⁴⁴ “Zunächst ist festzustellen, daß der *Begriff* erst im 20. Jahrhundert in der deutschen Sprache nachzuweisen ist.” M.Honecker, “Das Problem der Eigengesetzlichkeit”, *Zeitschrift für Theologie und Kirche* (1976), p.92.

⁶⁴⁵ “Da Max Weber in seinen genannten Aufsätzen [Vgl. Max Weber, *Ges. Aufs. zur Religionssoziologie*

logical political ethics where it soon became a distinctive feature (and a problem) closely associated with Lutheran social ethics.

The notion of “Eigen-gesetzlichkeit” belongs naturally within a group of terms, characterised by Honecker as the so called “‘Eigen’-bildungen, wie Eigenart, Eigenwürde, Eigenwert, Eigenständigkeit usw”.⁶⁴⁶ Such terms serve to mark the distinctive character of certain subject areas, their *immanent* value-structure.⁶⁴⁷ Claiming the “Eigengesetzlichkeit” of economy might for instance imply that an economic program has to be elaborated entirely according to the nature of economics itself, - and not according to “foreign” rules of (theological) ethics. The same might be the case in strictly political matters.

The notion of “Eigengesetzlichkeit” should, however, mainly be qualified in accordance with the second part of the term, – referring to “Gesetzlichkeit” or “Gesetz”. The way we understand the notion of “Gesetz (lichkeit)” in modern age is primarily taken from the domain of natural science, with its search for regular (causal) relations between the phenomena of the natural world.⁶⁴⁸ Or the notion might be used in a more Hegelian sense; – to express the objective orderliness of history and cosmos as a whole.⁶⁴⁹ The

I, (1920) 1972⁶ ...] den Begriff Eigengesetzlichkeit ziemlich häufig benutzt, dürfte somit ihm die Priorität der Prägung des Begriffs zuzusprechen sein.” M. Honecker, “Das Problem der Eigengesetzlichkeit”, *Zeitschrift für Theologie und Kirche* (1976), p.97f. Honecker once more underlines, that a lot of “Hinweise sprechen dafür, daß der Begriff kurz vor 1920 aufgekommen ist, sich dann rasch durchgesetzt hat und seit Mitte der 20er Jahre allgemein gebraucht wird, freilich ohne eindeutig definiert zu sein. Ich vermute, daß MAX WEBER in seinen religionsoziologischen Untersuchungen den Begriff geprägt und in die Diskussion gebracht hat.” (*Ibid*, p.97)

⁶⁴⁶ M. Honecker, “Das Problem der Eigengesetzlichkeit”, *Zeitschrift für Theologie und Kirche* (1976), p.92.

⁶⁴⁷ Hartmut Kreß has tried to distinguish between different aspects of the use of the term “value”. In doing so he also singles out different “Wertbereiche” in a way that might be illustrative when discussing the phenomenon of “Eigengesetzlichkeit”: “Unter Wertbereichen (oder Wertsphären) sind die verschiedenen kulturellen und institutionellen Ausformungen von Werten zu verstehen, die u.a. von G.Simmel und E.Troeltsch hervorgehoben worden sind: Religion, Recht, Wissenschaft, Kunst usw. repräsentieren jeweils eigene Wertbereiche.” Cf. H. Kreß, *Ethische Werte und der Gottesgedanke. Probleme und Perspektiven des neuzeitlichen Wertbegriffs* (1990), p.202.

⁶⁴⁸ And according to Honecker there are three characteristics that might be considered typical of the modern notion of “Gesetz(lichkeit)”, - namely causality, necessity and universality. “Der Gesetzesbegriff wird allgemein gekennzeichnet durch die Merkmale der Kausalität, der Notwendigkeit und der Allgemeingültigkeit. Das Gesetz bringt Determiniertheit zum Ausdruck, Festlegung im Unterschied zum Zufall, zur Kontingenz, zur Nicht-Notwendigkeit. Es ist jedoch einmal nicht notwendig, Gesetz mit Kausalgesetz einfach gleich zu setzen.” M. Honecker, “Das Problem der Eigengesetzlichkeit”, *Zeitschrift für Theologie und Kirche* (1976), p.113.

⁶⁴⁹ “Im neuzeitlichen Gesetzesbegriff sind zwei grundsätzliche Tendenzen zu unterscheiden. Der naturwissenschaftlich orientierte Begriff behandelt das Gesetz vorwiegend als relationales Zusammenhang, durch den der menschliche Verstand die Gegenstände der Natur in eine mathematisch-physikalisch faßbare Beziehung bringt. Das Gesetz ist also nach diesem Verständnis eine vom menschlichen Subjekt

latter understanding corresponds quite well with a traditional (Western) perspective, - the notion of “law” might thereby be used irrespective of any decisive difference between laws of nature and laws for the moral [and social] domain.

As far as I can see, however, it should be emphasised that “Gesetz(lichkeit)” means different things when used within different contexts and spheres of life. There are “Sinngesetze” and there are “Verhaltensgesetze”, and there are also “soziale, wirtschaftliche, historische Gesetze”, and beside this the notion of “Gesetz” has a special meaning when used in a theological context. The very notion of “Gesetz”, as used within the more or less autonomous spheres of life, – each with its own “laws”, reflects in itself the modern fragmentation. The result of this might be that:

- people have to comply with multiple kinds of norm- and value-systems, – which might lead to considerable difficulties in making reality cohere.
- the “laws” of one particular life-sphere easily becomes dominant, – which results in the discrediting or subjection of other life-spheres.
- religion has its own “laws” as one aspect of life, – which might lead to an undermining of the overarching perspective that was so often essential of religion.⁶⁵⁰

These things makes the idea of “Eigengesetzlichkeit”, which is so often allied with the doctrine of the two kingdoms, ambiguous and problematic. An approach from “creation theology” (which has often tended to support at least to some extent the idea of “Eigen-

hergestellte Beziehung zwischen Gegenständen der Natur, so daß sich vor allem erkenntnistheoretische Fragen nach Art und Gültigkeit dieser Beziehung ergeben. Die andere Tendenz, vertreten vor allem von Hegel und der marxistisch-leninistischen Philosophie, begreift das Gesetz als objektiven Zusammenhang eines Weltganzen und betrachtet es als abhängiges Moment *Einer* Totalität. Dieses Gesetzesverständnis kann sich bereits auf die antike Tradition berufen, die im Gesetz ein immanentes Ordnungsprinzip der Welt, des Kosmos, sah. Strittig ist jedoch, inwieweit der Gesetzesbegriff für Natur und Geschichte gleichermaßen gültig ist, ob hier Differenzen in der Anwendung des Gesetzesbegriffes notwendig sind, und ob Gesetz ein deskriptiver Begriff oder ein normativer, d.h. präskriptiver Begriff ist, der erst durch die Gesetzgebung der menschlichen Vernunft konstituiert wird (so Kant mit seiner Unterscheidung von Naturgesetz und moralischem Gesetz).” M. Honecker, “Das Problem der Eigengesetzlichkeit”, *Zeitschrift für Theologie und Kirche* (1976), p. 109f.

⁶⁵⁰ This “particularisation of the theological and of the religious perspective is clearly seen by Honecker: “Vor dem neuzeitlichen Welt-, Wirklichkeits und Gesellschaftsverständnis sind Ansprüche von Kirche und Theologie partikular geworden. Kirchliche Verkündigung und Lehre erreichen bestimmte gesellschaftliche Teilbereiche nicht mehr unmittelbar mit ihrem Anspruch und ihren Forderungen. Auch der wissenschaftliche Universalitätsanspruch der Theologie ist damit hinfällig.” Martin Honecker, “Das Problem der Eigengesetzlichkeit”, *Zeitschrift für Theologie und Kirche*, J.C.B.Mohr, 176, pp.92-130, p.107. The question whether Rawls contributes to such a “particularisation” depends on how he can cope with the so-called “from within-principle”. I will come back to these issues.

gesetzlichkeit”) has therefore not seldom been met with an approach to the political which is clearly “christocentric” (breaking radically with the idea of “Eigengesetzlichkeit”). Honecker attempts to escape from both of these positions. To illustrate this I will quote rather extensively from his article on “Eigengesetzlichkeit” before giving further comments:

“Der Gedanke sozialer und ökonomischer Gesetze kann mit Hilfe einer am ersten Glaubensartikel orientierten Schöpfungslehre und Ordnungstheologie nicht angemessen interpretiert werden. Denn diese Gesetze sind menschliche Verhaltensgesetze, also nicht irgendwie naturgegebene, zeitlos zu begreifende Gesetzmäßigkeiten. Sie sind vom Menschen geschaffene Strukturen, in welcher der Stiftungs-, Schöpfungs und Erhaltungswille Gottes allenfalls verborgen anwesend ist. Es ist aber nach meinem Dafürhalten auch nicht möglich, das Problem der Eigengesetzlichkeit vom zweiten Artikel her theologisch anzugehen. Die dauernde ungelöste Spannung zwischen der Berufung auf den Herrschaftsanspruch Christi, der die Anerkennung anderer Gesetze ausschließt, und der notwendigen Beachtung immanenter Sachgesetzmäßigkeiten dokumentiert dies m.E. zureichend. Darüber hinaus bin ich im Zweifel, ob sich die Christologie überhaupt als Fundament theologischer Sozialethik eignet, Fundament in dem Sinne, daß daraus positive Folgerungen ableitbar sind. Ihr heuristischer Wert für die Sozialethik besteht darin, als Korrektiv und negatives Kriterium Unvereinbarkeiten zwischen christlichem Glauben und sozialem, gesellschaftlichem Handeln aufzuweisen. Für die Grundlegung theologischer Sozialethik möchte ich deshalb vorschlagen vom dritten Glaubensartikel auszugehen, nämlich so, daß es Aufgabe christlicher Interpretation von Wirklichkeit, auch von gesellschaftlicher Wirklichkeit ist, deren Unabgeschlossenheit und Transcendenzbezug herauszuarbeiten. Selbstverständlich bedarf es dazu auch der Hilfe des ersten und zweiten Glaubensartikels. Aber der Zugang zu heutigem Verstehen von Wirklichkeit scheint nur mit Hilfe des Heiligen Geistes als der Macht der Erleuchtung sich erschließen zu lassen, die den Schein der Verdinglichung durchbricht und auf Erkenntnisgewinn hoffen läßt. Das bedeutet für die theologische Interpretation des Phänomens sozialer Gesetze, daß sie deren Relativität reflektiert, die Komplexität analysiert und gegen alle monistischen Tendenzen an der Differenziertheit und damit Vielfältigkeit der Wirklichkeit festhält. Die Frage ist nicht, ob es Systeme in Natur und Gesellschaft gibt, diese Frage erledigt und beantwortet sich durch bloße Beobachtung. Die Frage ist vielmehr, ob diese Systeme als geschlossene – d.h. ethisch gesprochen als Systeme unentrinnbaren Zwanges – verstanden werden, oder als offene Systeme, welche Raum für andere Entscheidungen läßt. Zur Diskussion steht also, ob gesellschaftliche Realität als unveränderliches Faktum verstanden wird oder als offenes System, als Prozess, der für ethische Verantwortung offen ist. Die Pneumatologie und ebenso das von daher verstandene gesamte christliche Glaubensbekenntnis könnten gerade durch die Art und Weise, wie sie Wirklichkeitsdeutung ermöglichen und vollziehen, eine Einübung in den rechten Umgang mit dem Gesetz und der Struktur von gesellschaftlicher Wirklichkeit leisten.”⁶⁵¹

⁶⁵¹ M. Honecker, “Das Problem der Eigengesetzlichkeit”, *Zeitschrift für Theologie und Kirche* (1976), p.115f.

It seems as if Honecker seeks a position which transcends the traditional controversy between (Lutheran) social ethics based strictly on a doctrine of creation and (Barthian) social ethics based more exclusively on the christological dogma.⁶⁵² While the former tends to take political and social institutions and structures as settled (once and for all) in a divine act of creation, the latter tends to make the exclusive and revealed law of Christ the ultimate norm of society and its institutions. Honecker refers to the second thesis of the *Barmen Declaration* as the clearest example of a christological approach, according to which the slightest idea of “Eigengesetzlichkeit” must be rejected as fundamentally at odds with a genuinely Christian perspective on the scheme of society and the political responsibility of Christians.⁶⁵³

However, the tendencies to make christology a derivative basis for political decisions or for substantial social programs, has always ended up with arbitrary solutions. On the other hand, a political legitimation based mainly on a theological doctrine of creation will soon have to realise that the Creator remains in many respects a “deus absconditus”.

In spite of this one might ask: What is theologically to be gained by taking instead the

⁶⁵² I shall here not thoroughly discuss which role Honecker’s own tentative approach really plays in his later writing. It is important now just to underline that he presents his own attempt to establish a position beyond two traditional approaches in social ethics merely as a working-hypothesis. (“Für die Integration des sozialwissenschaftlichen Gesetzesverständnisses in die theologische Sozialethik möchte ich thetisch folgende Arbeitshypothesen formulieren...”, M. Honecker, “Das Problem der Eigengesetzlichkeit”, *Zeitschrift für Theologie und Kirche*, 1976, p.115.) Even if one might also in more recent writings find some suggestions that he still intends to take a standpoint beyond the traditional controversy between a social ethics based strictly on the doctrine of creation and an ethics based more exclusively on christology, the approach he suggests here is not systematically worked out, but nevertheless well worth considering

⁶⁵³ “Als erstes sei erinnert an einen nunmehr schon historisch gewordenen, vielfach interpretierten und dennoch in seinem Verständnis nach wie vor kontrovers gebliebenen Text, nämlich die *zweite Barmer These* von 1934. Sie fordert, Jesus Christus sei ‘so und mit gleichem Ernst’ zu verkündigen sowohl als ‘Gottes Zuspruch der Vergebung aller unserer Sünden’ wie als ‘Gottes kräftiger Anspruch auf unser ganzes Leben’. Der Verwerfungssatz erklärt darum die Annahme für falsche Lehre, ‘als gebe es Bereiche unseres Leben, in denen wir nicht Jesus Christus, sondern anderen Herren zu eigen wären, Bereiche, in denen wir nicht der Rechtfertigung und Heiligung durch ihn bedürften’. Unter Berufung auf Barmen II hat vor allem eine streng christozentrisch entworfene Theologie und theologische Sozialethik betont, jede Anerkennung einer Eigengesetzlichkeit sei unvereinbar mit dem Bekenntnis zum Herrsein Christi, sei Verleugnung des Herrschaftsanspruchs Christi über die Welt. Karl Barth hat beispielsweise im Rahmen seiner Ablehnung des Naturrechts als eines zulässigen Orientierungspunktes für christliche Entscheidungen im politischen Raum beiläufig und fast unwirsch die Rechtmäßigkeit einer Berufung auf politische und wirtschaftliche Eigengesetzlichkeit für Christen bestritten. ... Nach Barth kann es zwar weltliche, profane Aufgaben, aber keine weltlichen, profanen Maßstäbe geben. Die Bürgergemeinde hat ‘keine vom Reich Jesu Christi abstrahierte, eigengesetzlich begründete und sich auswirkende Existenz, sondern sie ist – außerhalb der Kirche, aber nicht außerhalb des Herrschaftskreises Jesu Christi – ein Exponent dieses seines Reiches’ [KD IV/3, 165ff (§ 69,2)]. Auf Barth beruft sich durchgängig die Kritik an der reformatorischen Zwei-Reiche-Lehre und die dazu vertretene Antithese, welche im Theologoumenon von Königsherrschaft Christi programmatisch formuliert ist.” M. Honecker, “Das Problem der Eigengesetzlichkeit”, *Zeitschrift für Theologie und Kirche* (1976), p.98f.

point of departure mainly from the third article of faith, – i.e. from the pneumatology? As already suggested Honecker’s position is not developed enough to see quite exactly what kind of “Erkenntnisgewinn” we should have in matters of social and political ethics if taking our point of departure mainly from pneumatology.

The way Honecker stresses that substantial rules and institutional schemes for the domain of the political are not to be derived directly from christology or from creation theology, applies obviously to pneumatology as well. Evidence in substantial matters of social and political ethics can normally not be expected to be brought about by some kind of divine *spiritual* illumination. I think nevertheless that a pneumatological approach as conceived of by Honecker, even if presented merely as a working hypothesis, might have some implications of political significance:

Political systems are in principle to be held open for innovation. Since political systems are neither to be considered “Systeme unentrinnbaren Zwanges”⁶⁵⁴ nor sacrosanct institutional schemes which must be taken as unrevisable, the political domain is left open for genuine moral responsibility. This also implies that present schemes of society have to be characterised by incompleteness, relativity, complexity and plurality.⁶⁵⁵

Let me insert a remark here:

It might be expected that an approach from the perspective of the third article of faith should bring social (political) ethics and the issue of ecclesiology very close to one another, since the Church is to be considered the most eminent “instrument” of the Holy Spirit. And in many respects Honecker indeed focuses on the relation between social ethics and ecclesiology, – and thereby he aims at ruling out some misunderstandings.⁶⁵⁶

⁶⁵⁴ Martin Honecker, “Das Problem der Eigengesetzlichkeit”, *Zeitschrift für Theologie und Kirche* (1976), p.116.

⁶⁵⁵ This perspective may support the weight ascribed to the “burdens of judgments” in the Rawlsian conception.

⁶⁵⁶ By drawing upon the doctrine of the two kingdoms in this connection he wants to prevent certain misinterpretations concerning the limited mandate of the church: “In der Tat ist die Zweireichelehre heute unentbehrlich, wenn sich die Kirche, und zwar gerade die empirische Kirche über ihr gesellschaftliches und politisches Wirken und Reden verständigen will. Denn die erwähnte fundamentaltheologische Bedeutung der Zweireichelehre kommt auch zum Vorschein, wenn Kirche als Gemeinschaft von Menschen in der Gesellschaft redend und handelnd tätig wird. Allerdings muß man sich vor verschiedenen schwerwiegenden Mißverständnissen hüten. Einmal kann die empirische Kirche niemals mit dem Reich Christi identisch sein. Die empirische Kirche als menschliche Gemeinschaft repräsentiert dann nicht einfach die coram-deo-Relation, sondern steht immer zugleich coram-mundo. Die Zweireichelehre ist gerade auch darin Theorie kirchlichen Handelns, als sie den Bezug der Kirche auf *beide* Relationen festhält. Sodann ist die ‘Kirche’ nicht mit den Ämtern, Organen, Gremien der verfaßten Kirche ineinzusetzen. Kirche ist die

One should bear in mind that:

- the church has to be considered in its “Doppeldimensionalität”⁶⁵⁷, which means that it belongs within both “realms”.
- the church, when engaging in social ethics, is neither entirely nor primarily to be identified with its leadership, which would imply that the genuine Lutheran perspective on the church as a *community* of those believing in Christ were neglected.
- a consensus in matters of social and political ethics is seldom achieved in the church, nor could it be taken as constitutive of the church as such if it were established.

An approach from “pneumatology” in no way implies that the church should be in possession of a special insight or spiritual illumination, which could serve as a basis for ordering the *political* domain and for settling the institutional scheme of society rightly for all citizens. Honecker very clearly rules out tendencies to an “ecclesiocratic”⁶⁵⁸ approach in matters of social ethics and politics, and avoids making the “Christengemeinde” more or less directly a model for the “Bürgergemeinde”. Quite unlike Karl Barth, Honecker takes the “two-relations-doctrine” as a proper hermeneutic device for addressing matters of Christian faith and political reason. Honecker’s approach opens up for a more nuanced approach to the idea of “Eigengesetzlichkeit”.⁶⁵⁹

Gemeinschaft der Glaubenden und als solche gerade nicht soziologisch aufweisbar. Wenn auf die Gemeinde als Subjekt christlicher Sozialethik und gesellschaftlicher Verantwortung reflektiert wird, so kann dieses Subjekt gerade nicht empirisch festgestellt werden. Die Rückfrage nach dem Selbstverständnis der Kirche als Glaubensgemeinschaft ist nicht mit dem Verweis auf institutionelle Kompetenz zu lösen. Endlich ist die Meinung abzuwehren, als konstituierende der sozialetische Konsensus kirchliche Gemeinschaft.” M. Honecker, *Sozialethik zwischen Tradition und Vernunft* (1977), p.238.

⁶⁵⁷ This is a term that Honecker has taken from Hans Scultze (“Ethik im Dialog”, 1972). Cf. M.

Honecker, “Kriterien öffentlicher Äußerungen der Kirche”(1975), *Sozialethik zwischen Tradition und Vernunft* (1977), p.72.

⁶⁵⁸ I think that I can defend using the notion of “ecclesiocracy” in this setting since Honecker for his own part so clearly wants to stress a certain concern of the Reformation: “Die Reformation hat gegen die Papstkirche der damaligen Zeit die Zulässigkeit und Geltung weltlicher Herrschaftsansprüche der Kirche bestritten. Sie hat freilich damit den weltlichen Bereich nicht freigestellt von der Geltung des Gesetzes Gottes wohl aber von kirchlichen Direktiven.” M.Honecker, “Welche Legitimation haben Kirchen zu politischen Äußerungen”, *Sozialethik zwischen Tradition und Vernunft* (1977), p.54. And it follows from the very “Fundamentalunterscheidung” which Honecker employs that; “Die Unterscheidung von Gesetz und Evangelium beinhaltet sodann ... die in der reformatorischen Zweireichelehre intendierte Entklerikalisierung der Gesellschaft.” *Ibid.*, p.54. Honecker can also add that the very basis for so called “ecclesiocratic” approaches in political affairs are undermined as a result of the modern secularisation, which has decisively contributed to “die Freisetzung, die Autonomie der Lebensgebiete von klerikaler Bevormundung und biblizistischer Überformung”. Cf. M. Honecker, “Das Problem der Eigengesetzlichkeit”, *Zeitschrift für Theologie und Kirche* (1976), p. 122.

⁶⁵⁹ “Aufgrund der bisherigen Überlegungen ist nunmehr ausdrücklich darauf hinzuweisen, daß die

Honecker's pneumatological approach allows him to avoid an understanding of "Gesetzlichkeit" which would make the political system a *brutum factum* or a *closed* system, instead of treating it as an *open* system to be revised in a political process, involving all citizens as morally responsible. The approach from the third article of faith, as sketched by Honecker, might not only conflict with Barthianism, but also with a Lutheran view, characterised by a more "static"⁶⁶⁰ understanding of the doctrine of the two kingdoms. Honecker's strong emphasis upon the innovative aspects⁶⁶¹ in theological social ethics has to be taken into consideration if one shall properly understand his contribution to the Lutheran debate about the doctrine of the two kingdoms with its tendency to further "Eigengesetzlichkeit". His "pneumatological perspective" undermines namely any possibility of theologically legitimating political institutions and structures by reference to some kind of creation theology, which would entail treating them as nearly sacrosanct, settled once and for all. Honecker can therefore underline that the most urgent task in facing the challenges of a complex "gesellschaftlicher Wirklichkeit ist, deren Unabgeschlossenheit und Transcendenzbezug herauszuarbeiten".⁶⁶²

It is, however, typical of Honecker that his approach from "pneumatology" is not in-

reformatatorische Unterscheidung zweier Reiche, oder genauer gesagt: zweier Fora auch hinter meiner Analyse des neuzeitlichen Phänomens der Eigengesetzlichkeit steht. ...Die Zweireichelehre hält dazu an, zwei Bezüge, zwei Foren zu unterscheiden, nämlich die Bezüge coram deo und coram mundo. Die reformatatorische Unterscheidung setzt freilich eine Beziehung zwischen beiden Bezügen voraus, für welche zwar Gott nicht ohne Welt ist, die Welt aber eben nicht göttlich ist. Nur in dieser Unterscheidung von coram deo und coram mundo als theologischer Fundamentalbestimmung kann die Frage nach einer theologischen Beurteilung der Eigengesetzlichkeit sinnvoll gestellt werden." M. Honecker, "Das Problem der Eigengesetzlichkeit", *Zeitschrift für Theologie und Kirche* (1976), p.125.

⁶⁶⁰ Honecker himself is very much aware of this when discussing the eschatological impact of the doctrine of the two kingdoms: "Mit dieser Forderung nach einer eschatologischen Orientierung der Sozialethik verbindet sich folgerichtig die Kritik, die lutherische Zweireichelehre habe wegen ihres uneschatologischen Charakters zu einer Stabilisierung der bestehenden Verhältnisse beigetragen und sei aufgrund ihres Ansatzes zur theologischen Ideologie des politischen und sozialen Konservatismus geworden. Im Blick auf solche Kritik ist nicht zu bestreiten, daß die Zweireichelehre in ihrer Geschichte immer wieder im Sinne einer statischen Bereichsabscheidung und Kompetenzenverteilung verstanden wurde. Aber solchem Mißverständnis kann man nicht dadurch begegnen, daß man die Eschatologie als Alternative zur Begründung der Sozialethik einsetzt. Vielmehr gilt es, die eschatologische Komponente in der Zweireichelehre selbst zu bedenken und herauszuarbeiten. Die Relation des coram deo kann nämlich nicht anders als eschatologisch verstanden werden... Auch die Relation coram mundo enthält weiterhin insofern ein eschatologisches Moment, als die Ambivalenz des Weltverständnisses, welches Welt als gefallene Schöpfung begreift, eben nicht den bestehenden Weltzustand ohne weiteres zu sanktionieren und legitimieren erlaubt, sondern ihn als von der Sünde geprägte und entstellte Weltgestalt zu begreifen anhält. Mit der sündigen Entstellung der Welt kann aber eben auch christliche Sozialethik sich nicht widerstands- und widerspruchslos abfinden." M. Honecker, *Sozialethik zwischen Tradition und Vernunft* (1977), p. 267f.

⁶⁶¹ "Indem eine solche Weltanschauung sich für Neuansätze und Korrekturen offen hält, läßt sie Platz für das Walten des Geistes und kann innovatorische und emanzipatorische Impulse der Gesellschaftsgestaltung freisetzen." M. Honecker, *Grundriß der Sozialethik* (1995), p.74f.

compatible with respecting the worldly regiment with its different life-spheres and basic institutions in its *relative* “Eigengesetzlichkeit”. Honecker can even point “auf den Geist als Kraft der Unterscheidung”⁶⁶³, – enabling a Christian to properly distinguish between a *coram-deo*- and a *coram-mundo-perspective*. It is also well worth noting that Honecker can use the term “Vernunftgesetzlichkeit” positively interchangeably with the notion of “Eigengesetzlichkeit”⁶⁶⁴.

But the two “coram-perspectives” should not be confused:

- “Eigengesetzlichkeit”, if linked with the *coram-deo*-perspective, would most likely imply that existing natural and social laws and structures were taken as settled once and for all according to divine instruction. This would entail a kind of fatalism (in Honecker’s words: “Schicksalsglauben”) which would make it problematic to raise any kind of ethical criticism..
- “Eigengesetzlichkeit” in a *coram-mundo*-perspective simply means that the phenomena of the worldly realm can properly be considered in their own right, and that the nature of the phenomena themselves is taken appropriately into account. Since “Eigengesetzlichkeit” in this perspective, as a merely worldly phenomenon, can only be relative, it will be possible to raise the genuinely ethical questions.

Taking the *relative* “Eigengesetzlichkeit” of the political, social, economic and scientific domains into account, however, opens the way for seeking reasonable and shared

⁶⁶² M. Honecker, “Das Problem der Eigengesetzlichkeit”, *Zeitschrift für Theologie und Kirche* 1976, p.116.

⁶⁶³ “In der Relation *coram mundo* hingegen werden die immanenten Sachgesetlichkeiten – mitsamt der möglichen Veränderbarkeit der Ausgangsbedingungen – zu Regeln, an welche soziales, politisches, wirtschaftliches Handeln bei der Auswahl seinen Handlungsvorschläge gebunden ist. Diese Eigengesetzlichkeit ist relativ, d.h. bezogen auf den jeweiligen Handlungszweck und Handlungsbereich, impliziert also gerade nicht eine Totalaussage über die Struktur der Wirklichkeit. Eine dieser Differenziertheit sozial-ethischer Theoriebildung Rechnung tragende theologische Sozialethik wird nicht einäugig sein können. Weil Theologie freilich darum weiß, daß Geistliches und Weltliches in der faktisch vorgegebenen Realität miteinander vermengt sind und daß die beiden Foren *coram deo* und *coram mundo* im Gewissen des Menschen sich überschneiden, wird sie gerade auf Unterscheidung dringen, auf die Unterscheidung von Glaube und Politik, von Evangelium und Empirie, von Theologie und empirischer Wissenschaft. Sie wird die Wirklichkeit nicht monistisch bestimmen können, sondern das Unterscheiden lernen müssen, und solche Unterscheidung verweist letztlich auf den Geist als Kraft der Unterscheidung und als Macht der Wahrheit.” M.Honecker, “Das Problem der Eigengesetzlichkeit”, *Zeitschrift für Theologie und Kirche* (1976), p.126

⁶⁶⁴ “Der Begriff der Eigengesetzlichkeit kann daher im Blick auf Strukturen und Institutionen näherhin präzisiert werden als Vernunftgesetzlichkeit, als die den jeweiligen Strukturen der Natur der Sache nach immanente Sachgerechtigkeit, Sachlogik.” M.Honecker, “Das Problem der Eigengesetzlichkeit”, *Zeitschrift für Theologie und Kirche* (1976), p.122.

solutions in many fields based on “ein rationales Einverständnis”⁶⁶⁵ in the nature of the phenomenon to be considered, without excluding the moral perspective..

Let me briefly conclude by saying that Honecker, in my opinion, subtly distinguishes and connects the *coram-mundo-* and *coram -deo-perspectives*, – both of which are simultaneously to be complied with by the Christian. In spite of the distinction between the *two* kingdoms and in spite of the relative “Eigengesetzlichkeit” ascribed to the phenomena of the worldly realm, there is a dialectic between the *coram-mundo* and the *coram -deo-perspective* which is not to be ignored.⁶⁶⁶ When stressing the *relative* “Eigengesetzlichkeit” of the political (and of other life-spheres), Honecker therefore also emphasises that the merely *relative* might in itself pave the way for crucial questions about the *absolute*, – meaning “daß es Aufgabe christlicher Interpretation von Wirklichkeit, auch von gesellschaftlicher Wirklichkeit ist, deren Unabgeschlossenheit und Transcendenzbezug herauszuarbeiten.”⁶⁶⁷

5.4.2. Christian influence on political values?

I now turn specifically to the different “models”⁶⁶⁸ Honecker takes into consideration as possible models for distinguishing (and) relating properly between a Christian (moral) doctrine on the one side and political values on the other side. Since the “models” are not written in stone, Honecker might employ a slightly different terminology in different settings. When addressing the question of groundvalues for a constitutional democracy, Honecker takes the following four “models” into consideration: “Das Identitätsmodell”, “das Trennungsmodell”, “das Entsprechungsmodell”, “das Vermittlungsmodell”. The

⁶⁶⁵ “Für die Institutionen, Strukturen gesellschaftlichen, wirtschaftlichen, politischen Zusammenlebens jedenfalls ist ein rationales Einverständnis unabdingbar. Denn diese Strukturen, Institutionen beanspruchen jedes Gesellschaftsmitglied, nicht etwa nur den Christen oder nur den Nichtchristen. Sie sind damit eben auf Legitimation durch Vernunft angewiesen. In der sozialetischen Theoriebildung der Gegenwart wird dies im Kriterium der Sachgemäßheit formuliert.” M. Honecker, “Das Problem der Eigengesetzlichkeit”, *Zeitschrift für Theologie und Kirche* (1976), p.122.

⁶⁶⁶ This simply means that; “Eigengesetzlichkeit bedürfte in diesem Sinne der Einordnung in die übergreifende theologische Grundentscheidung von Gesetz und Evangelium.” M. Honecker, “Das Problem der Eigengesetzlichkeit”, *Zeitschrift für Theologie und Kirche* (1976), p.129.

⁶⁶⁷ M. Honecker, “Das Problem der Eigengesetzlichkeit”, *Zeitschrift für Theologie und Kirche* (1976), p.116. And thus Honecker can also underline that “Erst in solchem eschatologischen Horizont, den die Gegenwart des Geistes erkennen läßt, kann Theologie aber auch die Eigengesetzlichkeit in ihrer Realität begreifen, nämlich sowohl in ihrem begrenzten Recht als auch in ihrer nowendigen Begrenzung ... daß die Wirklichkeit der Gesellschaft nicht ohne Gottes Wirklichkeit in ihrer Wahrheit zu verstehen ist.” M. Honecker, “Das Problem der Eigengesetzlichkeit” *Zeitschrift für Theologie und Kirche* (1976), p.130.

⁶⁶⁸ Honecker himself uses the term “Modell” in this connection, and I am following him in this.

models of interpretation employed when considering the relation between Christian values and human rights⁶⁶⁹ are distinguished along the line of “*Entsprechung*”, “*Zuordnung*” and “*Vermittlung*”.

While concerned more generally with the question of distinguishing and relating properly, I will to some extent harmonise the model-sets employed by Honecker in his discussion of groundvalues and human rights. This means that I take my point of departure from the four models first mentioned. A model of “*Zuordnung*” as elaborated by W. Huber and H. E. Tödt will be discussed only in relation to Honecker’s “*Vermittlungsmodell*”, since it raises the question of why Honecker finds it at all important to distinguish their concern of “*Zuordnung*” from his concern of “*Vermittlung*”.

I start with the first and the second of the four models that Honecker considers. These “models” are rather simple and clear-cut. Nevertheless, these two models merit a brief discussion here as being of considerable interest in themselves as well as serving as a background for understanding Honecker’s own approach.

Thereafter, I turn to the more complex “models”, – seeking a subtler “*Entsprechung*” or “*Vermittlung*” (or “*Zuordnung*”). These models are characterised by simultaneously differentiating and relating moral doctrines following from Christian faith and moral ground-values that may be reasonably approved of by the citizens as a shared basis of coexistence and communication.

From the way Honecker approaches the question of common groundvalues and, specifically, the issue of human rights, one might draw important conclusions for the general way in which Christian social ethics might comply with political conceptions and issues,

⁶⁶⁹ I cannot here more specifically consider the issue of human rights as conceived of in Honecker’s book about “*Das Recht des Menschen*”, but the “models” used by Honecker in his approach to the issue of human rights, might also apply more widely and generally. Let me, however, also add that Honecker draws on the so-called “*Vermittlungsmodell*” both when concerned with the issue of human rights and when concerned with the question of “ground-values” for constitutional democracies, and this model might obviously be taken as Honecker’s best way of establishing a relation between Christian faith and political reason that makes the latter a commonplace without making the former morally irrelevant. The models that Honecker employs, should be sufficiently complex to comply with a simultaneity of aspects, although they are certainly simplified as all models are. When concerned for instance with the relation between Christian faith and human rights, the model drawn upon must be sufficiently nuanced to take into account that the issue of human rights actualises both legal, political and moral aspects in a rather *complex* way. It is not just a question of how Christian ethics and common (universal) morality should be related, although this is part of the whole complex. Political, legal, moral and religious aspects have to be taken

and, specifically, Rawls' idea of a strictly *political* "overlap." The models used might help us answer the simple question whether people can be expected to support certain political values *because-of* the Christian faith (and beliefs) they hold.

5.4.2.1. Neither a "Trennungsmodell" nor an "Identitätsmodell" will do

I. In a so called "**Trennungsmodell**"⁶⁷⁰ the *difference* between the perspective of the Christian doctrine and the concern for shared ground-values is stressed. At first glance it might therefore seem as if this model accords very well with the "Fundamental-unterscheidung" introduced by both Ebeling and Honecker, – or even with the idea of "Eigengesetzlichkeit". It is, for instance, assumed that the domains of religious and political justice are to be held sharply apart and, similarly, that liberal and religious ideas of liberty should not be confused.⁶⁷¹ There can therefore be little reason to claim that a certain political conception or practical social program is to be adopted *because of* the Christian belief one has. Maybe one should rather say that Christian beliefs and a political conception are so clearly separated that they cannot really come into conflict. If the separation of the two domains is consequently carried out, they are rather to be considered incongruent.⁶⁷² Thereby a possible connection between the two domains cannot really be reflected in this model.

II. In contrast, it is a characteristic of an "**Identitätsmodell**" that the Christian kerygma is supposed to provide us with the moral values required for coexistence within a political society. And Honecker's remark is very much to the point:

"Das Identitätsmodell behauptet, Eintreten für die Verwirklichung der Grundwerte sei nichts anderes als Praxis des christlichen Glaubens. Dieses Modell sieht richtig die Bedeutung der Grundwerte auch für den Christen. Aber es beachtet nicht den 'Überschuß' christlichen Glaubens."⁶⁷³

into consideration *simultaneously*. It may also be well worth noticing that Honecker takes human rights to be "Vernunftrechte".

⁶⁷⁰ M. Honecker, *Das Recht des Menschen. Einführung in die evangelische Sozialethik* (1978), p. 185.

⁶⁷¹ "Dieses Modell geht aus vom Unterschied zwischen christlichem Glauben und Grundwerten. Man wendet dann ein, 'die politische Freiheit – so positiv sie im übrigen zu schätzen sein mag – ist keine Form der Verwirklichung der in Christus gegründeten Freiheit.'" M. Honecker, *Das Recht des Menschen. Einführung in die evangelische Sozialethik* (1978), p.185f.

⁶⁷² One might for instance assume that this was a widespread view among the so-called "Deutsche Christen".

⁶⁷³ M. Honecker, *Das Recht des Menschen. Einführung in die evangelische Sozialethik* (1978), p. 185.

According to this model, just as for the previous one, there cannot really be a conflict between a Christian doctrine and the political values pursued. Taking a model of identity as one's point of departure therefore means that one can in principle avoid the question of compromising one's religious convictions for the sake of one's political conception, since a more principled tension does not exist.⁶⁷⁴ But the price may be high: It might be difficult to claim a qualitative difference between a merely political perspective and the transcendent scope of Christian faith. Honecker does not mention any theologian who might be taken as a representative of such an approach.⁶⁷⁵

My conclusion is that the first two "models" ("Das Trennungsmodell" & "Das Identitätsmodell") make it relatively easy to answer the question whether one can be expected to further certain political values *because-of* one's Christian faith (and beliefs). In the first case a sharp dualism might be established between the domain of Christian faith and the strictly political domain, and then it makes no sense to say that someone acts politically *because of* the religious beliefs he holds. In the second case, however, the moral basis of society is unreservedly identified with a Christian moral doctrine, and political agents can therefore rather unproblematically and directly take their political decisions on the basis of the Christian doctrine they hold. But neither of these models are adequate as instruments for dealing properly with the complexity of the relation between the Christian (moral) doctrine one holds and the kind of political values to be furthered in modern pluralist societies.

⁶⁷⁴ Of course one might have to realise that the religious/political conception one holds is not (yet) fully realised in the real world, but that is another kind of problem.

⁶⁷⁵ Maybe could Richard Rothe be taken as representative of this approach. And in a Norwegian context one might also say that Gisle Johnson, who clearly maintains the transcendent perspective of Christian faith, nonetheless tends clearly towards such a model. Let me demonstrate this by turning to Johnson's perspective on the Christian state, as explained by Svein Aage Christoffersen: "På samme måte som bare det kristelige ekteskap er et sant ekteskap, er det bare den kristelige stat som kan tilsvare statens idé, som er å skape det fullkomne samfunn som forutsetning for den enkeltes fullkommenhet. Statens oppgave er 'som et organ for Guds i Kristus aapenbarede Vilje paa den kristelige Families og det kristelige Selskaps Grundvold ved sin kristelige Lov og Retsorden at fremme de enkelte Statsborgeres sædelige Opdragelse og saaledes bidrage Sit til Guds Riges komme.' (Johnson 1898:280). Johnson tenker seg ikke at kirken skal styre staten. Men han tenker seg at kirken skal utstyre staten med den sedelighet som staten har til oppgave å tilføre samfunnet, fordi det i realiteten bare er kirken som kan utstyre staten med denne sedelighet. Dette gjør det mulig for Johnson å komme til rette med forholdet mellom de kristne og de ikke-kristne i det sivile samfunnet. Når staten skal tilføre det sivile samfunnet en sedelighet som den henter fra kirken, møter vi den kristne staten i avledet forstand. Den forutsetter ikke at alle i samfunnet er kristne, eller ønsker å være kristne, men er et samfunn som i sine prinsipper, lover og institusjoner lar seg beherske og bestemme av kristendommens ånd. En kristelig stat i denne forstand av ordet er en stat som ikke tillater det kristendommen forbyr, eller forbyr det kristendommen krever, sier Johnson." S.Aa.Christoffersen,

5.4.2.2. Seeking an appropriate “*Entsprechung*” between the Christian doctrine and the political approach

The third model, presented by Honecker, is referred to as “Das Entsprechungsmodell”.⁶⁷⁶ Within this model one is seeking for “*Entsprechungen*” in society which are in accordance with divine revelation, as the source bringing ultimate insight in God’s will and in the proper scheme of justice. The political line one chooses, should in a fundamental way accord with – and even be derived from – the Christian kerygma itself. What Honecker especially has in mind now is the Barthian⁶⁷⁷ way of establishing an “*analogia relationis*” between the Christian doctrine and the political field.⁶⁷⁸ Honecker tries to make clear what would be characteristic of the Barthian approach, when employed within the domain of human rights.

“Mit Hilfe des Analogiegedankens sucht man Entsprechungen zwischen Grundaussagen christlichen Glaubens und einem demokratischen Ethos und dem Menschenrechten aufzuzeigen. Demokratisches, rechtsstaatliches, menschenrechtsbezogenes Ethos soll dabei im Evangelium von Jesus Christus begründet werden und nicht aus nicht-christlichen, naturrechtlichen oder ‘nur’ humanitären Überlegungen. Dabei ist das Evangelium von Jesus Christus das ‘Urbild’, Kriterium, ‘Analogans’ für die menschliche Ethik, für das menschliche Handeln, welche die Entsprechung, das Abbild, das Analogatum sein sollen. Im Unterschied zu einer formal biblizistischen Argumentation, die Bibelzitate anführt, wird Bezug genommen auf das Evangelium, die Botschaft von Jesus Christus, als ‘Mitte der Schrift’. Dieses Evangelium wird beansprucht für eine Legitimation bestimmter ethischer Verhaltensweisen der Christen.”⁶⁷⁹

“Guds rike som politisk mål. Gisle Johnson og det sosiale spørsmål i dag”, *Arv og utfordring. Menneske og samfunn i den kristne moraltradisjon* (1995, eds. S.Aa. Christoffersen, T.Wyller), p.238f.

⁶⁷⁶ M. Honecker, *Das Recht des Menschen. Einführung in die evangelische Sozialethik* (1978), p. 186.

⁶⁷⁷ Already the titles of the two small books written by Karl Barth, “Rechtferdigung und Recht” (1938; Heft 1 der *Theologischen Studien*) and “Christengemeinde und Bürgergemeinde” (1946/Heft 20 der *Theologischen Studien*) indicate that Barth – by taking his point of departure from within the “Rechtferdigung” or the “Christengemeinde” – aims at the most appropriate “*Entsprechung*” within the political realm and within the domain of law.

⁶⁷⁸ The theologian, Eberhard Jüngel, is taken by Honecker to be representative of this view, as can be seen in his considerations about liberty: “Eberhard Jüngel geht zunächst aus von der Besonderheit der im Evangelium zugesprochenen Freiheit im Vergleich zu anderen Auffassungen von Freiheit, wie von der Eigenart der ‘Gerechtigkeit Gottes’, wie sie Paulus verkündet als Bundestreue des Schöpfers gegenüber seinen ihm feindlichen Geschöpfen (z.B. Rö 1,16f.; 5,10; 2 Kor 5,18-21). Er setzt diese Freiheit und Gerechtigkeit Gottes aber sodann in eine ‘*Analogia relationis*’ zur Freiheit des Menschen, ‘in der die im Glauben verstandene Freiheit als die allen Menschen zugemutete Freiheit vor Gott den Menschen untereinander ebenfalls Freiheit zumutet. Dabei versteht die Theologie den durch Gottes Gerechtigkeit im Evangelium freigesprochenen Menschen als diejenige Person, die nach menschlichem Recht ihrer ihr durch Gott zugesprochenen und zugewendeten Freiheit leben können muß’. [Note 39: Eberhard Jüngel: Freiheitsrechte und Gerechtigkeit, in: *Unterwegs zur Sache*, 1972, S. 246-256, Zitat S. 253.]” M. Honecker, *Das Recht des Menschen. Einführung in die evangelische Sozialethik* (1978), p. 186.

⁶⁷⁹ Cf. M. Honecker, *Das Recht des Menschen. Einführung in die evangelische Sozialethik* (1978), p. 129f.

The idea is that the gospel should be taken as the most appropriate point of departure when seeking direction in affairs of law, politics and social coexistence, – the gospel is supposed to be brought politically into play by a method of analogy. According to Karl Barth, the “*analogia relationis*” that is to be established between the Christian doctrine as the “*Analogans*”⁶⁸⁰ and a political course as the “*Analogatum*”, is to be clearly qualified as an analogy established by faith, an “*analogia fidei*”.⁶⁸¹ Since Christian faith is in no way generally shared, however, the Barthian approach will introduce into politics itself an “exclusive” aspect, which cannot easily be *reasonably* assessed and argumentatively justified.

Nevertheless, it would seem that a Barthian approach might accord with one of Rawls' main concerns in developing an overlapping consensus; – the demand for a support *from within* the (Christian) doctrine. And in fact, from a Barthian perspective one can in practice defend wholeheartedly the integrity of the person, vital rights and elementary liberties, – which are also taken by Rawls as fundamental. Barthianism has without doubt contributed decisively, and maybe even more than most religious groups, to a morally grounded opposition against totalitarian regimes.⁶⁸² Nevertheless, Barthianism tends towards making the Christian doctrine the normative source of political co-operation and the ultimate basis of legitimation for what should count as a morally justified political practice and a just institutional scheme for citizens.⁶⁸³ This would – as far as I can see – clearly be at odds with political liberalism.⁶⁸⁴

Barthian theology is often supposed to stress the qualitative “dualism” between “heavenly” and “earthly”. But this does not imply that the gulf between “heaven” and “earth” is so deep that Christians should not be concerned about the worldly realm and the domain of politics. Karl Barth did even not further a “*Trennungsmodell*” in social

⁶⁸⁰ Cf. M. Honecker, *Das Recht des Menschen. Einführung in die evangelische Sozialethik* (1978), p. 129f.

⁶⁸¹ Karl Barth could in no way approve of an “*analogia entis*” since it would in his opinion open up for “natural theology”.

⁶⁸² The attitude that Karl Barth took in favour of elementary liberty during the period of the Nazi-regime should in no way be underestimated.

⁶⁸³ “‘*Analogia relationis*’ besagt ja nicht nur Parallelitäten, Gemeinsamkeiten, sondern ein Bezugsverhältnis, in dem das Analogieverhältnis erst hergestellt wird und einer biblischen Legitimation bedarf.” M. Honecker, *Das Recht des Menschen. Einführung in die evangelische Sozialethik* (1978), p. 186f.

⁶⁸⁴ I will, however, in the last part of this main-chapter discuss thoroughly how Rawls, in his latest writings, seeks a proper way of introducing into the public forum of modern pluralist democracies religious norms and values of political significance.

ethics. Rather, Barthianism draws certain epistemic consequences from the “dualism” between heavenly and earthly: Due to this “gap” there is namely, according to Barthianism, just one way the will of God can be *known* in the world, namely by divine (self)-revelation, which may be accepted in faith. Thereby faith gives *access* to God’s will. Accordingly, the church/Christians should have a certain insight in the most proper kind of “Entsprechungen”⁶⁸⁵ between the divine order and the political order and a responsibility for making this widely known:

“Der rechte Staat muß in der rechten Kirche sein Urbild und Vorbild haben. Die Kirche existiere also exemplarisch, d.h. so, daß sie durch ihr einfaches Dasein und Sosein auch die Quelle der Erneuerung und die Kraft der Erhaltung des Staates ist.”⁶⁸⁶

But even if the Church can be supposed to have a certain epistemological edge in matters of (social) ethics, – Barthianism also takes into consideration that “analogy” is not “identity”. There remains a qualitative difference between heavenly and earthly, and Karl Barth most certainly does not believe that the Christians (or the Churches), now existing in this world, have such a clear insight into God’s will that it is possible for them to present us with a political *program* which completely reflects the divine order. The idea of establishing “Entsprechungen” cannot be extended that far, – at the most one can point out a main-line or a direction in reference to which it is possible to criticise an actual political course.

I find it, nonetheless, telling that Honecker classifies Barthian (social) ethics as “theological constructivism”.⁶⁸⁷ In doing so Honecker uses the notion of constructivism “um damit eine Einstellung zu kennzeichnen, die sich am einfachsten in der zunächst unverfänglich klingenden Formel ausdrücken läßt: ‘daß der Mensch die Einrichtung der Gesellschaft und der Kultur selbst gemacht hat und sie daher auch nach seinem Belieben

⁶⁸⁵ This aspect of the Barthian approach is sketched by Honecker as follows: “Aus dem Eintreten Jesu für die Verlorenen folgt das Eintreten für ein Höchstmaß sozialer Gerechtigkeit, aus der Gleichheit der Getauften in der Gemeinde die politische und soziale Gleichheit. Der Verschiedenheit der Gaben, Charismen in der Gemeinde entspricht im politischen Bereich die Gewaltenteilung, der Öffentlichkeit des Wortes Gottes die Absage an die Geheimdiplomatie, der Freiheit der Verkündigung des Wortes Gottes, die Meinungsfreiheit, der Ökumenizität der Kirche, die Absage an Kirchturmpolitik und nationalstaatliches Denken. Aus der Übermacht der Gnade über den Zorn folgt, daß gewaltsame Konfliktlösungen nur ultima ratio sein können und der irdische Freiheit Vorrang hat.” M. Honecker, *Das Recht des Menschen. Einführung in die evangelische Sozialethik* (1978), p. 132.

⁶⁸⁶ K. Barth, *Christengemeinde und Bürgergemeinde* (1946; Hft. 20 der Theologischen Studien), p.41.

⁶⁸⁷ “Das Problem des theologischen Konstruktivismus”, *Zeitschrift für evangelische Ethik*, 1980, pp. 97 - 111.

ändern kann’.”⁶⁸⁸ Honecker is critical of a rational constructivist approach both in matters belonging within the wide domain of culture in general, “da Kultur nicht ohne weiteres machbar ist, sondern geschichtlich wächst”⁶⁸⁹ and in matters of ethics in particular.⁶⁹⁰ But if Honecker is critical, one should indeed suppose that Karl Barth would be even more critical of any form of *rational* constructivism. Barth's strictly christocentric approach in matters of social ethics, and the exclusive starting point he takes from the divine (self)revelation, predictably make it impossible for him to take the scheme of society and its legal and social institutions as a phenomenon subject to being rationally constructed by man. It might therefore seem unjustified that Honecker treats Karl Barth as an exponent of a kind of constructivism, – *theological* constructivism. The following statement better captures Honecker's critical position, making it clear;

“... daß eben *nicht nur die Vernunft als konstruktives Prinzip beansprucht werden kann, sondern* in gleicher Weise *auch* der scheinbare Gegensatz zur Vernunft, die ‘*Offenbarung*’. Der Gegensatz von Offenbarung und Vernunft ist im Blick auf den Irrtum des Konstruktivismus nicht grundlegend, so wichtig er in anderer Hinsicht sein mag. Die evangelisch-theologische Ethik hat vielmehr im Gefolge der dialektischen Theologie weithin konstruktivistisch sich auf die Christusoffenbarung berufen.”⁶⁹¹

What Honecker criticises is the way the Christian revelation is made an epistemological principle in social ethics, providing us with substantially normative standards to be used when arranging the very structure of society. Transforming divine revelation (under-

⁶⁸⁸ The definition has Honecker taken from F.A.Hayek: *Die Irrtümer des Konstruktivismus und die Grundlagen legitimer Kritik gesellschaftlicher Gebilde*, 1970, p.4.

⁶⁸⁹ M.Honecker, “Das Problem des theologischen Konstruktivismus”, *Zeitschrift für evangelische Ethik* (1980), p.98.

⁶⁹⁰ How Honecker understands (and judges) constructivism in ethics gets rather obvious in the following: “Für die Ethik ist es eine Grundfrage, woher sie ihre Maßstäbe, Normen, Bewertungen menschlichen Verhaltens gewinnt. Kann der Mensch diese Maßstäbe, Normen, Bewertungen selbst schaffen, rational konstruieren...?” Cf. “Das Problem des theologischen Konstruktivismus”, *Zeitschrift für evangelische Ethik* (1980), p.97. And Honecker adds: “Der Konstruktivismus auf dem Feld der Ethik und der Gesellschaftstheorie stammt aus dem ‘Zeitalter der Vernunft’, das vom sogenannten cartesianischen Geist beherrscht war (und noch ist) und für welches *Voltaire's* Anspruch kennzeichnend ist: ‘Wenn ihr gute Gesetze haben wollt, verbrennt die, die ihr habt und macht euch neue’. [Voltaire: *Dictionnaire Philosophique*, p.432]. Der Konstruktivismus geht von der Grundannahme der Machbarkeit aller Dinge, einschließlich der Moral und der Gesellschaftsgestaltung, aus.” *Ibid.*, p.98.

⁶⁹¹ “Das Problem des theologischen Konstruktivismus”, *Zeitschrift für evangelische Ethik*, 1980, p.99. Honecker ascribes to the Barmer Declaration a considerable role in furthering theological constructivism: “So würde häufig das Theologoumenon der Königsherrschaft Christi oder die 2. These der barmer Theologischen Erklärung als konstruktives Prinzip theologischer Ethik benutzt. Diese ‘theologische Begründung’ hat der deutschen evangelischen Ethik bis weit in die 60er Jahre hinein ihre besondere Prägung gegeben. Die Überbetonung des Offenbarungsbegriffs als Grundlegung evangelischer Theologie ist freilich ihrerseits Ausdruck einer problematischen Rationalisierung und einer schematischen Verkürzung theologischer Grundvoraussetzungen.” “Das Problem des theologischen Konstruktivismus”, *Zeitschrift für*

stood more or less as an information about what cannot otherwise be known) into an epistemological and constructivist principle in the field of social ethics and politics, either renders theological social *ethics* a very exclusive affair or converts revelation into a rational principle, which, in either case, is not just politically but also theologically problematic⁶⁹² since the most essential theological “Fundamentalunterscheidungen” are ignored or misinterpreted. Honecker for his part stresses that revelation, which is by its very nature contingent (breaking, as it does, unexpectedly into the ordinary course of life) must not be exploited for programmatic political purposes, – defining what can be expected by the parties involved in social co-operation within the institutional scheme of a pluralist society.

5.4.2.3. Honecker seeking “Vermittlung”

The fourth model is called by Honecker “Das Vermittlungsmodell”.⁶⁹³ This model aims at finding a way of “mediating” properly between Christian belief and a strictly political concern. The model can be taken to reflect the so called dialectic between law and gospel.⁶⁹⁴ Taking the dialectic between law and gospel as a hermeneutic key makes it possible for Honecker to consider the worldly realm from a genuinely *theological* perspective, avoiding sharp “dualism”, while still honouring the relative autonomy of the *political*.⁶⁹⁵ In so doing, Honecker's goal is just to distinguish clearly between the two

evangelische Ethik, 1980, p.99.

⁶⁹² I think this is the reason why Honecker can emphasise that “Das Vordringen des Offenbarungsbegriffs in der evangelischen Theologie, vor allem in einem theologischen Supranaturalismus., entspricht durchaus dem Rationalismus. Die *Gegensätze von Offenbarung und Vernunft* als Grundprinzipien des Wissens, aber auch der Handlungsorientierung sind somit feindliche Brüder. Dietrich *Bonhoeffers* Wort vom ‘Offenbarungspositivismus’ kennzeichnet die Fragwürdigkeit eines solchen theologischen Ansatzes.” [Dietrich Bonhoeffer, *Widerstand und Ergebung*, Neuausgabe 1970, p.306, 359], M.Honecker, “Das Problem des theologischen Konstruktivismus”, *Zeitschrift für evangelische Ethik*, 1980, p.99.

⁶⁹³ M. Honecker, *Das Recht des Menschen. Einführung in die evangelische Sozialethik* (1978), p. 187.

⁶⁹⁴ What concerns the so-called “Vermittlungsmodell” Honecker can himself emphasise that: “Es beruft sich theologisch auf die Unterscheidung von Gesetz und Evangelium, die freilich eine Unterscheidung in Zuordnung ist.” M. Honecker, *Das Recht des Menschen. Einführung in die evangelische Sozialethik* (1978), p. 187.

⁶⁹⁵ Honecker's view is dependent on his understanding of the theological notion of the “law”, or better, his understanding of the dialectic between law and gospel. He emphasises that; “Diese Beziehung der [politischen] Grundwerte auf das reformatorische Verständnis des Gesetzes geht aus von deren faktischem Gegebensein und entnimmt und gewinnt daraus deren Evidenz und Verbindlichkeit für jedermann. Gefragt wird hier nicht nach Herkunft und Herleitung der Grundwerte, sondern nach ihrer Funktion, Bedeutung für das Zusammenleben der Menschen. Ausgangspunkt ist das Phänomen und die Evidenz der ethischen Forderung. Martin Luther: ‘Nam lex iam adest, ist schon da ...’ [WA 39 I, 477,7f], das Gesetz ist mit dem Menschsein gegeben. Es bedarf also keiner besonderen christlichen Kundgabe oder der Verkündigung des Glaubens.” M. Honecker, *Das Recht des Menschen. Einführung in die evangelische Sozialethik*, 1978, p. 187).

“realms”, but also to relate them properly.

As we have seen, Honecker is clearly critical of the Barthian approach, with its method of establishing Christian “Entsprechungen” within the political domain by systematically employing the idea of “*analogia fidei*”. Honecker for his part seeks for another possible approach, more in accordance with a Lutheran “*Fundamentalunterscheidung*” as unfolded above. But before turning more explicitly to Honecker’s own approach, leaving the Barthian method of analogy behind me, I would like to mention that there are others too who also use “analogy” as a device for finding a proper “*Zuordnung*” between the domains of Christian faith and political reason. In the book about “*Menschenrechte*”⁶⁹⁶ written by Wolfgang Huber and Heinz Eduard Tödt, the authors seek analogies between the Christian doctrine and the field of political values and rights. However, the role that analogy is supposed to play in this model of “*Zuordnung*” is different than the one it plays within the Barthian conception. When drawing the appropriate analogies of faith, Karl Barth always sets out from the kingdom of God in its qualitative *difference* to the worldly political order; conversely, Huber and Tödt take their point of departure from within the existing political realities. Even if Huber and Tödt also systematically make use of the idea of establishing (or discovering) *analogies*, one should admit that there is a qualitative difference between the “ground position” taken by them and a typical Barthian position. With reference to the issue of human rights, the two “ground positions” can be appropriately explicated in the following way:

“Die beiden Grundpositionen ... kann man – vergrößert – als einen Ansatz ‘von oben’ und einen Ansatz ‘von unten’ bezeichnen. Der Ansatz ‘von oben’ geht aus von der Offenbarung und der Bibel als Offenbarungszeugnis und sucht von daher Schlußfolgerungen für das Verständnis der Menschenrechte zu gewinnen. Der Ansatz ‘von unten’ geht aus von einer Analyse der vorfindlichen Menschenrechte und von der Menschenrechtsdiskussion und sucht Beziehungen zu Grundaussagen des christlichen Glaubens zu gewinnen.”⁶⁹⁷

In their book about human rights Huber and Tödt start by considering thoroughly the *existing* declarations, honouring them as widely shared (moral) achievements, brought about as the result of a long historical process and by the means of difficult negotiations within the fields of politics, law and morals. Now it is a crucial task, however, for

⁶⁹⁶ W. Huber/H. E. Tödt, *Menschenrechte. Perspektiven einer menschlichen Welt* (1977).

⁶⁹⁷ M. Honecker, *Das Recht des Menschen. Einführung in die evangelische Sozialethik* (1978), p. 128.

Churches and Christians to interpret human rights theologically, assessing those political achievements in a theological (moral) perspective, and give serious consideration to how these achievements are to be further explicated and unfolded, realised or revised, strengthened or criticised.⁶⁹⁸

Human rights are not to be given a special theological legitimation or somehow to be derived from particular Christian doctrines.⁶⁹⁹ Human rights are entirely respected by Huber and Tödt as a shared (moral) concern.⁷⁰⁰ This makes them emphasise that:

“Die Menschenrechte sind also ein Thema, das in eminentem Sinn zu einer kommunikativen Ethik nötigt. Kommunikativ muß diese Ethik zum einen darin sein, daß sie die Einsichten, die die verschiedenen Wissenschaften zu dem Problembereich beizutragen haben, zueinander ins Verhältnis setzt. Zum anderen muß sie, wenn sie Kommunikation stiften will, auf den Dialog und den möglichen Konsensus zwischen Menschen verschiedenen Glaubens und unterschiedlicher Überzeugung gerichtet sein.”⁷⁰¹

In this Honecker clearly agrees with Huber and Tödt, to whom he explicitly refers when discussing human rights.

There is, however, a two-fold concern within a model of “Zuordnung”, expressed in the very phrase “Analogie und Differenz”.⁷⁰²

First: It should not be ignored that Huber and Tödt try to safeguard what they consider a legitimate aim in Barthian theology; – the concern for avoiding a “dualism” between

⁶⁹⁸ Huber and Tödt emphasise that: “Für eine derartige theologische Interpretation bleibt die Menschenrechtsidee ein humaner, allgemein zugänglicher Gedanke, den man ohne die Voraussetzung des christlichen Glaubens akzeptieren könnte. Dennoch kann man auf diese Weise, wie wir meinen, den Gehalt und Sinn des Menschenrechtsgedankens theologisch ein Stück weit entschlüsseln und so neu würdigen. Dadurch gewinnt man Kriterien, die zur Urteilsbildung darüber beitragen, welche Tendenzen in der Menschenrechtsentwicklung von Christen gefördert, welche abgewiesen werden sollten.” W. Huber & H.E. Tödt: *Menschenrechte. Perspektiven einer menschlichen Welt* (1977), p.162.

⁶⁹⁹ It is made very clear by Huber and Tödt that ; “Die Gestalt einer ‘Theologie von oben’ kann die theologische Erörterung der Menschenrechte nicht annehmen. Diese Rechte sind nicht aus theologischen Obersätzen abzuleiten.” W. Huber/H.E. Tödt: *Menschenrechte. Perspektiven einer menschlichen Welt* (1977), p.158.

⁷⁰⁰ “Menschenrechte sind daher weder aus theologischen Obersätzen abzuleiten noch nachträglich christlich zu legitimieren. ‘Damit entfallen auch die Probleme, die sich einstellen, wenn man fragt, aus welchem speziellen Lehrstück christlicher Dogmatik die Menschenrechte abgeleitet werden können, ob aus der Schöpfungslehre, der Lehre vom Bunde Gottes mit den Menschen, der Lehre von der Rechtfertigung allein aus Glauben oder zum Beispiel der Eschatologie.’ [Huber /Tödt ..., p.158] Hingegen ist es möglich, einerseits Gemeinsamkeiten zwischen Menschenrechten und Grundaussagen christlichen Glaubens aufzuweisen, andererseits Unterschiede und spezifische Radikalisierungen des christlichen Glaubens zu Geltung zu bringen.” Cf. M.Honecker, *Das Recht des Menschen. Einführung in die evangelische Sozialethik* (1978), p.146f.

⁷⁰¹ W. Huber, H.E. Tödt: *Menschenrechte. Perspektiven einer menschlichen Welt* (1977), p.159.

⁷⁰² Cf. for instance the chapter “Analogie und Differenz – ein Grundmodell theologischen Denkens” in W. Huber, H.E. Tödt: *Menschenrechte. Perspektiven einer menschlichen Welt* (1977), pp.160-162.

Christian faith and political responsibility, even if a “heavenly order” cannot be taken as a derivative basis of a political scheme. Instead they are “scanning” the political realm for motives, ideas and concerns which might appropriately be considered in the light of similar (anthropological) motives, concerns and ideas in the Christian doctrine. Thus Huber and Tödt find a “structural parallelism”⁷⁰³ which cannot be without a decisive impact on those with a Christian faith, engaging in politics and social ethics. Christian motives, ideas and perspectives (on man for instance) may be taken into account and reflected when addressing political values and questions of basic justice.⁷⁰⁴ The fact, however, that Huber and Tödt take their point of departure so clearly “from below”, when seeking parallels to central concerns of the code of human rights within the Christian doctrine, distinguishes Huber and Tödt's use of analogy from a Barthian approach. They set out from existing political arrangements, institutions, laws and achievements.⁷⁰⁵

Second: From what I have already written, it should be clear that both Huber and Tödt, even if they are making systematically use of analogies, are trying to avoid making the gospel a “programmatically doctrine”⁷⁰⁶ for the political field. In doing so, Huber and Tödt,

⁷⁰³ One might for instance see a parallelism (analogy) between the way respect and inviolability of human beings are (to be) expressed and defended in political constitutions, social arrangements and in codes of human rights and the way Jesus respects persons when meeting, addressing and defending them.

⁷⁰⁴ In this Huber and Tödt can even seek direct support in “Karl Barths theologisches Denken... Er – bekanntermaßen ein entschiedener Feind jeder ‘natürlichen Theologie’, die den Glauben an Gott aus der Erkenntnis der natürlichen Welt meint entwickeln zu können – hat in den letzten Teilbänden seiner ‘Kirchlichen Dogmatik’ die Lehre von den ‘Gleichnissen des Himmelreiches’ erneuert. Sie besagt, daß immer wieder in der Welt Ereignisse geschehen und Gestaltungen menschlichen Zusammenlebens entworfen werden, welche gleichnishaft vorweg abbilden, was im Reich Gottes zu seiner Erfüllung und seiner Wahrheit kommt – oft genug zur Beschämung der christlichen Gemeinde, die um die Wahrheit weiß und sie doch nicht glaubwürdig und verstehbar bezeugt. Dieser Gleichnischaracter geschichtlicher Ereignisse und Entwürfe ist allerdings nicht von ihnen selbst her offenkundig, sondern er erschließt und erschlüsselt sich erst von der Wahrheit des Reiches Gottes her. In christlicher Verkündigung kommt solche Wahrheit zur Sprache. Etwas als Gleichnis aufzufassen, bedeutet, daß man darin auf Entsprechung und Differenz zugleich achten will.” W.Huber, H.E.Tödt: *Menschenrechte. Perspektiven einer menschlichen Welt* (1977), p.161f.

⁷⁰⁵ One might better understand the approach of Huber and Tödt if one takes as an example their approach to some essential values inherent in the human rights: “Drei unentbehrliche Sachmomente haben wir in der Grundfigur des Menschenrechts erkannt: das Freiheitsrecht, welches der Unverfügbarkeit der Person entspricht; das Gleichheitsrecht, das der Würde der Person korrespondiert, das Teilhaberecht, welches dem Angewisensein des Menschen aufeinander, ihrer gemeinsamen Betroffenheit von Schicksalen und ihrer gemeinsamen Verantwortlichkeit gerecht zu werden versucht. In den Grundinhalten des christlichen Glaubens finden wir offenkundig Entsprechungen zu diesen Elementen des Menschenrechtsgedankens. Doch sind sie im christlichen Glauben in spezifischer Weise radikalisiert.” W.Huber, H.E.Tödt: *Menschenrechte. Perspektiven einer menschlichen Welt* (1977), p.162f.

⁷⁰⁶ This is my translation of the phrase “Programmierende Doktrin”. Cf. H.E.Tödt, *Lutherische Rundschau* 1974, p.517. Cf. also M. Honecker, *Das Recht des Menschen. Einführung in die evangelische Sozialethik* (1978), p.146.

like Ebeling and Honecker, pay due attention to the “Fundamentalunterscheidung”, as expressed most clearly in the distinction between law and gospel (with the accompanying distinction between the two kingdoms). Theological (moral) doctrines or ecclesiological paradigms are not to be directly introduced and certainly not to be enforced within the political domain. Huber and Tödt are not just seeking *analogy* between a “heavenly scheme” and the political order, or between “Rechtfertigung und Recht” or between “Christengemeinde und Bürgergemeinde”, – they also place a great emphasis on the aspect of *difference*, which inherently belongs to the analogy as such:

“Die Beachtung der Differenz aber wird ... sich darin auswirken, daß man weltliches Recht nicht aus innergemeindlichen Kommunikationsstrukturen deduziert und es nicht durch scheinbar christliche oder humane Maximalansprüche überfordert. Wer auf die Differenz achtet, wird also zugeben, daß weltliches Recht zunächst einmal die minimalen Regeln und Bedingungen menschlichen Zusammenlebens zu sichern hat, dabei freilich offenbleiben soll für zwischenmenschliche Beziehungen von höherer Qualität.”⁷⁰⁷

As already suggested, Huber and Tödt come rather close to Honecker in many respects. It is characteristic of Honecker’s approach that he – just like them – avoids making the Christian doctrine a basis of derivation and legitimation in matters of social ethics and in political affairs.⁷⁰⁸ His critique of the position taken by Huber and Tödt might therefore seem a bit surprising. For even if Honecker considers it a strength of a model of “Zuordnung” that it can fully recognise reasonable and rational achievements and support shared efforts within the political domain, he adds that this also makes the weakness of this model obvious, since it remains unclear what the *genuine* Christian contribution within the political domain should really be. And Honecker even suggests, that this model, which intended to pay due attention to the Barthian concern for establishing analogies, may instead end up furthering the kind of “dualism” that was not seldom associated with models taking their point of departure clearly from the doctrine of the

⁷⁰⁷ W.Huber, H.E.Tödt: *Menschenrechte. Perspektiven einer menschlichen Welt* (1977), p.174f.

⁷⁰⁸ Honecker can himself clearly underline that: “Das Vermittlungsmodell teilt mit dem Zuordnungsmodell den Verzicht auf die Legitimationsfrage und den Grundansatz. Die Legitimationsfrage lautet: Was berechtigt Christen und Theologie dazu, sich mit bestimmten weltlichen Phänomenen, etwa den Menschenrechten, der Demokratie, den humanen Grundwerten zu befassen? Nur wenn diese Legitimation durch Herleitung der Berechtigung aus dem christlichen Glauben erbracht werden kann, ist – nach dieser Fragestellung – die Beschäftigung mit derartigen Problemen theologisch unanfechtbar und zulässig.” M.Honecker, *Das Recht des Menschen. Einführung in die evangelische Sozialethik* (1978), p. 149.

two kingdoms.⁷⁰⁹ The analogy is programmatically to be drawn from the bottom up.

Now it is urgent for Honecker to introduce another model, a model of “Vermittlung”, which can take us a decisive step further than a model of “Zuordnung”, as elaborated most clearly by Huber and Tödt. To see, however, what Honecker’s particular concern is, when taking steps beyond a model of “Zuordnung”, it is necessary to determine what the instances are, between which he finds it necessary to “mediate” in a better way than Huber and Tödt have done. In Honecker’s own words (as expressed in 1978): he seeks a “Vermittlung von Motivation und rationaler Evidenz”.⁷¹⁰ In *Das Recht des Menschen* Honecker in fact signals a *double* concern:

- He aims at connecting Christian faith and practical (political) reason by establishing a *motivational* bridge between them. Thereby he makes Christian faith productive for the political domain, without confusing the soteriological and moral perspective.
- In doing so he simultaneously underlines that political values and (moral) standards of social co-operation are to be justified in terms of *shared* (public) reason.⁷¹¹ Therefore he clearly stresses the aspect of “rational evidence”, – even in a conception of *social* ethics, conceived of on theological premises,

Let me first focus on the former of these concerns, the *motivational* bridge, before more thoroughly considering the role that an idea of “rational evidence” is supposed to play when concerned with moral values for the worldly domain. The reason why I want to start with the aspect of motivation, is that it is so closely connected with the search for the very “*proprium*” of Christian ethics, and thereby to a wide extent determines the Christian contribution within the domain of the political.

While representatives of a model of “Zuordnung” might consider it “für zu wenig, den

⁷⁰⁹ “Die Stärke des Zuordnungsmodells ist seine Anerkennung der Eigenständigkeit humanen Ethos und weltlicher Phänomene. Diese Stärke kann freilich auch Ansatz für die Kritik bieten, nämlich daß die Theologie keinen eigenen Beitrag leiste, also das christliche ‘Proprium’, der besondere Beitrag christlichen Glaubens und christlicher Theologie im Verständnis und im Umgang mit den Menschenrechten undeutlich bleibe. Im äußersten Fall kann sich dies steigern zum geläufigen Vorwurf gegen die Zweireichelehre, dies führe zu einem ‘Dualismus’ von Glaube und weltlicher Existenz der Christen. Man kann an diesem Modell schließlich die Berücksichtigung der (zureichenden) Relevanz der Christologie, der Königsherrschaft Christi, des Herrschaftsanspruchs Christi vermissen.” M.Honecker, *Das Recht des Menschen. Einführung in die evangelische Sozialethik* (1978), p. 148f.

⁷¹⁰ M. Honecker, *Das Recht des Menschen. Einführung in die evangelische Sozialethik* (1978), p. 155.

Glauben und die in der Rechtfertigung geschenkte Freiheit [nur] als Motivation für die Verwirklichung politischer Freiheit einzusetzen”⁷¹², in many respects *motivation* has become a key-issue in Honecker’s search for “Vermittlung” between Christian faith and political practice, making it possible to maintain both the relative autonomy of the political and the Christian proprium in social and political ethics.

It should, however, be remarked that Honecker in his latest works mostly avoids using the term “Motivation”. One obvious reason for this is that Honecker, when drawing heavily upon the motivational force of Christian faith, was often misunderstood.⁷¹³

When Onora O’Neill says about the topic of motivation that “it seems to me to be among the most confused and uncertain domains of philosophical inquiry at present”⁷¹⁴, she may well have been expressing a widely held opinion. And, admittedly, Honecker has not been very explicit or precise about how the notion of *motivation* is to be understood.⁷¹⁵ Nor has Honecker ever presented a thorough and well-formed theory about the

⁷¹¹ The way Honecker draws on “rational evidence” is of considerable interest when turning to Rawls’ conception of a forum of public reason, as a *shared* domain for justifying to one another decisions of common interest, standards for public affairs and basic institutional arrangements.

⁷¹² Honecker himself refers more specifically to Heinz Eduard Tödt for this view. One should not make the Christian contribution in questions of political rights and social ethics merely a matter of formal motivation. Honecker himself underlines that “Tödt hält es für zu wenig, den Glauben und die in der Rechtfertigung geschenkte Freiheit als Motivation für die Verwirklichung politischer Freiheit einzusetzen. Vielmehr geht es auch um die ‘qualitative Bestimmung der zu verwirklichenden Freiheit’.” [Heinz Eduard Tödt: Neue Qualität der Menschenrechte. Ein Orientierungsrahmen für kirchliches Handeln. *Lutherische Monatsheft* 13, 1974, p. 514-519, Zitat p.517].” Cf. M.Honecker, *Das Recht des Menschen. Einführung in die evangelische Sozialethik* (1978), p. 144f.

⁷¹³ Honecker realises this clearly, what can for instance be seen in an article recently published, where he once more stresses that: “Vielmehr kennzeichnet der Umgang mit Affekten die gesamte Prägung eines Menschen, seine Persönlichkeit” and thereafter adds: “Für diese Grundorientierung des handelnden Subjekts habe ich früher gelegentlich den Begriff ‘Motivation’ benutzt. Dieser Sprachgebrauch ist teilweise mißverstanden worden.” M. Honecker, “Vernunft, Affekt, Erfahrung” in: *Fundamente der Ethik. Bilanz der Neuzeit* (1996 Ed. A.Holderregger), p.106.

⁷¹⁴ O. O’Neill, *Towards justice and virtue* (1996), p.7. The very terminology might, however, to some extent be clarified. R.S Peters, who holds that the concept of *motivation* has developed from that of *motive*, tries to do so by taking his point of departure from “The Oxford English dictionary ... [which] throws out hints about the sorts of things which have been of interest to psychologists. ‘Motives’ are defined as

That which ‘moves’ or induces a person to act in a certain way; a desire, fear, or other emotions, or a consideration of reason, which influences or tends to influence a person’s volition; also often applied to a contemplated result or object the desire of which tends to influence volition.

This definition indicates well enough the directive aspect of the term ‘motive’ - the ‘contemplated result or object’ or the ‘consideration of reason’ which influences volition. But it also stresses the notion of ‘moving’ which is the etymological suggestion of the word, and its connexion with emotion and desire. And many would suggest that it is this connexion with emotion and movement which makes a reason a motive. It is an operative reason because of a causal connexion between directedness and some inner springs in the individual. A motive, it would be argued, is an emotively charged reason.” R.S. Peters, *The Concept of Motivation* (2nd edition 1960), p.37.

⁷¹⁵ In a book review of M. Honecker’s *Konzept einer sozialethischen Theorie* (1971), Honecker is

role that *motivation* should play generally in understanding human action or, more specifically, within theological social ethics, but the term should not be given up.

One must not overlook the *affective* aspects of human activity. In this connection Honecker appropriately focused on the irrational aspects of motivation, stressing “daß der Mensch eben nicht nur Vernunftwesen ist, sondern von Angst, Emotionen, irrationalen Motiven geleitet und beherrscht wird. Diesen ganzen Komplex nenne ich Motivation.”⁷¹⁶ But as far as I can see it is not the affective arousal as a psychological phenomenon or the more or less unconscious, irrational and shifting motives in general that Honecker has foremost been concerned about.

When stressing the motivational role of Christian faith in the field of (social) ethics, Honecker expresses theological concerns, which should still be taken as crucial and characteristic of his social ethics, even after he has renounced on the very term *motivation* in his most recent works. It is therefore of importance to identify the theological concern pursued by Honecker when seeking a “Vermittlung von Motivation und rationaler Evidenz”.

First of all he is, as usual, concerned about *distinguishing* properly. The question *what* people should do has to be distinguished from the question *why* people engage in some affairs. Accordingly he finds it necessary to introduce a distinction between motivation and reason, - thereby distinguishing the question of motivational force from the question of establishing the most reasonable substantial guidelines and criteria required in actual politics.⁷¹⁷ The distinction made by Honecker is of importance when clarifying the role

criticised for drawing upon the notion of *motivation* without providing us with the “soziologische und sozialpsychologische Erhärtung” that should be required. In the review Heinrich writes: “Das Proprium evangelischer Sozialethik aber liegt in der ‘Motivation’ ... Für die gesamte Konzeption H’s tragend ist die begriffliche (122) Unterscheidung von ‘Motivation’ und ‘Kriterium’ ... die im Vollzug nicht zu trennen sind. ‘Motivation ist die Begründung eines Handelns in dem Sinne, daß sie darüber Auskunft gibt, warum man zum Handeln genötigt ist.’ (15). ‘Das Sachkriterium soll dazu dienen, zu erkennen, was der Christ sachlich zu tun hat.’ (122). Wenn aber Motivation und Kriterium im Vollzug nicht zu trennen ist, impliziert das notwendig für die Methode und reflexive Erfassung der Begriffe eine Beschreibung dieses Vollzugs. Die begrüßenswerte terminologische Bestimmung der Begriffe ‘Motivation’ und ‘Kriterium’ wird depriviert durch die fehlende soziologische und sozialpsychologische Erhärtung der Beschreibung.” Ass. R. Heinrich in *Zeitschrift für Evangelische Ethik* (1972), p.56.

⁷¹⁶ M. Honecker, *Sozialethik zwischen Tradition und Vernunft* (1977), p.207.

⁷¹⁷ “Zwischen einer materialen Theorie der Ethik und der Motivation ethischen Handelns aus einer Grundüberzeugung, etwa religiöser Art, ist bei der ethischen Theoriebildung selbst zu differenzieren. Ethische Urteils- und Entscheidungsfindung ist ein mehrschichtiger Vorgang.” M. Honecker, *Das Recht des Menschen. Einführung in die evangelische Sozialethik* (1978), p. 155. This is a concern which can very clearly be found also in Honecker’s *Konzept einer sozialetischen Theorie* from 1971: “Motivation ist die Begründung eines Handelns in dem Sinne, daß sie darüber Auskunft gibt warum man zum Handeln

of Christian faith in matters of social ethics and politics:

“Der Glaube setzt instand, für das Rechte und Gute einzutreten. Der Vernunft fällt es zu, jeweils zu ermitteln, was in einer bestimmten Situation konkret das Rechte und Gute ist, und diese Einsicht allgemein einsichtig und kommunikabel zu machen. Im Gewissen geschieht die persönliche Identifikation mit diesem als richtig und notwendig Erkannten, die Affirmation, welche ethische Erkenntnis praktisch und konkret werden läßt. Der Glaube bewirkt *Motivation* zum Gebrauch der Vernunft und zum Vollzug der Affirmation des Anrufs des Gewissens.”⁷¹⁸

Honecker is concerned with the motivational role of *Christian* faith in matters of social and political ethics and, he is not as concerned with the affective arousal as such, which can be shifting, irrational and argumentatively unjustifiable. The following two aspects in Honecker’s approach to motivation may therefore be stressed:

- Even if Honecker is obviously acquainted with different theories of motivation within (moral) psychology, he avoids drawing explicitly and thoroughly on psychological insights and theories when explaining the *motivational*⁷¹⁹ role of Christian faith. He seeks instead for genuinely theological motives.
- When concerned with the *motivational* role of Christian faith, Honecker focuses on the very “Grundeinstellung” which accords with faith, the basic attitude and the deeper affections which are by far transcending the merely “rational-kognitiven

genötigt ist, warum man sich überhaupt zu einen Entschluß veranlaßt sieht. Motivation ist Kausalität von innen her gesehen (A.Schopenhauer). Von der Motivation sind die Kriterien zu unterscheiden, an denen sich gesellschaftliches Handeln inhaltlich orientiert. Kriterien dienen der Begründung einer Sachentscheidung. ... Ein Kriterium hat den Zweck, zu ermitteln, was getan werden soll, und zwar unter Berücksichtigung dessen, das getan werden kann, also aufgrund dessen, was im Bereich des Möglichen ist. Derartige Kriterien gesellschaftlichen Handelns zu finden, ist Aufgabe der Vernunft. Praktische Vernunft hat zu prüfen, was getan werden kann und getan werden soll.”(p.15). But Honecker also adds: “Im Vollzug gesellschaftlicher Praxis und konkreter Theoriebildung sind sonach Motivation und Kriterien nicht eindeutig zu trennen. Um der methodischen Klärung willen sind bei einer grundsätzlichen Unterscheidung sozialetischer Theoriebildung jedoch Motivationen und Kriterien sachlich und begrifflich zu unterscheiden, was nicht bedeutet, ihre praktische wechselseitige Beziehung und Beeinflussung zu bestreiten.” *Ibid.*,16.

⁷¹⁸ M. Honecker, “Vernunft, Gewissen, Glaube. Das spezifisch Christliche im Horizont der Ethik”, *Evangelische Ethik. Diskussionsbeiträge zu ihrer Grundlegung*, (ed. H.G.Ulrich, 1990), p.140.

⁷¹⁹ Honecker can take *motivation* to mean “(Grund-)Einstellung”. When concerned with motivation by faith, he rather seeks an approach to the phenomenon of motivation which is in accordance with the nature of Christian faith itself. Therefore he avoids drawing explicitly on certain theories within psychology which might tend to make Christian faith primarily a psychological phenomenon. “Es sei deshalb an dieser Stelle ausdrücklich vermerkt, daß mit der Verwendung des Motivationsbegriff hier mitnichten die Übernahme einer spezifischen psychologischen Motivationstheorie verbunden sein soll. Ohne auf die psychologische Diskussion um den Motivationsbegriff und die Einteilung der Motivationstheorien in zwei Typen ... einzugehen, also die Frage, ob Motivation eine Kausalität oder Finalität meint, verwende ich Motivation synonym mit ‘Einstellung’.” M. Honecker, *Sozialethik zwischen Tradition und Vernunft* (1977), p.211.

Ebene”.⁷²⁰ Thereby he makes it quite clear that:

“Motivation meint allerdings nicht beliebig auswechselbare Gesinnungsimpulse, sondern eine Grundeinstellung. Der Glaube kann deshalb als Motivation beschrieben werden, weil er eine bestimmte Grundeinstellung zur gesamten Lebenswirklichkeit einschließt...”⁷²¹

Honecker’s understanding of motivation, when concerned specifically with the motivational force of Christian faith within the domain of social ethics, has as far as I can see some similarity with the *fundamental option* as explained in Franz Böckle’s book on *Fundamental Moral Theology*. Böckle (with reference to P. Fransen) underlines that the fundamental option is not “a fully conscious, limited act alongside the individual acts in mans life. It points, on the contrary, to a radical and dynamic orientation in man’s life to which free consent is given in and through the individual acts in which it is realized.... it inspires them from within.”⁷²² And, Böckle immediately adds, this fundamental option “is always completely inspired by God’s power to attract, and it is borne up by his presence.”⁷²³

Instead of drawing heavily upon specific theories within psychology when explaining the phenomenon of motivation by faith, Honecker draws on theological motives, as for instance the distinction between “‘äußerlich’ und ‘innerlich’” as used by Luther⁷²⁴ with

⁷²⁰ In *Einführung in die Theologische Ethik, Grundlagen und Grundbegriffe* (1990) Honecker focuses on “Das Liebesgebot, and writes that: “Liebe ist sicher mehr als rationales Kalkül. Sie ist spontan, unmittelbar; man sagt, Liebe sei ein ‘Gefühl’, ein Affekt. Man kann Liebe auch ‘Motivation’ nennen. Motivation meint dabei einen Grundantrieb der gesamten Person. Liebe ist als Motivation mehr als eine einzelne Norm; sie ist Meta-Norm’. Der alte Begriff der Tugend als Haltung, habitus, *e/(c)j* beschreibt ein Phänomen, dessen modernes psychologisches Äquivalent ‘Motivation’ genannt wird. Es geht hier nicht nur um Reflexion auf der rational-kognitiven Ebene, sondern um Engagement auf der emotionalen Ebene, um eine Beeinflussung der Affekte. Diese Tiefenschicht der persönlichen Bindung kann man freilich gleichwohl vernünftig, rational analysieren und bedenken.” (p.152).

⁷²¹ M. Honecker, “Vernunft, Gewissen, Glaube. Das spezifisch Christliche im Horizont der Ethik”, *Evangelische Ethik. Diskussionsbeiträge zu ihrer Grundlegung*, (ed. H.G.Ulrich, 1990), p.140.

⁷²² F.Böckle, *Fundamental Moral Theology* (1980; originally published in German 1977), p.107.

⁷²³ F.Böckle, *Fundamental Moral Theology* (1980), p.107.

⁷²⁴ But Honecker’s attempt to establish in this way a theological basis for a motivational proprium in Christian ethics is indeed very tentative: “Die Unterscheidung von Vernunft und Motivation könnte man als hypothetischen Versuch einer Aufnahme und Weiterführung einer Unterscheidung verstehen, die Luther in Rahmen seiner Zweireichelehre verwendet, nämlich der Unterscheidung von ‘äußerlich’ und ‘innerlich’. ... Der Gebrauch des Begriffspaars ‘innerlich/äußerlich’ ist bei Luther freilich höchst vielschichtig und noch nicht umfassend untersucht worden. Ebenso fehlt es an einer Aufarbeitung der Luther vorgegebenen Tradition, die Ebenfalls außerordentlich verwickelt ist. Beides gilt es zu beachten. ... Je nach Zusammenhang wechselt auch der anthropologische Sinn der Formel. Luther verwendet diese anthropologische Unterscheidung vor allem innerhalb des Problemkreises von Glaube, Wort und Erfahrung und in der Erörterung von Rechtfertigung und Erlösung.” M.Honecker, *Sozialethik zwischen Tradition und Vernunft* (1977), p.213. Let it be mentioned that Helmut Thelicke for his part also draws very clearly

reference to the theology of St.Paul.⁷²⁵ And this distinction between “‘äußerlich’ und ‘innerlich’” is, according to Honecker, inseparable from another central theological distinction, i.e. the distinction between “Person und Werk”.⁷²⁶

It is necessary to keep his fundamentally theological approach to the phenomenon of *motivation* in mind in order to understand why Honecker finds the very “proprium” of Christian ethics on the motivational level, distinguished from – but not sharply distinct from – a level of substantial values and material political criteria. It is from this context that Honecker claims:

on the distinction between “innerlich/äußerlich”, which he does not seem to find problematic at all. His approach is therefore less tentative: “Die Tatschicht ist grundsätzlich nicht geeignet, das Spezifische jenes Gottesgehorsams sichtbar werden zu lassen. Es gilt zwar unbedingt, daß das Wort ohne die Tat unglaublich ist. Aber ebenso sehr gilt, daß die Tat ohne das Wort zweideutig ist. Dafür hat wiederum die emanzipierte Ethik des Säkularismus eindruckliche Belege geliefert. Deshalb kommt das spezifisch Christliche der Ethik nur in der Schicht der Motive heraus. Das Wort des Kolosserbriefs: ‘Alles, was ihr tut, das tut von Herzen (ε)/k yuxhḗj) als dem Herrn und nicht den Menschen’ (3,23) bringt das prägnant zum Ausdruck. Denn in diesem grundlegenden Imperativ christlichen Handelns ist das Handeln nicht nach der materiell-inhaltlichen Seite, sondern nach *Grund* und *Ziel* charakterisiert: Der *Grund* besteht zunächst einmal darin, daß das Tun *echt* ist, d.h. daß seine Innen- und Außenseite übereinstimmt (vgl. das ε)/swJen und ε)/cwJen von Mt.23,25). Sofern ich aus dem Herzen heraus handle, ist ja das Motiv einer bloß äußeren Zurschaustellung ausgeschlossen. Zugleich ist damit zum Ausdruck gebracht, daß auch die letzten Bindungen des interior homo im Handeln wirksam sein müssen, denn nur dann kann er ja in seinem Tun völlig gegenwärtig sein. Da diese Bindung aber in der Gemeinschaft mit dem Herrn besteht, ist damit zugleich das Ziel des Handelns gesetzt: daß ich es nämlich zur Ehre des Kyrios tue.” H.Thielicke, *Theologische Ethik I* (1972, 4.Aufl.), p.22.

⁷²⁵ It would be beyond my scope to enter more thoroughly into a debate about theological anthropology according to Luther or St.Paul. But let me mention that Honecker, setting out from Luther’s theology, at least suggests that there are aspects within the theology of Luther (and St.Paul) that are to be considered more thoroughly when concerned with the motivation of faith: “Einerseits ist Luther die paulinische Unterscheidung von innerem und äußerem Menschen vorgegeben, die Parallelen in der platonischen Anthropologie hat und seit Paulus in der theologischen Anthropologie verwendet wurde. Diese Unterscheidung verbindet sich mit der seit Johannes Damascenus verbreiteten Unterscheidung von äußerem und innerem Wort und mit anderen Gegensatzpaaren wie leiblich/geistlich, sichtbar/verborgen, irdisch/himmlich, alt/neu. Eine Aufarbeitung dieser Terminologie fehlt bislang.” M. Honecker, *Sozialethik zwischen Tradition und Vernunft* (1977), p.214.

⁷²⁶ Thus Honecker can emphasise that: “Die Unterscheidung von innerlich und äußerlich wird von Luther außer mit der Unterscheidung von Glaube und Liebe ferner mit der Unterscheidung von Person und Werk verknüpft. Die Luther vorgegebene anthropologische Unterscheidung von innerlich und äußerlich dient dazu, die Unterscheidung der verschiedenen Hinsichten von Glaube und Liebe, von Person und Werk zu veranschaulichen und zugleich ihre Zusammengehörigkeit festzuhalten.” M. Honecker, *Sozialethik zwischen Tradition und Vernunft* (1977), p.214. But realising that the distinction “innerlich/äußerlich” very often has been closely connected with the distinction between “Leib/Seele”, Honecker continues: “Diese anthropologische Unterscheidung von äußerlich und innerlich läßt sich heute freilich so nicht mehr festhalten, allein schon deshalb, weil die für Luther (und seine Zeit) selbstverständliche Unterscheidung zwischen Leib und Seele hinfällig geworden ist. Im Leib-Seele-Schema lassen sich heute die verschiedenen Aspekte des Menschseins nicht mehr begreiflich machen, da heute die Berufung auf ‘Seelisches’ von vornherein als Legitimierung subjektivistischer Beliebigkeit mißverstanden werden kann. Deshalb wäre zu erwägen, ob nicht die Unterscheidung von Vernunft und Motivation den von Luther mit seiner Formel von äußerlich/innerlich gemeinten Sachverhalt bezeichnen könnte: Luther geht es darum, daß ein bestimmtes Verhalten (‘Liebe’, ‘Werk’) ‘äußerlich’ sichtbar wird, zu dem der Mensch gleichwohl ‘innerlich’ frei

“Den Maßstab für gesellschaftliche Konkretionen setzt, auch für den Christen, gesellschaftskritische, geschichtliche Vernunft. Das proprium evangelischer Sozialethik ist damit zurückgenommen in die Motivation – der Christ handelt aus Glaube, Liebe, Hoffnung...”⁷²⁷

Thus Honecker clearly distinguishes between a level of *motivation* and a level of *reason*, or between the levels of “theologischer Motivation und politischer Verwirklichung”.⁷²⁸ It seems as if there is in Christian faith both a strong motivational force, and also a certain vagueness concerning the substantial impact in matters of concrete social ethics and politics.

In his analysis of Luther’s notion of faith, Martin Seils raises “die Frage nach *dem kognitiven Character des Glaubens selbst*”.⁷²⁹ This is a question which also applies within social ethics and becomes acute in the question whether one can really – on the basis of Christian faith – expect a “Zuwachs an ethischer Erkenntnis”.⁷³⁰ The way Honecker sometimes stresses the mere *motivation* as the very proprium of Christian ethics, is often criticised. This critique can even be found in an approach to theological ethics which in many respects comes close to the conception elaborated by Honecker. Arthur Rich for instance criticises the view that “der Glaube ... bewirke nur ‘*Motivation* [und] keinen Zuwachs an ethischer Erkenntnis’”.⁷³¹ In regard to the motivational force of Christian faith, one is, however, well advised to remember that faith itself includes certain *beliefs*

werden muß, nämlich als ‘Person’ durch den ‘Glauben’. Beides ist nicht zu vermengen, aber auch nicht zu trennen.” *Ibid.*, p.214f.

⁷²⁷ M. Honecker, *Konzept einer sozialetischen Theorie. Grundfragen evangelischer Sozialetik* (1971), p.67.

⁷²⁸ M. Honecker, *Sozialetik zwischen Tradition und Vernunft* (1977), p.242. The transformation into substantial standards and concrete political manifestations is obviously taken as complex, according to Honecker, what has to be reflected in the very theory of social ethics: “Zwischen einer materialen Theorie der Ethik und der Motivation ethischen Handelns aus einer Grundüberzeugung, etwa religiöser Art, ist bei der ethischen Theoriebildung selbst zu differenzieren. Ethische Urteils- und Entscheidungsfindung ist ein mehrschichtiges Vorgang.” M. Honecker, *Das Recht des Menschen. Einführung in die evangelische Sozialetik* (1978), p.155.

⁷²⁹ M. Seils, “Glaube”, *Handbuch Systematischer Theologie*, (1996, Bd. 13), p.64.

⁷³⁰ This is a phrase which is used by Honecker himself in different articles, for instance in *Zeitschrift für Evangelische Ethik*, 1990, p.138.

⁷³¹ With reference to M. Honecker’s “Vernunft, Gewissen, Glaube”, Arthur Rich criticises a view according to which: “Das spezifisch Christliche im Horizont der Ethik, in: *ZThK* 77(1980), meint sagen zu können, der Glaube bringe ‘für eine theologische Ethik keinen Zuwachs an ethischer Erkenntnis’ (S.399). Er bewirke nur ‘*Motivation* zum Gebrauch der Vernunft und zum Vollzug der Affirmation des Anrufs des Gewissens’ (S.341). Dagegen ist geltend zu machen, daß die Liebe des Glaubens Kriterien für die ihr gemäße Humanität hat und daß man insofern auf dieser Ebene sehr wohl von einem ethischen Erkenntnisgewinn sprechen kann. Übrigens mildert Honecker selbst die Härte seiner These, wenn er etwas weiter unten präzisiert: ‘Motivation meint allerdings nicht beliebig auswechselbare Gesinnungsimpulse, sondern

about the world and about man (before God), which will substantially qualify the motivation one has. Given this, Arthur Rich's objection seems plausible.

As far as I can see, however, Honecker does not take the motivational force of Christian faith to be just a kind of *affective* arousal, which is hardly substantively qualified at all. For even if Honecker says that Christian faith brings "keinen Zuwachs an ethischer Erkenntnis", this can hardly be taken to mean that faith as such is supposed to bring absolutely no kind of "cognition" capable of substantively influence the field of morals, social ethics and politics. Honecker underlines that;

"Sozialethik steht zwischen den von der Soziologie aufgewiesenen gesellschaftlichen Gegebenheiten und Zwängen und dem Wissen um eine 'andere Dimension im Menschsein', welche nicht in zweckrationalen Handlungsentwürfen bedacht wird, sondern aus der christlichen Überlieferung stammt. Wird diese 'eigentümliche Dialektik' ernstgenommen, so wirkt der Vorwurf einer Rücknahme der Sozialethik in die gläubige Person nur dann überzeugend, wenn man die eigene Prämisse, daß das Christentum ein Wissen um die den Menschen als Subjekt konstituierenden Faktoren bewahre, anderen als Fehler, ankreidet. In anderer Terminologie bezeichne ich nämlich dieses Wissen eben als 'Motivation', als Grundeinstellung des Menschseins."⁷³²

Honecker does not really enter into the meta-ethical debate about the motivating state of "desires" and "beliefs"⁷³³ (as applied to theological ethics), nevertheless, he does not appear to open up a gap between the affective and the cognitive.

A model of "Vermittlung" should maintain a *continuity* between the "Wissen", implied in faith itself, and the kind of reasonable values drawn upon in the public forum. But the question is *how* this continuity should most appropriately be conceived. Honecker is obviously of the opinion that faith itself paves the way for an insight into the difference between faith and morals, between soteriology and ethics, between law and gospel. The most elementary "Fundamentalunterscheidung" belongs to the kind of "Wissen" which is implicit in faith itself. This means that faith itself motivates to the (right) use of

eine ... ganz bestimmte Grundeinstellung zur gesamten Lebenswirklichkeit' (S.341)." A.Rich, *Wirtschaftsethik, Grundlagen in theologischer Perspektive* (2nd ed. 1985), p.170 (note 94).

⁷³² M. Honecker, *Sozialethik zwischen Tradition und Vernunft* (1977), p.204f. (The italicisation is made by me).

⁷³³ The issues considered in this chapter might indeed actualise central meta-ethical problems about the "two sorts of motivating states. The general name for the first sort is 'desire', and the general name for the second sort is 'belief'." Cf. J.Dancy, *Moral Reasons*, 1993, p.1f. A central issue in meta-ethical discussions about moral reasons is whether cognitive 'beliefs' as such should be taken as externally motivating states, what means that they are just contingently motivating, while 'desires' alone are to be taken as internally motivating, what would imply that the essential driving forces in ethics are of an emotional nature. But I cannot enter into this debate, which is not really raised by Honecker.

reason within the shared domain of social ethics and politics. The continuity between Christian faith and political reason, as conceived of in Honecker's model of "Vermittlung", is not adequately secured by merely taking the former as a *derivative* basis of the latter. The continuity between the different stages in Honecker's model of "Vermittlung" might instead be marked by employing the term *transformation*⁷³⁴ which makes the link between the three stages within his model weaker:

- Christian faith – with its orientation towards the Christian doctrine – provides us with motivation, beliefs and reasons for *moral* practice.
- The moral concern, characteristic of Christian faith, requires a transformation into human (ground)values and public standards to be reasonably justified. Honecker can formulate this concern rather strongly as follows:

“Die Motivation der christlichen Botschaft bedarf einer Umsetzung in rational überprüfbare Maßstäbe, Normen, Kriterien ethischen Handelns. Derartige Kriterien müssen inhaltlich den Anforderungen ethischer Evidenz genügen und können nicht einfach autoritär (z.B. durch Berufung auf Offenbarung) gesetzt werden.”⁷³⁵

- When moral (ground)values are to be “materialised” in applied politics and social life, one has to open up for reasonable judgement and a more pragmatic approach.

As far as I can see the model of "Vermittlung" is not thoroughly elaborated by Honecker, but nonetheless there can be little doubt that he clearly utilises the motivational force inherent in a sincere Christian conviction⁷³⁶ when elaborating a model for social

⁷³⁴ Honecker himself can use the terms "Vermittlung" and "Transformation" interchangeable, when characterising this model and avoids systematically the term "derivation".

⁷³⁵ M. Honecker, *Das Recht des Menschen. Einführung in die evangelische Sozialethik* (1978), p. 155. And with special regard to the issue of human rights this concern can be formulated as follows: "Das Evangelium wirkt Glauben. Der Glaube enthält auch eine menschliche Grundeinstellung. Diese Grundeinstellung bedarf jedoch der Umsetzung in zeit- und verhältnisbezogene Verhaltensregeln. ... Aufgabe christlicher Ethik ist dann freilich nicht die Erarbeitung einer Theorie der Menschenrechte (etwa durch deren Herleitung aus Schrift oder Offenbarung), sondern die Einweisung in den Umgang mit den Menschenrechten aus der Motivation des Glaubens." M. Honecker, *Das Recht des Menschen. Einführung in die evangelische Sozialethik* (1978), p.154. This implies clearly that Christian values are taken to be justifiable in terms of shared reason.

⁷³⁶ Without entering more thoroughly into the meta-ethical debate, let me in passing add that David Copp, in his attempt to establish a position which is neutral between the controversy about 'internalism' and 'externalism', stresses the motivating force of people's *convictions*, understood as a combination of sincere beliefs and a subscription to corresponding standards. The connection between "beliefs" and *corresponding* "standards" should even not be taken as a matter of mere derivation. "In typical cases, then, where a person making a claim of moral obligation is sincere, she both believes the proposition she expresses and subscribes to the corresponding standard. In such cases, I will say, her claim expresses a 'moral conviction', a combination of belief and subscription to the corresponding standard." D.Copp, "Moral

ethics. Simultaneously, however, there is a certain *inconclusiveness*⁷³⁷ built into the model of “Vermittlung”. This means that the kind of “Wissen” and beliefs⁷³⁸ implied in the Christian conviction, cannot be expected to provide us (for instance by some method of derivation) with specific moral prescripts for settling political issues “correctly”.

In an earlier chapter I have discussed the argument that a Christian moral doctrine cannot provide us with specific moral values, standards, prescripts and criteria required for social co-operation in modern societies, since no comprehensive doctrine can expectedly be *recognised* by all parties in pluralist societies. The argument introduced now is different: Due to the nature of the Christian doctrine itself *and* the complexity of the world, particular social standards and specific political values, criteria and solutions, cannot *conclusively* be specified, settled and justified by reference to a theological “Wissen” and a (privileged) religious insight.⁷³⁹ Once more we are face to face with a main concern in Honecker’ theological approach as such: To prevent Christian faith, from being

Obligation and Moral Motivation”, *On the Relevance of Metaethics. New Essays on Metaethics* (1995, eds. J.Couture & K.Nielsen), p.203

⁷³⁷ According to Webster’s Encyclopedic Unabridged Dictionary of the English Language (1994 ed.) *inconclusiveness* is characterised by “not resolving fully all doubts or questions” or by being “without final results”. p.721.

⁷³⁸ What Honecker especially has in mind are beliefs about the person, securing his integrity and inviolability according to the status he has as created in the image of God.

⁷³⁹ Let me here also add that Gerald Gaus in a very interesting way employs the notion of *inconclusiveness* when more generally concerned with the question of public justification. He underlines that: “Justifications are often inconclusive – they are open to doubt, not fully convincing, or not decisive because of the complexity of our belief systems and our limited ability to process all the information at our disposal. We have good grounds for forming (or rejecting) beliefs, but because so much information is available that cannot be adequately canvassed, we can seldom be confident that defeaters for our beliefs are not lurking, ready to overturn our conclusion. Victory is rare. Public debate is, I think, typically inconclusive in this way: The relevant information is so great that we are rational to form beliefs on the basis of what we have access to, but other people pick up on other information, coming to different conclusions.” G.F.Gaus, *Justificatory Liberalism. An Essay on Epistemology and political Thought* (1996), p.154. Theology, when concerned with social ethics and politics, should certainly take this kind of complexity into account when turning to substantive issues of politics and social ethics. This does not mean, however, that the motivating force of Christian faith in matters of social ethics is undermined. We might believe things with good reason, even if they cannot be settled conclusively in a way which is convincing to all parties. Let it now also be added that Gaus distinguishes *inconclusiveness* from *indeterminacy*: “We can, then, distinguish inconclusiveness from indeterminacy: The justification for accepting (or rejecting) a belief is inconclusive if the justification meets the minimum standards of proof for acceptance (rejection) but falls short of some high standard of proof for conclusiveness, certainty, knowledge, and so on. A justification for accepting (or rejecting) a belief is indeterminate if it falls short of the minimum degree of proof required for either justified acceptance or rejection.” *Ibid.*, p.153. There might be a “Wissen” implied in a Christian conviction which is morally significant, even if it cannot conclusively justify particular political choices and specific standards. Morally significant religious beliefs might be rendered politically relevant, provided that religious persons or churches can comply with minimum standards for public discourse, acceptance and justification. I will return to some of these aspects later in this chapter when discussing the burdens of judgement and the use of religiously grounded arguments within the public forum.

converted into a “programmierende Doktrin”⁷⁴⁰ for the social and political domain.

As a concluding remark I would like to stress that Honecker – when elaborating his model of *Vermittlung* (transformation) – is clearly concerned about the influence of Christian faith within the worldly realm.⁷⁴¹ But this kind of influence is not to be easily settled as in the different methods of derivation or in the methods drawing on the idea of establishing analogies, but is more open-ended, thereby opening up the political field for genuinely political reasoning. As far as I can see, Honecker's model of “*Vermittlung*”, seems thereby to be an appropriate response to Rawls' demand for *reasonable* arrangements in matters concerning basic justice, institutional premises for political coexistence and morally based standards for social co-operation.

5.5. Moral evidence – burdens of judgement.

5.5.1. Honecker drawing on moral evidence

It should now be clear that due to the Christian doctrine itself and the complexity of society as such, political solutions cannot be *conclusively* specified and justified by mere reference to a privileged (religious) insight in social ethics and the nature of society. The *complexity* of the real world has to be taken properly into account by theological social ethics. But let us now also reflect that the aim of a model of “transformation” was to establish a “*Vermittlung von Motivation und rationaler Evidenz*”.⁷⁴² Honecker without doubt draws very heavily on an idea of *moral evidence* in his conception of social ethics.

It might be taken for granted that there are some moral standards, virtues and attitudes which are well-established and widely approved of even in pluralist societies. Some moral intuitions and elementary norms and values are widely recognised. Gerhard Ebeling refers for instance to the gospel story of the Good Samaritan⁷⁴³ in order to

⁷⁴⁰ Let me in this connection once more refer to H.E.Tödt, *Lutherische Rundschau* 1974, p.517. Cf. also M. Honecker, *Das Recht des Menschen. Einführung in die evangelische Sozialethik* (1978), p.146.

⁷⁴¹ And he emphasises: “Sodann ist nicht strittig, daß der christliche Glaube auch das alltägliche Leben des Menschen betrifft, also die Lebenspraxis des Glaubenden mitprägt und mitgestaltet. Strittig ist jedoch, ob dieser Zusammenhang von Glaube und Lebenspraxis so eindeutig und aufweisbar ist ...” M. Honecker, *Sozialethik zwischen Tradition und Vernunft* (1977), p.15.

⁷⁴² M. Honecker, *Das Recht des Menschen. Einführung in die evangelische Sozialethik* (1978), p. 155.

⁷⁴³ Let me also mention that Rawls himself takes this story as an example of a Bible-text, which might easily be drawn upon in terms of public values: “... Luke, Ch. 10:29-37. It is easy to see how the Gospel story could be used to support the imperfect moral duty of mutual aid, as found, say, in Kant's fourth example in the *Grundlegung*.... To formulate a suitable example in terms of political values only, consider a

explain what moral evidence could mean. As an answer to the question who is my neighbour, whom I should love, Jesus tells the story of the Good Samaritan. The priest and the Levite, passing by without helping the half-dead man who had fallen among robbers, were *obviously* blameworthy, while the Samaritan, who “had compassion, and went to him and bound up his wounds . . . and brought him to an inn, and took care of him”⁷⁴⁴ did what was morally required and proved to act like a true neighbour to the man who had fallen among robbers. The parable makes no reference to more comprehensive doctrines from which Jesus could have support. Neither is there any thorough interpretation of sacred texts (there is just a reference to the commandment of love). Jesus is neither weighing alternatives nor is he using many words in arguing for a certain conclusion. In this respect the story is rather wordless, a brief presentation of a dramatic event. There is not even an explicit appeal to principles of mercy from the half-dead man who had fallen among robbers. The story nevertheless speaks out clearly.⁷⁴⁵ This is Ebeling’s main point. All moral and reasonable persons can obviously see what the situation demands from them. There is in this kind of event a built-in appeal to widely held moral intuitions in which certain moral activities and attitudes have to be taken as evident.⁷⁴⁶

Let it now be noted that Honecker, for his part, finds it appropriate to distinguish between (at least) two kinds of “evidence”. He holds that:

“Eine auf universale Geltung und Kommunikabilität, Mittelbarkeit angelegte Ethik beruft sich auf die Evidenz des Ethischen. Sie will überzeugen durch Einsicht. Die

variant of the difference principle or of some other analogous idea. The principle could be seen as giving a special concern for the poor, as in the Catholic social doctrine.” J. Rawls, “The Idea of Public Reason Revisited”, *The University of Chicago Law Review* (1997;3), p.786 (note 55).

⁷⁴⁴ Luke, 10,33f.

⁷⁴⁵ According to Ebeling it has to be emphasised that “Die Vorbeigehenden haben ihn [den “Ruf”] sehr wohl vernommen. Nur als dem Ruf sich Versagende gehören sie dazu. Der dem Ruf Gehorchende gab dagegen nicht nur zu erkennen, daß er verstanden habe, sondern mehr: daß er dem zum Ruf Gewordenen sein Einverständnis gab. Die Tat der Barmherzigkeit geschah nicht deshalb wortlos, weil sie nichtssagend gewesen wäre, sondern weil sie so selbstverständlich, so menschlich, so ermutigend war, ganz abgesehen von der faktisch gewährten ersten Hilfe. Sie war ganz und gar Wort. Sie sprach für sich.” G. Ebeling, *Wort und Glaube II* (1969), p.29.

⁷⁴⁶ Ebeling can especially appeal to this kind of moral evidence when faced with what might obviously threaten human existence: “Um in ethischer Hinsicht auf die elementaren Verstehensnötigungen zu stoßen, muß man sich an dem orientieren, was faktisch geschieht und notwendig zu geschehen hat. Die Notwendigkeit in ethischer Hinsicht wird evident an dem, was den Menschen in seiner Mitmenschlichkeit bedroht. Um sich dem Problem der Ethik zu stellen, muß man an den konkreten Bedrohungen der Mitmenschlichkeit orientiert sein und ständig in Kontakt bleiben mit solchen Situationen, in denen das Problem des Ethischen bedrängend erfahren wird.” G. Ebeling, *Wort und Glaube II* (1969), p.19.

Evidenz des Glaubens hingegen bedarf einer Erleuchtung durch den heiligen Geist, so daß es zutreffend heißt, der Glaube sei nicht jedermanns Sache (2.Thess.3.2).⁷⁴⁷

When Honecker so strongly stresses the “evidence of the ethical”, and simultaneously distinguishes the two kinds of “evidence”, he once more takes his point of departure from the main distinctions within Lutheran theology, – not least being that between law and gospel⁷⁴⁸ and the hermeneutic distinction between the two kingdoms.⁷⁴⁹ Thus it can also be understood why Honecker uses the phrase “Evidenz des Ethischen” interchangeably with “Evidenz des Humanum”.⁷⁵⁰ Drawing on the fundamental theological distinction, Honecker can even say that “Ethik bedarf nicht mehr stringent theologische Herleitung”.⁷⁵¹

⁷⁴⁷ M Honecker, “Thesen zur Aporie der Zweireichelehre”, *Zeitschrift für Theologie und Kirche* (1981), p.129.

⁷⁴⁸ “Ein ungelöstes Grundproblem ist die Evidenz des Ethischen, und zwar in Gestalt ethischer Normen oder Maßstäbe. Die reformatorische und altlutherische Theologie konnte dieses Problem dadurch beantworten, daß sie das Gesetz in seinem bürgerlichen Gebrauch, dem *usus politicus legis*, jedermann mit seinem Menschsein gegeben und einsichtig sein ließ und damit, zumindest tendenziell, als universal vorhandenen voraussetzte.” M Honecker, “Thesen zur Aporie der Zweireichelehre”, *Zeitschrift für Theologie und Kirche* (1981), p.133. But Honecker also underlines that the debate about a possible moral evidence in a modern age is in many respects different from the debate about the evidence of moral claims in the age of Reformation, – even if there are parallel concerns too: “Im Vergleich zur Reformationszeit, in welcher der ethische Anspruch als selbstevident, in der Sprache der damaligen Zeit als ‘natürlich’ gegeben galt, ist heute gerade das Ethische, auch seitens theologischer Sozialethik ausdrücklich zum Bewußtsein zu bringen. Denn mit dem Verlust des Ethischen kommt der Theologie das Gesetz abhanden, auf das sich das Evangelium bezieht und mit welchem es umgeht im duplex *usus legis* ...” M. Honecker, “Das Problem der Eigengesetzlichkeit”, *Zeitschrift für Theologie und Kirche* (1976), p.128.

⁷⁴⁹ “Die Rückführung der Zweireichelehre auf elementare Grundfragen christlicher Existenz nötigt m.E. zur Unterscheidung zwischen einer Evidenz des Ethischen und der Evidenz des Glaubens. ... Ethik soll Menschen anleiten menschlich zu leben. Und da sich das Wort menschlich sogar steigern läßt, könnte christliche Ethik dazu beitragen, menschlicher zu handeln, menschlicher zu werden und menschlicher zu sein. Sodann ist Menschlichkeit zunächst eine nicht-theologische Kategorie. Darauf verweist die Berufung auf die Vernunft als Maßstab einer menschlichen Ethik. Die Chiffre ‘Vernunft’ soll den Menschen bei seiner Humanität als Gabe und Aufgabe behaften. (Der sachlichen Probleme sowohl des Begriffs Vernunft wie einer Berufung auf Vernunft bin ich mir dabei durchaus Bewußt). M Honecker, “Thesen zur Aporie der Zweireichelehre”, *Zeitschrift für Theologie und Kirche* (1981), p.138f.

⁷⁵⁰ This is for instance the case when he is dealing with the challenge of fundamentalism: “Evangelische Ethik steht hier vor größeren Problemen [als die Katholiken], sofern sie einem biblizistischen und exklusiv christozentrischen Ansatz folgt, nicht aber, wenn sie sich auf die Evidenz des Humanum beruft.” M. Honecker, *Sozialethik Zwischen Tradition und Vernunft* (1977), p. 153.

⁷⁵¹ According to Honecker “Letzter Maßstab menschlichen Handelns ist kein Trans-Humanum, sondern eine dem Menschen, seinem Tun und lassen immanente Verbindlichkeit, das Menschsein, das Humanum selbst – aber nicht, wie es sich tatsächlich verhält, sondern wie es sich sinnvollerweise verhält, wie es sich verhalten soll. Ist diese Feststellung richtig, so rührt die Schwierigkeit, die theologische Ethik nach dem Normenbestand, also anhand der Einzelforderungen und Einzelentscheidungen von einer allgemeinen, humanen Ethik abzugrenzen, nicht nur von einer uns vorgegebenen pluralistischen Gesellschaftsstruktur her, sondern sie gründet in der Anerkennung des Evidenzanspruch des Ethischen selbst. Eine lediglich auf das soziale Zusammenleben der Menschen bezogene Ethik bedarf nicht mehr stringent theologische Herleitung.” M. Honecker. “Erfahrung und Entscheidung”, *Zeitschrift für Theologie und Kirche* (1978), p.500.

But this does not mean that ethics/morals as a shared phenomenon should not also be taken as a vital theological concern, – just as it should also be taken into account that there are central Christian/Biblical motives that may frequently be referred to in public reasoning.⁷⁵² However, there are obviously various ways of taking the moral concern into consideration from the side of theology:

“Einmal: Das Faktum des Anspruchs auf *Evidenz des Ethischen Forderung* seitens der allgemeinen Ethik läßt sich, auch durch die theologische Ethik nicht bestreiten. In der Theologiegeschichte ist das Recht dieses Anspruchs auch nicht bestritten worden, erinnert sei nur an die seit der christlichen Antike herrschenden Naturrechtsvorstellungen oder an Luthers Auslegung des Gesetzes, vor allem im primus usus legis, als menschlicher Grundgegebenheit. Auch für die sogenannte zweite Tafel des Dekalogs oder für das Gebot des Nächstenliebe läßt sich solche potentielle Evidenz für jedermann nicht übersehen. Diese Faktizität der ‘Evidenz des Ethischen’ ist dann aber auch im Ansatz und in der Methode seitens theologischer Ethik sachgerecht zu berücksichtigen. Die Fragestellung, ob es ‘nur’ eine theologische Ethik oder ‘nur’ eine allgemeine Ethik geben könne, erweist sich dann als schief und verfehlt.

Zum anderen: Die grundsätzliche Infragestellung der Möglichkeit theologischer Ethik ist primär *theologisch* zu erörtern, nicht *ethisch*. Denn diese Infragestellung enthält die prinzipielle Bestreitung der Möglichkeit, Gott allgemein zu denken. *Der Streit um die theologische Ethik entscheidet sich deswegen in und an der Gottesfrage.* Dieser Streit sprengt aber den Rahmen jeder ethischen Frage- und Aufgabestellung. Er ist deshalb auch nicht innerhalb der Ethik selbst zu lösen und auszutagen. Allenfalls an der Grenzen des Ethischen – den Erfahrungen von Schuld, Schicksal, Scheitern, Mißlingen, Tod – berühren sich theologische und ethische Fragestellung... Theologie muß die Selbständigkeit der Ethik freigeben, um gerade zu sich selbst als *Theologie* zu finden. Sie hat darum zu unterscheiden zwischen der Evidenz der Ethischen Forderung und der Evidenz des Glaubens, zwischen der Erleuchtung, welche allein der Heilige Geist als Geist der Wahrheit zu gewähren vermag, und der Erleuchtung aufgrund des Lichtes der Vernunft.

Schließlich: Ein Ausgehen von konkreten ethischen Aufgaben und Fragen erweist die Komplexität ethischer Urteile, Motive, Beweggründe des Handelns, Wahl der Mittel und Orientierungen an Zielen und Zwecken bilden ein komplexes Handlungsgefüge, dessen Untersuchung und Bewertung eben nicht durch den Rückgriff auf ein einziges Prinzip zu leisten ist.⁷⁵³

⁷⁵² When concerned with human rights for instance one should “erkennen, wie weithin christliche Motive in den Menschenrechten aufgenommen waren...” This does not make it problematic that today “berufen sich die Menschenrechte auf die Evidenz der Vernunft, nicht auf Gottes Gebot.” M. Honecker, *Sozialethik zwischen Tradition und Vernunft* (1977), p.139. However, one should add, that Honecker usually takes a rather tentative approach in difficult matters of (Christian) ethics. And in the introduction to *Sozialethik zwischen Tradition und Vernunft* he holds that; “Theologische Ethik nimmt vielmehr eine Mittelstellung ein zwischen der allgemeinen ‘humanen’ Ethik, deren Methoden und Argumentationsweisen, ihrer Berufung auf die Evidenz der Vernunft einerseits, und der christlichen Glaubenslehre und ihrer Überlieferung andererseits.” M. Honecker, *Sozialethik zwischen Tradition und Vernunft* (1977), p.7.

⁷⁵³ M. Honecker, “Das Problem des theologischen Konstruktivismus”, *Zeitschrift für Theologie und Kirche* 1980, p.108.

It is worth noting in this text how Honecker starts with an idea of moral evidence and ends up by emphasising the complexity we normally have to face when making moral judgements within the framework of a modern society. The very idea of moral *evidence* which Honecker draws so heavily upon in his social ethics⁷⁵⁴, is obviously considered fully compatible with an idea of *complexity* and even with a feeling of “Ratlosigkeit und Verlegenheit der von neuen Herausforderungen, neuen Situationen und neuen Aufgabenstellungen Betroffenen.”⁷⁵⁵ One of Honecker’s main point is obviously that complexity and uncertainty require that we *seek* evidence through shared efforts and rational arguments.

It should also be remarked that Honecker is very much aware of “die Krise der Vernunft”⁷⁵⁶, – which might be a hindrance to broad agreement through public reasoning and not least for settling human rights which all parties can reasonably recognise.⁷⁵⁷ But Honecker nevertheless goes for the better *argument* in matters of social ethics and stresses the role of reason in political affairs and public discourse, – even if “die Krise der Vernunft” goes very deep and must be considered a constant source of anxiety.⁷⁵⁸

⁷⁵⁴ Let it here be inserted that Honecker does not provide us with a precise philosophical explanation what concerns his use of the term “evidence”, neither does he specify very exactly what should count as proper sources of *moral* evidence. However, it should be sufficiently clear what he aims at, and not least which positions he is criticising. Let it for instance be remarked that Honecker is clearly criticising the Barthian position – within which he himself is theologically educated – and instead finds reason to hold forth “was erst ethische Einsichten gesellschaftlich relevant macht, nämlich die Bildung eines ethischen Konsensus durch rationale Diskussion und Verständigung aufgrund von allgemeiner Evidenz.” M.Honecker, *Sozialethik zwischen Tradition und Vernunft* (1977), p. 200.

⁷⁵⁵ M. Honecker, *Einführung in die Theologische Ethik, Grundlagen und Grundbegriffe* (1990), p. x.

⁷⁵⁶ Thus Honecker can clearly stress that a “geschichtsspekulativ begründete Fortschrittsoptimismus mit dem Glauben an den Sieg des Vernünftig-Guten in der Geschichte wurde im 20. Jahrhundert aber radikal erschüttert.” M.Honecker, *Grundriß der Sozialethik* (1995), p.2.

⁷⁵⁷ “Die Krise der Vernunft, ihre Reduktion auf bloß rationale Effizienz, das Ausklammern der humanen Orientierung, die Reduzierung auf an sich bloß technisch ‘vernünftige’ rationale Verfahren hat in der Gegenwart Zweifel an der Tragfähigkeit der Vernunft geweckt. Solche Zweifel an der Vernunft als Mittel und Verständigungsgrundlage zwischen grundsätzlich *allen* Menschen trifft jedoch auch die Menschenrechte. Denn die Menschenrechte beanspruchen als universale Forderung, ‘vernünftig’, einsichtig zu sein.” M. Honecker, *Das Recht des Menschen. Einführung in die evangelische Sozialethik* (1978), p. 163.

⁷⁵⁸ The role that Honecker ascribes to the “Vernunft” within the field of morals should already be sufficiently demonstrated. Let me, however, once more stress a main concern in Honecker’s conception: “Vernünftige Diskussion und Reflexion sollen Kommunikation ermöglichen. Der vernünftige Diskurs ist die einzige vorstellbare Alternative zu Unterwerfung, Überredung und damit zu Gewalt oder einem autoritären Diktat. Anerkennung und Zustimmung können nur frei gegeben werden. Deswegen sollte Zustimmung vernünftig einsehbar und begründbar sein. Vernunft ist, so verstanden, nicht substantiell zu begreifen, nicht als Sachverhalt, Gegenstand, bestimmte Meinung oder Norm zu identifizieren. Sie soll lediglich Grundlage kommunikativer Verständigung sein. Vernunft kann sich deshalb nur im Gebrauch zeigen. Sie ist zudem nicht uniform. Am besten wäre es sogar von ‘Vernünften’ im Plural zu reden und so geschichtliche Vernunft, technische Vernunft, praktische Vernunft, theoretische Rationalität, humane Vernunft differenzierend zu benennen. Der Theologe weiß schließlich auch um die Versuchungen und

Honecker clearly realises that even the political values and moral doctrines which some people consider most rational and reasonable, may be considered highly unreasonable and unacceptable by others⁷⁵⁹, and there may often be no conclusive argument, by which such deep disagreement can be removed. Nevertheless, Honecker observes that there is no way to return back to a pre-enlightened age.⁷⁶⁰

The idea of moral evidence in Honecker's conception of social ethics in fact goes well together with an insight into the crisis of reason and morality. The idea of moral evidence is accompanied by an insight in the very *apory* of morality, as elaborated in a well-known article by Gerhard Ebeling, which Honecker refers to.⁷⁶¹ When concerned with ethics one might very soon realise that in "den Erfahrungen von Schuld, Schicksal, Scheitern, Mißlingen, Tod – berühren sich theologische und ethische Fragestellung".⁷⁶² The idea of an Evidenz des Ethischen" is in Honecker's theological conception of ethics, just as in Ebeling's, accompanied by a clear awareness of the "Aporie des Ethischen", which means that the phenomenon of ethics raises questions that cannot be answered or solved within the moral field itself.

Gefahren eines Mißbrauchs der Vernunft, um die Möglichkeit ihrer Verfehlung und Selbstverfehlung, darum daß Vernunft "blind", falsch und irrend werden kann. Die Vernunft, die Gabe Gottes ist, ist stets auch die Vernunft des von Gott abgefallenen Menschen, die Vernunft des Sünders. Dies veranlaßt zu Bescheidenheit und Demut und hält alle ethische Reflexion zu skeptischer Selbstkritik an." M. Honecker, *Grundriß der Sozialethik* (1995), p.xii.

⁷⁵⁹ That was in some respects the problem when an appropriate abortion-law for society was about to be settled.

⁷⁶⁰ "Vielmehr ist jetzt davon auszugehen, daß die Aufklärung ein epochal neues Bewußsein von der Aufgabe der Vernunft und von der Ausrichtung der Gesellschaft und den Regeln der Vernunft gebracht hat. Ein Gesellschaftsbild und eine sozialethische Theorie ist seit der Aufklärung nicht mehr in derselben Weise möglich, wie dies vor der Aufklärung möglich war: Staat und Gesellschaft sind einem nachaufgeklärten Bewußsein radikal weltlich, diesseitig, säkular geworden. Der sakrale Umschluß des mittelalterlichen Gesellschaftsbildes ist zerbrochen. An seine Stelle trat die vernünftige Evidenz eines humanen Anspruchs. ... Seit der Aufklärung hat sich die Ethik verselbständigt: Sie begründet sich mit Hilfe der praktischen Vernunft unabhängig von Religion und besonderen Weltanschauungen und beruft sich auf die allgemeine rationale Evidenz des ethischen Anspruchs." M. Honecker, *Das Recht des Menschen. Einführung in die evangelische Sozialethik*, Gütersloher (1978), p. 21f.

⁷⁶¹ According to Gerhard Ebeling we have now arrived at the point "wo die Scheidewand zwischen dem ethischen Problem und der Sache der Theologie hauchdünn wird..." G. Ebeling, *Wort und Glaube II* (1969), p.25. And he adds: "Bei der Untersuchung des Phänomens des Ethischen waren wir gelegentlich an eine Grenze gestoßen, über die es selbst nicht hinausführte, aber hinauswies. Zum Wesen der Ethik gehört es offenbar, daß sich ihre Problematik in Dimensionen weitet, für die sie nicht zuständig ist, in Fragen mit denen unter ethischem Gesichtspunkt nicht fertig zu werden ist. Es ist Vorsicht geboten, daraufhin vom Ethischen her die Sache der Theologie ohne weiteres für legitimiert zu halten. Das Vorliegen von Aporien berechtigt nicht, jede sich anbietende Lösung zu akzeptieren. Mit dem Aufweis religiöser Bedürfnisse ist die Wahrheit des Glaubens nicht eo ipso erwiesen. Es könnte ja sein, daß über das Ethische hinaus nichts anderes auszusagen bleibt als eine unauflösliche Aporie des Ethischen, die wir uns nicht durch religiöse Illusionen verschleiern dürfen." G. Ebeling, *Wort und Glaube II* (1969), p.32.

⁷⁶² M. Honecker, "Das Problem des theologischen Konstruktivismus", *Zeitschrift für Theologie und Kirche* 1980, p.108.

Thus Honecker's idea of an "Evidenz des Ethischen" goes well together both with a recognition of the limits of ethics and with an insight in the apories raised within ethics itself and with an awareness of the uncertainty of human judgement in ethical (and political) matters of great complexity. By stressing the idea of an "Evidenz ethischer Überlegungen" Honecker sets a *goal* for public reasoning and draws on people's *shared* moral resources in matters of common social and political significance. In this connection Honecker is critical of what he characterises as "dogmatism" in social ethics and politics.⁷⁶³ He considers it necessary to consider both historical, social, cultural, political aspects as well as essential elements of history and tradition when facing the complexity of modern societies. The different aspects have to be taken into account in what Honecker characterises as a "Konvergenzargumentation".⁷⁶⁴

The very complexity of modern societies, makes necessarily "die Begrenztheit unserer menschlichen Erkenntnis deutlich..."⁷⁶⁵ And so Honecker's idea of rational evidence also accords well with what one might characterise as an "epistemic humility"⁷⁶⁶ when questions about the better knowledge are raised. Honecker takes it for granted that vital problems of social ethics and politics in modern highly complex societies can only be solved via reasonable communication and social co-operation between all of the citizens involved. Christian social ethics therefore has to be essentially "dialogical" according to

⁷⁶³ "Eine dogmatische Grundlegung der Ethik führt leicht zum Dogmatismus, zu einer axiomatischen Deduktion ethischer Forderungen aus theologischen Grundsätzen und Prinzipien. Ein solcher Dogmatismus verfehlt nicht nur allzuleicht die jeweilige reale Situation, die Empirie, sondern ist darüber hinaus eine Form der Immunisierung gegen die Widerlegung durch die Realität. An die Stelle der Evidenz ethischer Überlegungen treten in diesem Fall autoritativer Ansprüche. Eine derartige dogmatische Immunisierungsstrategie entzieht theologische Ethik den Einwänden einer allgemeinen kritischen Ethik. Der Dogmatismus kann nämlich darauf verzichten, den Geltungsanspruch des ethisch Gebotenen einer kritischen Prüfung seitens der Vernunft auszusetzen." M. Honecker, *Sozialethik Zwischen Tradition und Vernunft*, p. 6f. His critique against "dogmatism" in social ethics, makes Honecker sceptical towards elaborating a substantive Christian social ethics, as is already underlined. Nevertheless he can also add that "schließlich ist die Ablehnung einer besonderen materialen christlichen Sozialethik auch nicht dahingehend zu interpretieren, daß es überhaupt keine christliche Verhaltensweisen gebe, sondern sie besagt nur: Soweit es die ethischen Normen menschlichen Zusammenlebens *in der Gesellschaft* betrifft, also das, was für jedermann gilt, können diese Normen material nicht 'christlich' gefüllt sein." M. Honecker, *Das Recht des Menschen. Einführung in die evangelische Sozialethik* (1978), p. 25.

⁷⁶⁴ Cf. "Das Problem des theologischen Konstruktivismus", *Zeitschrift für evangelische Ethik*, 1980, p.100.

⁷⁶⁵ M. Honecker, *Grundriß der Sozialethik* (1995), p.646

⁷⁶⁶ The term "epistemic humility" is not taken from Honecker. In the book *Den politiske orden* (1994, ed. E.O.Eriksen) Harald Grimen has written about: "Fornuftig usemje og epistemisk resignasjon". I have modified Grimen's term "epistemic resignation". To get a term that in my opinion fits better within Martin Honecker's conception of social ethics, I have accordingly chosen the notion "epistemic humility" which I find very appropriate for my purpose here.

Honecker.

What I have here called an “epistemic humility” actually plays a very important role in most of Honecker’s writings about social ethics, which can easily be seen. There are at least three theological perspectives, which makes the “limitation” of our natural judgement/reasoning in matters of social ethics and substantive politics obvious.

I. The very notion of *revelation* seems to imply not just that some divine truths are made accessible (in an extraordinary way), but also implies that something remains hidden. In other words, in the very act of revelation “*deus revelatus*” implicitly refers to “*deus absconditus*”. Honecker takes this into account not just as an issue of theological dogma, but in social ethics as well.⁷⁶⁷ In matters concerning social ethics, politics and the worldly order there are – theologically spoken – epistemic limits that even the most rational (or pious) human being has to respect. When trying to get full insight in the worldly regime of God, people will be left with the world as an *opus absconditum dei*.⁷⁶⁸ Churches (and Christians) respecting this, cannot behave, in the worldly realm, as if they had a privileged access to an infallible moral code that is exclusively and fully at the Church’s own disposal. In so far as Churches and Christians are involved in politics, it must be understood that the positions they take are to be publicly judged, critically assessed⁷⁶⁹, and continually revised as a result of an ongoing public debate, in which Christians are participants alongside with non-Christian citizens. Honecker therefore finds it important to correct what he characterises as an “instruktionstheoretisch” approach to divine revelation which he fears could render reasons provided by Churches/-Christians in matters of politics rather “esoteric”.⁷⁷⁰

⁷⁶⁷ Very often, however, this issue is discussed – as for instance by Luther and Karl Barth – in connection with the doctrine of predestination.

⁷⁶⁸ Therefore Honecker can say: “Theologische Ethik teilt vielmehr die Ungewißheiten der Gegenwart; sie erfährt sie als *opus absconditum dei*. Gottes Handeln ist dem Menschen weithin verborgen. Ein tiefes Mißtrauen gegenüber allen theologischen Positionen, denen Gottes Wille manifest, eindeutig erkennbar und greifbar zur Verfügung steht, ist angebracht. Deswegen kann ich auch die Ethik nicht auf eine Offenbarungstheorie stützen, erst recht nicht auf ein positivistisches Verständnis von Offenbarung. Ist der Rekurs auf ein absolutes Offenbarungswissen nicht möglich, dann bleibt aber nur der Weg, mit ethischen Fragen ‘vernünftig und verständig’ umzugehen.” M. Honecker, *Grundriß der Sozialethik* (1995), p. xi.

⁷⁶⁹ “Christliche Anschauung weltlicher Wirklichkeit ist verbesserungsfähig und kritikwürdig. Eine mit dem christlichen Glauben vereinbare Weltanschauung kann keinen totalitären Anspruch erheben. Sie muß die Freiheit der Wahrheitssuche zulassen. Damit wird sie unausweichlich pluralistisch, tolerant und relativ.” M. Honecker, *Grundriß der Sozialethik* (1995), p.74.

⁷⁷⁰ “In der Neuzeit wird Offenbarung zunächst instruktionstheoretisch verstanden: Offenbarung wird – supranaturalistisch – zur Information über unbekannte Heilstatsachen oder Wahrheiten. Die Haltung des Menschen gegenüber solcher Offenbarung ist dann die des Gehorsams, die Anerkennung göttlicher

According to Honecker, decisions taken by the churches, the Christians or the theologians in questions of politics and social ethics can in no way be taken as the “in-disputable”, “absolute” results of a revelatory insight. Honecker makes it quite clear that “...jeder Form von autoritärer Moralvermittlung sehe ich kritisch.”⁷⁷¹ The Church itself should have special reasons for being sceptical towards definitive solutions and ultimate “Letztbegründungen” in questions of social ethics.

“Den Beitrag theologischer Ethik sehe ich nicht in der Verkündigung letzter Heilswahrheiten, sondern in einer Anleitung zur eigenständigen Urteilsbildung. Dialog und Beratung prägen daher den Stil ethischer Argumentation.”⁷⁷²

The complexity of society as well as the limits on our judgement and capacity for reasoning, are clearly taken into account by Honecker as well as by Rawls. It is characteristic of Honecker that he continually emphasises that “unsere Einsicht ist immer nur bruchstückhaft”, not least when we are engaging in politics and social co-operation.⁷⁷³

II. A theological insight into the limitations on human reason might supposedly also be underpinned by arguments taken from hamartiology. Human beings are endowed by their Creator with the gift of reason which helps them manage life, but human reason is simultaneously to be considered the ratio of a sinner.⁷⁷⁴ From this perspective one might

Autorität. Zugleich beansprucht solches Offenbarungsverständnis im Sinne einer Mitteilung von bislang unbekanntem göttlichen Wahrheiten eine spezifische Rationalität. Daraus folgt ein Dualismus von natürlicher Erkenntnis und Offenbarungswahrheit. Offenbarung wird als besondere Weise der Erkenntnis verstanden. Die Glaubwürdigkeit solcher übernatürlicher Offenbarungswahrheiten muß apologetisch bewiesen werden.” M.Honecker, *Grundriß der Sozialethik* (1995), p.73

⁷⁷¹ M. Honecker, *Grundriß der Sozialethik* (1995), p. ix

⁷⁷² M. Honecker, *Grundriß der Sozialethik* (1995), p. x.

⁷⁷³ According to Honecker one has to conclude as follows: “... daß die theologische Erkenntnis Einblick in eine besondere Tiefendimension der Gesellschaft gewähren kann, ist nicht nachzuweisen. Auch profane Vernunft kann Entfremdung, Repression und Unmenschlichkeit, die durch gesellschaftliche Strukturen, soziale Verhältnisse und inhumanes Handeln verursacht sind, aufzeigen. Dazu bedarf es nicht eines besonderen theologischen Tiefenblicks, der dämonische Mächte am Werk sieht. Theologische Sozialethik wird sich freilich auch dessen bewusst sein, daß die Realität komplexer und vielfältiger ist als unsere Vorstellungen von ihr. Aber die Korrekturbedürftigkeit gesellschaftlicher Erkenntnis ist kein Alibi für theologische Weltfremdheit; die Theologie kann allenfalls vor dem sozialphilosophischen Traum warnen, man könne das Ganze der Gesellschaft verstehen und interpretieren. ... Das Ganze, die Totalität zu verstehen, kann nur uneinlösbare Aufgabe, aber niemals gelungenes Resultat sein. Daher spreche ich nur von Grundtendenzen der pluralistischen, industriellen und aufgeklärten Gesellschaft, um die Unabgeschlossenheit des gesellschaftlichen Prozesses und noch mehr des Verständnisses dieses Prozesses zum Ausdruck zu bringen. Unsere Einsicht ist immer nur bruchstückhaft, weil die Geschichte selbst ein Feld offener Möglichkeiten ist. Aber auch die Erkenntnis von Fragmenten reicht für eine im allgemeinen zureichende Bestimmung des gesellschaftlichen Standorts aus.” M.Honecker, *Konzept einer sozialetischen Theorie. Grundfragen evangelischer Sozialethik* (1971), p.10f.

⁷⁷⁴ “Die Vernunft, die Gabe Gottes ist, ist stets auch die Vernunft des von Gott abgefallenen Menschen, die Vernunft des Sünders. Dies veranlaßt zu Bescheidenheit und Demut und hält alle ethische Reflexion zu skeptischer Selbstkritik an.” M. Honecker, *Grundriß der Sozialethik* 1995, p.xii. What concerns the

take the “insufficiency” of our reasoning as stemming from bias, from evil-mindedness and from permanent defects in the human capacity for moral reasoning. However, in this connection we are especially concerned with the shortcoming and limitations of reason when it is at its best, i.e. when it is *properly* exercised – within the domain of its undisputed competence – in questions of politics and social coexistence. And in this perspective should theology not deny or ignore the competence of reason.⁷⁷⁵

III. Honecker’s theological treatment of the limitation on ratio and our capacity of moral reasoning in matters of political and social ethics is not primarily dependent upon a doctrine of hamartiology. It is to a wide extent rather eschatologically motivated, although not in the sense that Christian eschatology is converted into a “programmatically doctrine” for social ethics, but in the sense that there are “limitations” characterising the scheme of this “ai)w/n” that should not (and cannot) be removed by political means. In an eschatological perspective the *difference* between a perfect knowledge sub specie aeternitatis and the insight gained by ordinary (political) reasoning and examination becomes clear. In an eschatological perspective it seems clear that “our gifts of knowledge and of inspired messages are only partial; but [first] when what is perfect comes, then what is partial will disappear.” (1.Cor.13,9f.). The church does well to heed the eschatological difference, simultaneously taking into account the *difference* between the church as an eschatological *communio sanctorum* and as an empirical association in society with conflicts, considerable diversity and widespread uncertainty about issues of social ethics.

notion of sin – in a perspective of ethics – cf. also M. Honecker, *Einführung in die Theologische Ethik, Grundlagen und Grundbegriffe* (1990), pp.50-59.

⁷⁷⁵ Wilfried Joest underlines for instance that Luther himself can stress positively the proper role both of “sensus und ratio” in matters of civil justice and ordinary affairs. This is an essential aspect of Luther’s theological conception of man that is underlined by Joest as follows: “Ratio kann speziell das formallogische Schlußverfahren bezeichnen, aber auch allgemeiner die praktische Urteilskraft in Bezug auf das bonum temporale (z.B. die Rechtsordnung und ihre iustitia civilis); und schließlich überhaupt die Fähigkeit des Menschen, die Weltgegebenheiten in ihrem innerweltlichen Aspekt zu erfassen. Sensus bezeichnet natürlich zunächst das sinnliche Wahrnehmungsvermögen im engeren Sinn, aber oft auch allgemeiner das sich auf Wahrnehmung und rationale Verarbeitung gründende ‘Meinen’ des Menschen; sogar das Meinen und Schließen des Menschen über seinen eigenen *geistlichen* Lebensstand auf Grund des in seelischer Wahrnehmung Gefühlten (worin für Luther freilich bereits eine Grenzüberschreitung des sensus geschieht). In den jeweils allgemeineren Bedeutungsnuancen tendieren beide Begriffe dahin, zusammenzufallen.... Die Formel ‘sensus et ratio’ gewinnt dann den mehr technischen Sinn: die Potenz des Menschen zum Weltwissen in den beiden speziellen modi von dessen Zustandekommen. Diesen Sinn dürfte sie vor allem dort haben, wo das Erkennen durch sensus und ratio formell dem Erkennen des Glaubens aus dem Wort gegenübergestellt wird.” W. Joest, *Ontologie der Person bei Luther* (1967), p.102f. Discussing Luther’s conception of man more thoroughly would be beyond the scope of my thesis. But it may never-

5.5.2. Rawls stressing the “burdens of judgment”

Honecker stresses the limits of human reason, but might nevertheless be taken as representative of a reasonable theological approach to social ethics and the question of the value formation of society.

And as already emphasised, Rawls for his part makes it clear that the comprehensive doctrines, existing in modern pluralist societies, as well as the persons holding them, should be *reasonable* when addressing questions of basic justice and premises for social co-operation. This is a precondition for arriving at *shared* moral premises for coexistence that can widely be recognised as fair.⁷⁷⁶ Thus Rawls unquestionably and quite strongly assumes the reasonableness of comprehensive doctrines and places trusts in public reason in matters of shared political interest, but it has to be added that he simultaneously demonstrates a fundamental insight in the limits of reason, and tries to draw the necessary consequences from this insight. As a result, Rawls approach does not differ significantly from that of the theologian Martin Honecker.

Before undertaking an analysis of Rawls conception of public reason, a fairly extensive discussion of Rawls’ elaboration and use of the *burdens of judgement* is in order. This phenomenon was previously touched upon when I considered pluralism, but now I have to take some further steps and discuss some aspects more thoroughly. Let me first present an abridged summary of the kind of “burdens” which according to Rawls are necessarily incumbent upon our (moral) judgement:

1. Reality is *complex* and conflicting data might be hard to assess.
2. We may consider the same aspects relevant, but disagree about their *weight*.
3. Our moral and political concepts are often vague, and need *interpretation*.
4. When assessing evidence, we are influenced by our *total experience*.
5. There might be different kinds of *normative* considerations of varying force.
6. All systems of social institutions have a limited social space. All that is valuable, cannot be realised simultaneously, and we have to *set priorities*.

theless be of some interest to suggest (with support from W. Joest) that Luther in affairs concerning the ‘iustitia civilis’ could draw decisively on the ‘sensu et ratio’ of natural man.

⁷⁷⁶ Let me, however, recall that Rawls differs from Kant and Locke in so far as he will avoid claiming the reasonableness of Christianity (or religion more generally) on premises that are in themselves philosophically comprehensive and doctrinaire.

Some of these aspects may also be found in Honecker's thoughts. But it is in no way obvious that all of the different factors which comprise the list of "burdens of judgment" – as set forth by Rawls – should be assumed from a theological point of view. And an acceptance of these burdens of judgement may perhaps further relativism (and even advance scepticism). Recognising these kinds of burdens on our judgement means that we have to accept that people can plausibly be expected to disagree upon vital issues, even when they are being rational, and even when they are being most reasonable and honest.

I have already suggested that the disagreement between people which follows from such "burdens", should not be explained as stemming from evil-mindedness or (temporarily) defects in people's capacity of reasoning and making inferences. One simply has to take into account that even people who are perfectly reasonable and highly moral will most likely end up with religious views, moral doctrines and conceptions of the good that differ radically. Thus it can easily be understood why it is so difficult for people to arrive at *the* truth in matters of religion, politics and morals. Rawls even takes one further step such that the insight in – and recognition of – the burdens of judgement is itself taken as a constitutive part of what it means to be reasonable.

In *Ethics* **Leif Wenar** recently delivered "*An Internal Critique*" of Rawlsian political liberalism.⁷⁷⁷ Among other things in his article, Wenar specifically discusses the way Rawls conceives of "the burdens of judgment", and he finds it very unlikely that the majority of religious persons, groups and churches should ever be ready to accept a "fallibilist" view like the one which is presented to us by Rawls.

Wenar's essay tentatively takes a Catholic perspective in its approach to Rawls⁷⁷⁸, but his argument is, in principle, intended to apply more generally. Thus Wenar emphasises "that Catholic doctrine is only cited here as a particularly clear exemplar of religious doctrine."⁷⁷⁹ If Rawls really claims – as Wenar assumes – that religious citizens, as for instance those belonging to the Catholic church, must acknowledge (or at least not deny) "the burdens of judgment" before they can count as reasonable persons capable of

⁷⁷⁷ Cf. L. Wenar, "Political Liberalism: An Internal Critique", *Ethics* (1995, vol. 106, No. 1), p.32-62.

⁷⁷⁸ This is made an integrated part of his internal critique.

⁷⁷⁹ L. Wenar, "Political Liberalism: An Internal Critique", *Ethics* (1995, vol. 106, No. 1), p.46.

joining into a broader consensus about a common framework for society, there is – according to Wenar – good reason to believe that an “overlap” should *never* gain the necessary support.

Moreover, citizens belonging to the Catholic Church should not be expected to support such an overlap, nor is there any reason to believe that people holding other religious or philosophical or moral comprehensive doctrines as we know them, should be eager to support a liberal view conceived of in accordance with the “relativist” attitude inherent in the very idea of the burdens of judgement sketched out by Rawls. Wenar for his own part makes it therefore quite clear that;

“...the burdens of judgment are at best unnecessary for endorsing the content of a liberal view. But the burdens of judgment are more than unnecessary. By insisting that they be part of the characterization of the reasonable person, Rawls excludes many who could otherwise join a liberal consensus. The burdens of judgment exclude many with sincere religious beliefs. This conclusion is unavoidable once we view the burdens of judgment from a perspective both liberal and firmly religious. Were we pressing a liberal perfectionist line in which social institutions are designed to favor autonomy and experimentation over stultifying superstition these points of view should be ignored. But Rawls’s theory claims to be tenable by members of all the main historical faiths (and this without scepticism or hesitancy). So we must examine the theory from the viewpoint of religious believers even if we do not ourselves believe. When we do, we will see why many sincere believers will balk at the burdens of judgment. The difficulty is that religious doctrines typically deny that the burdens of judgment obtain. This, on reflection, should not be surprising. The burdens of judgment are meant to explain (among other pluralisms) why some people believe in one faith, while others believe in other faiths, and still others are agnostics and atheists. The explanation essentially says that questions about religion – about which is the true faith, if any have truth at all – are hard to think through even under the best conditions, and that people answer these questions differently because of their particular life experience (because of their ethnicity, class, place in the division of labor etc.). By contrast, a religious doctrine – as a purportedly authoritative guide to moral requirements and/or salvation – characteristically presents itself as universally accessible to clear minds and open hearts. When a religious doctrine addresses the diversity and lack of religious belief, it is most unlikely to ground its explanation in the difficulty of the issues and the limited perspectives of both believers and non-believers. For this would suggest the likelihood of error on both sides. Rather, heresy and infidelity are due to worldly temptation, demonic intervention, divine predestination, and so on – forces within the horizon of the religious doctrine’s sure scheme of value and fact.⁷⁸⁰ ... To ask Catholics and other believers, to accept the

⁷⁸⁰ And here Wenar refers to the “Dogmatic Constitution on Divine Revelation”, art 6, in *The Documents of Vatican II*, ed. Walter M. Abbot, New York: Herder & Herder, 1966: “This sacred Synod affirms, ‘God, the beginning and end of all things, can be known with certainty from created reality by the light of human reason.’ (see Rom. 1:20), but the Synod teaches that it is through His revelation ‘that those

burdens of judgment is to ask them to abandon unnecessarily fundamental aspects of their faith and their attitude toward it. This is unnecessary because the Catholic church, like other established churches, now endorses a political view sympathetic to (and sometimes indistinguishable from) the content of justice as fairness.”⁷⁸¹

According to Wenar the idea of the burdens of judgement, as described by Rawls;

- should in fact exclude many with sincere religious beliefs, since it in fact demands from them that they abandon fundamental aspects of their faith,⁷⁸²
- should not be required for the sake of upholding the fundamental idea of toleration in society,
- should not be reckoned as an inherent part of a conception of political liberalism that aims at being widely approved of.⁷⁸³

Let me start with the latter of these objections: According to Wenar “the burdens of judgment” are considered an accidental and unnecessary part of political liberalism, which adds nothing essential to the presentation of justice as fairness. This would also mean that a recognition of these “burdens” is not taken to be required to maintain liberal constitutional principles as for instance liberty of conscience and freedom of thought, which are so closely connected with the idea of justice as fairness. And it might very well be possible to accept an idea of *reasonable* coexistence and *fair* co-operation without simultaneously recognising the burdens of judgement as a precondition to realising

religious truths which are by their nature accessible to human reason can be known by all men with ease, with solid certitude, and with no trace of error, even in the present state of the human race.”

⁷⁸¹ L. Wenar, “Political Liberalism: An Internal Critique”, *Ethics* (1995, vol. 106, No. 1), pp.43-45.

⁷⁸² Although Rawls makes ideal theory – it would be a crucial objection to his proposal for consensus if many representatives of the main *historical* religions in fact considered the Rawlsian “overlap” to be so conceived of that they felt excluded (and accordingly would deny support). In such a case I think that Rawls had to revise his theory. Wenar takes, as mentioned, his point of departure from a particular comprehensive religious doctrine, namely the Catholic one. Since Rawls himself has made an endorsement from the perspective of different religious, moral and philosophical doctrines an integrated part of his own theory, the kind of critique against Rawls’ conception, set forth by Wenar on the basis of a very influential church-perspective, should have considerable weight, and might in fact also be considered a critique held within the “internal” framework of Rawls’ own conception. What Wenar, however, is not doing, is to discuss the theological platform from which he himself criticises Rawls’ conception. Is it really so that religious persons – when accepting the burdens of judgement – have to “abandon fundamental aspects of their faith”, as Wenar writes? Of course it may be sufficient for Wenar’s argument that many Christians in fact have this opinion. But in order to answer such questions theologically adequately, it is necessary to go beyond a mainly “internal” perspective.

⁷⁸³ This critique might also be considered “internal”, since Wenar obviously means that Rawls – by bringing into his theory controversial epistemological doctrines as expressed in the “burdens”, in fact undermines his own intention of developing a conception of *political* liberalism that is so undogmatically

this idea. According to Wenar it would be better to remove the idea of the burdens of judgements, with its sceptical implications, from a political liberalism, which goal is a broad overlapping consensus about a shared framework for coexistence in pluralist democratic societies. The idea of the “the burdens of judgment” is in fact to be considered a serious obstacle for establishing an overlapping consensus, since the relativist assumptions cannot be widely accepted. But since the idea of the burdens of judgement – according to Wenar – does not essentially and necessarily belong to political liberalism, these epistemological assumptions can be removed without undermining the essential concerns of political liberalism as such. Political liberalism should according to Wenar rather be strengthened and be made far more endorsable if these “burdens” are not considered as an integral part of a *political* conception.

Wenar also holds that there is nothing incoherent in rejecting the idea of “the burdens of judgment” while continuing to defend the principles of toleration and the liberty of conscience, as many Christians have done. Toleration might perfectly well be defended on the basis of the dignity, integrity and freedom that Christians ascribe to human beings as created in the image of God. The “relativist” assumptions manifested in the burdens of judgement are therefore not to be taken as a necessary prerequisite for developing an attitude of toleration.

Let me conclude this as follows: If the “burdens” are maintained, the result would – according to Wenar – be a doctrinaire liberalism which would be unnecessarily comprehensive, relativist and sceptical, and could most likely never be taken as an appropriate basis for an overlapping consensus.

The critical view, held by Wenar, is quite different from the point of view taken by **Harald Grimen**.⁷⁸⁴ In an English summary following an article on the issue of political stability and the burdens of judgement⁷⁸⁵ Grimen emphasises that his intention has been;

“... to analyse the part played by John Rawls’ analysis of ‘the burdens of judgement’ in his idea of how a political conception of justice can gain support by overlapping

conceived of that it might gain the support from citizens holding very different religious, moral and philosophical doctrines.

⁷⁸⁴ Cf. H. Grimen: “Fornuftig usemje og epistemisk resignasjon”, *Den politiske orden*, Ed. Erik Oddvar Eriksen, Tano 1994, p. 70 - 123 and

⁷⁸⁵ H. Grimen: “Politisk stabilitet og ‘The burdens of judgement’”, *Norsk Statsvitenskapelig Tidsskrift* (1994, no.2, pp.133 - 152).

consensus in a constitutional regime. [And he adds that:] It is argued that, for several reasons, the analysis of ‘the burdens of judgement’ is the most central aspect of Rawls way of dealing with stability.”⁷⁸⁶

I shall not in detail discuss Grimen’s essay, but limit myself to pointing out some of the arguments he uses for considering the burdens of judgement an essential and integrated part of a Rawlsian *political* liberalism:

First: Insight into “the burdens of judgement” is closely connected to the distinction between reasonable and unreasonable disagreement that is a characteristic of Rawls’ theory of political liberalism. According to Rawls (and to Grimen) insight in the burdens of judgement is in itself a distinctive mark of a reasonable person. And therefore there can be no doubt that Rawls himself takes an acceptance of these “burdens” to be characteristic of a liberal society. And the very idea cannot so easily be removed from political liberalism.

Second: Grimen also seems to agree with Rawls that an insight in the burdens of judgement will most likely support and strengthen the disposition for toleration in modern societies.⁷⁸⁷ It is supposed to be a close connection between accepting the burdens of judgement and tolerating a *reasonable* disagreement in society. Persons without an insight in the burdens of judgement are more likely to explain disagreement as a result of bad will, errors, short-sightedness, self-interest and/or egoism⁷⁸⁸, while an acceptance of the burdens of judgement should provide us with *prima facie* reasons for respecting kinds of disagreement, – and especially when disagreement cannot be argumentatively removed, – even by the most serious attempts made by the most reasonable persons.

I agree with Grimen that there can be little doubt that Rawls *himself*⁷⁸⁹ considers the

⁷⁸⁶ *Norsk Statsvitenskapelig Tidsskrift*, Universitetsforlaget 1994, p.152. Grimen says that the very idea of ‘the burdens of judgement’ as presented by Rawls, may be characterised as “viktigaste ideén i hans syn på grunnlaget for støtte og stabilitet for ei politisk oppfatning om rettferd i eit demokratisk samfunn.” *Ibid*, p.133.

⁷⁸⁷ This does not exclude additional reasons for maintaining toleration.

⁷⁸⁸ This seems to be confirmed also by Wenar, when he for instance writes: “Catholic doctrine seems to imply that evil forces had a role in the Reformation and subsequent religious fragmentation, although members of separated churches now are guilty of no more than being descended of those who were misled. The progress of human reason under free institutions does not enter into the Catholic version of the rise of pluralism, since a Catholic may well see this as ‘progress’ away from the truth. And why should one not see reasonable pluralism as at least unfortunate – even if one is not a Catholic? ... Could one not reasonably see modern history as the intensification of tragic conflicts of value?” L. Wenar, “Political Liberalism: An Internal Critique”, *Ethics* (1995, vol. 106, No. 1), p.47f.

⁷⁸⁹ I don’t think Wenar would disagree in this. Both Wenar and Grimen may be right, at least in one

idea of the “burdens” an integral part of political liberalism and takes the recognition of them as an essential aspect of being reasonable:

“The first aspect of the reasonable, then, is the willingness to propose fair terms of cooperation and to abide by them provided others do. The second basic aspect, as I review now, is the willingness to recognize the burdens of judgment and to accept their consequences for the use of public reason in directing legitimate exercise of political power in a constitutional regime.”⁷⁹⁰

The “burdens”, as listed by Rawls, should to a wide extent serve as an appropriate reminder for those who wonder why disagreement and pluralism develop even among people who are considered reasonable and honest. A genuine insight in the “burdens” might in my opinion have two important consequences, as also shown by Grimen:

- One should not hastily take disagreement as an expression of bad will, short-sightedness and self-interest.
- One should not be too optimistic about the possibility of removing value-disagreement argumentatively (On the other hand: removing it by the means of coercive power would be an illiberal solution).

One might very well understand why the idea of the burdens of judgement is taken as an essential aspect of political *liberalism*. It can at least plausibly be assumed that an acceptance of “the burdens of judgment” should further an attitude of toleration among all citizens and thereby most likely strengthen fair coexistence.⁷⁹¹

As shown there can be little doubt that Rawls himself takes the recognition of the

respect: The idea of “the burdens of judgment” are central to Rawls. But Wenar for his own part considers the idea of “the burdens of judgment” to be misplaced and neither necessary for upholding political liberalism as such nor required for maintaining the idea of toleration. Wenar is trying to correct and improve the theory as conceived of by Rawls in an essential point.

⁷⁹⁰ J. Rawls, *Political Liberalism* (1993), p.54.

⁷⁹¹ Grimen takes the “fundamentalist” as the typical example of a person not recognising the burdens of judgement: “For å ha eit omgrep om rimelig fornuftig usemje må ein person kunne forstå synspunkt som rimeleg fornuftige, som, på trass av argumentasjon, avvik frå hans egne. Elles kan han ikkje forklare usemje slik at dei som er usamde, resonnerer og opptrår rimeleg fornuftig. Held han egne synspunkt som rimeleg fornuftige, utan å rå over eit omgrep om rimeleg fornuftig usemje, må han i så fall vise til at andre resonnerer og opptrår ufornuftig, for å forklare usemja. Han må vise til interesser, manglende viten, falskt medvit, mistak, perspektivblindhet, o.l. Ein slik person er fundamentalist, på grunn av det han ikkje ser. Han ser ikkje at data kan vera samansette og motstridande, og at, sjølv om vi er samde om relevante synspunkt, kan vi vera usamde om vekting. Han ser ikkje at omgrep er vage og at røymsler formar vurdering. Han ser ikkje at det ofte, når verdiar er tema, finst synspunkt av ulik type på alle sider, som må vegast utan klare reglar, og at institusjonar berre kan realisera visse verdiar, slik at vi må velge utan eintydige kriterier. Fundamentalistar kan ha eit skilje mellom sant og falskt, fornuftig og ufornuftig. Men dei manglar

“burdens of judgment” to be of vital importance. It appears to me that his intention was just to present us with some relatively uncontroversial insights taken from epistemology, semantics and hermeneutics, that reasonable persons should better have in mind when faced with the difficulty of weighing norms, assessing values, explaining diversity and arguing fairly in complex matters within modern societies characterised by deep pluralism. Rawls has given an account of some essential limitations on our judgement, which should be taken into consideration by co-operative citizens representing a diversity of comprehensive doctrines. Let it then also be said that;

- the different “burdens”, as listed by Rawls might be weighed and assessed rather differently.⁷⁹²
- this list of “burdens” might be further specified and completed,

But the idea itself, that there are essential burdens of judgement and limitations on our reasoning which have to be taken into account by people engaged in social co-operation, political work and public reasoning, seems plausible.

But the question of Wenar’s objection to Rawls remains; – that conceiving of an “overlapping consensus” in a way which implies that the parties have to recognise the burdens of judgement, would exclude many with sincere religious beliefs, since what is demanded from them in reality is tantamount to an abandonment of fundamental aspects of their own faith. If this is the case, Rawls would thereby undermine his own idea of an overlapping consensus. For the overlapping consensus is conceived of to be fully approvable from different premises, including religious premises, as made clear by Wenar.⁷⁹³

Wenar foresees that the result of making the idea of the burdens of judgement an essential premise of an overlapping consensus about the very basics of society, would render

den type reflektert distanse til egne synspunkt som innsikt i ‘the burdens of judgement’ gjev.”H. Grimen, *Norsk Statsvitenskapelig Tidsskrift* (1994), p. 138.

⁷⁹² Charles Larmore, for instance, ascribes a special weight to the fourth of the “burdens” listed by Rawls, holding that when assessing evidence and taking norms and values into consideration, we are inevitably influenced by our *total life-experience*. This alone would be sufficient to explain why people arrive at different standpoints in matters of value and belief.

⁷⁹³ Let me recall that Wenar – at least for the sake of the argument – takes a religious point of departure: “...Rawls’s theory claims to be tenable by members of all the main historical faiths (and this without scepticism or hesitancy). So we must examine the theory from the viewpoint of religious believers even if

society as such “a community of the uncertain, a society of the unsure.”⁷⁹⁴ How could one really expect citizens, strongly concerned about the role of religion in society, to endorse an “overlap” or a liberal conception, which might be supposed to promote both uncertainty, hesitancy, indifferentism and scepticism about the *religious* values and *moral* standards they are most strongly committed to? A liberal approach, drawing so strongly on the burdens of judgement as Rawls does, seems to be quite insensitive to citizens most sincere and devout religious and moral convictions, according to Wenar. There might even be a risk that many faithful believers should ultimately be excluded from the class of reasonable citizens in a Rawlsian liberal society, just because they are so strongly committed to an uncompromising religious truth. And it might therefore properly be asked: Why should religious persons endorse a liberal conception, if they have really good reason to fear that it is in fact based on epistemological premises that might in the long run undermine fundamental aspects of their own faith by promoting a relativist attitude and maybe even a widespread indifference in matters of religious and moral significance?

Wenar admits that Rawls himself sees no danger that an insight in the burdens of judgement might further uncertainty, hesitancy and scepticism about the truth of religion as such or of any moral or philosophical comprehensive doctrine.⁷⁹⁵ Nevertheless, Wenar maintains his objection: “I think it is clear that they do imply these things.”⁷⁹⁶

It is, however, very important to keep in mind that Rawls’ explicitly intends “to bypass religion and philosophy’s profoundest controversies”⁷⁹⁷, when concerned with the strictly *political* task of how institutional premises for social co-operation among the citizens can fairly be settled and maintained. Society’s most fundamental diversity in value-commitments as well as its deep conflicts concerning ultimate truth cannot be resolved with the most reasonable (political) arguments. Neither can political conflicts

we do not ourselves believe.” L. Wenar, “Political Liberalism: An Internal Critique”, *Ethics* (1995, vol. 106, No. 1), p. 43.

⁷⁹⁴ L. Wenar, “Political Liberalism: An Internal Critique”, *Ethics* (1995, vol. 106, No. 1), p.48.

⁷⁹⁵ In *Political Liberalism* Rawls comments on “the scepticism that may seem to be suggested by the account of the burdens of judgment. Since scepticism must be avoided if an overlapping consensus of reasonable doctrines is to be possible, the account of those burdens must not proceed as a sceptical argument.” J. Rawls, *Political Liberalism* (1993), p.62f. But in spite of this intention Wenar obviously means that Rawls cannot avoid furthering scepticism and relativism, when claiming accept for the “burdens”.

⁷⁹⁶ L. Wenar, “Political Liberalism: An Internal Critique”, *Ethics* (1995, vol. 106, No. 1), p. 46.

⁷⁹⁷ J. Rawls, *Political Liberalism* (1993), p. 152.

in modern pluralist societies be removed by appeal to religious authority. Stressing this, Rawls may find support in Honecker's theological approach and the way he uses the doctrine of the two realms as a hermeneutic key to open up the worldly kingdom as a realm of reason⁷⁹⁸, simultaneously, however, clearly avoiding a practical "divination" of reason. One might draw on an elementary insight into the "burdens" as far as matters of the worldly realm are concerned, without thereby "relativising" religious faith as such.

As far as I can see, there are good reasons for paying due attention to the Rawlsian use of the "burdens":

I. The burdens of judgement presented by Rawls allow him to provide a plausible explanation for some important aspects of the limitation and difficulties we actually face with when reasoning with one another about (political) values and standards. By introducing the "burdens" Rawls tries to explain in the most plausible way why people, even if most of them are reasonable and honest, might nevertheless come to very different judgements in matters concerning religious truth, moral values and conceptions of the (common) good. Accepting that a diversity of interests and life-plans as well as value-conflicts and religious diversity should be taken as normal even among moral and reasonable persons (and do not depend on evil-mindedness), might be an important precondition for arriving at some reasonable political principles for fair coexistence and social co-operation (without invoking the coercive powers of the state). The idea that there are some elementary burdens of judgement that have to be taken into account by people involved in political affairs, social co-operation and matters of social ethics, seems plausible in its own right, irrespective of the particular role the "burdens" play in political liberalism, – even if it should also be admitted that the different "burdens", listed by Rawls, may not be as uncontroversial as he seems to assume.

II. Rawls (and Grimen) considers a recognition of the burdens of judgement a prerequisite for furthering toleration in society, making it possible to accept that fully reasonable persons can disagree in matters concerning vital moral, religious and philosophical values. Since an insight into the "burdens" helps us understand that pluralism might be both reasonable and argumentatively irremovable, it seems plausible to assume that this

⁷⁹⁸Honecker will not deny that "... auch im weltlichen Bereich steht der Glaubende verborgen unter dem Anspruch und der Herrschaft Gottes. Er kann nur nicht mit diesem Anspruch politisch argumentieren.

insight might also contribute to increasing mutual respect, thereby furthering toleration, as Rawls believes. But this does not rule out the possibility that some Christians might take their premises for toleration and fair co-operation mainly from the Christian (moral) doctrine, or at least from a Biblical perspective on man, as created in the image of God. I don't think Rawls would really object to this. He accepts that there might be (at least) two mutually supportive ideas of toleration. One is purely political while; "The other is not purely political but expressed from within a religious or a nonreligious doctrine..."⁷⁹⁹

However, I think that Wenar has plausibly shown that an insight in these burdens of judgement is not strictly necessary for maintaining an idea of toleration. But an insight in the "burdens" might nevertheless, as far as I can see, further an attitude of toleration in society. In this I think Rawls makes an important and highly plausible point.

Let us now, at the end of this chapter, conclude by returning to the theological perspective. In my opinion Honecker came very close to recognising essential "burdens" on our judgements in matters of politics, – on *theological* premises. In so far he might to a wide extent be supportive of Rawls' idea of the "burdens". And I think that Honecker has argued strongly and plausibly for the view that Churches and Christians are not in a privileged epistemic position and have no special book of answers nor a substantive insight into worldly things that others cannot likewise be expected to have. Taken as a special source of knowledge and a code of instruction in matters of shared politics and social ethics the Christian "revelation" might very easily be overtaxed and misused. Instead, Christians and churches, who share in the task of upholding a fair scheme of society and securing basic justice for all, have to accept the need to establish "evidence" by argumentative means, – thereby seeking reconciliation with co-citizens in common political affairs through public reasoning.

Luther hat darum sehr wohl bedacht, warum er den Bereich politischen Handelns ein Vernunftreich nannte." M. Honecker, *Sozialethik zwischen Tradition und Vernunft* (1977), p.55.

⁷⁹⁹ J. Rawls, *The Idea of Public Reason Revisited* (manuscript 1997), p.17.

5.6. Reconciliation by public reason?⁸⁰⁰

5.6.1. From common sense to public reason

Although pluralism might be considered radical in modern societies and the chances of overcoming it by public reasoning limited, Honecker stresses the idea of ethical evidence, making political discourse and even a certain value-consensus possible. One might even say that Honecker, when introducing a theological “Fundamentalunterscheidung” between the evidence of faith and the evidence of (public) reason, secures for the latter the most proper place, which it should have in its own right, within the worldly realm.

Rawls for his part thoroughly discusses the role of public reason in fostering *mutual* understanding among citizens and a *shared* basis for social co-operation. Although Rawls – by stressing the burdens of judgement – argues that pluralism has to be taken as a normal and permanent feature of modern democratic societies, he nevertheless draws upon the shared ideas/ideals inherent in his own political culture. When striving for a morally grounded agreement on a required minimum for coexistence and social co-operation, Rawls utilises citizens’ moral resources and draws on common reason. It is therefore quite appropriate for Kent Greenawalt to state:

“Although its elaboration is complex, the basic idea of Rawls’ approach is simple. It is that the fundamentals of political life should be more or less agreed upon, and set outside ordinary political wrangling. A corollary of this ‘setting outside’ of basic fundamentals is that when people must determine the implications of the fundamentals, they should do so according to a common reason that does not involve disputed comprehensive views.”⁸⁰¹

People can be supposed to have some *common* resources which enables them to coexist and co-operate as morally responsible citizens of society. The possibility of reaching a stable consensus and arriving at *shared* standards of coexistence depends to a very wide

⁸⁰⁰ Even if I here use a phrase taken from Rawls, it should be remarked that Rawls for his part is very much aware of “the limits of reconciliation by public reason. There are three main kinds of conflicts: those deriving from citizens’ conflicting comprehensive doctrines, those from their different status, class position, and occupation, or from their ethnicity, gender, and race; and finally, those resulting from the burdens of judgment.” Cf. J. Rawls, “Introduction to the Paperback Edition”, *Political Liberalism* (1996). p. lx.

⁸⁰¹ In this way Kent Greenawalt summarises the view of Rawls in the book *Private Consciences and Public Reasons* (1995), p.106. Although Greenawalt does not make it quite clear what “fundamentals” really mean, it should at least be as obvious for him as for Rawls that there cannot be an agreement in pluralist societies on the ultimate religious or philosophical grounds that different citizens might have.

extent on the force of common reason, people's sense of justice and their moral preparedness to comply with agreed terms of social co-operation as are manifested by citizens' readiness to honour *common* civic duties.

When I considered the idea of *sensus communis* from a moral point of view (in chapter 4), I concluded that Rawls to a certain extent could draw on aspects of a common-sense-morality. Common sense, common reason and morality, not least as it is demonstrated by the virtue of the *reasonable*, is considered essential for building and upholding a co-operative society, and for reaching a morally based consensus.

In the excursus on common-sense-morality in chapter 4) I also suggested, however, that Immanuel Kant⁸⁰² found much of what is said about *sensus communis* to be rather vulgar⁸⁰³, especially if tending towards the mere "applause" of conventional opinion. But Kant himself, nevertheless, utilises certain aspects of an idea of *sensus communis*, – pointing to its close connection with the notion of the *public*.⁸⁰⁴ One might even say that Kant transforms the idea of "sensus communis" into an idea of "public sense". It might therefore be profitable to consider certain crucial aspects of Kant's idea of a "public sense" before turning specifically to Rawls' idea of public reason.

At first glance it might be difficult to see how Kant's interpretation of "sensus communis" has a specific *public* orientation.

- For the first part of the *sensus communis* consists – according to Kant – in the maxim *to think for oneself*.⁸⁰⁵ This is opposed to a thinking that is mechanically relying on external authorities.

⁸⁰² Rawls himself without doubt leans heavily on the philosophy of Kant. As we shall see, there is, however, considerable differences too.

⁸⁰³ Let me recall what Kant more precisely has in mind here: "Der gemeine Menschenverstand... hat daher auch die kränkende Ehre, mit dem Namen des Gemeinsinnes (*sensus communis*) belegt zu werden; und zwar so, daß man unter dem Worte gemein (nicht bloß in userer Sprache, die *hierin* wirklich eine Zweideutigkeit enthält, sondern auch in mancher andern) so viel als das vulgare, was man allenthalben antrifft, versteht" Cf. I.Kant, *Kritik der Urteilskraft*, (§ 40), 1790, (WBG, 1968, Vol.8), p. 389.

⁸⁰⁴ The notion of the *public* is according to Onora O'Neill defined by Kant primarily "in terms of the *audience* [Publikum] whom an act of communication may reach." O. O'Neill, *Constructions of Reason. Explorations of Kant's Practical Philosophy* (1989), p. 32. When Kant takes "common sense" to mean "public sense", he draws upon a term that has got a special weight from the age of Enlightenment and was discussed very thoroughly in the time following.

⁸⁰⁵ Kant characterises this as a "Selbstdenken" that results in "die Maxime einer niemals passiven Vernunft" Cf. I.Kant, *Kritik der Urteilskraft* (§ 40), 1790, (WBG1968, Vol.8), p. 390. Typical of "passive reason" is superstition, biased and merely obeying reason, and all kinds of reasoning that have to be characterised as entirely "von anderen geleitet" *Ibid.* p.391.

- The second part of the *sensus communis*, however, is the maxim “... to think from the standpoint of everyone else”⁸⁰⁶ as opposed both to merely private⁸⁰⁷ ways of reasoning and to a mere mirroring of the general opinion.
- And the third part of the Kantian *sensus communis* consists in the maxim to think consistently as opposed to an “undisciplined” thinking. An inconsistency of beliefs would for instance make it impossible to trace out their implications properly.⁸⁰⁸

The maxims to think for oneself and to think from the standpoint of everyone else, which are the two first *sensus-communis*-based maxims according to Kant, are not at odds with one another. The maxim to think for oneself is, in effect, supposed to have a highly public significance: it is considered an essential prerequisite for participating in reasoning, communication and community. “Those who suppress their own voices do not reason; but are merely voiceless echoes, whose parroted words cannot be taken as expression of judgement or as acts of communication.”⁸⁰⁹ And, it follows, that to think from the standpoint of everyone else cannot mean that persons should mirror the general opinion, but that a perspective of universalisation is to be made an integrated part of one’s own thinking. “The supreme principle of reason is merely the principle of thinking and acting on principles that can ... hold for all.”⁸¹⁰ According to Kant's understanding of *public sense* people are capable of reflecting critically upon their own judgement by taking a universal perspective.

When addressing the world at large, the arguments and reasons employed should have

⁸⁰⁶ The formulation here – that I find very much to the point – is taken from Onora O’Neill. O. O’Neill, *Constructions of Reason. Explorations of Kant’s Practical Philosophy* (1989), p.26. Kant himself characterises the maxim that follows from the second aspect of *sensus communis* as “An der Stelle jedes andern denken”. Cf. *Kritik der Urteilskraft*, (§ 40), 1790, (WBG,1968,Vol.8), p. 390. And Kant adds that this is characteristic of “... einen Mann von erweiterter Denkungsart ..., wenn er sich über die subjektiven Privatbedingungen des Urteils, wozwischen so viele andere wie eingeklammert sind, wegsetzen, und aus einem allgemeinen Standpunkte (den er dadurch nur bestimmen kann, daß er sich in den Standpunkt anderer versetzt) über sein eigenes Urteil reflektiert.” *Ibid.* p.391. The *reflexive* aspect is obvious.

⁸⁰⁷ It might be a bit surprising that Kant can take the notion of *the private* in the following two ways: first it is taken to characterise what is strictly personal, and then it characterises what is made in the name of some external authority. The consequence following from this view seems to be that soldiers for instance, when executing orders, or clergymen, when acting in office as the ministers of the church, should appropriately be considered representatives of “private reason”.

⁸⁰⁸ Kant characterises this as “Jederzeit mit sich selbst einstimmig denken” and adds that “Die dritte Maxime, nämlich die der konsequenten Denkungsart, ist am schwersten zu erreichen, und kann nur durch die Verbindung beider ersten, und nach einer zur Fertigkeit gewordenen öfteren Befolgung derselben, erreicht werden.” Cf. *Kritik der Urteilskraft* (§ 40), 1790, (WBG,1968,Vol.8), p. 391.

⁸⁰⁹ O. O’Neill, *Constructions of Reason. Explorations of Kant’s Practical Philosophy* (1989), p. 25f.

⁸¹⁰ O. O’Neill, *Constructions of Reason. Explorations of Kant’s Practical Philosophy* (1989), p. 59..

the quality of being publicisable.⁸¹¹ Reasoned communication is not automatically guaranteed, but depends upon people's readiness to comply with rules that can be reasonably understood and lived up to by all. Thus all rules that apply within the public forum, either formal or substantial, should be widely interpretable, commonly understandable and reasonably "accessible". The public use of reason is indeed the most significant common characteristic of human beings as coexistent beings.

But the subordination of thinking and practice to heteronomous authorities like the state, the church or external experts, would, according to Kant, be inconsistent with the very nature of reason.⁸¹² It would for instance be considered unreasonable for public debate to be cut off by the mere appeal to external (religious) authorities, recognised only by some citizens or authorised by those in charge of the coercive powers of the state. A basic *freedom* in matters of practical reason is fundamental for the understanding of public reason according to Kant.⁸¹³ But simultaneously it must be emphasised that the practice of public discourse requires a disciplining of thought, reason and judgement. The third aspect of *sensus communis* therefore requires "consistency". A certain disciplining is necessary in public reasoning.

5.6.2. The publicity condition according to Rawls

The publicity condition requires that citizens involved in social co-operation should give reasons to one another for the standpoints they take – thereby avoiding non-accessible grounds – when affairs of shared interest and decisions affecting the common good are concerned.⁸¹⁴ This is emphasised by Rawls as strongly as by Kant. The publicity con-

⁸¹¹ It is obviously not sufficient for public arguments that they are *expressed* in a public forum.

⁸¹² That reason, in all its forms, has to be purified from heteronomous elements according to Immanuel Kant, might be well worth mentioning in this connection: "Reason, the discipline of all disciplines, can only be and must be self-disciplined: The subordination of thinking and practice to other supposed authorities (state, church, experts, personal preferences) is not reason, but the abrogation of reason. Reason's discipline cannot be alien; it must be autonomous." O. O'Neill, *Constructions of Reason. Explorations of Kant's Practical Philosophy* (1989), p. 57.

⁸¹³ His ideas of *sensus communis* are entirely in accordance with his practical philosophy as a whole, as gets manifest in his emphasis on human freedom. One might in this connection also refer to the principle of universalisation, essentially built into the categorical imperative.

⁸¹⁴ I think that Gerald F. Gaus gives a brief and good account of an essential aspect of the publicity condition when setting out from the fact that "most people have difficulty constructing objections to their own proposals... It is a Herculean task, quite beyond our cognitive capacity, to scan even our own system of beliefs for all inconsistencies or defeaters; even Hercules would flinch at the task of scanning the systems of everyone else as well. The only accessible way to have reasonable confidence that a proposal is publicly justified is to put it forward and invite specific challenges from others. ... Again, the evidence

dition which is implied in Rawls' conception of justice as fairness is articulated on three levels that shall be sketched very briefly:

- The principles of justice, by which society is regulated, must in themselves be *public*.

This means for instance that:

“Principles are to be rejected that might work quite well provided they were not publicly acknowledged, or provided the general facts upon which they are founded are not commonly known or believed.”⁸¹⁵

- The general beliefs (about man and the scheme of coexistence for example), in the light of which the first principles of justice are to be weighed, assessed and accepted, must also be publicly known. Complying with the publicity condition therefore implies:

“... that the parties must reason only from general beliefs shared by citizens generally, as part of their public knowledge.”⁸¹⁶

- The public conception of justice is fully justifiable in its own terms. This means that:

“if citizens wish to, the full justification is present in the public culture, reflected in its system of law and political institutions, and in the main historical traditions of their interpretation.”⁸¹⁷

For citizens involved in social co-operation within the framework of a constitutional democracy the publicity condition “means that in their public political life nothing need

strongly suggests that the generation of challenges and replies is a scarce social resource, and only by taking advantage of the social division of argumentative labor – by actually putting forward proposals in the public forum, and so inviting challenges and replies – can one have reasonable confidence that one's proposal is publicly justified. Public justification, then, is public not only in the sense that it must show that each has a sufficient reason to accept the justification but, in addition, in the sense that it must meet the *publicity condition*.” G.F.Gaus, *Justificatory Liberalism. An Essay on Epistemology and Political Theory* (1996), p.148.

⁸¹⁵ J. Rawls, *Political Liberalism* (1993), p.69.

⁸¹⁶ J. Rawls, *Political Liberalism* (1993), p.69. Rawls himself can explain this second point more specifically as follows: “The second level of publicity concerns the general beliefs in the light of which first principles of justice themselves can be accepted, that is, the general beliefs about human nature and the way political and social institutions generally work, and indeed all such beliefs relevant to political justice. Citizens in a well-ordered society roughly agree on these beliefs because they can be supported (as at the first level) by publicly shared methods of inquiry and forms of reasoning... I assume these methods to be familiar from common sense and to include the procedures and conclusions of science and social thought, when these are well established and not controversial. It is precisely these general beliefs, reflecting the current public views in a well-ordered society, that we – that is, you and I who are setting up justice as fairness – ascribe to the parties in the original position.” *Ibid.*, p.67.

⁸¹⁷ J. Rawls, *Political Liberalism* (1993), p.67.

be hidden.”⁸¹⁸ But as I understand Rawls the publicity condition is even more demanding, it says that all parties have a moral obligation to justify their activities to one another, to give a public account of their aims and explain the reasons for their public conduct openly in terms accessible to all

But the condition of publicity also means – taken negatively – that there have to be certain constraints upon what can be “allowed” from the different parties engaging in public reasoning. Some of these constraints are obviously of a formal kind, implying that the parties cannot be allowed to ignore common principles of inference, standard rules of evidence and general criteria of justification. But there are also further constraints with more *substantial* implications. For example, citizens engaged in public discourse are expected to accept that there might be situations “not allowing them to take into account all true beliefs”⁸¹⁹ The publicity condition applies when we are concerned with questions about the fair institutional scheme of coexistence and issues of basic justice.

5.6.3. The orientation of public reason

From what is already said, it should be clear enough that public reason has an inherent orientation towards a *shared* conception of justice. Only a strictly political conception of justice, not identical with a particular conception of justice as conceived of within any particular comprehensive doctrine existing in society, can be a public mark of orientation and serve as “a fund of implicitly shared ideas and principles”⁸²⁰ which all parties can refer to and draw upon in matters of public interest.⁸²¹ Thus Rawls holds that;

⁸¹⁸ J. Rawls, *Political Liberalism* (1993), p.68. Rawls is, however, immediately explaining this strong claim as follows: “The text does not say that nothing is hidden but only that nothing need be hidden, We cannot guarantee that nothing is hidden, for there is always much we do not and perhaps cannot know, and many ways in which we can be misled by institutional appearances. But perhaps we can make sure that nothing need be hidden; in a free society that all correctly recognize as just there is no need for the illusions and delusions of ideology for society to work properly and for citizens to accept it willingly. In this sense a well-ordered society may lack ideological, or false, consciousness.” *Ibid.* p.68f.

⁸¹⁹ J. Rawls, *Political Liberalism* (1993), p.218. The phrase “take into account” might be very vague. The difficult question is whether people, when entering into the strictly public forum, should “reason only from general beliefs shared by citizens as part of public knowledge.” (*Ibid.*, p.70) This would dramatically limit their reference to religious “truths” in public affairs. I will be concerned with the problem raised here both in this chapter and in the next.

⁸²⁰ J. Rawls, *Political Liberalism* (1993), p.14.

⁸²¹ I recall that a *political* conception is defined by Rawls as: a moral conception worked out for the basic structure of society; a free-standing conception not derived from any comprehensive doctrine; a conception taking its content from the shared political culture of democratic society.

“...citizens are to conduct their fundamental discussions within the framework of what each regards as a political conception of justice based on values that the others can reasonably be expected to endorse ... This means that each of us must have, and be ready to explain, a criterion of what principles and guidelines we think other citizens (who are also free and equal) may reasonably be expected to endorse along with us.”⁸²²

The orientation towards a *political* conception of justice affords public reason with the required content by;

- specifying certain basic rights, liberties, and opportunities,
- assigning a special priority to these rights, liberties, and opportunities,
- asserting what is required for making effective use of basic liberties and opportunities.⁸²³

On this basis, public reason serves to constrain and discipline arguments, reasoning, discourse and co-operation in matters concerning our equal citizenship and our living together in society. Thus public reason limits the way citizens can “fairly” explain and justify their standpoints and arguments to one another when fundamental issues of common interest are at stake.⁸²⁴ One might plausibly assume, as Rawls does, that there has

⁸²² J. Rawls, *Political Liberalism* (1993), p.226. I think that Rawls’ idea here is not far from that of Kant whose concern was that one should use such reasons and arguments in the public forum, which *can* be widely accepted. If the reasons are for the moment *in fact* not accepted by all, is therefore not decisive. We should employ reasons that other citizens may reasonably be expected to endorse along with us.

⁸²³ Cf. J. Rawls, *Political Liberalism* (1993), p.223. In *The Idea of Public Reason Revisited* (1997) the content is specified as follows by Rawls: “Thus the content of public reason is given by a family of political conceptions of justice, and not by a single one. There are many liberalisms and related views... Three main features characterize these conceptions: First, a list of certain basic rights, liberties and opportunities (such as those familiar from constitutional regimes); Second, an assignment of special priority to those rights, liberties and opportunities, especially with respect to the claims of the general good and perfectionist values; and Third, measures ensuring for all citizens adequate all-purpose means to make effective use of their freedoms. Each of these liberalisms endorses the underlying ideas of citizens as free and equal persons and of society as a fair system of cooperation over time. Yet since these ideas can be interpreted in various ways, we get different formulations of the principles of justice and different contents of public reason.” J. Rawls, “The Idea of Public Reason Revisited”, *The University of Chicago Law Review* (1997;3), p.773f.

⁸²⁴ Such “fundamental issues” often involves the exercise of power. However, it may plausibly be held that there is a certain difference what concerns the way citizens should justify to one another their decisions and the way the authorities of society can be expected to justify their decisions publicly, in matters involving the exercise of power. The authorities of society are normally assumed to have a mandate to exercise *power*, which individual citizens lack. The problem of justifying the exercise of power, is, however, rather complicated, since in a democracy should political power, which is always in some respect coercive power, be considered the power of the *public*, what means that it is the power of free and equal citizens taken as a collective body. Questions about the exercise of political power by the political authorities can therefore be transformed into a question how citizens should properly exercise and justify their use of coercive political power over one another when fundamental issues of basic justice are at stake. The crucial question is therefore: “...in the light of what principles and ideals must we exercise that power if our

to be a *shared* basis of political values, which citizens as free and equal parties, holding highly different comprehensive views, might appeal to and refer to when discussing and seeking justification for their standpoints and decisions in strictly public affairs. And the common point of reference for the arguing parties within the public forum⁸²⁵ should be a *political* conception of justice, or more in accordance with Rawls' latest view: a family of such conceptions, characterised by being "broadly liberal".⁸²⁶ Thus reasoning within the public forum should make it possible for citizens to justify to one another the standpoints and the decisions they take in public affairs⁸²⁷ by invoking vital political values as expressed in some shared conception of justice, – liberal in scope.

5.6.4. Public and non-public reasons

The orientation of public reason towards a strictly *political* conception of justice, serves to underline the difference between public reason and the many kinds of so called non-public reasons, which also play decisive roles in society.

“There are many nonpublic reasons and but one public reason. Among the nonpublic reasons are those of associations of all kinds: churches and universities, scientific societies and professional groups.”⁸²⁸

In *Political Liberalism* Rawls obviously wishes to discipline citizens' reasoning within the public forum while simultaneously paying due attention to the role that non-public

doing so is to be justifiable to others as free and equal? To this question political liberalism replies: our exercise of political power is proper and hence justifiable only when it is exercised in accordance with a constitution the essentials of which all citizens may reasonably be expected to endorse in the light of principles and ideals acceptable to them as reasonable and rational. This is the liberal principle of legitimacy.” J. Rawls, *Political Liberalism* (1993), p. 217.

⁸²⁵ I find the notion “public forum” very appropriate, although it should be added that Rawls “does not regard the political and the nonpolitical domains as two separate, disconnected spaces, each governed solely by its own distinct principles.” J. Rawls, “The Idea of Public Reason Revisited”, *The University of Chicago Law Review* (1997;3), p.791.

⁸²⁶ Let me recall that according to Rawls, especially as we meet him in his latest writings, it is not necessary that persons and groups share exactly the same principles of justice. A family of liberal conceptions will obviously do, – a certain latitude is to be accepted concerning the conceptions of justice that can serve as a public criterion. And Rawls characterises the class of acceptable conceptions of justice as “broadly liberal”. This content [of public reason] is formulated by what I have called a ‘political conception of justice’, which I assume is broadly liberal in character.” J. Rawls, *Political Liberalism* (1993), p.223.

⁸²⁷ “Public reasoning aims for public justification. We appeal to political conceptions of justice, and to ascertainable evidence and facts open to public view, in order to reach conclusions about what we think are the most reasonable political institutions and policies. Public justification is not simply valid reasoning, but argument addressed to others: it proceeds correctly from premises we accept and think others could reasonably accept to conclusions we think they could also reasonably accept.” J. Rawls, “The Idea of Public Reason Revisited”, *The University of Chicago Law Review* (1997;3), p.786.

reasons play in society.

However, let it be stressed that Rawls' distinction between public and non-public is not identical with a distinction between *public* and *private*. The notion of the "public" within political liberalism is not to be contrasted to the "private".⁸²⁹ Rawls takes pains to make it perfectly clear that;

"The public vs. nonpublic distinction is not the distinction between public and private. This latter I ignore: there is no such thing as private reason. There is social reason – the many reasons of associations in society which make up the background culture; there is also, let us say, domestic reason – the reason of families as small groups in society – and this contrasts both with public and social reason. As citizens, we participate in all these kinds of reason and have the rights of equal citizens when we do so."⁸³⁰

The category of "nonpublic reasons" can accordingly be assumed to comprise the different kinds of reasons that belong within the diverse spheres of civil society. There are for instance the kind of reasons which properly apply within the social setting of the family or within the religious communities of churches or within other associations and social groups. These non-public reasons are not "private". Even if non-public reasons cannot directly be taken as reasons within the strict public forum characterised by the discourse of governmental officials, judges (and legislators) and candidates for public office⁸³¹, they might have an unquestionable social impact, – not just within closed communities, but also within the wider civil society, – characterised by considerable diversity.

Thus Rawls in fact makes an important distinction between the forum of public reason

⁸²⁸ J. Rawls, *Political Liberalism* (1993), p.220.

⁸²⁹ Therefore I think that the way the Dutch professor, Gerrit Manenschijn, draws parallels between the distinction between the "public" and the "private" as supposedly found in Rawls' liberal conception and the Lutheran doctrine of the two kingdoms is not just to the point. "In my inaugural lecture I called Rawls' distinction between the private and the public a reversed secularized version of the doctrine of the Two Kingdoms: from a secularized vision of the world it is argued that faith should not play a role in public life. (G. Manenschijn: "Response to Karl-Wilhelm Dahm's Paper", *A Just Europe. The Churches' Response to the Ethical Implications of the New Europe*, Eds. D. Hedin and V. Mortensen (1992), p.73 (Note 4).

⁸³⁰ J. Rawls, *Political Liberalism* (1993), p.220 [Note 7]

⁸³¹ In fact Rawls sets very narrow limits for the public forum, emphasising that "This forum might be divided into three parts: the discourse of judges in their decisions, and especially of the judges of a supreme court; the discourse of government officials, especially chief executives and legislators; and finally, the discourse of candidates for public office and their campaign managers, especially in their public oratory, party platforms, and political statements. We need this three-part division because, as I note later, the idea of public reason does not apply in the same way in these three cases and elsewhere." J. Rawls, "The Idea of Public Reason Revisited", *The University of Chicago Law Review* (1997;3), p.767f.

and the wider field of society's background culture.⁸³² And he assumes that different kinds of non-public reasons, e.g., the reasons of churches and diverse associations, may have a significant influence on the "background culture", thereby contributing decisively to the moral debate and the value-formation of civil society as a whole.⁸³³

One should bear in mind that Rawls' appeal to public reason is clearly focused and that the Rawlsian public forum is very limited. It is limited in respect to issues which are to be discussed and handled.⁸³⁴ And it seems also to be limited in the way that it applies primarily to citizens in the execution of particular official duties. In his reply to Jürgen Habermas Rawls very much desires to keep public reason strictly focused, concentrating

⁸³² Rawls makes it clear that: "Distinct and separate from this three-part public political forum is what I call the background culture. This is the culture of civil society. In a democracy, this culture is not, of course, guided by any one central idea or principle, whether political or religious. Its many and diverse agencies and associations with their internal life reside within a framework of law that ensures the familiar liberties of thought and speech, and the right of free association. The idea of public reason does not apply to the background culture with its many forms of nonpublic reason nor to media of any kind." J. Rawls, "The Idea of Public Reason Revisited", *The University of Chicago Law Review* (1997;3), p.768. And this is further explained in a footnote to the text quoted: "The background culture includes, then, the culture of churches and associations of all kinds, and institutions of learning at all levels, especially universities and professional schools, scientific and other societies. In addition, the nonpublic political culture mediates between the public political culture and the background culture." *Ibid.* 768.

⁸³³ I think this is what the German Bundeskanzler, Helmut Schmidt, clearly realised. Churches as well as other associations have a mandate of their own and a clear obligation to contribute to the value-formation of the civil society, within which they participate. In this connection Rawls first stresses that political liberalism leaves untouched all kinds of religious doctrines (provided they are reasonable), and he criticises Habermas for not showing the same kind of "respect": "The central idea is that political liberalism moves within the category of the political and leaves philosophy as it is. It leaves untouched all kinds of doctrines, religious, metaphysical, and moral, with their long traditions of development and interpretation. Political liberalism proceeds apart from all such doctrines, and presents itself in its own terms as free-standing. Hence, it cannot argue its case by invoking any comprehensive doctrine, or by criticizing or rejecting them, so long of course as those doctrines are reasonable politically speaking. ... Habermas position, on the other hand, is a comprehensive doctrine and covers many things far beyond political philosophy. ... It rejects naturalism and emotivism in moral argument and aims to give a full defence of both theoretical and practical reason. Moreover, he often criticizes religious and metaphysical views. Habermas does not take much time to argue against them in detail; rather, he lays them aside, or occasionally dismisses them, as unusable and without credible independent merit in view of his philosophical analysis of the presuppositions of rational discourse and communicative action." J. Rawls, "Reply to Habermas", *The Journal of Philosophy* (1995), p. 134f.

⁸³⁴ In *Political Liberalism* it is clearly underlined that: "... the limits imposed by public reason do not apply to all political questions but only to those involving what we may call 'constitutional essentials' and questions of basic justice. This means that political values alone are to settle such fundamental questions as: who has the right to vote, or what religions can be tolerated, or who is to be assured fair equality of opportunity, or to hold property. These and similar questions are the special subject of public reason. Many if not most political questions do not concern those fundamental matters ...". J. Rawls, *Political Liberalism* (1993), p.214 But then he continues: "Some will ask: Why not say that all questions in regard to which citizens exercise their final and coercive political power over one another are subject to public reason? Why would it ever be admissible to go outside the range of political values? To answer: My aim is to consider first the strongest case where the political questions concern the most fundamental matters. If we should not honor the limits of public reason here, it would seem we need not honor them anywhere." *Ibid.* p.215.

mainly on the reasons that are to be given by official executives, as for instance legislators and judges. Rawls indicates his difference with Habermas as follows:

“The public reason of political liberalism may be confused with Habermas’s public sphere but they are not the same. Public reason in PL [Political Liberalism] is the reasoning of legislators, executives (presidents, for example), and judges (especially those of a supreme court, if there is one). ... As for Habermas’s public sphere, since it is much the same as what I called in PL (14) the background culture, public reason with its duty of civility does not apply.”⁸³⁵

But even if the strictly public forum is more limited in Rawls’ political liberalism than it is in Habermas’ conception, they both agree that citizens, engaged in public reasoning and activity, must accept some constraints on the way they can appropriately pursue and justify their standpoints. And let it also be added that Rawls also holds that all citizens concerned with political affairs can be expected to act more or less in analogy with those who are primarily subjected to the constraints of public reason.⁸³⁶

And citizens should, according to Rawls, clearly “realize that they cannot reach agreement or even approach mutual understanding on the basis of their irreconcilable comprehensive doctrines. In view of this, they need to consider what kinds of reasons they may reasonably give one another when fundamental political questions are at stake.”⁸³⁷ This is a crucial ground-assumption in Rawls’ elaboration of the idea of public reason. Thus there can be little doubt that what Rawls characterises as comprehensive doctrines or “transcendent values” (as for instance the values closely connected to salvation and eternal life), cannot be made part of *strictly* public reasoning, although the reasons given in comprehensive doctrines might play a considerable role within the wider field of civil society.

⁸³⁵ J.Rawls, “Reply to Habermas”, *The Journal of Philosophy* (1995), p.140. (Note 13)

⁸³⁶ In his article on *The Idea of Public Reason Revisited* (1997) Rawls considers the question “How though is the ideal of public reason realized by citizens who are not government officials? In a representative government citizens vote for representatives – chief executives, legislatives, and the like – and not for particular laws (except at a state or local level when they may vote directly on referenda questions, which are rarely fundamental questions). To answer this question, we say that ideally citizens are to think of themselves *as if* they were legislators and ask themselves what statutes, supported by what reasons, satisfying the criterion of reciprocity, they would think it most reasonable to enact. When firm and wide-spread, the disposition of citizens to view themselves as ideal legislators, and to repudiate government officials and candidates for public office who violate public reason, is one of the political and social roots of democracy, and is vital for its enduring strength and vigor.” J. Rawls, “The Idea of Public Reason Revisited”, *The University of Chicago Law Review* (1997;3), p.769. From the idea of public reason Rawls obviously derives some ideals that are also supposed to apply rather widely and generally.

⁸³⁷ J. Rawls, “The Idea of Public Reason Revisited”, *The University of Chicago Law Review* (1997;3), p.766..

Let me now, however, take it somewhat further: Even if the ground orientation in Rawls' political philosophy remains much the same as in 1971, one can clearly see that there are now some new accents in Rawls' understanding of the relation between public and non-public reasons, as indicated by his more recent writings. In his latest writings, including *Political Liberalism*, one observes a certain reorientation in Rawls' view concerning the role that he ascribes to churches, religious associations and persons of faith in contributing to the value-formation of society, and even to the public discussion about basic justice and fundamental rights. And there is in Rawls' philosophy also a certain reorientation concerning the question of how the constraints required by public reason should best be defined and applied. In his discussion about "The Limits of Public Reason" in *Political Liberalism* Rawls distinguishes between two approaches to the problem that arise when relating public reason to the many reasons appropriately used within religion and different associations.

- First there is the *exclusive approach*, saying that "on fundamental political matters, reasons given explicitly in terms of comprehensive doctrines are never to be introduced into public reason."⁸³⁸
- Then there is the *inclusive view*, "allowing citizens, in certain situations, to present what they regard as the deeper (religious) reasons they have for holding certain political values, provided they do this in ways that strengthen the ideal of public reason itself."⁸³⁹

Rawls admits that he was at first most inclined to hold the first of these views, but that he was persuaded through many discussions that the exclusive approach was too restrictive. There were many practical cases and examples, which indicated that the exclusive view failed in dealing properly with the complex relation between religious faith and public reason. During recent years Rawls has therefore become more and more inclined to defend the second view, which is further explicated and reflected in his most recent writings, – especially in *The Idea of public reason Revisited* (1997).

⁸³⁸ And he immediately continues: "The public reasons such a doctrine supports may, of course, be given but not the supporting doctrine itself." J. Rawls, *Political Liberalism* (1993), p.247.

⁸³⁹ J. Rawls, *Political Liberalism* (1993), p. 247. Thus it might be possible to pay due attention to the close connection there might be between political values and citizens' comprehensive doctrines.

5.6.5. The paradox of public reason

Even if one might plausibly distinguish more or less sharply between public reason and the many non-public reasons, it cannot be denied that citizens' commitment to religious truth or moral doctrines and the specific religious reasons they have might be strong enough to provide them with a basic motivation for engaging in matters of political justice and social ethics. It therefore seems "paradoxical" to try to strengthen the strictly political concern by reducing the religious impact in the public forum, – since there is a considerable risk that the strongest possible motivation for a moral commitment within the political domain will thereby be undermined and weakened. The dilemma is seen by Rawls.

"I now turn to what to many is a basic difficulty with the idea of public reason, one that makes it seem paradoxical. They ask: why should citizens in discussing and voting on the most fundamental political questions honor the limits of public reason? How can it be either reasonable or rational, when basic matters are at stake, for citizens to appeal only to a public conception of justice and not to the whole truth as they see it? Surely, the most fundamental questions should be settled by appealing to the most important truths, yes these may far transcend public reason!"⁸⁴⁰

If one really understands the nature of (the Christian) religion, one can hardly claim that religious obligations should ever be set in brackets. It seems therefore odd if citizens – in loyalty towards some political values – should practically ignore their deepest religious (and moral) commitment when contemplating the most fundamental moral and political issues to be used in determining the basic structure of society and the very scheme of coexistence, within which individuals, communities and churches are to live and co-operate.

Rawls is, as already suggested, very much aware of the problems raised by imposing such heavy restraints on people with a religious commitment. This problem is taken directly into account by Rawls both in *Political Liberalism* and in later writings. And Rawls obviously realises that the problem might seem "paradoxical": For even if both public reason and a morality grounded on Christian faith might be convergent in many cases, this does not solve the more principled problem; – that the moral commitment inherent in Christian faith might be suspended when matters of basic justice and constitutional essentials are at stake and debated within the forum of strictly public affairs.

⁸⁴⁰ J. Rawls, *Political Liberalism* (1993), p.216.

In recent time Rawls is attempting a considerable lessening of the contrast between public and non-public reasons, even if it may seem as if he is still doing so by reducing the *direct* impact of religions within the strictly public forum. Therefore one might ask whether the so called “paradox of public reason”⁸⁴¹ still remains, – even if Rawls has moved from an “exclusive” to a more “inclusive” approach”. For it is still the case that people, according to Rawls, are not expected to invoke reasons directly taken from their comprehensive doctrines when decisive institutional premises for coexistence and issues of basic justice are handled out.

One might certainly ask, as Rawls himself does: “What is the reason for limiting the parties in this way and not allowing them to take into account all true beliefs?”⁸⁴²

That there has to be a *shared* basis of justification for equal citizens concerned with matters of constitutional essentials, basic justice and the handling of strictly public affairs, seems plausible enough. Therefore a solution to the “paradox of public reason” cannot consist in cancelling entirely the constraints on citizens’ public reasoning, which are considered necessary for them to co-operate and coexist within a shared and fair institutional framework. But this does not necessarily mean that it can be considered reasonable to expect from “those of faith” that they entirely avoid referring to their religious views in matters of public interest. Can it plausibly be expected that religious persons should be ready to accept that “it is often perfectly reasonable to forswear the whole truth.”⁸⁴³

In my opinion it can still be asked why it would not be better for people to introduce their different religious reasons openly within the strictly public forum just as within the different spheres of civil society. Even if many citizens would not accept the particular reasons given by others, it may nonetheless be most fair to *openly* give an account of the religious reasons one draws upon, simultaneously hoping that there is still sufficient common ground, shared premises and mutual trust for bringing about the required basis for social co-operation. Of course I take it for granted that the explanation given by the diverse parties can be clearly understood by all citizens, even if it cannot be accepted by all of them.

⁸⁴¹ This is Rawls’ own terminology. Cf. J. Rawls, *Political Liberalism* (1993), p. 218.

⁸⁴² J. Rawls, *Political Liberalism* (1993), p.71.

It follows from what I have said so far that the “exclusive view” is fundamentally problematic, – for how can an exclusive approach guarantee that political values “are not puppets manipulated from behind the scenes by comprehensive doctrines.”⁸⁴⁴ The deeper religious reasons might after all be quite decisive, – even if citizens are presenting non-religious reasons within a public forum. An “inclusive view” can better cope with the high correlation there is between the comprehensive doctrines people hold and the political conception of justice they subscribe to.

But even if one takes an inclusive approach, as Rawls in his most recent writings is doing, the so called “paradox” is not automatically removed. It still seems as if there has to be considerable constraint upon the explicit use of religious reasons within the public forum, even if it is simultaneously taken for granted that a religious conviction might provide us with the strongest motivational force for pursuing vital political values and advance basic justice.

5.6.6. The Rawlsian proviso

In recent works Rawls admits, as suggested, that the inclusive view might be considered most appropriate.⁸⁴⁵ And in fact he now draws some consequences from this view that might seem surprising. He emphasises that the constraints inherent in public reason should not prevent us from openly introducing reasons stemming from the comprehensive (religious) doctrines we honour into the *public* political discussion⁸⁴⁶, - “provided that, in due course, we give properly public reasons to support the principles and policies our comprehensive doctrine is said to support.”⁸⁴⁷ This is the Rawlsian “pro-

⁸⁴³ J. Rawls, *Political Liberalism* (1993), p.219.

⁸⁴⁴ J. Rawls, “The Idea of Public Reason Revisited”, *The University of Chicago Law Review* (1997;3), p.777.

⁸⁴⁵ “The answer turns on which view best encourages citizens to honor the ideal of public reason and secures its social conditions in the longer run in a well-ordered society. Accepting this, the inclusive view seems the correct one.” J. Rawls, *Political Liberalism* (1993), p.248

⁸⁴⁶ Rawls can in his most recent works sometimes express himself rather strongly about this, saying that: “... there are no restrictions or requirements on how religious or secular doctrines are themselves to be expressed; these doctrines need not, for example, be by some standards logically correct, or open to rational appraisal, or evidentially supportable. Whether they are or not is a matter to be decided by those presenting them, and how they want what they say to be taken.” J. Rawls, “The Idea of Public Reason Revisited”, *The University of Chicago Law Review* (1997;3), p.784.

⁸⁴⁷ J. Rawls, “The Idea of Public Reason Revisited”, *The University of Chicago Law Review* (1997;3), p.776.

viso”.⁸⁴⁸ But Rawls does not present us with any detailed formula for how and when the proviso is to be satisfied. Instead he underlines that this “calls for good sense and understanding.”⁸⁴⁹

The reason why Rawls introduces the so called proviso, is not that he now – reluctantly and with considerable reservation – accepts that it is after all the better solution to introduce religious reasons into the public forum. By openly introducing religious (an other comprehensive) reasons in the public political debate, in accordance with the so called proviso, Rawls suppose that one might positively contribute to the development of civic friendship and a co-operative society. And therefore he can conclude that:

“These benefits of the mutual knowledge of citizens’ recognizing one another’s reasonable comprehensive doctrines bring out a positive ground for introducing such doctrines, which is not merely a defensive ground, as if their intrusion into public discussion were inevitable in any case.”⁸⁵⁰

And Rawls seeks for good examples. He can take Martin Luther King as an example of a person letting his Christian faith decisively influence his public “mission” in matters concerning citizens’ most fundamental civil rights. In King’s case there was without doubt a high correlation between his basic religious beliefs and the arguments he presented publicly. His public engagement for equal civil rights must clearly be taken as “consecutive” to the comprehensive view he honoured, – consecutive not just in the sense that his Christian faith and his religious conviction might be considered an underlying driving force, however hidden from public exposure. The comprehensive reasons that Martin Luther King quite openly drew upon, strengthened without doubt the “mission” of the civil rights movement. The Christian faith of Martin Luther King could in no way be enclosed in brackets, but was manifest in his struggle to have fundamental civil rights extended to all as citizens. But King's persuasive constitutional arguments

⁸⁴⁸ In *The Idea of Public Reason Revisited* Rawls makes it clear “that reasonable comprehensive doctrines, religious or nonreligious, may be introduced in public political discussion at any time, provided that in due course proper political reasons – and not reasons given solely by comprehensive doctrines – are presented that are sufficient to support whatever the comprehensive doctrines introduced are said to support. This injunction to present proper political reasons I refer to as *the proviso*...” J. Rawls, “The Idea of Public Reason Revisited”, *The University of Chicago Law Review* (1997;3), p.783f.

⁸⁴⁹ J. Rawls, “The Idea of Public Reason Revisited”, *The University of Chicago Law Review* (1997;3), p.784. But he is giving several examples, referring for instance both to the Abolitionists and to the Civil Rights Movement.

⁸⁵⁰ J. Rawls, “The Idea of Public Reason Revisited”, *The University of Chicago Law Review* (1997;3), p.785.

were nevertheless *political* arguments, and as such they might reasonably have been appreciated and accepted by people irrespective of their differing comprehensive views. Most likely even King himself did not have a method for systematically reflecting and properly satisfying a Rawlsian proviso when proceeding from his Christian convictions to his public engagement for justice. Nevertheless it seems as if Rawls can take Martin Luther King as an example of a political agent satisfying the so called proviso:

“I do not know either the Abolitionists and King thought of themselves as fulfilling the purpose of the proviso. But whether they did or not, they could have. And had they known and accepted the idea of public reason, they would have.”⁸⁵¹

I cannot discuss the case of Martin Luther King in any greater detail, however, I think that the King example indicates that:

- There might be a high correlation between the religious (Christian) beliefs people hold (for instance concerning the dignity of man as created by God) and their commitment in public affairs. The inclusive view takes this correlation into account.
- A Rawlsian proviso should be taken as a regulative idea by the different parties when they are invoking comprehensive (religious) grounds in public reasoning.⁸⁵²

But it cannot be denied that situations might occur when it is impossible for citizens, motivated by a comprehensive doctrine, to express their grounds in terms of public reason. And one might without great difficulties imagine that the public culture in King’s own time had been such that it would have been impossible for him to make the strongest reasons he had consistent with the kind of proviso proposed by Rawls. Martin Luther King’s message, his political concern and not least his basic theological view, could very well have been taken as highly unreasonable by most “reasonable” citizens at his time, – and it could even have been considered a threat to sound public reasoning.

The Rawlsian proviso might nevertheless, as far as I can see, *normally* be taken as a

⁸⁵¹ J. Rawls, “The Idea of Public Reason Revisited”, *The University of Chicago Law Review* (1997;3), p.785f. (Note 54).

⁸⁵² Even if Martin Luther King most likely never had a formula or a method for satisfying the proviso-requirement, he nevertheless complied with the essential idea of such a proviso according to Rawls: “Consider also the Abolitionists and those in the Civil Rights Movement. The proviso was fulfilled in their case however much they emphasized the religious roots of their doctrines because these doctrines supported basic constitutional values – as they themselves asserted – and so supported reasonable conceptions of justice.” J. Rawls, “The Idea of Public Reason Revisited”, *The University of Chicago Law Review* (1997;3), p.785f.

proper guideline for coexistent citizens, holding diverse comprehensive doctrines, in their attempt to establish the *mutual* understanding required for fair social co-operation. But let it also be remarked that the Rawlsian proviso seems to imply that one should still be careful in making *directly* use of beliefs and reasons taken from comprehensive views when arguing publicly in matters concerning basic justice and the very structure of society.⁸⁵³ The proviso clearly subjects citizens' reasoning within the public forum to formal discipline and put restrictions on the way they may invoke religious grounds. This does not, however, imply that citizens, at any moment in which they fail to argue for their fundamental convictions within widely held constraints of public reason, should be accused of holding comprehensive doctrines which have proved themselves unreasonable. Public reason is absolutely not to be taken as infallible or fixed once and for all.

5.6.7. The reciprocity criterion

As made clear: public reasoning requires that the parties accept some constraints on their use of "private" arguments. This means that the parties may freely make use of reasons taken from their comprehensive doctrines within the public forum, provided they are also prepared to explain the particular grounds they have in terms of public reason. This is required for bringing about a *mutual* understanding among citizens. In fact the Rawlsian conception of public reason, with its built-in *proviso*, rests on a principle of *reciprocity*, which citizens, as reasonable persons, can be expected to honour.

"Citizens are reasonable when, viewing one another as free and equal in a system of social cooperation over generations, they are prepared to offer one another fair terms of social cooperation (defined by principles and ideals) and they agree to act on those terms, even on the cost of their own interests in particular situations, provided that others also accept those terms. For these terms to be fair terms, citizens offering them must reasonably think that those citizens to whom such terms are offered might also reasonably accept them. Note that 'reasonably' occurs at both ends in this formulation: in offering fair terms we must reasonably think that citizens offered them might also reasonably accept them. And they must be able to do this as free and equal, and not as dominated or manipulated, or under the pressure of an inferior political or social position. I refer to this as the criterion of reciprocity..."⁸⁵⁴

⁸⁵³ Rawls can still say that: "What we cannot do in public reason is to proceed directly from our comprehensive doctrines, or a part thereof, to one or several political principles and values, and the particular institutions they support." J. Rawls, "The Idea of Public Reason Revisited", *The University of Chicago Law Review* (1997;3), p.777f.

⁸⁵⁴ J. Rawls, "Introduction to the Paperback Edition", *Political Liberalism* (1996), p.xliv. It might be well

Making a criterion of reciprocity, an integrated part of public reason accords in my opinion with the ground idea of justice as *fairness* as elaborated from the very beginning. As far as I can see, however, the idea of reciprocity is stressed even more explicitly and frequently in Rawls' most recent writings. This can be observed in *Political Liberalism* (1993) and especially in the *Introduction to the Paperback Edition of Political Liberalism* (1996) as well as in the essay about *The Idea of Public Reason Revisited* (1997). The moral-political question, especially actualised in modern democratic societies, is how coexistent persons, as free and equal citizens, with an equal right of participating in the rule and the power of a democratic society, should most properly exercise political power over one another, when taking into account that citizens have an obligation to justify to one another the steps they take in matters of shared interest and basic justice. According to Rawls, citizens engaged in public political affairs should sincerely believe that the public reasons they offer in political matters may also be taken by others as a reasonable justification of a political decision.⁸⁵⁵

Let it now also be mentioned that the reciprocity-criterion as such can be expected to have considerable weight not just in the Rawlsian conception, but in *theological* (social) ethics as well. The principle of reciprocity is introduced through the golden rule, as expressed for instance in Matt. 7,12.⁸⁵⁶ In his article on the golden rule in *Theologische*

worth noticing that Rawls holds that: "The criterion of reciprocity is normally violated whenever basic liberties are denied. For what reasons can both satisfy the criterion of reciprocity and justify holding some as slaves, or imposing a property qualification on the right to vote, or denying the right of suffrage to women?" *Ibid.*, p.li.

⁸⁵⁵ "The answer is given by the criterion of reciprocity: our exercise of political power is proper only when we sincerely believe that the reasons we offer for our political action may reasonably be accepted by other citizens as a justification of those actions." J. Rawls, "Introduction to the Paperback Edition", *Political Liberalism* (1996), p.xlvi.

⁸⁵⁶ It is quite clearly concluded by Heinz-Horst Shrey in an article about the golden rule that: "Wir haben bei der philosophischen Erörterungen der goldenen Regel festgestellt, daß es bei dieser um das Prinzip der Gegenseitigkeit geht. Dieses kann definiert werden als 'allgemeinste Prinzip des sozialen Handelns, das auf der Erwartung einer adäquaten Gegenleistung beruht.' (Mühlmann 328)." Heinz-Horst Shrey, "Goldene Regel III, *Theologische Realenzyklopädie*, Vol.XIII (Studienausgabe 1993), p.581. Let it, however, also be remarked that the role of the golden rule is very much discussed within theological ethics and exegesis. Rudolph Bultmann could for instance characterise the golden rule as "die Moral eines naiven Egoismus." R.Bultmann, *Geschichte der synoptischen Tradition*, p.107. But others ascribed to the golden rule a greater significance: "Indem das Christentum die Goldene Regel dem Liebesgebot gleichstellte und in ihr die Summe der göttlichen Forderungen enthalten sah (Mt 7,12), indem es die Goldene Regel zu einem Element seiner Bekehrungstradition machen konnte (Act 15,20.29), räumte es der natürlichen Evidenzerfahrung in der Ethik einen herausragenden Platz ein. Die christliche Ethik gewann so eine allen Menschen direkt einsichtige Grundlage, die von der Empirie des Alltäglichen ausgeht (vgl. Justin, dial.92,3f; Photius, in Matth. 7,12 ...). Der Wert der Goldenen Regel liegt darin, daß sie an die Erfahrung des natürlichen Menschen anknüpft und diesem damit die Möglichkeit bietet, einen direkten Zugang zu einem christlichen Wertsystem zu gewinnen." Roman Heiligenthal, "Goldene Regel II, *Theologische Realenzyklopädie*, Vol.XIII (Studienausgabe 1993), p.575.

Realencyclopädie Heinz-Horst Schrey makes it clear that he finds much the same concern in the golden rule as in Rawls' idea of justice as *fairness*:

“Die Sache, um die es bei der goldenen Regel geht, das Prinzip der Gegenseitigkeit, steht im Mittelpunkt der Gerechtigkeitslehre von J.Rawls. Dieser versteht Gerechtigkeit als Fairness, die wechselseitige Anerkennung der Prinzipien erfordert, auf denen das Handeln beruht. Ansprüche, die gegen das Gerechtigkeitsprinzip verstossen, sind damit ausgeschlossen. Rawls versteht Gerechtigkeit als Konkretisierung des Urzustandes, von dem gilt, das jedermann gleiches Recht auf das umfangreiche System gleicher Grundfreiheiten hat, das mit dem gleichen System für alle anderen verträglich ist.”⁸⁵⁷

Even if the criterion of reciprocity is a subject for discussion in theological ethics and cannot unproblematically be made *the* crucial guideline for reasoning in theological social ethics, the reciprocity-criterion as such – especially as it is used within the Rawlsian conception of justice as *fairness* – seems unavoidable in *social* ethics. It is a principle which is already widely recognised. From a Christian perspective it might also be added that the reciprocity-principle is in itself obviously referring to “einen für Christen und Nichtchristen evidenten Kern”.⁸⁵⁸ It might be taken as a vital moral principle furthering mutual understanding and respect among all parties involved in social co-operation

5.6.8. Consensus through public reasoning?

One might agree with Rawls that public debate, when guided by the reciprocity-criterion, might increase the mutual understanding among citizens, thereby paving the way for a fundamental “reconciliation by public reason”. But if a *reconciliation* by public reason should mean that citizens, just by reasoning within a public forum, might be supposed to end up with some agreed conception about what is basically just and which scheme of society is most fair, one should be prepared for disappointment. Honecker for instance very convincingly points out that “ratio” will neither provide us with very much in the way of concrete guidance nor remove the plurality of doctrines. And Rawls for his part finds it necessary;

⁸⁵⁷ Heinz-Horst Shrey, “Goldene Regel III, *Theologische Realencyclopädie*, Vol.XIII (Studienausgabe 1993), p.580.

⁸⁵⁸ Heinz-Horst Schrey seems right when stressing that: “Insofern enthält das in der goldenen Regel ausgesprochene Prinzip der Gegenseitigkeit einen für Christen und Nichtchristen evidenten Kern, als es in der dieser Grundbeziehung auf die gegenseitige Anerkennung des Rechts auf Dasein sowie dessen Erhaltung

“... to stress that the ideal of public reason does not often lead to general agreement of views, nor should it. [But he nonetheless adds:] Citizens learn and profit from conflict and argument, and when their arguments follow public reason, they instruct and deepen society’s public culture.”⁸⁵⁹

The relation of public reason to the Rawlsian overlapping consensus is complex and might be stated as follows: For public reason to function well, there already has to be in society an overlapping consensus about the most essential aspects within a conception of justice (or within a family of related conceptions). This is required for the orientation of public reason, since public reasoning and public justification presupposes some shared referential basis. And Rawls has for his part (by a rather complicated procedure discussed in chapter 4) elaborated the conception of *justice as fairness* as a proposed basis to be referred to by the different parties involved in public reasoning/justification.

But beside this it has to be stressed that an overlapping consensus cannot be worked out and maintained independently of public reason itself. The overlap will reflect the values and ideas of the political culture, as comprised in public reason.

Thus public reason requires the “overlap” for its own orientation, and, when practised in accordance with the reciprocity-criterion, it will also further social co-operation, strengthen “civic friendship”⁸⁶⁰ and advance coexistent values, and thereby secure the fundamental “overlap”.

In order to avoid misunderstandings, let it now also be added that one need not expect that public reasoning should more or less remove pluralism and lead citizens to substantive agreement in most matters of morality and politics. Even the content of public reason as such cannot be taken as fixed and settled once and for all.⁸⁶¹ Let it also be

und Förderung ankommt.” Heinz-Horst Shrey, “Goldene Regel III, *Theologische Realenzyklopädie*, Vol.XIII (Studienasgabe 1993), p.582.

⁸⁵⁹ J. Rawls, “Introduction to the Paperback Edition”, *Political Liberalism* (1996), p.lvii.

⁸⁶⁰ Let me once more turn to the role of the criterion of reciprocity: “To make more explicit the role of the criterion of reciprocity as expressed in public reason, I note that its role is to specify the nature of the political relation in a constitutional democratic regime as one of civic friendship. For this criterion, when citizens follow it in their public reasoning, shapes the form of their fundamental institutions. For example – I cite easy cases – if we argue that the religious liberty of some citizens is to be denied, we must give them reasons they can not only understand – as Servetus could understand why Calvin wanted to burn him at the stake – but reasons we might reasonably expect that they as free and equal might reasonably also accept.” J. Rawls, “Introduction to the Paperback Edition”, *Political Liberalism* (1996), p.li.

⁸⁶¹ Rawls even reminds us that “The content of public reason is not fixed, any more than it is defined by any one reasonable political conception.” J. Rawls, “Introduction to the Paperback Edition”, *Political Liberalism* (1996), p.liii.

added that the content of public reason might turn out differently in different cultures.⁸⁶²

But there is, nevertheless, in public reason a built-in idea that some constraints have to be imposed on the kind of reasons to be invoked in public reasoning. I have already pointed out how this may actualise the “paradox” of public reason. By constraining religious grounds one simultaneously runs the risk of weakening the deepest and strongest moral motivation people have for engaging in public affairs. But now Rawls takes a further step: In the end there is just one way the paradox *can* be dissolved according to Rawls: If citizens really accept the most reasonable constraints, built into the very idea of public reason, as an integrated part of their own deepest (religiously grounded) moral commitment, the paradox of public reason will lose its paralysing force. And Rawls indeed foresees a solution where:

“Citizens affirm the ideal of public reason, not as a result of political compromise, as in the *modus vivendi*, but from within their own reasonable doctrines.”⁸⁶³

This is the secret of the overlapping consensus, for it means that the so called paradox can only be supposed to disappear when public reason, with its orientation towards the common good, is endorsed by an overlapping consensus of the reasonable comprehensive doctrines themselves. Thereby the constraints implicit in public reason are turned into a kind of self-restraint, – to be endorsed from within the comprehensive doctrine one is honouring. Rawls clearly realises that (religious) comprehensive doctrines are not to be considered solely a source of irreconcilable conflict in society, – it is now fully realised by Rawls that comprehensive moral doctrines might in themselves encourage citizens to honour the ideals of public reason. We will leave a further discussion of the specific duties imposed by the requirement of public reasoning and the conflicts that might result from complying with the so called duty of civility until the next chapter.

5.7. Some concluding remarks

Before concluding this chapter, which has mostly focused on different aspects of moral and political reason, I would like to summarise some crucial aspects of Rawls’ idea of public reason, analysed in the last part of the chapter. According to Rawls public reason

⁸⁶² Most likely this will also imply that a world-wide “overlapping consensus” cannot easily be achieved, even if focusing on the most essential moral-political values.

⁸⁶³ J. Rawls, *Political Liberalism* (1993), p.218

has a definite structure, consisting of five central facets:

- It applies mainly when strictly political questions concerning basic justice and shared institutional conditions for coexistence and social co-operation are at stake.
- It applies primarily to those holding governmental office, to citizens aiming at public office and to judges, but the ideals inherent in public reason might also be given a wider application; per analogy these ideals are relevant also for citizens when dealing with ordinary political matters of shared interest.
- It takes its orientation from a political conception of justice (or from a family of liberal conceptions), – about which there should be an overlapping consensus even in pluralist societies.
- Shared principles of justice are to be applied above all to questions concerning the legitimate institutional use of power (within a framework of law).
- Last but not least, in matters of public reason, our guiding principles should satisfy the test of reciprocity.

As already suggested, there has been a certain evolution in Rawls' thinking about public reason, – from a rather exclusive to an inclusive view. From a theological point of view this development within the Rawlsian conception, by which he can mitigate the “paradox” of public reason should be viewed positively. But of course one should have in mind that Rawlsian political liberalism still imposes considerable constraints on the kind of reasons that can be invoked within the strictly political forum, – as can be seen in the role Rawls ascribes to the so called “proviso”.

Let me now conclude this chapter by considering in a theological perspective some aspects connected with the constraint of public reason in particular and with our reasoning about basic moral-political questions more generally.

a) It may be of some importance to notice first that Honecker does not distinguish between a strictly public forum and the wider forum of civil society with its background culture in the way Rawls does. The domain of the *public* comprises both domains and is

broadly conceived of in Honecker's thought.⁸⁶⁴

b) From a liberal political point of view the public discourse and the maintenance of a public forum have usually been taken to be of vital importance for controlling those in power and for advancing justice and truth.⁸⁶⁵ Even if citizens in pluralist societies may not be supposed to arrive at the most vital truths or reach broad and deep agreement, public reasoning is in itself to be guided by an idea of consensus.⁸⁶⁶

c) The maintenance of a public forum may be of the greatest importance for focusing on the elementary political liberties, rights and opportunities which are to be guaranteed for individual citizens, – as well as for Churches⁸⁶⁷ and for other associations participating in public life. But as one of many associations the church has no privileged position in this political perspective, but an equal right.⁸⁶⁸

⁸⁶⁴ The wide understanding of the public might be usual in theological social ethics. Cf. for instance the latest book written by Ivar Asheim where he directly comments on Rawls' narrow understanding of the notion of the public: "Rawls forsøker altså å sortere problemene ut ved å skjelne mellom 'public' og 'non-public reason' og tilsvarende fora. Er denne terminologien heldig? For egen del opererer Rawls med et meget trangt offentlighetsbegrep, som refererer til sammenhenger som aktualiserer juridisk-politisk tvangsmakt. Dermed skjærer han klar av konflikter mellom 'comprehensive doctrines', men legger samtidig opp til misforståelser og misbruk av sitt konsept ved å anvende et offentlighetsbegrep som avviker sterkt fra det vanlige. Habermas' offentlighetsbegrep ligger mer på linje med alminnelig språkbruk idet det refererer til samfunnsmessig opinionsdannelse i interessekonflikter i sin alminnelighet." I. Asheim, *Hva betyr holdninger. Studier i dydsetikk* (1997), p.187f. I don't think it is a problem that Rawls uses the notion of "the public" in a rather narrow sense. But it might be a problem if one is confusing the different approaches of Rawls and Habermas.

⁸⁶⁵ "Die aufgeklärte liberale Auffassung vertraute auf Öffentlichkeit als Garanten von Wahrheit und Gerechtigkeit. Die öffentliche Diskussion sollte Wahrheit und Gerechtigkeit in Erscheinung treten lassen. Darum war für sie die Forderung nach Meinungs- und Pressefreiheit so wichtig." M. Honecker, "Öffentlichkeit", *Theologische Realenzyklopädie*, Vol. XXV (1995), p.21. Let it, however, be added once more that Rawls for his part is not as optimistic about the possibility of establishing moral or political truth through public reasoning.

⁸⁶⁶ "Kategorien der Öffentlichkeit sind dabei: Autonomie des kommunikativen Handelns, Freiheit und Selbstbestimmung der Teilnehmer und Transparenz der kommunikativen Organisation. Das demokratische Verständnis von Öffentlichkeit beruht darauf, daß Menschen zur politischen Verantwortung bereit sind und daß in der freien, uneingeschränkten Diskussion ermittelt werden soll, was dem öffentlichen, Wohl, dem Gemeinwohl am besten entspricht. Das Ziel des Diskurses ist also Konsens..." M. Honecker, *Grundriß der Sozialethik* (1995), p.632.

⁸⁶⁷ "Jede Partizipation der Kirche am Prozess der Willensbildung in der Öffentlichkeit ist abhängig von einer Reihe von Faktoren. Dazu zählen ... die Struktur der Öffentlichkeit. In einer freiheitlichen, pluralistischen Demokratie hat die Kirche einen anderen Zugang zu Öffentlichkeit als in einem totalitären Regime, in einer Diktatur. Die Achtung der Grundrechte, der Meinungsfreiheit, der Pressefreiheit der Zugang zu Massenmedien sind dabei bedeutsam..." M. Honecker, *Grundriß der Sozialethik* (1995), p. 637f.

⁸⁶⁸ Honecker makes this quite clear when discussing the "Öffentlichkeitsauftrag" of the church. "Die Anerkennung eines Öffentlichkeitsauftrags gibt der Kirche keine spezifische Rechtsposition. Aus der Formel läßt sich also keine besondere privilegierte Stellung der Kirche in der Öffentlichkeit ableiten. ... Eine Sonderstellung und Begünstigung der Kirche gegenüber anderen Verbänden wäre mit dem Ver-

d) I think that Honecker may be right in emphasising that the publicity condition is normally to be honoured not just by political liberalism, but by Churches and Christians as well: “Die Evidenz der Dinge liegt in ihrer öffentlichen Manifestation begründet.”⁸⁶⁹ Political schemes, decisions in matters of basic justice and moral claims of common interest have to be tested and defended “coram publico”.⁸⁷⁰ And when churches engage in public affairs and raise questions of basic justice, they have to justify the standpoints they take in terms of public reason and argue reasonably for them, – thereby respecting certain public constraints, as for instance, the Rawlsian proviso.

e) Even if the Rawlsian proviso opens up for invoking religious reasons within the public forum, it does so provided that one can “translate” the religious reasons to fit within the terms of public reason. Unless we postulate, however, that standards set by public reason can mostly be expected to be fundamentally incompatible with God’s law (seen in the perspective of an *usus politicus legis*), the Rawlsian proviso should normally be satisfied. I think Honecker (like Rawls) successfully argues that we need usually not postulate such an incompatibility in matters of social ethics.⁸⁷¹

f) The domain of the public has different characteristics, – and I think Honecker does right in focusing especially on the phenomenon of “Transparenz”. The parties should be ready to explain and to justify to one another openly their standpoints in public affairs by invoking *common* reason and *shared* premises. Let it also be added that “transparency” may be an ideal to be practised, as far as possible, not just in the strictly public forum but in churches as well.⁸⁷²

fassungsrecht eines säkularen Staates nicht zu vereinbaren. Der Staat hat der Kirche nur den Freiraum für ihr Handeln in Verkündigung und Diakonie einzuräumen und ihr in derselben Weise Zugang zu den Massenmedien zu gewähren wie anderen Verbänden und Organisationen auch. Die Berufung auf einen Öffentlichkeitsauftrag der Kirche ist eine Formulierung evangelischer Juristen.” M. Honecker, “Öffentlichkeit”, *Theologische Realenzyklopädie*, Vol.XXV (1995), p.24.

⁸⁶⁹ M. Honecker, “Öffentlichkeit”, *Theologische Realenzyklopädie*, Vol.XXV (1995), p.18.

⁸⁷⁰ The notion “coram publico” is taken from Honecker. M. Honecker, “Öffentlichkeit”, *Theologische Realenzyklopädie*, Vol.XXV (1995), p.19.

⁸⁷¹ Rawls for his part even suggests that “In endorsing a constitutional democratic regime, a religious doctrine may say that such are the limits God sets to our liberty...” J. Rawls, “The Idea of Public Reason Revisited”, *The University of Chicago Law Review* (1997;3), p.782.

⁸⁷² There might be many reasons for this. Honecker refers especially to the fact that: “Kirche is ... ebenfalls *Teil* der Öffentlichkeit. Sie hat sich deren öffentlicher Kritik als gesellschaftlicher Verband aussetzen: Die Forderung nach Transparenz richtet sich dann auch *an* die Kirche. Die Kirche steht dann nicht der Öffentlichkeit gegenüber, sondern sie steht *in* ihr.” M. Honecker, *Grundriß der Sozialethik* (1995), p.637.

g) From a theological perspective, however, it should primarily be stressed that the gospel is “public”. This is reflected in the “*publice docere*” of *Confessio Augustana*. (CA XIV). Postulating an “Öffentlichkeitsanspruch” for the gospel – which cannot, however, be substantially susceptible to public or rational opinion – means that the *kerygma* itself has the widest possible *address*.⁸⁷³ The Christian *kerygma* can, according to its own nature, in no way be reduced to a kind of strictly “esoteric” knowledge or made a merely “private” affair.⁸⁷⁴

h) Moreover, Honecker, like Rawls, takes for granted that religious views and religious reasons should play an important moral role, contributing both to the value-formation of civil society and even to the public debate (provided the proviso is satisfied). And both of them pay due attention to the elementary fact that most people cannot be expected to distinguish sharply between public reasons and the reasons stemming from their comprehensive doctrines, even if the way of relating them might be rather complex, as can especially be seen in Honecker’s model of “Vermittlung”.

I have now focused mainly on “the public”. I will make some additional remarks also on the use of *reason*, moral reason, when concerned with matters of basic justice and a shared political framework of social co-operation. I have employed the theological distinction between law and gospel, and foremost the doctrine of the two kingdoms as hermeneutic keys that might properly open up the domain of the political as a *shared*

⁸⁷³ “Die Mission der christlichen Gemeinde richtet sich an die Welt (Mt 28,20). Darum hat die Kirche notwendig einen öffentlichen Auftrag. Jesu Rede ergeht frei und offen vor aller Welt (Joh 18,20). Jesu Jünger schulden jedermann Verantwortung (1. Petr 3,15). Die Gemeinde ist Stadt auf dem Berge, Licht in der Welt (Mt 5,14f.). Öffentlich zu werden ist daher konstitutiv für die christliche Gemeinde. Gottesdienst, Predigt, Unterweisung geschehen öffentlich. Es ist daher durchaus sinnvoll und theologisch begründet, wenn man von einem ‘Öffentlichkeitsauftrag der Kirche, von ‘öffentlicher Verantwortung’ spricht.” M. Honecker, “Öffentlichkeit”, *Theologische Realenzyklopädie*, Vol. XXV (1995), p.21.

⁸⁷⁴ “Öffentlichkeitsauftrag und Anspruch der Kirche bedeutet dann: freier Zugang der Kirche zur Öffentlichkeit, keine Verabannung ins Ghetto im Unterschied zu der Sicht, Religion sei ‘Privat-sache’.” M. Honecker, *Grundriß der Sozialethik* (1995), p.637. And Honecker criticises the Kantian distinction between *public* and *private*, the result of which was that the preaching of a minister in the church should most appropriately be considered a strictly “private” affair, – since he is acting on clearly “heteronomous” premises, bound by external authorities. The Kantian view of the “public” is considered earlier in this chapter. But let me here just add that Kant can say that: “Der Gebrauch also, den ein angestellter Lehrer von seiner Vernunft vor seiner Gemeinde macht, ist bloß ein *Privatgebrauch*, weil diese immer nur eine häusliche, obzwar noch so große, Versammlung ist; und in Ansehung dessen ist er als Priester, nicht frei, und darf es auch nicht sein, weil er einen fremden Auftrag ausrichtet.” I.Kant, *Beantwortung der Frage: Was ist Aufklärung*, , 1783, (WBG, 1979, Vol.9), p.57. Again it has to be underlined that preaching in the church is no private activity, it is widely addressed, open to the “publicum” and it can be criticised freely and might at least have a considerable influence on the value-formation of (civil) society. I think that Honecker as well as Rawls would avoid drawing on the Kantian distinction between *private* and *public*.

concern. I have thoroughly analysed Rawls idea of the reasonable, which is so essential for his idea of an overlapping consensus. Simultaneously, however, I have tried not to ignore the deep pluralism characteristic of modern societies. Most of this chapter has been concerned with different aspects of the reasonable, public reason and moral reasoning. Of course my perspective on moral reason is not theologically unproblematic.

One might theologically degrade reason, stressing instead its limitation or its insufficiency or the apories it is often provoking. And there are theological arguments that could even be taken as an occasion for suspending the role of common reason or for rejecting entirely public reason, – relying instead on particular “reasons” or an exclusive kind of revelation or an “esoteric” or privileged insight. I think, however, that Honecker is right in his claim that this way of defeating (public) reason, might in the end turn out to be a Pyrric-victory rendering any reasoned discourse or consensus impossible, making the church an ally of irrationalism and obscurantism⁸⁷⁵, and simultaneously undermining the premises for a public forum.

To avoid misunderstanding, let me recall that Honecker’s social ethics do not contain any practical “deification” of reason.⁸⁷⁶ He himself clearly stresses that substantially and ontologically “ratio” can neither provide us with any catalogue of moral norms nor with very much of specific and authoritative guidance in matters of social ethics.⁸⁷⁷ Argumentative or communicative reason – which may even be supposed to have a moral orientation towards the “humanum” – is nonetheless urgently required.⁸⁷⁸ This

⁸⁷⁵ “Sodann ist es theologisch fragwürdig, die Aporien der Vernunft zum Erweis der Notwendigkeit von Offenbarung, Glaube und Kirche zu benutzen. Die Selbstkritik der Vernunft legitimiert nicht schon die Erfordernis einer Offenbarung, – auch nicht für die theologische Ethik. Denn das Bedürfnis nach Orientierung, das die Vernunft anscheinend nicht decken kann, bürgt nicht für die Wahrheit und Authentizität der Offenbarung überhaupt. Wenn eine Wendung zum Offenbarungsglauben allein auf der Verzweiflung an der ratio beruhen müßte, wird christlicher Glaube überführt in Irrationalismus, wenn nicht Obskurantismus, d.h. in Aberglaube. Ein Irrationalismus des Offenbarungsglaubens ist ein auf Kosten der Wahrheit erfochtener Pyrrhussieg.” M.Honecker, “Vernunft, Gewissen, Glaube. Das spezifisch Christliche im Horizont der Ethik”, *Evangelische Ethik. Diskussionsbeiträge zu ihrer Grundlegung*, ed. H. G.Ulrich (1990), p.131.

⁸⁷⁶ Honecker says it directly as follows. “Sie werden meinen Überlegungen zur Ethik entnommen haben, daß ich keine direkte ‘Theologisierung’ der Vernunft anstrebe und insofern für eine autonome Ethik eintrete.” M. Honecker, “Erfahrung und Entscheidung”, *Zeitschrift für Theologie und Kirche* (1978), p.499.

⁸⁷⁷ “Zunächst ist das Mißverständnis zu vermeiden, als sei Vernunft substantiell oder ontologisch zu verstehen.” M.Honecker, “Vernunft, Gewissen, Glaube. Das spezifisch Christliche im Horizont der Ethik”, published in *Evangelische Ethik. Diskussionsbeiträge zu ihrer Grundlegung*, ed. H. G.Ulrich (1990) p.127.

⁸⁷⁸ Honecker underlines that: “Vor dieser Notwendigkeit, sich der Vernunft als Argumentationsprinzip

communicative reason sets an agenda for discursive processes, for disciplined arguing and explanation, for justifying common standards and assessing diverse standpoints within the public forum.⁸⁷⁹

I have already stressed that “transparency” is an ideal, which is closely connected with the openness required by public reason. But this ideal of “Transparenz” cannot and should not always be pursued, what Honecker clearly realises. There may be practical reasons for that.⁸⁸⁰ But here are also deeper theological reasons for saying so, grounded in Christian faith itself. Faith gets manifest, in the Christian church as a congregation of those believing in God, and it gets manifest in the wider forum of the public. At the same time, however, faith belongs genuinely within the forum internum, the individual conscience, and as such it cannot and should in no way be made fully transparent in terms of public reason.⁸⁸¹ Respecting the nature of faith, as something that cannot be definitely explained and need not be entirely justified within the forum externum of the public, means to respect the very integrity and privacy of the person and prevents what Honecker can also characterise as the “Tyrannei des Öffentlichen”.⁸⁸² If extended to

auszusetzen, ist aber auch christliche Überlieferung und christliche Ethik gestellt.” M.Honecker, “Vernunft, Gewissen, Glaube. Das spezifisch Christliche im Horizont der Ethik”, *Evangelische Ethik. Diskussionsbeiträge zu ihrer Grundlegung*, ed. H. G.Ulrich (1990), p.129.

⁸⁷⁹ Honecker underlines: “Kritik setzt voraus eine freie Argumentationsgemeinschaft, in der alle Argumente zugelassen werden müssen, damit diese Argumente kritisch geprüft werden können. Nur in ihrem Gebrauch kann nämlich Vernunft geprüft und kritisiert werden.” M.Honecker, “Vernunft, Gewissen, Glaube. Das spezifisch Christliche im Horizont der Ethik”, *Evangelische Ethik. Diskussionsbeiträge zu ihrer Grundlegung*, ed. H. G.Ulrich (1990), p.128.

⁸⁸⁰ “Transparenz von Entscheidungsprozessen in Staat und gesellschaftlichen Institutionen und Organisationen ist gar nicht überall realisierbar und stößt auf Grenzen. Sofern es nicht nur um passive Öffentlichkeit, sondern um aktive Öffentlichkeit geht, werden Mitbestimmung, Partizipation (z.T. in Form formal nicht geregelter Partizipation) intendiert. Dadurch können jedoch Kompetenzen und Verantwortlichkeiten undeutlich werden. Auch kann die Öffentlichkeit von Entscheidungsprozessen die Sachdiskussion verkürzen (‘Fensterreden’); oder Entscheidungen verlagern sich in nichtöffentliche Gremien. Genau das Gegenteil von Transparenz wird dann faktisch erreicht. Deshalb ist es sinnvoll, zwischen öffentlichen und nichtöffentlichen Phasen eines Entscheidungsprozesses zu differenzieren.” M. Honecker, *Grundriß der Sozialethik* (1995), p.635f.

⁸⁸¹ Honecker himself makes this quite clear: “Das Spannungsverhältnis zwischen Kirche und Öffentlichkeit ist im Wesen christlichen Glaubens verwurzelt. Die Kirche ist keine *civitas Platonica*. Sie ist in der Öffentlichkeit der Welt erkennbar an ihren äußeren Kennzeichen, an den *notae externa ecclesiae*; sie ist insofern sichtbar. Die Kirche ist auch nicht Trägerin einer Geheimreligion und will keine weltflüchtige Sekte sein. Sie ist jedoch unsichtbar, verborgen als *societas fidei et spiritus sancti in cordibus* (Apol. CA VII: BSLK 234,29f.). Der Glaube herrscht inwendig im Herzen. Es gibt zwar Äußerungen des Glaubens (Bekenntnis, Zeugnis), die öffentlich sind; aber der Glaube selbst bleibt innerlich im Herzen verborgen. Diese Nichtprüfbarkeit des Glaubens macht es unmöglich, alles kirchliche Handeln öffentlich zu machen. Das Gebet wird von Jesus aus der Öffentlichkeit in die Verborgenheit der Kammer verwiesen.” M. Honecker, “Öffentlichkeit”, *Theologische Realenzyklopädie*, Vol.XXV (1995), p.24.

⁸⁸² “Die Unverfügbarkeit und Innerlichkeit des Glaubens ist jedoch zugleich auch Zeichen und Schutz der Unaufweisbarkeit der Person. Die theologische Erkenntnis Gottes als Geheimnis der Wirklichkeit und der

religion and matters of conscience, “public opinion” would exert a very strong pressure towards conformity. From a theological point of view – but also in a political perspective – it is in this context of crucial importance to maintain one of the most fundamental distinctions used all the way by Honecker:

“Mit der Unterscheidung von dem was *coram deo*, vor Gott, gilt und deshalb nicht öffentlich sein kann, und dem, was *coram publico* geschieht und geschehen muß, wird die Unterscheidung von Glaube und Werk, von Wirken Gottes und Handeln des Menschen im Blick auf das Verständnis von Öffentlichkeit ausgelegt.”⁸⁸³

I think that Rawls, while clearly limiting the strictly public domain, can genuinely respect that there are vital aspects of life that cannot and need not be politically organised or fully justified in terms of public reason. This is the advantage of a “narrow” approach to the domain of the political and the public. And this also means that Rawls' proviso does not necessarily apply to all aspects of religious conduct which takes place within a democratic society. I think that this insight provides an important premise for the kind of toleration that must be guaranteed within modern pluralist (and liberal) societies.

dieser Gotteserkenntnis entsprechende Glaube bieten deshalb auch einen Schutz gegen einen Totalitätsanspruch von Öffentlichkeit. Völlige Transparenz macht den Menschen schutzlos und verfügbar. Mithilfe des Drucks der Öffentlichkeit können Gewissen manipuliert und verführt werden. So gesehen befreit der Glaube von der Tyrannei des Öffentlichen und schafft einen Freiraum individueller Gewissensentscheidung.” M. Honecker, “Öffentlichkeit”, *Theologische Realenzyklopädie*, Vol.XXV (1995), p.25.

⁸⁸³ M. Honecker, “Öffentlichkeit”, *Theologische Realenzyklopädie*, Vol.XXV (1995), p.25.

6. CITIZENSHIP, DISCIPLESHIP AND THE DUTY OF CIVILITY

6.1. *Tensions, constraints and costs.*

Honecker, like G. Ebeling, treats the doctrine of the two kingdoms as, above all, an appropriate key to understanding the so called “forum-situation” of man as standing simultaneously “coram deo” and “coram mundo”.⁸⁸⁴ The doctrine of the two kingdoms – as far as it relates to this situation – is most properly characterised as a “two-relation-doctrine” rather than a “two spheres-doctrine”. But if the ground-situation of man is characterised by his living both “coram deo” and “coram mundo”⁸⁸⁵, then a fundamental tension is built into his existence in the world, as being simultaneously “Christperson” and “Weltperson”.⁸⁸⁶

Rawls for his part, also focuses on the kind of problems which arise from viewing man as simultaneously “Weltperson” and “Christperson”. As persons holding a political conception and simultaneously honouring a comprehensive (religious) doctrine, citizens can be supposed to strive to make their most sincere concerns cohere. Rawls awareness of simultaneity is clearly evidenced by the following reformulation of one of the main questions raised in *Political Liberalism*,

“How is it possible for those affirming a religious doctrine that is based on religious authority, for example, the church or the Bible, also to hold a reasonable political conception that supports a just democratic regime? ... How is it possible for citizens

⁸⁸⁴ Distinctions like these are more thoroughly considered in chapter 5.

⁸⁸⁵ Let it here, however, be inserted that the theological notion of the “world”, when applied to the political domain, may be ambiguous in itself: “Die Beurteilung der politischen Welt ist ein Sonderfall der neutestamentlichen Bewertung von ‘Welt’ (Kosmos). ‘Welt’ wird im NT ambivalent gesehen. Welt ist einerseits Schöpfung Gottes, andererseits Inbegriff der gottfeindlichen Macht. Die neutestamentlichen Texte zum Verhalten der Christen gegenüber der politischen Macht sind Ausdruck dieser Zweideutigkeit in der Einschätzung von Welt (vgl. Markus 12,13-17 par, Römer 13,1-7 sowie 1. Petrus 2,13-17; 1. Timotheus 2,2 einerseits, Johannesoffenbarung 13 andererseits).” M. Honecker, “Der Auftrag der Kirche und die Aufgabe des Staates”, *Essener Gespräche zum Thema Staat und Kirche* (1991), p.77.

⁸⁸⁶ “Solche Beschreibung der Grundsituation des Menschseins mit Hilfe der Zweireichlehre verweist auf eine unaufgebbare Spannung, eine Spannung, die sehr verschieden bestimmt werden kann, als Unterscheidung zweier Relationen coram deo/coram mundo, zweier Gerechtigkeiten (iustitia spiritualis/civilis), als Unterscheidung von Person und Werk, Glaube und Liebe, Christperson und Weltperson. Konstitutiv ist für die Zweireichlehre diese Spannung. ... Die Grundvoraussetzung der Zweireichlehre ist, daß die gesamte Wirklichkeit von Grundgegensätzen bestimmt wird, in deren Schnittpunkt sich der Mensch vorfindet und die ihn dazu nötigen, sich in ihnen zu orientieren und Orientierungspunkte, Relationen zu unterscheiden.” M. Honecker, *Sozialethik zwischen Tradition und Vernunft* (1977), p.183f.

of faith to be wholehearted members of a democratic society ...?”⁸⁸⁷

Of course Rawls does not treat the *simultaneity* as a theological problem, but as a political problem closely connected to his idea of citizenship.

As Christians people have a primary loyalty in all things as is made clear in Acts 5,29: “We must obey God rather than man.” As members of society, citizens have moral duties. Public reason, which comprises the ideas to be drawn upon in an “overlapping consensus”, gives rise to an ideal of citizenship. Endorsing an overlapping consensus as a common basis for public commitment and social co-operation implies that we – as citizens – are ready to accept certain “limitations on our freedom, impositions on our will which must be discharged regardless of our inclinations”⁸⁸⁸ and regardless of the “private” and more specific aims that we might have.

The fact that certain duties (and constraints) follow from one's participation in social co-operation within an ordered society was previously stressed by Thomas Hobbes who clearly recognised that human beings – after having willingly left behind them the state of nature – had to give up something in order to attain something that they considered most required. People, it was supposed, were by and large willing to accept very strong constraints on their freedom, if they could thereby get an effective protection against an absolute and arbitrary “freedom” of others in return. Thus Hobbes supposed that people were willing to pay a rather high price for safety, peace and protection.⁸⁸⁹

According to Rawls, the government has a monopoly on the use of the coercive powers of society. But Rawls (like John Locke⁸⁹⁰) draws the conclusion that the people might also withdraw their consent, thereby rendering a government illegitimate. The monopoly of power ascribed to the sovereign or the state-authorities is, therefore, ultimately based on the consent of those governed. Rawls main perspective is that:

⁸⁸⁷ J. Rawls, “Introduction to the Paperback Edition”, *Political Liberalism* (1996), p. xxxixf.

⁸⁸⁸ A. John Simmons, *Moral Principles and Political Obligations*, Princeton - New Jersey 1981, p.7

⁸⁸⁹ According to Hobbes people should be expected to be willing to accept heavy constraints on their freedom for the sake of internal peace and self-preservation. They could be supposed to “sacrifice” to a very wide extent the liberty that they had in the state of nature, willingly handing over their original rights rather unconditionally to the sovereign. As long as a sovereign does not in the most tyrannical way forfeit his most eminent task of preserving citizens’ lives, his ordering of society should be accepted.

⁸⁹⁰ I recall that according to Locke it can never be easy for the citizens to withdraw their consent, on which the actual government is based. Cf. J.Locke, *Two Treatises of Government* (1689/1993), p. 201.

“In a constitutional regime the special feature of the political relation is that political power is ultimately the power of the public, that is, the power of free and equal citizens as a collective body. This power is regularly imposed on citizens as individuals and as members of associations, some of whom may not accept the reasons widely said to justify the general structure of political authority – the constitution – or when they do accept that structure, they may not regard as justified many of the statutes enacted by the legislature to which they are subject.”⁸⁹¹

By stressing that the power of society ultimately remains with the citizens as free and equal partners, Rawls very clearly takes the citizens, – as a *collective body* – to be the real sovereign of society. If the citizens – taken as a collective body – are considered the ultimate source of political sovereignty, it follows that citizens in fact have to impose on themselves the constraints that are required to make society function as a common enterprise, i.e. as a fair, coexistent and well-ordered society for all its members. In a democratic society this is the ultimate perspective on the exercise of final political and coercive power. But this makes it even more necessary for citizens to find or establish a *shared* basis for enacting laws and distributing *common* resources and justifying to one another the most crucial decisions in a shared forum of *public* reason. Simply put, citizens – as members of society – have a duty to justify and to explain to one another the reasons they have for taking certain standpoints and making certain decisions in matters of shared political interest. And it is this, which might also render reference to particular reasons, called by Rawls “comprehensive reasons” within the framework of the public, so problematic.

So the title, “constraints and costs” is chosen to indicate that all citizens in democratic and modern liberal societies are somehow expected to pay a tribute to the “project” of upholding a required minimum of *shared* standards and complying with certain civic duties in their roles as citizens. According to Rawls persons, parties and groups in pluralist societies are supposed to be ready to accept certain constraints on their conduct in order to make society function as a fair system of co-operation. Modern societies impose a co-operative need to stick to common rules, widely acceptable principles and reasonable procedures in cases of public interest. A corresponding coexistent attitude seems to be required for the sake of internal peace and social co-operation within a common institutional framework, which the parties can accept as just.

⁸⁹¹ J. Rawls, *Political Liberalism* (1993), p.136

The question remains nonetheless, what price should we be willing to pay for maintaining society as a system of co-operation, consisting of citizens that have obviously very diverse religious and moral convictions. The “costs” following from accepting public constraints, for instance by sticking strictly to public reason, instead of advancing one’s comprehensive reasons unrestrictedly, might seem rather heavy. Someone might for instance fear that imposing such constraints might imply;

- a “*devaluation*” of Christian values and moral standards in the public field, – if Christians are to a considerable extent abstaining from explicit reference to their religious convictions.
- an increase of *intra-personal conflicts*, – if religious convictions are really outweighed by political values which are “not easily overridden”.⁸⁹²

At first glance it seems as though the required constraints most clearly benefit liberalism in terms of furthering its political values while potentially imposing considerable costs in terms of the comprehensive view one might have.

However, instead of just regretting the *costs* of accepting some constraints in public affairs as an integral part of the political obligation one has as a citizen, it is also necessary to consider the *costs* of sticking to “non-shared” and “private” reasons in matters where equal citizenship is at stake. For what is really the alternative to all parties accepting certain limitations on their private and non-public activity in order to make a pluralist society function as a *fair* institutionalised system of co-operation? Without doubt the costs following from an unrestrained attitude in matters of common interest

⁸⁹² J. Rawls, *Political Liberalism* (1993), p.218. Even in liberal societies Rawls presupposes that political values “under the reasonably favorable conditions that make democracy possible, normally outweigh whatever other values are likely to conflict with them...” *Ibid.* p.156. The result can, however, be considerable problems of conscience, – although I think that Rawls takes for granted that this kind of conflict will most likely not occur very often in liberal societies. However, there is – as I will make clear – many suggestions in Rawls’ own works that indicate that even within clearly liberal societies cannot the tension between comprehensive doctrines and political conceptions be easily mitigated or removed. Let me add that a distinction between *intrapersonal* and *interpersonal* conflicts might be helpful in this connection. It is also used by Joachim Wiebering: “Bisher ging es in den genannten Erfahrungsfeldern um ‘interpersonale Konflikte’, die zwischen verschiedenen Menschen oder sozialen Gruppen aufbrechen. Daneben stehen noch die ‘intrapersonalen Konflikte’, die sich in einem Menschen abspielen, der von einander widersprechenden Forderungen hin und her gerissen wird und zu keiner eindeutigen Entscheidung findet. Solche Konflikte betreffen die Ebene der Gewissensentscheidung des einzelnen...”, Cf Joachim Wiebering, “Kompromiß als christliche Kategorie”, *Zeitschrift für evangelische Ethik*, 1978,4; S.298. It can hardly be avoided that *intrapersonal* conflicts might arise because widely recognized political obligations are not at all seen by some groups and individuals as compatible with duties imposed by religious and moral comprehensive views.

and equal citizenship might also be very high.⁸⁹³ An unwillingness by Christians to seek a common basis might be met with a similar attitude from other groups as well, – the result of which might be a relapse into a “state of nature” with all of the risks implied in the exercise of an unframed and unlimited “freedom”. The point I am stressing here is that every group in a society has to realise that: “A choice for or against restraint, sacrifices something of value.”⁸⁹⁴ And it is impossible to tally the *costs* of social co-operation without also taking into consideration the *gains* that citizens will have from honouring a duty of civility, practising common virtues of citizenship, and establishing shared norms for political coexistence within an agreed framework of society, as based upon equal citizenship.⁸⁹⁵

It is the consideration of gains as against costs in his political calculations that leads John Locke to conclude that all citizens would gain decisively by leaving the state of nature with its “perfect liberty” and instead submit willingly to a common scheme of a well-ordered political society (grounded on consent), with its inherent constraints on the liberty of individuals and groups. For it is not so much the costs as the advantages that focus one’s attention when assessing life within the politically ordered society,

“If man in the state of nature be so free, as has been said; if he be absolute lord of his own person and possession, equal to the greatest, and subject to nobody, why will he part with his freedom? Why will he give up this empire, and subject himself to the dominion and control of any other power? To which ‘tis obvious to answer, that though in the state of nature he hath such a right, yet the enjoyment of it is very uncertain, and constantly exposed to the invasion of others. For all being kings as much as he, every man his equal, and the greater part no strict observer of equity and justice, the enjoyment of the property he has in this state is very unsafe, very insecure. This makes him willing to quit this condition, which however free, is full of fears and continual dangers: and ‘tis not without reason, that he seeks out, and is willing to join in society with others who are already united, or have a mind to unite for the mutual preservation of their lives, liberties and estates, which I call by the general name property.”⁸⁹⁶

⁸⁹³ According to Rawls “The virtues of political cooperation that make a constitutional regime possible are, then, very great virtues.” J. Rawls, *Political Liberalism* (1993), p.157). And one such political virtue is obviously the readiness “to meet others halfway...” (*Ibid*, p.157). Citizens are expected to take an active interest in coming to reasonable *interpersonal* arrangements with others and – in public affairs – to play by common rules and honour principles, which can be considered commonly acceptable in democratic societies.

⁸⁹⁴ K. Greenawalt, *Private Consciences and Public Reasons*, (1995), p.133.

⁸⁹⁵ In this it is also presupposed that an acceptable consensus has to incorporate certain standards of fairness. If Plato’s Republic could for instance also be supposed to rest on some kind of consensus, it should hardly be a consensus based on Rawlsian ideas of fairness.

⁸⁹⁶ J. Locke: *Two Treatises of Government* (1689/1993), p.178.

The “gains” following from all parties consenting to some vital constraints on their liberty might be;

- a society, which can be upheld as an institutionalised common enterprise for mutual preservation of life, social goods and (religious) liberty.⁸⁹⁷
- a society with a basic structure that allows for an individual liberty only as far as it is compatible with a similar liberty for others.⁸⁹⁸
- a society with a sufficient political power to secure elementary rights and *effective* justice for the diverse citizens and groups.

However, political arrangements would appear to be of a highly conditional nature when considered from a Christian perspective. It seems as if the recognition of shared ideals of equal citizenship, vital co-operative duties and political values might be possible only with some essential reservations from a Christian point of view. As is made clear for instance in St. Augustine’s *City of God*, Christians enjoy what might be termed “dual citizenship”.⁸⁹⁹ They belong within two “kingdoms” and the duties of citizenship which they have should always be balanced against the obligation inherent in the “citizenship” which they simultaneously have within the commonwealth of God. As stated in the “Letter to the Philippians”:

“But our commonwealth⁹⁰⁰ is in heaven, and from it we await a Savior, the Lord Jesus Christ...” (Phil.3,20)

As already suggested, Rawls is very much aware of the dilemma arising from the fact that citizens might have a dual loyalty. This is at least taken into account when he distinguishes between the two ground-perspectives that all citizens should normally be presupposed to have, namely a political view and a comprehensive doctrine:

“For we always assume that citizens have two views, a comprehensive and a political view, and that their overall view can be divided into two parts, suitably related. We hope that by doing this we can in working political practice ground the constitutional essentials and basic institutions of justice solely in those political values, with these values understood as the basis of public reason and justifi-

⁸⁹⁷ Expressed in a Lockean way this would be the alternative to a society taken as an aggregate of individuals, each with their unconstrained “perfect liberty”.

⁸⁹⁸ Let it here be underlined that according to Rawls can human liberty only be limited for the sake of liberty itself. And that is just what is taking place when people leave the state of nature.

⁸⁹⁹ They can be considered “pilgrims” within the *civitas terrena*.

⁹⁰⁰ In Greek: “h(mw=n galr to\ poli/teuma e)n ou)ranoi=j u(pa/rxei.”

cation.”⁹⁰¹

It seems obvious that questions about discipleship, and the duties of citizenship might be considered from theological, philosophical and political perspectives. While I will, when discussing problems of citizenship and religious commitment in this chapter, mainly take a theological perspective, I nonetheless intend to contribute to a wider debate and dialogue. The question about the proper relation between citizenship and discipleship is in many respects of common interest and cannot be ignored when taking a Rawlsian point of departure. In this chapter I will therefore pay particular attention to Rawls’ *ideal* of citizenship, following from the idea of public reason and citizens’ readiness to comply with the most vital conditions for achieving an “overlapping consensus”. In this context, the relation between the duty of citizenship and the moral duty which follows from one’s religious and moral comprehensive view must be addressed.

6.2. Can a Christian be a good citizen?

6.2.1. Citizenship – morally laden?

Let us now turn to the notion of citizenship which plays a central role in Rawlsian thought. It may be said that Rawls, when elaborating his liberal conception of justice, especially in the theory of justice presented in 1971 but also in *Political Liberalism*, cannot entirely avoid comprehensiveness himself. Rawls answers this critique by admitting that *A Theory of Justice* may in some respect be characterised as a comprehensive (and controversial) theory.⁹⁰² One might for instance find particular assumptions about man in his theory, which are unlikely to be widely shared. In *Political Liberalism*, however, he aims at a *political* conception that is compatible with modern pluralism and, as such, is non-comprehensive in aim.⁹⁰³ This also means that Rawls’ perspective

⁹⁰¹ J. Rawls, *Political Liberalism* (1993), p. 140.

⁹⁰² It is admitted by Rawls that “the argument in *Theory* relies on a premise the realization of which its principles of justice rule out. This is the premise that in the well-ordered society of justice as fairness, citizens hold the same comprehensive doctrine, and this includes aspects of Kant’s comprehensive liberalism, to which the principles of justice as fairness might belong. But given the fact of reasonable pluralism this comprehensive view is not held by citizens generally, any more than a religious doctrine, or some form of utilitarianism.” J. Rawls, “Introduction to the Paperback Edition”, *Political Liberalism* (1996), p. xlii.

⁹⁰³ Let it be noticed that the term “comprehensive” should not be taken as synonymous with “substantial”. Rawls’ conception is not broad and deep, neither is it aiming at some kind of “Letzbegründung” or “ultimate truth”. He sets out for a conception that is political and reasonable. But of course the conception he elaborates is not without substantial elements. “Justice as fairness is substantive ... in the sense that it

on man has to some extent changed.⁹⁰⁴:

“In political philosophy one role of ideas about our nature has been to think of people in a standard, or canonical, fashion so that they might all accept the same kind of reasons. In political liberalism, however, we try to avoid natural or psychological views of this kind, as well as theological or secular doctrines. Accounts of human nature we put aside and rely on a political conception of persons as citizens instead.”⁹⁰⁵

Rawls will now clearly avoid elaborating a comprehensive doctrine of man in general. Employing instead the notion of the *citizen* fits well with his strictly political approach. Through the revitalisation of the idea of citizenship Rawls hopes to concentrate on the strictly political and moral aspects of social coexistence within the framework of society. Citizenship relates to the basic structure of society and the essential institutions of the state. And implied in citizenship are certain civic duties.

A brief digression is in order to clarify the notion of citizenship, drawing from the third book of *Politics* in which Aristotle uses the phenomenon of seamanship to explain some essential aspects of citizenship: A crew working together on a ship has different tasks (as navigators, mates etc...). There is a special task for each of them, and accordingly there is a particular virtue (a)reth/) corresponding with the individual responsibility each one has. But there is also a common virtue of seamanship valid for all the seamen, as a co-operating crew with the shared aim of bringing the ship to its destination. This way of thinking about seamanship is in a vital respect analogous to the way one should think about citizenship, according to Aristotle. Even if citizens have individual tasks and particular duties to fulfil, there is also a virtue, which should be the same for all the coexistent citizens, – it might just be called the “virtue of citizenship”. According to Aristotle the virtue of citizenship has its inherent meaning in the “salvation” of

springs from and belongs to the tradition of liberal thought and the larger community of political culture of democratic societies.” J.Rawls, “Reply to Habermas”, *The Journal of Philosophy* (1995), p. 179.

⁹⁰⁴ However, there is hardly a radical shift in Rawls’ assumptions about man. In the introduction to the paperback edition of *Political Liberalism* he still emphasises: “We must start with the assumption that a reasonably political society is possible, and for it to be possible, human beings must have a moral nature, not of course a perfect such nature, yet one that can understand, act on, and be sufficiently moved by a reasonable political conception of right and justice to support a society guided by its ideals and principles. Theory and PL try to sketch what the more reasonable conceptions of justice for a democratic regime are and to present a candidate for the most reasonable. They also consider how citizens need to be conceived to construct those more reasonable conceptions ...” J. Rawls, “Introduction to the Paperback Edition”, *Political Liberalism* (1996), p.lxii.

⁹⁰⁵ J. Rawls, “The Idea of Public Reason Revisited”, *The University of Chicago Law Review* (1997;3), p.800.

society.⁹⁰⁶

Let me – by taking my point of departure from the illustration given by Aristotle – just underline that characterising somebody as a citizen is to ascribe to him certain *moral obligations* towards the “polis” and the co-citizens.⁹⁰⁷

Aristotelian society also contained groups of people (*me/toikoi*) and slaves (*dou/loi*) who were non-citizens and thereby excluded from the full participation in society. As we can see in Aristotle’s *Politics*, citizenship was a rather exclusive affair. What characterised *citizens*, according to Aristotle, was their full participation in the political and judiciary power of the polis. The virtue of citizenship got its orientation from this participation in the affairs of polis. Thus a citizen in the strict sense of the word is – according to Aristotle – a man who has the right and the duty to participate in the administration of justice and the holding of office in the city-state.⁹⁰⁸ And according to Aristotle there should most appropriately be a system of regular turnover in the holding of public offices in society.⁹⁰⁹ Rulers should not hold office permanently. A ruler should know what it is like both to be ruled and to rule. Thereby citizens might (at different times) have different tasks and duties within the city-state, which demonstrates that in principle citizenship is to be based on a fundamental *equality*.⁹¹⁰ And as far as the ruler governs

⁹⁰⁶ Cf. Aristotle’s: *Politiken (Politics)*, Greek/Swedish edition 1993) III, 1276b;28-31, where Aristotle concentrates on “h(swthri/a th’s koinwni/aj” and emphasises that “koinwni/a d’e)sti\ n h(politei/a dio\ th\ n a)reth\ n a)nagkai\ ron ei\ Anai\ tou= poli/tou pro\ s th\ n politei/an “.

⁹⁰⁷ According to Bill Jordan this Aristotelian concern could not be maintained in modern time. Referring to “the great revolution in moral thinking which occurred in the eighteenth century” Jordan adds: “With this change, the notion of citizenship, while still defining what members of society had in common, came to be quite separate from the idea of morality; and instead of trying to ensure that citizens had an interest in the common good, the state was mainly concerned with allowing them to pursue competitive advantage. The result was that citizenship lost its connections with both morality and self-interest, and came to be exclusively concerned, in liberal theory at least, with the relationship between individual liberty and political authority.” B. Jordan, *The Common Good, Citizenship, Morality and Self-Interest* (1989), p. 68. I think that Jordan has pointed to an important feature of a modern understanding of citizenship, but I will nonetheless also add that a liberal conception of citizenship does not necessarily imply that citizenship loses its moral basis. I think that Rawls’ conception of political liberalism demonstrates that this need not be the case.

⁹⁰⁸ More precisely: “ti\ j me\ n ou\ an e)stin o(poli/thj, e)k tou/twn fanero/n: %Å ga\ r e)cousi/a koinwnei=n a)rxh=j bouleutih=j kai\ kritikh=j, poli/thn h)/dh le/gomen ei\ anai\ tau/thj t=j po\ lew\ j ...” Aristotle, *Politiken (Politics)*, Greek/Swedish edition 1993), Book III, 1275b;17-20.

⁹⁰⁹ This kind of “turnover” is clearly presupposed by Aristotle when saying: “dio\ kai\ ta\ j politika\ j arxa\ j, o(/tan \$Å kat` i)so/thta tw=n politw=n sunesthkui=a kai\ kaq` o(moiothta, kata\ me\ roj a)ciou=sin a)/rxein, ...” Cf. *Politiken (Politics)*, Greek/Swedish edition 1993), Book III, 1279a, 8-10).

⁹¹⁰ This equality was – as we saw – the very reason for the kind of “turnover” in holding public offices that was proposed by Aristotle: Cf. *Politics*, Book III, 1279a, 8-10). And Aristotle holds that “h(del\ poli\ j koinwni/a ti\ j e)sti tw=n o(moi\ wn,” Aristotle, *Politiken (Politics)*, Greek/Swedish edition 1993), Book VII, 1328a, 35-36)

other citizens, he should also be very well aware of the fact that he is ruling over free men. For according to Aristotle citizens were supposed to be *free* men. Slaves, *metoikoi* and also women were not citizens, although they all played roles that the city-state could not do without.⁹¹¹ The notion of citizenship within the Aristotelian polis was indeed exclusive. But the important thing to underline here is that citizenship implied certain *virtues*, which were related to the common good, the “salvation” of polis, as the shared home-place.⁹¹² And Aristotle distinguishes the question about the virtues that are needed to be a good citizen from the question about the virtues that are required for a human being to be morally good. (Although the two issues cannot be kept completely apart). Citizenship implies certain duties, but also certain privileges and rights in relation to the city-state.

It is well-known how St. Paul, according to the *Acts of the Apostles*, effectively appealed to his status as a citizen of Rome when he was arrested for preaching the gospel.

“But when they had tied him up with the thongs, Paul said to the centurion who was standing by, ‘is it lawful for you to scourge a man who is a Roman citizen, and uncondemned?’ When the centurion heard that, he went to the tribune and said to him: ‘What are you about to do? For this man is a Roman citizen.’ So the tribune came and said to him, ‘Tell me, are you a Roman citizen?’ And he said, ‘Yes’. The tribune answered, ‘I bought this citizenship for a large sum.’ Paul said, ‘But I was born a citizen.’ So those who were about to examine him withdrew from him instantly; and the tribune also was afraid, for he realized that Paul was a Roman citizen and that he had bound him.” (Acta 22,25-29.)

Others, who did not have the same protection, might be treated far more brutally after having confessed openly their belief in Jesus Christ, – as we can for instance see in a Letter from Pliny the Younger to Trajan:

“This is the course that I have adopted in the case of those brought before me as Christians. I ask them if they are Christians. If they admit it I repeat the question a second and a third time, threatening capital punishment; if they persist, I sentence them to death. For I do not doubt that, whatever kind of crime it may be to which they have confessed, their pertinacity and inflexible obstinacy should certainly be punished. There were others who displayed a like madness and whom I reserved to be sent to Rome, since they were Roman citizens.”⁹¹³

⁹¹¹ Aristotle makes it quite clear that “*tou=to galr a)lhqe/j, w(j ou) pa/ntas qete/on poli/taj w(=n a)/neu ou)k a)/n ei)/h pollij...*”, Aristotle, *Politiken (Politics)*, Greek/Swedish edition 1993), Book III, 1278a, 2-3.

⁹¹² Let me, however, remark that Aristotle takes the proper administration of the state to be advantageous not just for citizens in the strict sense, but also for slaves, *metoikoi* and other non-citizens. (Cf. *Politics*, Book III, 1279a)

⁹¹³ *Documents of the Christian Church*, Selected by Henry Bettenson (1963), p.4.

It might be assumed that most ordinary members of the Christian church in the first century belonged to the lower classes, and there is also good reason to suppose that a considerable number of slaves belonged to the church as well. They obviously did not have the same rights and protection as it is told that Paul – as a citizen – enjoyed.⁹¹⁴ In fact it seems as if the author of the *Acts of the Apostles* had a considerable reverence for Roman citizenship, although the duties implied in citizenship had to be relegated when in conflict with the loyalty towards the gospel, as made clear in *Acta 5,29*, which is referred to in *Confessio Augustana XVI*: “De rebus civilibus”.

As far as I can see both the Greek and the Roman Stoics contributed likewise to a certain relativising of the weight of citizenship, – by considering people primarily as *human beings*, who in addition were *citizens* of a particular “polis” (or empire) with its system of official duties and rights. The “polis” is still important, but seems not to provide the ultimate framework for defining the most basic virtues. The perspective has got more universal. “Cosmos” has to be considered our common home-place. What unifies people as human beings is now most decisive.

According to Maximilian Forschner it was typical of influential Stoic philosophers to regard social morality as a phenomenon to be applied in concentric circles. Normally they found it appropriate to start with the love that human beings naturally had for themselves (self-preservation) and also for their children and relatives. Then the moral perspective could be extended to friends, co-citizens, those belonging to the same people/culture, and at last they ended up with the overarching universal perspective, including all people, as human beings.⁹¹⁵ One might naturally expect a stronger moral concern

⁹¹⁴ And the text quoted indicates that citizenship of the Roman Empire might be bought and sold (while it is assumed that St. Paul had got his citizenship by birth).

⁹¹⁵ “Die ausführlichste Quelle zur stoischen Lehre vom menschlichen Sozialtrieb bietet Cicero. Der erste von ihm angeführte Punkt ist die natürliche Liebe der Eltern zu ihren Kindern. Diese hat der Mensch mit den Tieren gemein. Daß er mit einigen Tieren auch noch den Herdentrieb bzw. den Trieb zur Gemeinschaftsbildung teilt, ist der zweite Gedanke. Für beide Triebe gilt, daß das einzelne Lebewesen hier von Natur aus zu Tätigkeiten tendiert, die auf etwas abzielen, was sich von dem für das tätige Individuum jeweils Nützlichen unterscheidet bzw. dieses übersteigt. Dies kann bis zum Einsatz des eigenen Lebens für die Nachkommen bzw. die Gemeinschaft gehen. Dann schlägt Cicero einen gewaltigen Bogen mit dem nur auf den Menschen zutreffenden Satz: hieraus erwächst eine natürliche Wohlgeneigtheit (*commendatio = oi)kei/wsij*) zwischen allen Menschen, derart, daß der Mensch dem Menschen gerade deshalb, weil er Mensch ist, nicht als etwas Fremdes erscheinen sollte. ... die Lücke zwischen Elternliebe, Herdentrieb und universaler Oikeiosis schließen zeitlich später zu datierende stoische oder von der Stoa beeinflusste Texte mit dem Gedanken einer allmählichen konzentrischen Ausweitung des Gegenstandes naturwüchsiger Zuneigung vom Selbst zu den Eltern bzw. Kindern, Verwandten, Freunden, Mitbürgern, Volksgenossen bis hin zur Menschheit insgesamt.” M. Forschner, *Die stoische Ethik* (1995), p.157f.

within the inner circles, but this renders it even more important to strengthen the universal perspective of morality. And the universal perspective might to some extent even relativise a more limited perspective of citizenship, which is so clearly defined by the role citizens play within the framework of the city-state. The status as *a human being* should in essential moral respects be considered primary to being a *citizen*.

In modern democracies the notion of citizenship has changed in many respects.⁹¹⁶ Having largely lost its *moral* significance and weight, it seems as if it was just taken as a terminus technicus within the domain of law. Nowadays most inhabitants in modern democracies are *normally* to be reckoned as citizens, – although there might still be within modern states a difference between “citizens” and other “*metoikoi*” – such as immigrants, asylum-applicants etc.

According to John Rawls there are, however, three things that should be taken as quite essential of modern citizenship:

First: Citizenship is radically democratised, it is made far more *inclusive*. The notion of citizenship is nowadays most appropriately used to express what is *normally* the case within democratic societies, – namely, that nearly all persons are recognised as fully co-operating members of the nation-state with all the basic political rights, duties and responsibilities that follows from the status of citizenship. And accordingly, public offices are, unlike the case in the “polis” of Aristotle, open to all members of society. The exclusivity of the notion of citizenship is radically broken.

Second: The idea of *equal* citizenship is essential. This means for instance that some citizens cannot be allowed to enforce upon co-citizens, sharing an *equal* citizenship, rules, doctrines and duties that just a group of citizens consider the best for society as a whole. Therefore Rawls would clearly consider a comprehensive doctrine “unreasonable” if;

⁹¹⁶ Already when I considered more thoroughly the contractarian tradition I touched upon issues within the early liberal tradition closely related to the issues I now consider. Thomas Hobbes for instance took the basic *contract* to express the will of all the individual citizens, although he considered the state – when first established – as nearly absolute. The rights of citizens were clearly limited. And even within the early liberal stage, the notion of citizenship was still relatively exclusive. It might for instance be linked up to the condition of having property in society. This was the case with John Locke. A criterion of ownership, rendering “citizenship” a rather exclusive phenomenon, made it impossible for a lot of people to hope to achieve the status of a citizen.

“... it proposed to use the public's political power – a power in which citizens have an equal share – to enforce a view bearing on constitutional essentials about which citizens as reasonable persons are bound to differ uncompromisingly.”⁹¹⁷

Third: The idea that citizens are to be *free*, as far as their liberty is compatible with an equal liberty for the other members of society, remains a basic idea. There are according to Rawls three fundamental aspects of such a freedom, assumed to belong essentially to citizens.

- citizens are to be considered self-authenticating sources of valid claims, what means that they can regard themselves as entitled to advance their own conception of the good, and can expect that the freedom required to pursue a conception of the good is supported by society and the public institutions.
- citizens are also regarded as free in the sense that they can be held responsible for the ends they are pursuing.⁹¹⁸
- citizens are free not just to have, but also to revise and even freely reject a particular conception of the good or a religious belief.⁹¹⁹

Crucial within the Rawlsian conception is the idea of free and equal citizenship⁹²⁰,

⁹¹⁷ J. Rawls, *Political Liberalism* (1993), p. 138. And Rawls makes it quite clear that: “There is no reason why any citizen, or association of citizens, should have the right to use state power to decide constitutional essentials as that person's, or that association's comprehensive doctrine directs.” *Ibid.*, p. 226.

⁹¹⁸ In other words “citizens think of themselves as free in three respects: first, as having the moral power to form, revise, and rationally to pursue a conception of the good; second, as being self-authenticating sources of valid claims; and third, as capable of taking responsibility for their ends. Being free in these respects enables citizens to be rationally and fully autonomous.” J. Rawls, *Political Liberalism* (1993), p. 72.

⁹¹⁹ Citizens are supposed to have some higher-order interests, what means that they can be “regarded as having at any given time a determinate conception of the good, that is, a conception specified by certain definite final ends, attachments, and loyalties to particular persons and institutions, and interpreted in the light of some comprehensive religious, philosophical, or moral doctrine.” J. Rawls, *Political Liberalism* (1993), p. 74. But they cannot be expected to have one and the same conception of the good. I shall not once more touch upon the issue of the common good, discussed in chapter 2, but let it just be recalled that Rawls obviously takes it to be necessary that citizens – even in pluralist societies – share an essential common political *aim*; – the realising of an idea of justice: “...in the well-ordered society of justice as fairness, citizens share a common aim, and one that has high priority: namely, the aim of insuring that political and social institutions are just, and of giving justice to persons generally, as what citizens need for themselves and want for one another. It is not true, then, that in a liberal view citizens have no fundamental common aims ...” J. Rawls, *Political Liberalism* (1993), p. 146.

⁹²⁰ This idea is inseparable from Rawls' conception of justice as *fairness*. The scheme of society can only be considered fair if there is a built-in respect of equal citizenship and a basic support of each citizen's freedom. Therefore Rawls himself starts “... with a first fundamental question about political justice in a democratic society, namely what is the most appropriate conception of justice for specifying the fair terms of social cooperation between citizens regarded as free and equal, and as fully cooperating members of society over a complete life, from one generation to the next?” J. Rawls, *Political Liberalism* (1993), p. 3.

based on the idea of citizens having the two moral capacities, i.e. a moral capacity for pursuing a conception of the good and a capacity for a sense of justice.⁹²¹ It can easily be seen that the ability to act from a sense of justice – at least “to the requisite degree”⁹²² – is essential for social co-operation.

The idea of social co-operation is also closely linked to an understanding of “citizens as reasonable and rational, as well as free and equal, and so addressed to their public reason.”⁹²³ As reasonable persons (who are also rational)⁹²⁴ people are able of being fully co-operating members of society as a joint venture.

So far it seems clear that the notion of citizenship is a very central (and frequently used) term within the Rawlsian political conception of liberalism, and there can be no doubt that the notion of citizenship is a morally laden term. This is even further emphasised by the way the idea of citizenship is taken to give rise to certain *duties*.

A distinction is sometimes drawn between two aspects of citizenship, “that of rights or status, so called passive citizenship, and that of active citizenship which carries responsibilities, duties and the idea of sharing in world-making possibilities with others.”⁹²⁵

⁹²¹ “The basic idea is that in virtue of their two moral powers (a capacity for a sense of justice and for a conception of the good) and the powers of reason (of judgements, thought, and inference connected with these powers), persons are free. Their having these powers to the requisite minimum degree to be fully cooperating members of society makes persons equal.” J. Rawls, *Political Liberalism*, p.19f. In the Rawlsian society “Citizens act willingly so as to give one another justice over time.” *Ibid.*, p.143.

⁹²² According to Rawls “the members of society are citizens regarded as free and equal in virtue of their possessing these two moral powers to the requisite degree...” And he adds immediately that: “This is the basis of equality. The moral agent here is the free and equal citizen as a member of society, not the moral agent in general.” J. Rawls, *Political Liberalism* (1993), p.109.

⁹²³ J. Rawls, *Political Liberalism* (1993), p.143. That their nature as reasonable (implying also rationality) has also a clear significance for their co-operative ability can be seen in *Political Liberalism*: “The political values of a constitutional democracy are, however, seen as distinctive in the sense that they can be worked out using the fundamental idea of society as a fair system of cooperation between free and equal citizens as reasonable and rational.” (*Ibid.*, p.126)

⁹²⁴ In an earlier chapter I thoroughly discussed the relation between “the rational and the reasonable”. Let me just recall two things now. First: While *the rational* is mainly calculating, the notion of the reasonable is – according to Rawls – clearly morally laden. It may be interesting to see that the philosopher Georg Henrik von Wright distinguishes in much the same way between “the rational” and “the reasonable”. Cf *Vitenskapen og fornuften* (Norwegian edition), Cappelen’s upopulære skrifter, Oslo, 1991, p.22f. Second: By drawing so heavily on the notion of the idea of the *reasonable* Rawls will avoid making (strong) statements about truth within the domain of the political: “The advantage of staying within the reasonable is that there can be but one true comprehensive doctrine, though as we have seen, many reasonable ones. Once we accept the fact that reasonable pluralism is a permanent condition of public culture under free institutions, the idea of the reasonable is more suitable as part of the basis of public justification for a constitutional regime than the idea of moral truth. Holding a political conception as true, and for that reason alone the one suitable basis of public reason, is exclusive, even sectarian, and so likely to foster political division.” J. Rawls, *Political Liberalism* (1993), p.128f.

⁹²⁵ P. B. Clarke in *Dictionary of Ethics, Theology and Society* (1996), p. 140f.

Citizenship implies – according to Rawls – that there are certain rights and duties that citizens have as members of society. The emphasis in this chapter will be put on the moral duty implied in citizenship and on the constraints that persons are assumed to comply with *as citizens*. When I discussed the idea of public reason in the previous chapter, I clearly suggested that there is an ideal of citizenship inherent in the idea of public reason itself. Rawls very clearly stresses that;

“...the ideal of citizenship imposes a moral, not a legal, duty, the duty of civility – to be able to explain to one another on those fundamental questions how the principles and policies they advocate and vote for can be supported by the political values of public reason. This duty also involves a willingness to listen to others and a fair-mindedness in deciding when accommodations to their views should reasonably be made.”⁹²⁶

I will be concerned with different theoretical and practical aspects of Rawls’ “duty of civility” throughout the rest of this chapter, but the most obvious aspects of a “civic duty” should very briefly be pointed to already now:

- The duty of civility requires from citizens a willingness to *justify* and to explain to their co-citizens the reasons they have for the standpoints they take in matters of public interest by reference to shared principles of justice.
- The duty of civility requires from citizens a readiness to *listen* frankly to the reasons of co-citizens, who should likewise have access to the forum of public reasoning without being hindered by any kind of oppressive means.
- The duty of civility requires an elementary *fairmindedness* from the citizens, implying a preparedness to revise and adjust their standpoints in the light of reasonable arguments given by co-citizens in matters of common interest.

These three points might, at first glance, seem rather uncontroversial. However, it can also be understood from them that the duty of civility imposes certain “constraints” on public reasoning and conduct, which might after all not be so uncontroversial. For it seems as though the duty of civility requires from us that we stick to common reason (public reason) in matters of public interest, even if there might be good reasons – from the perspective of the comprehensive doctrine we honour – to pursue particular aims and interests that can perhaps not so easily be publicly justified or fit within an over-

⁹²⁶ J. Rawls, *Political Liberalism* (1993), p. 217. There is a vital disciplining associated with the very idea of public reason (what was also the case in Kant’s conception), expressed in an ideal of public reason.

lapping consensus. It appears that persons with a deep attachment to a particular doctrine such as a strong religious commitment, might in fact be expected to give up something of value in order to be fully co-operative members of a liberal society.

6.2.2. Politics – in the horizon of the kingdom of God? How co-operative should moral theology be?

Several times I have stressed that Rawls expects from the Christian – as well as from the other doctrines existing in pluralist societies – that they be reasonable. And he expects Christian citizens to behave reasonably in matter of public interest, thereby contributing to the kind of fairness, which can be the basis for the stability of society.

But due to the built-in *eschatological* perspective the Christian doctrine should perhaps not so easily be supposed to provide us with guidelines serving the ordering and stabilisation of political society. An eschatological approach could just as well be supposed to cause a radical destabilisation of society.⁹²⁷ These issues have been intensively discussed throughout church history and cannot be thoroughly considered now. Let it, however, be mentioned that the Church-father, St Augustine – even in the work where he most consequently contrasts *civitas terrena* to *civitas dei* – stresses that the former should be honoured and its laws respected, since it provides all citizens, irrespective of their faith, with great goods, as for instance an ordered (internal) peace:

“So also the earthly city, whose life is not based on faith, aims at an earthly peace, and it limits the harmonious agreement of citizens concerning the giving and obeying of orders to the establishment of a kind of compromise between human wills about things relevant to mortal life. In contrast, the Heavenly City – or rather that part of it which is on pilgrimage in this condition of mortality, and which lives on the basis of faith – must needs make use of this peace also, until this mortal state, for which this kind of peace is essential, passes away. And therefore, it leads what we

⁹²⁷ According to Jürgen Moltmann Christians might play the most important political role in society, when contributing to the destabilisation of society: “Sollte der Gott, der sie [die Christen] ins Leben gerufen hat, etwas anderes von ihnen erwarten, als was die moderne Industriegesellschaft von ihnen erwartet und ihnen zumutet, so muß die Christenheit den Exodus wagen und ihre gesellschaftlichen Rollen als neue babylonische Gefangenschaft ansehen. Nur wo sie gesellschaftlich als nicht voll anpassungsfähige Gruppe erscheint und die moderne Integration aller mit allen an ihr nicht gelingt, tritt sie in eine konfliktgeladene, aber fruchtbare Partnerschaft zu dieser Gesellschaft. Nur wo ihr Widerstand sie als eine nicht-assimilierbare und nicht-arrivierbare Gruppe zeigt, kann sie dieser Gesellschaft ihre eigene Hoffnung vermitteln, die durch nichts beschwichtigt und zur Ruhe des Angepaßtseins gebracht werden kann. Es ist dabei heute weniger ihre Aufgabe, der ideologischen Glorifizierung der Verhältnisse, als vielmehr der institutionellen Stabilisierung der Verhältnisse zu widerstehen und durch das ‘Aufwerfen der Sinnfrage’ diese zu Verunsichern, sie beweglich und elastisch im Prozess der Geschichte zu machen.” J. Moltmann, *Theologie der Hoffnung. Untersuchungen zur Begründung und zu den Konsequenzen einer christlichen Eschatologie* (1968/7.Aufl), p.299.

may call a life of captivity in this earthly city as in a foreign land, although it has already received the promise of redemption, and the gift of the Spirit as a kind of pledge of it; and yet it does not hesitate to obey the laws of the earthly city by which those things which are designed for the support of this mortal life are regulated; and the purpose of this obedience is that, since this mortal condition is shared by both cities, a harmony may be preserved between them in things that are relevant to this condition.”⁹²⁸

But Augustine leaves us with no reason to doubt that Christians, while living in the “earthly city”, have their primary loyalty and orientation towards the “Heavenly City”.

The proclamation of the kingdom of heaven by Jesus from Nazareth most likely gave rise to very different thoughts among those listening to him. Some expected that a political theocracy was about to be realised. Others expected a full realising of the principles of the mosaic law. And sometimes it was the apocalyptic visions, the cosmic dimensions of the coming of the kingdom of God, that were focused upon, – a radically new “aion” was about to come, – brought forth by a direct intervention by God himself. In a nation well acquainted with the “messianic” visions it cannot come as a surprise that the proclamation of the kingdom of God should give rise to political and national hope. Peace, justice, national freedom and material abundance should come. But there was nonetheless in the preaching of Jesus something transcending all this.⁹²⁹ Jesus himself, the story of his life, his death and resurrection, the promises he brought, his authority to forgive sins and his healing of people, were the constitutive (and extraordinary) events most characteristic of the “kingdom of heaven” as presented by Jesus. And according to

⁹²⁸ St. Augustine, *City of God* (413-426/1984), Book XIX, 17 (p.877). Let it also be added that St Augustine considered it an appropriate task for Christians to pray for the “earthly city”, not least for the sake of internal peace. Therefore he reminds the Christians that “... the Apostle instructs the Church to pray for the kings of that city and those in high positions, adding these words: ‘that we may lead a quiet and peaceful life with all devotion and love’ [1.Tim.2,2]. And when the prophet Jeremiah predicted to the ancient People of God the coming captivity, and bade them, by God’s inspiration, to go obediently to Babylon, serving God even by their patient endurance, he added his own advice that prayers should be offered for Babylon, ‘because in her peace is your peace’ [Jer.29,7] – meaning, of course, the temporal peace of the meantime, which is shared by good and bad alike.” *Ibid.*, Book XIX, 17.

⁹²⁹ This is in a very appropriate way underlined by the Tübinger professor, Walter Kasper: “Jesus sagt uns nirgends ausdrücklich, was diese Gottesherrschaft ist. Er sagt nur, daß sie nahe ist. Er setzt offensichtlich bei seinen Hörern ein Vorverständnis und eine Erwartung voraus, die für uns heute nicht mehr ohne weiteres gegeben ist. Aber auch damals erwartete man unter der Gottesherrschaft recht Verschiedenes. Die Pharisäer stellten sich darunter die vollkommene Erfüllung der Thora vor, die Zeloten verstanden darunter eine politische Theokratie, die sie mit Waffengewalt herbeizuführen trachteten, die Apokalyptiker erhofften das Kommen des neuen Äon, des neuen Himmels und der neuen Erde. Jesus läßt sich nicht eindeutig einer dieser Gruppen zuweisen. Sein Sprechen von der Gottesherrschaft ist merkwürdig offen.” W. Kasper, “Die soziale Relevanz der Reich-Gottes-Botschaft”, *Grundfragen des menschlichen Zusammenlebens in christlicher Sicht. Einführung in die christliche Gesellschaftslehre mit systematischer Textauswahl*, Ed. J. Schwartz (1977), p.79.

the gospel of St. John, Jesus himself stressed that “my kingship is not of this world” (John 18,36). It seems problematic to take the kerygma of the kingdom of God, as a source for elaborating a political program or giving concrete substantive guidelines concerning the duties that people may have as citizens in this world.

Martin Honecker takes it for granted that the Christian kerygma might indeed be a strong motivating force⁹³⁰ and have a decisive impact on people’s lives and conduct within the domain of the political, but the kerygma about the kingdom of God cannot *directly* provide us with the required standards for assessing the institutional framework of our society politically, or concretely tell us what the duty of civility requires. For although “near”, God’s kingdom remains transcendent and different. Taking this into account, one cannot easily use the kerygma about the kingdom of God directly as a basis for political activity at different times in different societies, - or as a key to substantive political decision-making.

- The kingdom of God lacks the required material specificity for providing us with direct criteria for social practice and for ordering of the political field.⁹³¹
- The kerygma of the kingdom of God has to be understood first of all as divine promissio.⁹³² The hope and the symbols⁹³³ characteristic of the kerygma of the kingdom transcends by far what can be taken as a merely political “telos”.
- The kingdom of God should be considered the kingdom of God. Its realisation would mean the end of secular history, not a relative improvement of it, not even a revolu-

⁹³⁰ “Die Hoffnung auf das Reich Gottes kann jedoch den universalen Horizont christlichen Glaubens aufzeigen, sie kann Motivation christlicher Existenz, auch gesellschaftlicher Existenz sein.”, M. Honecker, *Konzept einer sozialetischen Theorie. Grundfragen evangelischer Sozialetik* (1971), p.5.

⁹³¹ “Die Hoffnung auf das Reich Gottes kann in gleichem Sinne zwar Motivation, aber nicht theoretisches Kriterium sein. ... Das Reich Gottes kann jedoch nicht Kriterien sozialetischer Praxis geben, weil die Hoffnung auf das Reich keine inhaltlichen Angaben über die Gestaltung gesellschaftlicher Verhältnisse macht. Die Vielfalt sozialetischer Konzeptionen, welche sich auf das Reich Gottes als gesellschaftlich wirksam werdende Gestaltung des Gotteswillens berufen haben, zeigt, daß die Reich-Gottes-Hoffnung selbst inhaltlich unbestimmt ist und keine Maßstäbe zur Beurteilung gesellschaftlicher Verhältnisse und damit der sozialetischen Praxis enthält.”, M. Honecker, *Konzept einer sozialetischen Theorie. Grundfragen evangelischer Sozialetik* (1971), p.122f.

⁹³² “Die Botschaft vom Reiche Gottes ist in diesem Sinne Verheißung, nicht sozialetische Theorie. Die Verheißung ist freilich eine Ermöglichung christlichen Handelns in der Welt; denn sie macht frei. ... In der Nachfolge Jesu wird schließlich das Reich Gottes schon jetzt präsent, nicht als sozialetisches Ziel, Telos, sondern als Ermöglichungsgrund wahrhaft menschlichen Lebens.” M. Honecker, *Konzept einer sozialetischen Theorie. Grundfragen evangelischer Sozialetik* (1971), p.126.

⁹³³ In the apocalyptic literature there is a frequent use of esoteric symbols, the full meaning of which can be understood only by those having the “code” to the secrets.

tionary change of it.⁹³⁴ The strictly eschatological perspective transcends all other kingdoms, all schemes of society that are established by man, and all models elaborated within different kinds of social ethics.⁹³⁵

One reason why Honecker is so thoroughly considering the issue of Christian eschatology within political and social ethics, is obviously that he is very critical of the way Christian eschatology is in fact utilised in much of present theology, – for instance in the works of Jürgen Moltmann. Introducing a strictly eschatological perspective in the discussion about social and political ethics renders the theological approach to social ethics rather exclusive. And it is not quite clear either how this theological perspective is assumed to guide our political conduct as citizens within the *political* society (either ancient or modern). The idea of the “kingdom of God” or a “theology of hope” taking its point of departure exclusively from Christian eschatology, cannot be made a derivative basis for answering central questions that might be raised in the political society, as for instance *which* moral constraints should most fairly be imposed by the institutions of democratic societies, or the question *which* consequentialist considerations citizens should make before “maximising” their ideal moral values in non-ideal situations, or the more general question *how* citizens, with highly different beliefs, can co-operate fairly so as to strengthen one another’s moral dispositions, thereby contributing to the internal peace. These questions demonstrate that the theological and moral approach to political ethics and to the duty of citizenship has to be rather complex. And in this respect Hon-

⁹³⁴ Thomas Münzer is one of many examples of a “revolutionary” interpretation and application of the Christian eschatological kerygma. Cf. for instance E. Bloch, *Thomas Münzer als Theologe der Revolution* (1972/originally published 1962). For the “Rebell in Christo Thomas Münzer”(p.15) the eschatological proclamation of Jesus was a direct motivation for what Ernst Bloch characterises as a “bäuerlich-proletarisch-chiliasische Revolution”. (p.36). Let it, however, in this connection also be added that not seldom could an eschatological approach instead further a rather disinterested attitude what concerned questions of politics.

⁹³⁵ Once more Honecker uses this perspective to stress that *all* political and social-ethical systems, – including *political* conceptions of justice, are to be relativised and should be considered revisable: “Alle sozialetischen Modelle, wie immer sie auch begründet werden, sind, weil sie relativ sind, revisionsfähig und -bedürftig. Zur Relativität gesellschaftlicher Gerechtigkeit gehört auch, daß sie in einem geschichtlichen Prozess erweitert und verbessert werden können. Der Prozess der Verwirklichung gesellschaftlicher Gerechtigkeit kommt innerweltlich zu keinem Ziel. Das Reich der vollkommenen Gerechtigkeit, des völligen Friedens, einer durch nichts mehr beeinträchtigten Humanität und Freiheit wird niemals auf Erden errichtet werden können. Von der dem Menschen zur Realisierung aufgetragenen besseren irdischen Gerechtigkeit, der *iustitia civilis externa*, in der Sprache der Reformation, ist die Gerechtigkeit des Reiches Gottes, die *iustitia spiritualis interna* zu unterscheiden. Die Gerechtigkeit des Reiches Gottes kann nicht im geschichtlichen Vollzug erkämpft werden, sie bleibt Gabe. ... Die Gabe ist für den Christen Motivation der Aufgabe, da sie ihn zum Handeln ermächtigt und zum Gebrauch kritischer Vernunft freisetzt.”, M. Honecker, *Konzept einer sozialetischen Theorie. Grundfragen evangelischer Sozialetik* (1971), p.124f.

ecker is, as far as I can see, right: A theology of hope, taking its point of departure exclusively from Christian eschatology cannot in itself contribute very much to the kind of co-operative virtue required by citizens in modern democratic and pluralist societies, and neither can it provide us with a theological basis for coping adequately with the complexity of modern society.

In order to avoid misunderstandings it should be added that Honecker does not on his part present us with an uneschatological theological approach to social and political ethics. Instead he distinguishes two kinds of eschatology:

First: Eschatology might be conceived of as a more or less complete system of theological doctrines, a theological “fund”, from which (radical social) directives for political and social institutions and actions can be derived. This is called “explicit eschatology”.⁹³⁶ But according to Honecker one cannot derive concrete prescripts that can be transformed into socio-political standards or programs for modern societies, directly from Christian and Biblical eschatology.⁹³⁷ Elaborating an explicit eschatology to be used “instruktionstheoretisch” in political affairs, would entail a confusion of the fundamental distinction between law and gospel.

Second: There is within all theological doctrines, ideas and beliefs, nevertheless, an inherent aspect of eschatology. Honecker characterises this as an “implicit eschatology”.⁹³⁸ This is, however, not sufficient for elaborating a program for the political domain. Instead implicit eschatology provides us with a perspective on all our theology,

⁹³⁶ This is a kind of eschatology that “...Erkenntnisse über die Zukunft der Welt vermittelt. Aus diesen Erkenntnissen lassen sich sodann Zielvorstellungen und Handlungsanweisungen entnehmen. Eine derartig lehrhaft formulierte oder formulierbare Eschatologie kann man explizite Eschatologie nennen.” M. Honecker, *Konzept einer sozialetischen Theorie. Grundfragen evangelischer Sozialetik* (1971), p.3.

⁹³⁷ “Die Hoffnung auf das Reich Gottes kann jedoch den universalen Horizont christlichen Glaubens aufzeigen, sie kann Motivation christlicher Existenz, auch gesellschaftlicher Existenz sein. Aber einen allgemein evident zu machenden Maßstab der Sozialetik, ein Leitbild sozialetischer Praxis gibt sie nicht her.” M. Honecker, *Konzept einer sozialetischen Theorie. Grundfragen evangelischer Sozialetik* (1971), p.5.

⁹³⁸ “Von der Problematik einer expliziten Eschatologie zu unterscheiden ist eine implizite Eschatologie. Implizite Eschatologie meint, daß die Eschatologie nicht selbständiges theologisches Thema als Lehraussage ist, sondern eine Perspektive jeder theologischen Aussage.... In der Gotteslehre hält implizite Eschatologie Gottes Wesen und Handeln für neue Auslegungen frei, so daß Gott selbst und seine Offenbarung noch eine Zukunft haben und Gottes Verborgensein von der Verheißung seiner Herrlichkeit und seines Offenbarwerdens überholt wird. In der Christologie zeigt sich implizite Eschatologie in dem Bekenntnis zu der noch verborgenen Herrschaft Christi... Nur solange Eschatologie als der allenthalben mitwandernde Horizont der Theologie vollkommen offenbleibt, kann sie auch das theologische Denken – einschließlich der Sozialetik – offenhalten.” M. Honecker, *Konzept einer sozialetischen Theorie. Grundfragen evangelischer Sozialetik* (1971), p.3f.

political and moral activity and permanently reminds the Christian of the decisive *difference* between political society and the kingdom of God, thus making it obvious that all political schemes and decisions can still be criticised and improved. This means that the deepest eschatological perspective should never be ignored, even when people are concerned with matters of politics and public affairs.

The conduct of Christians – as citizens – within the settled scheme of political society might, however, primarily be seen by Honecker as *consecutive* to the justification by faith. Thus he appeals to what is considered, not least within the Lutheran church⁹³⁹, the very “*articulus stantis et cadentis ecclesiae*”, namely the theological doctrine of justification, when conceiving of theological social ethics and proper political conduct. Foremost it is the liberating effect of the justification of faith that is to be stressed in this connection.⁹⁴⁰

- Neither political activity nor actions of mercy and love, directed towards other human beings, can be drawn upon in *forum justificationis*. Political and moral activity is therefore to be performed entirely for the sake of one’s co-citizens or neighbours.
- Within the *locus justificationis* the freedom of God has to be taken as a decisive theological premise.⁹⁴¹ There is a freedom of conscience corresponding to the freedom of God.⁹⁴²
- There is a dialectic inherent in the theological idea of freedom. The free person is –

⁹³⁹ “Die Wirkung der Reformation und besonders Martin Luthers auf die Ethik ist nicht primär in Einzelinhalten und Normen aufweisbar...Die ‘Neubau der Sittlichkeit’ (*Karl Holl*) auf Grund von Luthers Rechtfertigungsverständnis besteht nicht in einer neuen materialen Ethik, in neuen Normen, sondern in einem neuen Umgang mit dem Leben, in der Unbefangenheit und Selbständigkeit, in die hinein er das Handeln des Christen entläßt. Reformatorischer Rechtfertigungsglaube ermächtigt zu Taten der Liebe und ist insofern befreiend für die Ethik.” M. Honecker, *Einführung in die Theologische Ethik, Grundlagen und Grundbegriffe* (1990), p.288f.

⁹⁴⁰ Honecker obviously wishes to follow Luther when saying that: “Der Ansatz der Ethik Luthers erwächst aus dem Verständnis der Rechtfertigung und der darin gewährten Freiheit eines Christenmenschen. Den Schlüssel zu einer Ethik bietet das reformatorische Freiheitsverständnis. Das Handeln des Christen in der Welt ist Erweis christlicher Freiheit; es geschieht aus Dankbarkeit für die geschenkte Gnade. Diese theologische Zuordnung von Rechtfertigung und Ethik hat Konsequenzen für die Einschätzung der Guten Werke.” M. Honecker, *Einführung in die Theologische Ethik, Grundlagen und Grundbegriffe* (1990), p.285

⁹⁴¹ This also corresponds with the way *Confessio Augustana*, Article V, emphasises that the faith is given by the “*spiritus sanctus ... ubi et quando visum est Deo...*”, *Die Bekenntnisschriften der evangelisch-lutherischen Kirche* (6.Aufl.;1967), p.58.

⁹⁴² Coercive state force (as well as ecclesiastical power) is misplaced in this setting.

in a coram hominibus-perspective – morally free to be a servant.⁹⁴³ Realising the commandment of love becomes an essential manifestation of justification by faith.

Setting out from the justification by faith – as Honecker does in accordance with Luther – paves the way for a genuine “Weltfrömmigkeit”.⁹⁴⁴ Honecker sees the “world-scene”; state, society, family, labour etc. as fields where morality as well as human reason, really apply. In accordance with Confessio Augustana; Honecker clearly realises that it is required “in talibus ordinationibus exercere caritatem”.⁹⁴⁵ But within a worldly framework such aspects as social change, historicity, the limits of reason and the provisional character of the political as such cannot be neglected.⁹⁴⁶ A morality, reflecting Christian freedom, might therefore very appropriately take the shape of “... einen altruistischen Utilitarismus”.⁹⁴⁷

“Der Mensch ist vor Gott als Mensch allein durch die Verheißung bestimmt. Allein das Wort macht Gewissen und Seele frei; kein äußeres Werk vermag solche Freiheit zu gewähren. Die innerliche Freiheit äußert sich dann in guten Werken. Maßstab des guten Werken ist der Nutzen des Mitmenschen, nicht die Vergewisserung der eigenen Seligkeit und Frömmigkeit.”⁹⁴⁸

Then Honecker, referring to St. Paul, makes it quite clear that an eschatological (relativising) perspective on the political domain and on the duties we have as citizens “erlaubt bei Paulus keine Vernachlässigung und Mißachtung der Bürgerpflichten.”⁹⁴⁹

Christians can be supposed to be co-operating members of society with an orientation towards “der Nutzen des Mitmenschen.” Honecker is, however, aware of the fact that the Lutheran church might rightly have been accused of furthering a certain political

⁹⁴³ This dialectic is made obvious by Luther in the two sentences so frequently quoted: “Ein Christenmensch ist ein freier Herr über alle Dinge und niemand untertan. Ein Christenmensch ist ein dienstbarer Knecht aller Dinge und jedermann untertan.” *Von der Freiheit eines Christenmenschen* (1520), (Calwer Luther-Ausgabe; Band 4; 1965), p.162.

⁹⁴⁴ What concerns the term “Weltfrömmigkeit” cf. M. Honecker, *Einführung in die Theologische Ethik, Grundlagen und Grundbegriffe* (1990), p. 286.

⁹⁴⁵ *Die Bekenntnisschriften der evangelisch-lutherischen Kirche* (6.Aufl.;1967), p. 71. (CA. XVI).

⁹⁴⁶ “Die reformatorische Orientierung der Ethik an Vernunft und Humanität, am primus usus legis, verpflichtet andererseits das Ethos zur Sachlichkeit und Nüchternheit und ermöglicht es, die Geschichtlichkeit der Welt und damit auch die Wandlungen von Sitte und Kultur anzunehmen. Die theologische Ethik kann dann mit gutem Gewissen pragmatisch und offen verfahren.” M. Honecker, *Einführung in die Theologische Ethik, Grundlagen und Grundbegriffe* (1990), p. 287.

⁹⁴⁷ M. Honecker, *Einführung in die Theologische Ethik, Grundlagen und Grundbegriffe* (1990), p.285.

⁹⁴⁸ M. Honecker, *Einführung in die Theologische Ethik, Grundlagen und Grundbegriffe* (1990), p.285. Honecker can also emphasise that the freedom of Christians will be transformed into a “kommunikative Freiheit”. *Ibid.*

⁹⁴⁹ M. Honecker, *Grundriß der Sozialethik* (1995), p.307f.

“quietism” and even of promoting a general aversion against social change. And he admits that sometimes one might find an affinity towards double-morality within Lutheran political ethics as a result of separating too sharply between religious faith and political reason.⁹⁵⁰ This might also contribute to a more general loosening of the ties between politics and morality. Honecker is fully aware of the great problems that a separation between religious moral doctrines and merely political and rational ideas has caused.⁹⁵¹ There is certainly no moral-free domain, but the moral commitment may nonetheless be articulated differently within different frameworks, since the constraints on human activity cannot be the same in all roles and within all domains.⁹⁵²

Even if an eschatological perspective should not be turned into a “programmatic doctrine” for the political domain, it cannot be ignored when Christian citizens are engaging in matters of social ethics and politics. The existence of a tension between the divine eschaton and realistic political ends, may well cause people to feel a deep uneasiness

⁹⁵⁰ “Gegen Luthers Ethik und vor allem gegen das Luthertum wird der Vorwurf des Quietismus, des Konservatismus und der Doppelmoral erhoben. Besonders *Ernst Troeltsch* (in den “Soziallehren”) und, seine Argumente aufnehmend, *Karl Barth* haben das Luthertum kritisiert...”, M. Honecker, *Einführung in die Theologische Ethik, Grundlagen und Grundbegriffe* (1990), p.287.

⁹⁵¹ “Die Trennung von Glaube und Politik ließ überdies zu, den neuzeitlichen Macht- und Gewaltstaat zu legitimieren. Der Preis einer ‘Weltfrömmigkeit’ ist dann eine Verinnerlichung des Ethos, welche nur noch ein persönliches Gewissen, aber keine allgemeine, öffentliche Moral mehr kennt.” M. Honecker, *Einführung in die Theologische Ethik, Grundlagen und Grundbegriffe* (1990), p. 287.

⁹⁵² In 1526 Luther wrote a book that might be of some interest for the subject I am considering now: *Ob Kriegsleute auch in seligem Stande sein können*, Band 4 der *Calwer Luther-Ausgabe* (1965). (Cf. WA Band 19, p623ff). At this time the threat from the Islamic world, represented by the Turks, was immense. But even more it seemed as if the rebellion of the peasants in Germany in 1525 troubled Luther. Could Christians who were bound to love their neighbours and even their enemies, take part in the war against the Turks or even in the rebellion against unjust electoral princes? Luther solved this problem, at least partly, by distinguishing between “Amt und Person”, and between two kinds of justice: “Erstens ist der Unterschied ins Auge zu fassen, daß Amt und Person (oder: Werk und Täter) zweierlei ist. Denn es kann wohl ein Amt oder Werk gut und recht sein, wenn man es für sich selbst nimmt, und doch ist es böse und unrecht, wenn die Person oder der Täter nicht gut oder recht ist oder es nicht recht ausführt. Ein Richteramt ist ein köstliches, göttliches Amt, gleichviel, ob es sich um den Richter mit dem Mund handelt oder um den Richter mit der Faust, den man den Scharfrichter heißt. ... Ebenso ist es auch mit dem Kriegsstand, - Amt oder -Werk: für sich selbst genommen ist es recht und göttlich; aber es ist darauf zu sehen, daß die Person es auch ist, die dazu gehören und rechtschaffen sein soll ... Zweitens mache ich hier den Vorbehalt, daß ich diesmal nicht von der Gerechtigkeit rede, welche die Person vor Gott rechtschaffen macht. Das tut ja allein der Glaube an Jesus Christus, der ohn all unser Werk und Verdienst aus lauter Gottesgnade geschenkt und gegeben wird, wie ich das sonst schon so oft und manchmal geschrieben und gelehrt habe. Vielmehr rede ich hier von der äußerlichen Gerechtigkeit, die in den Ämtern und Werken steht und geht. D.h., um es ganz deutlich zu sagen: Ich handle hier von der Frage: Kann es der christliche Glaube, um dessentwillen wir von Gott für gerecht angesehen werden, auch neben sich ertragen, daß ich ein Krieger bin, Krieg führe, wüрге und steche, raube und brenne, wie man dem Feind in Kriegsläufen nach Kriegsrecht tut? Ist dieses Werk auch Sünde oder Unrecht, worüber man sich vor Gott ein Gewissen machen muß? Oder darf ein Christ keins von diesen Werken tun, sondern allein wohl tun, lieben, niemand würgen oder in Schaden bringen?” *Calwer Luther-Ausgabe* (Band 4,1965), p.62f. According to Luther a Christian could be a soldier, but he was not allowed to participate in the revolt against state-authorities.

when concerned with public affairs and raises the question of how to harmonise ones' multiple loyalties. Even if the problem should expectedly be less acute in *liberal* societies, with their greater emphasis on citizens' freedom of conscience and their personal liberty, it cannot entirely be removed. In Rawlsian terminology the tension depends on the fact that citizens are supposed to affirm simultaneously *both* a comprehensive doctrine *and* a focal political conception. And this has to be taken properly into account even when aiming for an overlapping consensus.⁹⁵³

6.2.3. Christian confession in political affairs

In a liberal society the comprehensive doctrine one honours and the political conception one has should be “somehow related”⁹⁵⁴, which, according to Rawls, implies that a comprehensive doctrine can normally be assumed to be reasonably co-operative and tolerant. As already suggested, however, it might be objected that this attempt to harmonise comprehensive Christian doctrines with a conception of political liberalism largely ignores the eschatological perspective which throws the very scheme of this world into relief. This objection is also raised against Protestant churches in Germany, which have interfered in public reasoning by the means of so called “Denkschriften”, – with their implicit assumptions about the public role of the churches:

“Der Einwand gegen diese Auffassung des Verhältnisses von Kirche und Öffentlichkeit lautet, sie bringe das christliche Bekenntnis in der Welt nicht zureichend zur Geltung und sei zu sehr auf Verständigungsmöglichkeiten zwischen Kirche und Gesellschaft bedacht, statt die eschatologische, prinzipielle Differenz zwischen Kirche und Welt zu betonen. Statt eine vernünftige pragmatische Kommunikation mit der Gesellschaft anzustreben, sollten Kirche und Christen vielmehr ein prophetisches Mandat wahrnehmen. In dieser Debatte steht also die Zuordnung von christlichem Bekenntnis und allgemeiner sittlicher Vernunft in Frage.”⁹⁵⁵

This gives Honecker an occasion to discuss the proper place of the Christian confession within the forum of the public, – in matters of politics and social ethics. Even if he might be personally critical of the way the church has interfered in the public debate through “Denkschriften”, the objection referred to above might also apply to Honecker's own theories, since he too finds a reasonable and pragmatic approach in matters of pol-

⁹⁵³ Thus it is underlined by Rawls “that, in an ideal overlapping consensus, each citizen affirms both a comprehensive doctrine and the focal political conception, somehow related.” J. Rawls, *Political Liberalism* (1993), p.xix.

⁹⁵⁴ J. Rawls, *Political Liberalism* (1993), p.xix.

itics and social ethics largely recommendable. But sometimes a reasonable and pragmatic attitude seems impossible. This may be the case if a *liberal* society opens up for a practice which appears to be at odds with central moral principles in the comprehensive doctrine one honours. The problem was clearly manifested in the debate over the liberalisation of the abortion law (especially in the ninety seventies). Many Christians and churches massively opposed the liberalisation of the law since they were of the opinion that the unborn child was being deprived of a protection by law that the state authorities should provide. In this connection I find it appropriate to consider two questions that Honecker himself raises:

- Can political and social-ethical issues bring Christians into a status confessionis?
- How can eventually political decisions properly be characterised as heretical?

It seems as if there are certain moral and political issues, which might bring Christians into a “status confessionis”, forcing them to stand up against lawmakers and majority-decisions in questions of the utmost importance. Social and political peace and co-operation obviously has its limits. And this raised the question of status confessionis in matters of the greatest moral (and political) significance.

By making a political and moral question an issue of status confessionis the church demonstrates that there are elementary norms and fundamental values which are so closely connected to the Christian perspective on God, world and man, that one cannot submit to the moral judgement of influential groups or political authorities. Making something a matter of status confessionis is to use “die schärfste Alarmglocke”⁹⁵⁶, which can be used by the church.

As far as I can see Honecker does not entirely rule out the possibility that the Church might consider a moral-political issue a matter of status confessionis, but he nevertheless concentrates mainly on the many good reasons for not choosing this course.

- The phrase “status confessionis” give in itself the impression that it refers to something extraordinary.⁹⁵⁷ But confessing Christ should be the *normal* state of a Chris-

⁹⁵⁵ M. Honecker, *Grundriß der Sozialethik* (1995), p.662.

⁹⁵⁶ The phrase, which is taken from Bishop Lohse, is quoted by Honecker; *Grundriß der Sozialethik* (1995), p.663.

⁹⁵⁷ By quoting Martin Schloemann (“Der besondere Bekenntnisfall: Politik als Glaubenssache?”). Ed. E. Lorenz, Erlangen 1983, pp.48-98), Honecker “schlüsselt die Vielfalt der Möglichkeiten, den status con-

tian, in modern societies as well as in ancient societies. Confession in a theological perspective should most properly be used about the praising of God, – foremost in the services of the church.

- One might, nevertheless, appropriately distinguish between the normal state of making one’s faith publicly known and the more extraordinary cases, sometimes characterised by Honecker as “casus confessionis”.⁹⁵⁸ In times characterised by persecution, when the temptation to deny Christ is near at hand, it is quite clear what is to be confessed, – and what the costs are.⁹⁵⁹
- One reason why one should normally not make political issues a matter of “status confessionis” or a “casus confessionis”, is that political situations are seldom very clear but often extremely ambiguous and complex.⁹⁶⁰
- There is a fundamental distinction to be made in this context: From a theological

fessionis zu verstehen, auf: ‘Zustand des Bekennens – Zustand, der Bekenntnis fordert – Notstand des Bekennens – Situation oder Zeit der Entscheidung (z.B. über Verrat oder Verlust des Glaubens, über Abbruch der Kirchengemeinschaft) – Verteidigungsstellung (hinter die man dogmatisch oder kirchenpolitisch nicht zurück kann) – status quo, (der besser ist als mögliche Änderungen) – kritischer Punkt, an dem man Stellung beziehen muß – der Punkt, an dem man zeigen muß, wo man steht – die Stellungnahme selbst – der in bestimmten Situationen eingenommene Standpunkt – der Glaubensstandpunkt, an dem, die Toleranz ihre Grenze findet – der zentrale Punkt, mit dem alles steht oder fällt – die ‘Sollbruchstelle’ – das kompromißlose Eintreten für eine Position, die die Substanz des Glaubens berührt – der Punkt, da man widerstehen muß – der Vollzug des Widerstandes selbst – der Punkt, wo man für jemanden etwas einstehen muß – der Vollzug des Einstehens selbst – das Abstandnehmen von jemand/etwas (Aufkündigung oder Versagen von Gemeinschaft) – das persönlich/gemeinschaftliche Gestelltsein – das Feststehen im Glauben – das Stehen in (letzter) Verantwortung – der besondere Stand eines zum Bekennen Berufenen – der Bewußtseinszustand dessen, der bekennt (auf den man schaut, der möglicherweise oder mit Sicherheit ein Martyrium erwartet) – das Bestehen einer Situation, in der man in letzter Hinsicht auf die Probe gestellt ist (in der man das Heil verlieren kann) usw.’” M. Honecker, *Grundriß der Sozialethik* (1995), p.669f

⁹⁵⁸ This is defined by Honecker as :”Besonderes Bekenntnisfall’. Casus confessionis – ein außergewöhnlicher, extra-ordinärer Bekenntnisfall, die Ausnahmesituation.” M. Honecker, *Grundriß der Sozialethik* (1995), p.664. The phrase “casus confessionis” is according to Honecker used for the first time in the Formula Concordiae (Ep. X) in connection with the discussion of the problem of “adiaphora”. “Im Adiaphoristischen Streit forderte der Gnesiolutheraner *Matthias Flacius* ‘nil est adiaphoron in casu confessionis et scandali’”. Cf. M. Honecker, *Grundriß der Sozialethik* (1995), p.664.

⁹⁵⁹ What Honecker especially has in mind “... ist der Fall besonderen Bekennens, nämlich in Situationen der Verfolgung und der Gefährdung der Eindeutigkeit des Evangeliums.” M. Honecker, *Grundriß der Sozialethik* (1995), p.670. But the question still remains: “Kann man den status confessionis auf *ethische* Fragen beziehen? Ethisches Versagen ist zweifellos Sünde, Unrecht. Aber ist Sünde zugleich auch Verleugnung des Bekenntnisses? The way Honecker asks, suggests that he is sceptical of making political or ethical issues a question of confession.

⁹⁶⁰ The nature of the political has a complexity which should even not be removed by mere confession. This would mean to introduce a perspective of unambiguity that is often at odds with the nature of the political. However, there might also be some moral-political issues that are quite clear, when seen in a Christian perspective. Bonhoeffer for instance stressed that the church, from the moment when mission among the Jews was forbidden, found itself “in statu confessionis”. Cf. D.Bonhoeffer, “Die Kirche vor der

perspective it is necessary to distinguish between “opus dei” and “opus hominis”, thereby stressing that faith is entirely borne by an “opus dei”. What characterises the “opus hominis”, in its ambiguity, is that it can “nur ein indirektes Bekenntnis zu Gott und ein Zeugnis und Zeichen des Glaubens sein, der durch Handeln nicht eindeutig auszuweisen ist.”⁹⁶¹

- Theological social ethics cannot ignore the fact that an appeal to an indisputable obligation which raises a *status confessionis* – without an attempt to meet the Rawlsian proviso – would most likely undermine the *shared* basis for political coexistence and social co-operation.
- Political authorities can at least expect from the Church that it is very careful making a political case a “*casus confessionis*”, thereby imposing on persons a very strong obligation to adopt particular social-ethical standpoints or resist certain *political* decisions. On the other side can the church expect from liberal societies that they as far as possible avoid provoking the kind of dilemma that might lead citizens into a “*status confessionis*”.
- Just as the Church should be careful in defining a case as a “*casus confessionis*”, according to Honecker, it should normally also avoid characterising decisions in matters of politics or social ethics as “heretical”, thereby making the gospel an unambiguous criterion for right political practice. It would be politically very problematic, just as it would normally be theologically dubious if one made political practice a decisive criterion of right faith, thereby testing citizens’ willingness to abide by the truth of the gospel. It is necessary to have in mind that “Häretiker leugnet keine beliebige, sondern eine fundamentale Glaubenswharheit, und zwar hartnäckig (‘*pertinaciter*’), nach Belehrung. Bei diesen Merkmalen geht es um der

Judenfrage” (15. April 1933, *Gesammelte Schriften II*, 1959, p.44-53).

⁹⁶¹ “Das Christusbekenntnis ist ein Glaubensbekenntnis. ... Dabei gilt es, die reformatorische Unterscheidung von Glaube und Werken, vom Bekenntnis zur Tat Gottes als Heilstat (*opus dei*) und dem Einstehen von Christen für das Gerechte in der Welt, also die Wahrnehmung ethischer Verantwortung (*opus hominis*) zu unterscheiden. Das Bekenntnis des Glaubens ist Grundvoraussetzung allen Tuns der Christen und damit auch christlicher Ethik. Dieses Bekenntnis geschieht aber zunächst in der Kirche; es hat ekklesiologische Relevanz und stiftet Gemeinschaft in der Kirche. Diese Gemeinschaft hat feilich dann Folgen für den ‘Lebensgottesdienst’. Aber der Lebensgottesdienst ist nicht einfach unmittelbare, direkte Anwendung des Glaubens, sondern er hat sich eigenständig, mit Hilfe der Vernunft, am Nutzen und Bedürfnis der Mitmenschen auszurichten. Dies besagt auch die Unterscheidung von Gesetz und Evangelium.” M. Honecker, *Grundriß der Sozialethik* (1995), p. 675f. From this also follows that Honecker can be very critical of the ecumenical “Programmsatz ‘Die Lehre trenn, das Dienen eint’.” Cf. M. Honecker, *Grundriß der Sozialethik* (1995), p.674.

Heil.”⁹⁶² This is a crucial insight.

As far as I can see this does not mean that one can entirely exclude the possibility that certain political decisions and social arrangements within modern liberal societies can bring the church into a genuine status confessionis. There might be extreme-situations where political decisions, basic issues of humanity and religious concerns cannot and should not be kept apart, – as in the case where mission among Jews were forbidden by the Nazi-authorities. Thus a church should always be prepared to deal adequately with such extreme-cases.⁹⁶³ But for normal cases Honecker’s conclusion seems plausible:

“Die Vielschichtigkeit des Bekenntnisverständnisses, die Mehrdeutigkeit der Formel status confessionis und die Problematik des Begriffes ‘ethische Häresie’ lassen es nicht ratsam erscheinen, zwischen Bekenntnis und Ethik einen *unmittelbaren* Zusammenhang zu sehen. Die Berufung auf das Bekenntnis bei politischen und ethischen Urteilen trägt die Gefahr ideologischer Legitimation in sich. Ethische Entscheidungen und Urteile sind in der Regel vernünftig, nach Kriterien des Sachgerechten, zu begründen; sie setzen Situationsanalysen voraus und sind nur in Grenzfällen Glaubensentscheidungen, Gewissensentscheidungen aus letzter Bindung an Gott.”⁹⁶⁴

Let me conclude as follows: Christian faith opens up for a genuine “Weltfrömmigkeit”.⁹⁶⁵ The confession to God in Christ can be assumed to have a strong motivating

⁹⁶² One might say that it is the essential “ground-consensus” of the church, which is endangered in heresy. But “Kirchengemeinschaft setzt nicht notwendig den politisch-ethischen Konsensus voraus. ‘Ethische Häresie’ beim Wort genommen, würde heißen: Der politisch Andersdenkende, auch der Irrende wird in der Kriche nicht mehr geduldet. Der Häresievorwurf enthält damit eine ideologische Verurteilung und zieht eine schroffe ekklesiologische Konsequenz aus bedingungsloser Parteilichkeit.” M. Honecker, *Grundriß der Sozialethik* (1995), p.677. Let it also be added here that one should distinguish between heresy and apostasy. A liberal society must fully respect individuals’ right to leave their church and their confession freely, while they should simultaneously respect the right of churches to protect themselves (with acceptable means) from heresy.

⁹⁶³ This presupposes within the church and among Christians a clarity about the premises for their participation in political, social and co-operative ventures within the framework of modern society. Rawls seems to take for granted that there is within churches and among religious citizens such a self-consciousness, when he sets out for an overlapping consensus that can be endorsed “from within” different reasonable (religious) doctrines.

⁹⁶⁴ M. Honecker, *Grundriß der Sozialethik* (1995), p.677.

⁹⁶⁵ Once more I refer to the term “Weltfrömmigkeit”, used by M. Honecker (*Einführung in die Theologische Ethik, Grundlagen und Grundbegriffe*, 1990, p. 286) which is more thoroughly explained by Honecker as follows: “Aus Luthers theologischen Neuanatz folgt ein bestimmter *Lebensstil*. Die Einstellung zur Welt kann man “Weltfrömmigkeit” nennen. Der Glaube ermöglicht einen unbefangenen Umgang mit der Welt. Die Einzelanweisungen Luthers zu ethischen Fragen seiner Zeit waren zeitbezogen. Luther war kein Theoretiker der Ethik, sondern weithin ein seelsorgerlich bestimmter Ratgeber. Deshalb sind auch seine konkreten Empfehlungen kontextabhängig. Dies ist zu berücksichtigen im Blick auf seine z.T. sehr problematischen Stellungnahmen und Äußerungen zu politischen und sozialen Problemen (z.B. zum Bauernkrieg, zur Toleranz, über die Juden) wie auch auf die individualethischen Ratschläge, vor allem zum Verhalten in der Ehe und Sexualität. Auch die sogenannte Zweireichelehre enthielt kein geschlossenes sozialethisches Prinzip. Die Weltlichkeit des reformatorischen Ethos prägt gleichwohl das bürger-

force towards responsible participation in social co-operation.” Participation in the domain of the political and in the forum of the public, requires a certain discipline, a willingness to comply with certain constraints.

There is a way of disciplining thoughts, arguments, reasoning and actions following from our living together within the shared institutional scheme of (a constitutional democratic and liberal) society. While the constraints on social co-operation and political coexistence within the modern liberal society might differ in essential respects from the kind of restraints imposed by the societies within which St.Paul or Luther lived, some constraints are in any case required in any and all societies. The liberty of individuals might be limited, even by the use of state-power, for the sake of the liberty of their co-citizens. There is, for example, no freedom to oppress others. And, moreover, as we have already suggested, public reason (debate) requires that the public arguments one advances be subject to a certain disciplined structuring; They should be such that they can be understood and in principle justified to every reasonable person (although not necessarily accepted by them). This also means that one should – for theological as well as political reasons – be careful striking “die schärfste Alarnglocke” in public affairs of great complexity⁹⁶⁶, thereby provoking the most irreconcilable conflict.

6.3. A matter of self-restraint?

It is not theologically problematic to assume that human beings, as coexisting social beings within the framework of a political society, have to accept certain constraints on their “freedom” set by legitimate state-authorities. One finds this central idea already stressed in Rom.13,1-7. And it is implied in the theological understanding of an “*usus politicus legis*”.

In modern liberal democracies, however, the necessity of imposing on the members of

liche Leben. Politik und Wirtschaft werden von klerikaler Bevormundung freigesetzt.” Two things are well worth noticing here: **1)** Luther (as well as Honecker) makes it quite clear that one can do without a casuistry very much elaborated and imposed by the clergy, **2)** The risk of making mistakes cannot be removed in ethics (cf. the Rawlsian idea of the “the burdens of judgment”). But Honecker also reminds us of the elementary point of departure which Luther has taken in matters of social ethics: “Der Mensch kann in der Welt Mitarbeiter Gottes, cooperator dei sein. Die zweite Tafel des Dekalogs enthält Maßstäbe, Kriterien für die Gestaltung des menschlichen Zusammenleben.” *Ibid.* p.286.

⁹⁶⁶ As mentioned Honecker makes use of this phrase which I find very appropriate in this connection. *Grundriß der Sozialethik* (1995), p.663. Striking “die schärfste Alarnglocke” in political affairs might be considered especially problematic in liberal democracies if it is not argumentatively backed up or publicly

society certain “constraints” on their freedom, is – as already suggested – turned into an idea of free and equal citizens imposing on themselves certain restraints as part of a duty of civility. Self-restraint means to impose on one-self certain restrictions required by all parties participating in public reasoning and social co-operation on terms which can be widely approvable, taking into account that they have an obligation to justify their decisions to one another. Thus the notion of self-restraint used as a political virtue implies a readiness to meet the demands of public reason and avoid direct reference to comprehensive reasons based on an insight that is not similarly accessible to all parties. Converting the idea of required political constraints into an idea of “self-restraint” as part of a duty of civility is, however, not unproblematic.

The idea of practising the required self-restraint for the sake of social co-operation within the shared institutional scheme of a democratic society, and the readiness to justify to others the standpoints one takes in matters of public interest, presuppose that there is an agreed basis for the justification of political standpoints and for social co-operation. In other words: there has to be an “overlapping consensus” providing us with a shared platform for public reasoning and setting the premises for complying with our duty of civility.

A kind of “self-discipline”, which is morally motivated through an idea of fair social co-operation, can hardly be avoided by responsible persons in modern pluralist societies, where people have to find reasonable ways of coexisting. If social co-operation shall succeed, one cannot allow competing interests, private ends and endless disagreement to take an upper hand when concerned with the very terms of coexistence. (That would be a relapse into a Hobbesian state of nature). Thus *self-restraint* seems to some extent recommendable in pluralist societies, although there might be a certain price following from introducing standards of social co-operation, since some individual ideals, private goals, controversial standpoints, and particular doctrines cannot be stressed and may even be modified and adjusted in the light of shared values, common standards and widely acceptable interests. For instance the forum of the public can never serve as a platform for advancing “esoteric reasons” and strictly private interests. Instead citizens are expected to avoid to a wide extent reference to non-shared premises, non-accessible

justified, as is required in the Rawlsian proviso and presupposed by the idea of public reason inherent in political liberalism.

grounds and merely private convictions, – at least when common issues of basic justice, constitutional essentials and public welfare are at the stake. The problem is, however, that the kind of self-limitation that liberals like Rawls seem to presuppose in matters of public interest, might very soon imply that people are expected to give up something that is essential to them.

The American professor of law, **Kent Greenawalt**, has clearly shown that serious conflicts between religious convictions and the claim for self-restraint inherent in a duty of civility, might arise even in modern liberal societies. Liberal societies should normally be supposed to provide the best framework for people to conduct their lives both as good citizens and as loyal Christians. Toleration and respect for elementary (religious) rights and fundamental liberties should namely be taken as essential values within this kind of societies. Greenawalt provides, however, an in depth and subtle discussion of the dilemmas that might nevertheless occur. In this respect one might refer to his two books:

“Religious Convictions and Political Choice” (1988)

“Private Consciences and Public Reasons” (1995)

According to Greenawalt it seems plausible to assume that there must at least be a minimum of conformity between a person’s deepest moral convictions and conceptions of the good on the one hand and the standpoints and activity required by a political duty of citizenship on the other hand.⁹⁶⁷ Greenawalt is somewhat critical of drawing a hard and fast distinction between non-public religious reasons and public reason⁹⁶⁸, thus he asks:

“What grounds are proper for people making political decisions and arguments within a liberal democracy? Should public reasons be more limited than all that properly counts in private conscience? Should officials, and even ordinary citizens, restrain themselves from relying in public politics on some grounds that appropriately influence them in their private lives and within their nonpublic associations? Do fairness, cohesiveness, and stability suggest that such self-restraint is desirable?”⁹⁶⁹

Even if Rawls, as we meet him in *Political Liberalism*, just as Greenawalt, emphasises

⁹⁶⁷ I suppose that it follows from this that Greenawalt could not approve of the most radical ways of separating theologially between two “regiments”.

⁹⁶⁸ It seems as if Greenawalt fears that the idea of public reason, as *originally* unfolded by Rawls, should in fact tend to rule out all grounds resting on particular comprehensive views. Religious grounds might then per definitionem be taken as “excluded grounds”.

that non-public reasons cannot be allowed to undermine public reason, in matters concerning basic justice and the institutional premises for coexistence, there are still some great problems to be clarified. Let it be admitted that the greater the shared political problems of society are, the more urgent it seems for the citizens to maintain a fundamental commitment to common reason as a *shared* basis of communication, justification and co-operation. For Christians and for churches this obviously means that one has to undertake the effort of making one's own arguments publicly accessible (although not necessarily acceptable). There can be no doubt that Kent Greenawalt accepts that a principle of self-restraint – as inherent in the idea of a civic duty⁹⁷⁰ – should be considered a vital part of citizenship within liberal societies, where people have to find reasonable ways of coexisting in spite of radical diversity. The main-problem for Greenawalt, however, is how radical this kind of self-restraint should appropriately be and to what extent such self-restraint might cause conflicts of loyalty that seriously threaten a persons sense of moral integrity. And therefore he asks: “Can someone engage in such self-restraint and remain true to his or her larger conceptions of how we should live?”⁹⁷¹

The answer to these questions depends on what “self-restraint” is supposed to imply within the public forum of modern pluralist democracies. I will therefore start with a paraphrase of the kinds of *recommended* restraints, that according to Greenawalt might be considered appropriate in modern (liberal) democracies⁹⁷²:

a) First there are recommendations concerning *the kinds of grounds* which citizens should most properly employ when entering the forum of public reason.⁹⁷³ Normally

⁹⁶⁹ K.Greenawalt, *Private Consciences and Public Reasons* (1995), p.4.

⁹⁷⁰ I take Greenawalt's term “civic duty” and Rawls' term “duty of civility” to be interchangeable.

⁹⁷¹ K.Greenawalt, *Private Consciences and Public Reasons* (1995), p.4. Already the title of Greenawalt's book from 1995 indicates that the problem for Greenawalt is the rather sharp distinction between “public” and “private”, a distinction which he means to find in the (former) conception of Rawls. Greenawalt does not intend to give a broad philosophical analysis of the distinction as such, neither does he aim at solving the problem theologically, but through many examples he shows that the public and the private (or more in accordance with Rawls: the non-public) are intertwined in many ways, both on a principled level and in practice. The two are related in complex patterns on many different levels. And Greenawalt aims at a reasonable way of meeting this complex problem adequately. However, the main question can sometimes even be formulated in a very principled way by Greenawalt: “Is political truth intricately related to religious truth or does it have some independent place?”. *Ibid.*, p.121.

⁹⁷² Let me insert that I am not treating the different kinds of recommended restraints in the same order as Greenawalt.

⁹⁷³ Rawls for his part is concerned not just with discourse as such when entering the public forum. Reasons (which might be considered correct or incorrect) are to be given, decisions have to be taken, laws settled, political and social institutions justified. Rawls makes it clear that: “We are concerned with reason, not simply with discourse. A way of reasoning, then, must incorporate the fundamental concepts

citizens cannot expect to draw exclusively on so called non-accessible grounds, i.e. grounds derived from comprehensive views, or particular religious sources, or private ideas of the good, or some combination of these.

b) It is, however, still a question *to what extent* reliance on so called non-accessible grounds should be avoided. As I have already made clear Rawls has more recently taken a more inclusive attitude in strictly public affairs than he did before, provided the “Rawlsian proviso” is fulfilled. And Greenawalt can stress that particular religious grounds might sometimes permissibly influence and strengthen other arguments within the forum of public reason. As far as I can see, Greenawalt and Rawls have in fact come closer to one another in recent time.

c) It also seems plausible to claim that the significance of practising self-restraint will depend on *the proper ranging* of the subjects to be considered. The greater the public significance of an issue, and the greater the shared interest in society as a whole, the more important is it to avoid drawing heavily on merely “esoteric” grounds or strictly private reasons. This is the reason why the issue of self-restraint is so clearly stressed when questions of fundamental justice and constitutional essentials are at stake.⁹⁷⁴ In this I see no great difference between Greenawalt and Rawls.

d) In addition it is important to underline that *persons in different social roles and settings might be differently affected* by a duty of self-restraint. Very often, however, Greenawalt concentrates on both “officials and (ordinary) citizens”, thereby signalling that he is concerned both with the kind of self-restraint implied in citizenship more generally, and with the special problems of officials (judges, legislators etc.), who may have a strong religious/moral commitment. But primarily Greenawalt is concerned with the latter perspective. The persons who should be especially careful using (or relying on) “non-accessible reasons” include first of all judges, legislators and executive state-servants, – when acting officially. In a weaker sense, however, citizens can generally also be expected to practice self-restraint when taking part in common political life and engaging in different social fora.

and principles of reason, and include standards of correctness and criteria of justification.” J. Rawls, *Political Liberalism* (1993), p.220.

⁹⁷⁴ Let me recall that according to Rawls there is in civil society as such no reason to introduce a strong self-restraint what concerns reference to non-public arguments. There are a lot of issues where religious or ideological perspectives should be considered very relevant and should freely be referred to.

e) It might also be a question which *kinds of activity* should be covered by a duty of civility. Is it the argument itself within a strictly public forum that has to be restricted? Or is it the reliance on religious or other “nonpublic” grounds that should better be ruled out when decisions are to be made in matters concerning basic justice and constitutional essentials? It seems obvious that it would violate a duty of civility in modern democratic and pluralist societies if, for example, a judge in such a society attempted to legitimate his court rulings solely by appeals to Sharia, or if a parliamentarian were to take divine revelation of the Bible as exclusive and decisive source for settling legislative issues.

Usually self-restraint means that one deliberately limits the *reference to* so-called non-accessible grounds in the forum of public reason. But as can be seen in the 5th bullet-point above, self-restraint might also be more radical, implying that one should not *rely on* non-accessible reasons, which are thereby in fact converted into “excluded grounds”. A society demanding radical self-restraint not just in the *use* of religious grounds but also concerning the *reliance* on religious grounds in matters of public interest might easily turn out to be illiberal, interfering in the forum of conscience. This might admittedly be a difficult issue. Rawls – and Honecker as well – very much accept that citizens are relying on the comprehensive doctrine they honour, in so far as they are decisively motivated by it when entering the public forum, and not least when sticking by an overlapping consensus. But in so far as public affairs are substantially interpreted and influenced – at least for a great part – by the comprehensive doctrine one honours, religious grounds may be openly introduced, provided the Rawlsian proviso is to be satisfied. Opportunism might be the result if the arguments *used* publicly are others than the comprehensive grounds upon which we are really relying. And as far as I can see this is to a wide extent taken into account by Rawls too, at least in his recent writings, both in the so-called “proviso”, and in the idea of an overlapping consensus supported *from within* the different comprehensive doctrines. A *from within*-principle as elaborated by Rawls is required if one shall escape both an ignoring of religious grounds and a tactical rationalising of them.

An ideal of self-restraint in public affairs, is in itself supposed to be morally supported by the religious doctrine people are honouring, provided the doctrine is reasonable. This means that citizens can be expected to practise a duty of citizenship not so much in spite

of their religious conviction as because of it. That such an approach should be possible, is Rawls' main assumption and hope, clearly expressed in his recent writings. It seems as if Rawls now, much in accordance with Greenawalt, very decisively takes into account that there are bonds between people's deeper (religious) commitment and the political conceptions they go for that it is better not to disguise for tactical or for similar reasons.

If "self-restraint", among other things, really means to abstain from appeals to reasons and justificatory arguments that invoke a knowledge (and a religious insight) that other citizens do not have or cannot reasonably acquire, then the principle of self-restraint should be taken as an essential part of the Rawlsian fairness-argument. Society, seen as a fair system of co-operation based on equal citizenship, has as underlined, to be grounded on elementary principles of *reciprocity*, while suspending the reciprocal perspective might pave the way for some privileged groups to impose on society as a whole their own particular values (for instance by the means of the coercive state-powers). The reciprocity-argument should therefore be considered the core of all principles of reasonable self-restraint. As made clear in the previous chapter, this is a perspective on self-restraint that may be considered plausible from the Christian comprehensive view too, – with its acceptance of the reciprocity-principle manifested in the golden rule.

A principle of self-restraint concerning the use of private or non-public reasons has to be applied differently in different contexts. The tension between *public* obligation and *personal* (*private*) conviction, focused upon by Greenawalt, is resolved very differently in different contexts. When acting on behalf of legal authorities, or representing the state, or concerned with matters of fundamental justice, questions of constitutional essentials, and the organising of the basic structure of society, a principle of self-restraint should be rather strongly pursued. But there is, as suggested, obviously different settings where the principle of self-restraint might be taken to apply in a much weaker sense.⁹⁷⁵

As emphasised, political liberalism restricts the invocation of religious grounds to those public instances where the Rawlsian proviso strictly applies. The duty of civility is

⁹⁷⁵ In addition Greenawalt also mentions a *semi-public domain*, where people are not strictly representing public authorities, but are nevertheless aiming at having the greatest possible public influence. In this connection Greenawalt uses the notion "*quasi-public*". Journalists, editors and perhaps representatives of different churches belong to this group together with for instance parent's associations in school, private citizens speaking at a town-meeting etc.

therefore also given a rather narrow application. Neither Rawls nor Greenawalt would deny, however, that in a weaker sense citizens can more generally be expected to practice a certain self-restraint also in terms of the way they introduce and draw upon religious grounds and privileged insight in common affairs. Principles of reciprocity and fairness, as expressed in the proviso, also apply within the wider framework of civil society, in common reasoning and in matters of shared interest. Civil society does not merely open up for groups and associations, each with their internal reasons, but also provides us with common arenas of discourse and co-operation.

Nevertheless I think that it is very important to follow Rawls in so far as he also avoids making the duty of civility, as a virtue closely connected with public reason, a general key-norm within the field of social-ethics generally.⁹⁷⁶ There are a lot of political and social life-situations where it is better that citizens explain openly and unhindered to one another what their religious belief requires from them in matters of social ethics, although there might still be good reasons, not just political but also theological reasons, for practising to some extent a Rawlsian proviso in a reasonable way in all matters of *shared* political interest.

There can be little doubt that the Church, (not least the Lutheran church) has usually considered it legitimate, normal and important that Christians in a *reasonable* way participate in politics and fulfil their civil duties, as is for instance clearly emphasised in *Confessio Augustana*, Article XVI “De rebus civilibus”.⁹⁷⁷ Christians are expected to comply with the political scheme, standards of public reason and the political duties which are required for upholding external justice and peace. With the support of

⁹⁷⁶ Instead he underlines that: “It is imperative to realize that the idea of public reason does not apply in all political discussion of fundamental questions, but only to discussions of those questions in what I refer to as the public political forum.” J. Rawls, “The Idea of Public Reason Revisited”, *The University of Chicago Law Review* (1997;3), p.767. The narrow approach is reflected also in the ideal of public reason which is the duty of civility: “Finally, distinct from the idea of public reason ... is the *ideal* of public reason. This ideal is realized, or satisfied, whenever judges, legislators, chief executives and other government officials, as well as candidates for public office, act from and follow the idea of public reason and explain to other citizens their reasons for supporting fundamental political questions in terms of the political conception of justice that they regard as the most reasonable. In this way they fulfil what I shall call their duty of civility to one another and to other citizens.” *Ibid.*, p.768f.

⁹⁷⁷ This is even underlined in a very rough way: “De rebus civilibus docent, quod legitimae ordinationes civiles sint bona opera Dei, quod christianis liceat gerere magistratus, exercere iudicia, iudicare res ex imperatoriis et aliis praesentibus legibus, supplicia iure constituere, iure bellare, militare, lege contrahere, tenere proprium, iurare postulantibus magistratibus, ducere uxorem, nubere. Damnant Anabaptistas, qui interdunt haec civilia officia christianis”. Cf. “Confessio Augustana”, *Die Bekenntnisschriften der evangelisch-lutherischen Kirche* (6. Aufl.; 1967), p.70f.

Luther's *Disputatio de homine* (1536) Martin Honecker therefore states that "In der Verantwortung vor der Welt ist die Vernunft das höchste Vermögen und die edelste Gabe."⁹⁷⁸ But due to the fundamental limitations of reason, the existing plurality of values and the different kinds of situations we are facing, it might often be difficult to see what a duty of citizenship exactly requires.

Rawls is, however, obviously very much aware of the strong commitment inherent in religious faith and in people's personal convictions. In a Rawlsian society, therefore, the comprehensive doctrines are not supposed to come into play *beside* – but *through* public reason. This premise is fundamental for even the idea of an overlapping consensus based on the "from-within-principle". It is crucial, from a political point of view, that a political and a genuinely religious perspective are distinguished, but I think that even Rawls clearly realises that the two perspectives are also to be clearly held together, – not least when the question of fundamental political values is raised.

Discipleship and citizenship have to be held together in some coherent way. And Greenawalt seems in fact to confirm this standpoint when touching upon the question whether the justifying reasons given within the public field are to be supported by citizens deepest beliefs.

"Rawls's discussion leaves a bit uncertainty on one subject that is critical to the relation between actual grounds of decision and public justification – whether the proponent of a position must himself believe in the public justification he offers." [But Greenawalt adds:] ... "I believe that Rawls has in mind a sincere justification, one which the speaker actually credits."⁹⁷⁹

Proponents of a position may believe that their public argument is a good one irrespective of the religious conviction they have. An argument is good in its own right. Or they may believe it is good only insofar as it accords with their religious view. In both cases citizens really believe in the public justification they offer. Or the argument set forth publicly is not really a serious and decisive argument at all, it is nothing but a vicarious argument set forth solely in order to defend a conclusion mandated by religious reasons which cannot really be presented in terms of shared reason. In this case the argument cannot really be considered serious in the sense that the proponents themselves really

⁹⁷⁸ M. Honecker, "Vernunft, Gewissen, Glaube", *Evangelische Ethik. Diskussionsbeiträge zu ihrer Grundlegung und ihren Aufgaben* (1990), (Ed. H.G.Ulrich), p.132,

believe in it. Rawls should avoid the latter position when claiming that religious grounds in matters of basic justice and constitutional essentials should be expressed in terms of public reason, as specifically required by the duty of civility.

The main idea behind the duty of civility seems – at least at the first glance – plausible enough and even relatively unproblematic from a theological point of view: Given the fact of pluralism, the scheme of a well-ordered co-operative society can be maintained only if all citizens, involved in social co-operation, are ready to practice certain political virtues in public argument and conduct, showing an elementary fairness, and a willingness to explain and to listen unprejudicedly to other citizens. Thomas Pogge provides us with the following insightful explanation of Rawls' duty of civility.

“Im Falle einer politischen Gerechtigkeitskonzeption wie der Rawlsschen kommt noch hinzu, daß Bürger ganz verschiedene umfassendere Konzeptionen des Guten, also auch persönliche Werte haben, die der gerechten Entscheidung zuwider sein können. Angesichts dieser Tatsachen setzt eine wohlgeordnete Gesellschaft bestimmte *politische Tugenden* voraus: In ihren politischen Auseinandersetzungen wollen Bürger fair miteinander umgehen, sachbezogen argumentieren und auf die Argumente anderer eingehen. Sie wollen einander Vertrauen, Respekt und Toleranz entgegenbringen, und bereit sein, einander ein Stück entgegenzukommen. Sie wollen alles daransetzen, die Behebung vermeintlicher Ungerechtigkeiten im Rahmen der politischen Spielregeln zu verfolgen. In einer durch eine politische Gerechtigkeitskonzeption wohlgeordneten Gesellschaft nehmen diese Tugenden einen besonderen Character an durch ihre Verbindung mit der Pflicht zur Kulanz unter Bürgern. Der Inhalt dieser Pflicht wiederum wird bestimmt von der Idee des öffentlichen Vernunftgebrauchs...”⁹⁸⁰

Pogge further provides us with an example to illustrate the dilemmas that might follow from practising “self-restraint” in accordance with the duty of civility. He refers to the way the governor of New York, Mario Cuomo, has complied with the duty of civility. As a Christian, belonging to the Catholic Church, Cuomo obviously shares the very restrictive approach to *abortus provocatus* launched by the Catholic Church, while he – as a governor – simultaneously avoids recurring to those religiously motivated reasons when being in charge of his political office, – thus complying officially with a liberal abortion-law which is in all political respects correctly settled. Now he is loyal to a legitimately enacted law of abortion, even if it paves the way for a practice that is very

⁹⁷⁹ K. Greenawalt, *Private Consciences and Public Reasons*, (1995), p.112. [And he adds:] “This belief is based partly on correspondence with Rawls.”(Note 41, p.204).

⁹⁸⁰ T.W. Pogge, *John Rawls* (1994), p. 135. Pogge uses the term “Kulanzpflicht” (or “Pflicht zur Kulanz”) for the Rawlsian term “duty of civility”.

liberal and which cannot be approved of by his own church or by himself.⁹⁸¹

I refer to this example, just because I think that this kind of public conduct can be taken as an example of what practising of a duty of civility might very well entail. Pogge does not really take a standpoint on the difficult dilemma posed in the specific case of Cuomo. I think, however, that Pogge has nevertheless shown that Rawls' idea of a duty of civility may after all not be considered uncontroversial, and that a "Vermittlung" between citizens' religious and political commitment may sometimes be very problematic. It seems as if Cuomo has clearly come into conflict with the principle stressed in *Acta* 5,29: "We must obey God rather than men."⁹⁸² If a very serious conflict should arise between the two kinds of obligation that Christians have, thereby bringing them into the state characterised by Honecker as a "casus confessionis", it appears that there should be little doubt about how to set the priorities from a Christian point of view: *Religious* obligations can normally be expected to outweigh the merely *political* values that are likely to conflict with them.⁹⁸³

But this seems not to be so obvious in the Cuomo-example. He seems to consider it an inherent part of a duty of civility that citizens, and especially those holding governmental offices, should avoid sabotaging decisions, laws and rights, which are fairly settled according to agreed rules, procedures and principles, even if these decisions and laws turn out differently from what one could morally approve of oneself.⁹⁸⁴ This seems to be a plausible standpoint. But Pogge nevertheless suggests that the practising of a Rawlsian duty of civility might sometimes lead to kinds of behaviour that should cert-

⁹⁸¹ "Der Gouverneur des Staates New York, Mario Cuomo, hat vor einigen Jahren erheblich zum Verständnis dieser Möglichkeit [of practicing a duty of civility] beigetragen. Als gläubiger Katholik akzeptiert Cuomo die Gründe, die zu einer scharfen moralischen Verurteilung von Abtreibungen führen, und schließt sich persönlich dieser Verurteilung an. Trotzdem glaubt er, daß in seinem politischen Verhalten als Gouverneur diese Gründe keinerlei Rolle spielen sollten, weil sie vielen seiner Mitbürger nicht zugänglich sind und von ihnen daher vernünftigerweise abgelehnt werden können. Cuomo hat sich deshalb politisch gegen Gesetze und Maßnahmen eingesetzt, die seinen persönlichen Wertvorstellungen entsprochen hätten, weil er sich durch etwas wie die von Rawls postulierte Pflicht zur Kulanz unter Bürgern verpflichtet fühlte."

T.W. Pogge, *John Rawls* (1994), p. 138f.

⁹⁸² In the Lutheran Church this saying is given the status of a general principle. Cf. *Confessio Augustana*, art. XVI: "Itaque necessario debent christiani oboedire magistratibus suis et legibus, nisi cum iubent peccare: tunc enim magis debent oboedire Deo quam hominibus. Actum 5.29". *Die Bekenntnisschriften der evangelisch-lutherischen Kirche* (6. Aufl.;1967), p.71.

⁹⁸³ A possibility of conflict cannot be excluded since Rawls on his part takes for granted that in situations of hard cases will "political values normally outweigh whatever nonpolitical values conflict with them." J. Rawls, *Political Liberalism* (1993), p.146.

⁹⁸⁴ But of course, decisions and laws can be altered and revised just as fairly and correctly as they were once settled.

ainly be considered untenable when considered in the perspective of most comprehensive doctrines, and should most likely be rejected by most citizens as deeply unreasonable.⁹⁸⁵ At least a great deal of reflection is required if one shall see the *reasonableness* and also the *theological legitimacy* of practising a duty of civility which might end up as in the example of Cuomo, setting the deepest moral commitment one has in brackets. I shall, however, not try to solve the Cuomo-case. But I shall nevertheless, as a last part of this chapter, consider some further aspects of the case of abortion, which has in many cases so clearly strained the ideal of a duty of civility within modern and largely liberal societies.

6.4. The really hard cases

6.4.1. Two footnotes on abortion

Greenawalt agrees with Rawls that it is important to distinguish “between constitutional essentials and basic issues of justice, on the one hand, and ordinary political issues, on the other”.⁹⁸⁶ People can hardly be supposed to avoid all kinds of comprehensive and religious grounds when discussing most ordinary questions of politics and social justice. But even if Greenawalt means that Rawls manages fairly well to give plausible reasons and criteria for distinguishing between basic issues of justice and ordinary political issues, he appropriately adds that “troublesome borderline cases will be inevitable.”⁹⁸⁷ And Greenawalt himself takes as an example of such a case the problem of abortion. Has the unborn child a right to be protected by law against abortion? Or should a right to abortion rather be taken as a constitutional essential for women? And how to comply with a *law* of abortion when passed in accordance with settled procedures? If the issue of abortion is considered a question of basic justice – or even belongs to the so-called constitutional essentials – are religious values then to be disqualified?

⁹⁸⁵ Thus Pogge admits that it might be “...fraglich, ob man realistisch darauf hoffen kann, daß Menschen ihre religiöse, moralische oder philosophische Weltanschauung im Rawlschen Sinne verstehen werden. Man muß hier zugestehen, daß die eben illustrierte Einstellung *heute* bei denen, die sich überhaupt ernsthaft einer umfassenderen Lehre verpflichtet fühlen, nicht besonders verbreitet ist. Das mag aber auch daran liegen, daß diese Einstellung dem gesunden Menscheverstand nicht gerade unmittelbar verfügbar ist, sondern durch erhebliche philosophische Reflexion erarbeitet werden muß. Rawls darf also durchaus hoffen, daß diese Einstellung, wenn ihre Möglichkeit erst einmal allgemein verstanden ist, auch weitere Verbreitung finden wird.” T.W. Pogge, *John Rawls* (1994), p. 138.

⁹⁸⁶ K. Greenawalt, *Private Consciences and Public Reasons* (1995), p.118.

⁹⁸⁷ K. Greenawalt, *Private Consciences and Public Reasons* (1995), p.118.

I cannot thoroughly discuss the problem of abortion as such, but shall concentrate on problems related to the idea of public reason and the practising of a duty of civility. There is in Rawls' works no thorough analysis of the problem of abortion. It is, however, referred to in *Political Liberalism*, and I will start by quoting in extenso a footnote that has been commented and discussed upon:

“As an illustration, consider the troubled question of abortion. Suppose first that the society in question is well-ordered and that we are dealing with the normal case of mature adult women. It is best to be clear about this idealized case first; for once we are clear about it, we have a guide that helps us to think about other cases, which force us to consider exceptional circumstances. Suppose further that we consider the question in terms of these three important political values; the due respect of human life, the ordered reproduction of political society over time, including the family in some form, and finally the equality of women as equal citizens. (There are, of course, other important political values besides these). Now I believe any reasonable balance of these three values will give a woman a duly qualified right to decide whether or not to end her pregnancy during the first trimester. The reason for this is that at this early stage of pregnancy the political value of equality of women is overriding, and this right is required to give it substance and force. Other political values, if tallied in, would not, I think, affect this conclusion. A reasonable balance may allow her such a right beyond this, at least in certain circumstances. However, I do not discuss the question in general here, as I simply want to illustrate the point of the text by saying that any comprehensive doctrine that leads to a balance of political values excluding that duly qualified right in the first trimester, is to that extent unreasonable; and depending on details of its formulation, it may also be cruel and oppressive; for example, if it denied the right altogether except in the case of rape and incest. Thus, assuming that this question is either a constitutional essential or a matter of basic justice, we should go against the ideal of public reason if we voted from a comprehensive doctrine that denied this right. However, a comprehensive doctrine is not unreasonable because it leads to an unreasonable conclusion in one or even in several cases. It may still be reasonable most of the time.”⁹⁸⁸

Rawls for his part assumes that the case of abortion should be considered a question of basic justice, – maybe even a matter of essential constitutional significance. (“Thus, assuming that this question is either a constitutional essential or a matter of basic justice ...”).

And thereby he also suggests that it is a case where the ideal of public reason applies, what means that citizens should feel bound to behave according to the duty of civility. (“...we should go against the ideal of public reason if we voted from a comprehensive doctrine that denied this right.”)

⁹⁸⁸ J. Rawls, *Political Liberalism* (1993), p.243f.

This means that the parties involved should comply with the constraints of public reason when passing laws in matters of abortion.

And it also means that the duty of citizenship sets limits to how one should deal with the law, when it has become legally valid, after being correctly settled according to constitutional procedures.

These aspects are of importance, especially for citizens holding public office, but also for citizens in general and for churches and other associations with a strong moral commitment in moral-political issues like this. There might, however, be many parties wishing to behave reasonably. And it may not be easy to see why it can reasonably be claimed by Rawls “that any comprehensive doctrine that leads to a balance of political values excluding that duly qualified right in the first trimester, is to that extent unreasonable ...”

Now it is important to notice that the context within which Rawls presents us with the problem of abortion is in a discussion of some apparent difficulties with public reason. And one such problem is that some issues are obviously so difficult that “public reason fails to resolve the question.”⁹⁸⁹ Someone might then consider it reasonable that citizens utilise non-political values and invoke the ultimate principles provided by their comprehensive views.⁹⁹⁰ But this, Rawls claims, is not a proper solution when there is deep disagreement in matters of basic justice and constitutional essentials. It would in fact imply suspending public reason entirely⁹⁹¹ since we would give up the crucial premise that public reasoning has to be based on “values everyone can reasonably be expected to endorse.”⁹⁹² The greatest threat to society as a joint venture of fair social co-operation is, according to Rawls, not that there may be radical disagreement and even

⁹⁸⁹ J. Rawls, *Political Liberalism* (1993), p.240.

⁹⁹⁰ And Rawls is obviously of the meaning that Kent Greenawalt is inclined to hold this view. The problem is sketched by Rawls as follows: “One difficulty is that public reason often allows more than one reasonable answer to any particular question. This is because there are many political values and many ways they can be characterized. Suppose, then, that different combinations of values, or the same values weighted differently, tend to predominate in a particular fundamental case. Everyone appeals to political values but agreement is lacking and more than marginal differences persist. Should this happen, as it often does, some may say that public reason fails to resolve the question, in which case citizens may legitimately invoke principles appealing to nonpolitical values to resolve it in a way they find satisfactory. ... Kent Greenawalt seems inclined to this view ...” J. Rawls, *Political Liberalism* (1993), p.240.

⁹⁹¹ Accordingly Rawls himself emphasises that: “The idea of public reason urges us not to do this in cases of constitutional essentials and matters of basic justice. Close agreement is rarely achieved and abandoning public reason whenever disagreement occurs in balancing values is in effect to abandon it altogether.” J. Rawls, *Political Liberalism* (1993), p.241.

essential issues that cannot clearly be solved by appealing to public reason. The greatest threat is that diverse groups and individuals in society might feel fully justified in invoking merely internal, associational, comprehensive and private reasons when matters of fair coexistence, constitutional essentials and basic justice are at stake. Or that they should render the appeal to political values insincere each time things get really difficult, since they can always invoke “better” and deeper values trumping them. According to Rawls one should:

- ascribe to public reason and the ideal it prescribes the highest possible weight in all matters of constitutional essentials and basic justice,
- take public reason to be suitably complete, in so far as it gives a *sufficient* platform for settling the essential issues,
- leave it to public reason to express a reasonable combination and balance of political values, – even in hard cases.

Certainly, the institutional arrangements and laws following from the use of public reason may be imperfect. And many citizens, holding different comprehensive views, will often find that some important reasons are unhappily left out. A political decision or a settled law might, however, be revised, altered and even replaced, if new and better reasons are given. But still it is the principle of public reason that has to be complied with, meaning “that citizens be able to explain their vote to one another in terms of a reasonable balance of public political values.”⁹⁹³

Let it also be added that Rawls is of the opinion that most comprehensive doctrines are entirely consistent with the conditions of public reason and capable of giving the essential political values of constitutional democracies further backing. At least this will be the case for the *reasonable* comprehensive doctrines in society. But he also adds that:

“The only comprehensive doctrines that run afoul of public reason are those that cannot support a reasonable balance of political values.”⁹⁹⁴

And this is just the place where Rawls inserts the footnote on abortion, quoted above, where he stresses that:

⁹⁹² J. Rawls, *Political Liberalism* (1993), p.241.

⁹⁹³ J. Rawls, *Political Liberalism* (1993), p.243.

⁹⁹⁴ J. Rawls, *Political Liberalism* (1993), p.243.

- the values referred to should be (formulated as) *political* values.
- there should be a reasonable *balance* of those values.

As we saw; in the case of abortion Rawls is pointing out three relevant values (there might be more): **1)** a due respect for human life, **2)** an ordered reproduction of political society (involving family-values), **3)** the equality of women as citizens. There is no need now to discuss in detail the values introduced by Rawls. Let it just be stated that all of them can be supposed to be widely acceptable political (and moral) values.⁹⁹⁵

The second point is, however, most central and problematic. What is it to make a reasonable *balance* of those values? Due to people's social background, their value-traditions and their religious attachment one might expect that there will be considerable differences concerning *what* is to be defined as a reasonable or unreasonable balancing of values. Why should it for instance be considered unreasonable, if one sincerely balances differently from Rawls, taking the first of the three political values as most decisive? Let it be that an argument from the idea of citizen's equality weighs very heavily in an overall balancing of values, but one might also reasonably claim that the "due respect for human life" has to be taken as a crucial key-value for all political values.⁹⁹⁶ This should imply that a decisive weight has to be given to the first of the three values mentioned by Rawls. And the conclusion should therefore be altered. By stressing that all premises, which count within the forum of public reason, have to be properly *balanced*, Rawls himself opens up for a weighing of all relevant values that might end up with a conclusion that is different from the one he seems inclined to hold in the case of abortion. Why should it not be fully reasonable to claim the protection of the foetus by law during the first trimester? In fact I don't think that Rawls contributes very much what concerns the question *what* the most reasonable law of abortion should be like in a modern society. And I don't think that is Rawls' main concern either. In later writings he even wants to modify the impression that he has recommended a very liberal attitude concerning the question of securing by law an unlimited right to abort-

⁹⁹⁵ I shall not even discuss the "belief that a fetus is a person with a right to live." Cf. R. Dworkin, *Life's Dominion. An Argument about Abortion and Euthanasia* (1993), p.32. For my purpose it is sufficient here to state that Rawls refers to "the due respect for human life" as one important premise to be considered in the case of abortion.

⁹⁹⁶ I think that Peter Wilhelm Böckman, when discussing *abortus provocatus*, argues in accordance with this view when stressing "det prinsipielle, at det må være ulogisk av hensyn til et menneske å fjerne selve

ion. Let me therefore now turn to the other footnote that I announced:

“Some have quite naturally read the footnote in Rawls, *Political Liberalism*, lecture VI, § 7.2 at 243-244 (cited in note 1), as an argument for the right to abortion in the first trimester. I do not intend it to be one. (It does express my opinion, but my opinion is not an argument.) I was in error in leaving it in doubt whether the aim of the footnote was only to illustrate and confirm the following statement in the text to which the footnote is attached: ‘The only comprehensive doctrines that run afoul of public reason are those that cannot support a reasonable balance [or ordering] of political values [on the issue].’ To try to explain what I meant, I used three political values (of course, there are more) for the troubled issue of the right to abortion to which it might seem improbable that political values could apply at all. I believe a more detailed interpretation of those values may, when properly developed in public reason, yield a reasonable argument. I don’t say the most reasonable or decisive argument; I don’t know what that would be, or even if it exists. ... Suppose now, for purposes of illustration, that there is a reasonable argument in public reason for the right of abortion but there is no equally reasonable balance, or ordering, of the political values in public reason that argues for the denial of that right. Then in this case, but only in this kind of case, does a comprehensive doctrine denying the right of abortion run afoul of public reason. However, if it can satisfy the proviso of the wide public reason better, or at least as well as other views, it has made its case in public reason. Of course, a comprehensive doctrine can be unreasonable on one or several issues without being simply unreasonable.”⁹⁹⁷

Rawls is now much clearer about many aspects concerning the use of public reason and the commitment to a duty of civility in difficult boarder-line-cases , as for instance, the issue of establishing proper and fair abortion laws.

a) He is now much clearer about what would cause comprehensive doctrines, denying the right of abortion, to “run afoul of public reason”. Comprehensive doctrines can be said to run afoul of public reason only if they fail to provide us with any reasonable *balancing* or ordering of the political values which are relevant. But balancing of values – especially in complex matters – might yield different conclusions. And Rawls does not aim at giving us a comprehensive overview of the question of abortion as such, ending up with a recommended solution. His concern is much more how coexisting citizens – within the limits of public reason and in accordance with a duty of civility – can cope with those hot questions, which are so difficult and also so important in modern societies. And therefore he stresses that political liberalism does not hold that an ideal of public reason should always lead to a general agreement of views. Complying

grunnbetingelsen for at det skal kunne erfare noe hensyn og noen forbedring – nemlig livet.”
P.W.Bøckman, *Liv – Fellesskap – Tjeneste. En kristen etikk* (1970), p.178.

fairly with the terms of public reason, however, might in itself contribute to a deeper understanding between the parties even if agreement is not to be attained.

b) Even when agreement cannot be reached, and even if the results attained by following an ideal of public reason might turn out to be imperfect, citizens can at least be expected to vote sincerely on the subject. And the outcome of honest reasoning and deliberation may be taken as “reasonable and legitimate law, and binding on citizens by the majority principle.”⁹⁹⁸ There is hardly a fair alternative to this way of proceeding.

c) Moreover, a law has to be passed, – by a majority decision (which might be highly imperfect). There are groups that would reject some laws settled by majority decision. Rawls refers to the Roman Catholic Church. The Catholic church has tried to argue by the use of public reason, but has in most Western democracies failed in winning the majority for its view. Now Rawls expects the Church to recognise the right to abortion, not as a morally approvable or morally correct, but at least as a right legitimately established by law. And resistance by using force against those making use of the law or against institutions practising the law would be unreasonable. Rawls also finds reason to add that nobody need make use of the right to abortion for themselves and may freely continue to argue against the law in order to have it changed:

“Certainly Catholics may, in line with public reason, continue to argue against the right of abortion. Reasoning is not closed once and for all in public reason any more than it is closed in any form of reasoning. Moreover, that the Catholic Church’s non-public reason requires its members to follow its doctrine is perfectly consistent with their also honoring public reason.”⁹⁹⁹

Obviously Rawls considers it highly recommendable that citizens and associations continue their arguing and striving for a revision of a law which they find unjust and unreasonable. And he even seems to take for granted that people, by entering freely into churches (or other associations), have an obligation to respect the moral comprehensive doctrines advanced by their churches. Members of the Catholic church, for instance, have the full legal right to have an abortion, but it might nevertheless be a moral duty not to exercise this right (even if they cannot deprive their future selves of this right

⁹⁹⁷ J. Rawls, “The Idea of Public Reason Revisited”, *The University of Chicago Law Review* (1997;3), p.798.

⁹⁹⁸ J. Rawls, “The Idea of Public Reason Revisited”, *The University of Chicago Law Review* (1997;3), p.798.

which is secured by law).¹⁰⁰⁰

d) I think it will be impossible to entirely avoid serious conflicts in some difficult (“borderline-”)cases, which involve matters considered especially important by some of the parties in society. It should be noticed here, however, that Rawls ends both of the footnotes quoted in this chapter, by stressing that “a comprehensive doctrine can be unreasonable on one or several issues without being simply unreasonable.”¹⁰⁰¹ Thereby Rawls in fact considers the “borderline-conflicts” that might arise between different parties in society, and also between religious groups and legislators, in hot questions like the abortion case as *punctual* conflicts. Thus he can maintain his principled main perspective which is central to political liberalism; namely that citizens are supposed to affirm simultaneously a comprehensive doctrine and a political conception which can normally be expected to cohere, without bringing citizens into a permanent state of double morality or into a status confessionis ending up with insoluble loyalty- conflicts.

The case of abortion has indeed been a hot question. Ronald Dworkin even underlines that “the war over abortion seems fiercer and more violent in America than anywhere else. Why? Part of the reason lies in the peculiar paradox of America’s ambivalence toward religion. ... the United States is nevertheless among the most religious of modern Western countries and, in the tone of some of its most powerful religious groups, by far the most fundamentalist.”¹⁰⁰² Dworkin might be right about the intensity of “the war over abortion” in the United States, but it seems as if this is a very hot question in most European nations as well, even if fundamentalism may be weaker here.

Martin Honecker, who very much makes social-ethics and politics a domain of human reason and common morality, takes in one of his most recent book a theological approach to “abortus provocatus” which is at the very outset clear enough:

“Menschliches Leben ist von seinem Beginn an ein Prozess mit verschiedenen

⁹⁹⁹ J. Rawls, “The Idea of Public Reason Revisited”, *The University of Chicago Law Review* (1997;3), p.799.

¹⁰⁰⁰ Of course this is a difficult matter. Let it here also be remarked that there are limits imposed by society as such to what can be permitted within the domain of the private and the associational and within families. People can for instance not be forced to avoid making use of the rights secured by the law itself.

¹⁰⁰¹ Let me once more refer to *Political Liberalism*: “However, a comprehensive doctrine is not unreasonable because it leads to an unreasonable conclusion in one or even in several cases. It may still be reasonable most of the time.” J.Rawls, *Political Liberalism* (1993), p.244.

¹⁰⁰² R. Dworkin, *Life’s Dominion. An Argument about Abortion and Euthanasia* (1993), p.6.

Stadien. Für die ethische Frage nach dem Schutz ungeborenen Lebens verbinden sich hierbei Tatsachenfragen (was ist biologisch feststellbar?) und Wertungsfragen (auf welchen Schutz hat ungeborenes Leben moralisch Anspruch, wie ist das jeweilige Stadium der Menschwerdung ethisch zu bewerten?) unauflöslich miteinander. Die entscheidende Frage lautet dann: Kann nur die sittliche, vernünftige Person Subjekt von Rechten und Träger der Menschenwürde sein, oder ist jedes Leben, auch das ungeborene menschliche Leben, von einer dignitas aliena, einer Unverfügbarkeit bestimmt, die ihm Gott verleiht und die deshalb zu schützen ist. ... Das Kriterium für eine theologische Beurteilung lautet aber: Der Mensch ist nicht nur 'Geist', Bewußtsein, sondern leib-seelische Ganzheit; er ist Geschöpf in der Totalität, Einheit von Geist, Leib und Seele. Das schließt den Schutz der leiblichen Natur (schon in ihrer Potentialität) ein. Das werdende Leben hat außerdem vor Gott Würde, dignitas, vor aller eigenen menschlichen Leistung, auch vor aller geistigen Leistung."¹⁰⁰³

Let me now briefly point at some aspects which might be of importance from the perspective I have chosen.

a) The debate about an abortion law in Germany has obviously been as complicated as in most of the western democracies.¹⁰⁰⁴ And churches as well as individual Christians have participated intensively in this very hot debate. Although his principled view is clear enough, Honecker is rather careful what concerns substantial conclusions. But at least he finds it urgent that the public debate steers clear of two extremes: a self-determination reflected in the slogan "Mein Bauch gehört mir"¹⁰⁰⁵ and an attitude entirely based on the view that "Abtreibung ist Mord"¹⁰⁰⁶

b) Honecker reminds us that churches and individual Christians have in fact taken different standpoints and have also behaved rather differently when the question of a liberalisation of the abortion law came up. This reflects a certain plurality within the churches. It is not difficult, however, to observe that there is a greater unanimity within

¹⁰⁰³ M. Honecker, *Grundriß der Sozialethik* (1995), p.93.

¹⁰⁰⁴ I cannot here go in details about the German debate. The background is as follows: "Die sozialliberale Koalition beschloß 1974 eine Reform des §218 und 219 des Strafgesetzbuchs auf Grundlage der Fristenlösung. Die Voraussetzung der Fristenlösung war eine Beratung der Schwangeren vor dem Eingriff; nach einer Beratung hat die Frau das Recht, die Durchführung des Eingriffs vom Arzt zu Verlangen und Straffrei zu bleiben. Das Bundesverfassungsgericht hob am 25. Februar 1975 das Gesetz auf, mit der Begründung, auch ungeborenes Leben sei vom Grundgesetz geschützt. Seitdem ist eine weit angelegte Indikationslösung Praxis. (Gesetz von 1976)." M.Honecker, *Grundriß der Sozialethik* (1995), p.97. I should like to add that public reason as it has got manifest in the decision of the "Bundesverfassungsgericht", differs from what is considered most reasonable in other contexts and countries, what just serves to illustrate that public reason in itself might take different courses.

¹⁰⁰⁵ M. Honecker, *Grundriß der Sozialethik* (1995), p.94.

¹⁰⁰⁶ M. Honecker, *Grundriß der Sozialethik* (1995), p.94.

the Catholic Church¹⁰⁰⁷ than within the Protestant churches in respect of the attitude towards the problem of (settling a law of) abortion.¹⁰⁰⁸

c) But, nevertheless, in a historical overview in *Grundriß der Sozialethik* it seems as if Honecker himself sees the issue of abortus provocatus as a case which naturally belongs within the problem-sphere of the fifth commandment.¹⁰⁰⁹

d) And he obviously sees a need for establishing *theological* criteria for approaching the problem of abortion and the issue of a just abortion-law. Honecker ascribes to the unborn child a “*dignitas aliena*”, i.e. a dignity grounded not in its own physical or mental capacities, but mainly in God’s esteem. In this way the elementary inviolability of the foetus is established. In *Grundriß der Sozialethik* it seems not quite clear, however, how Honecker imagines that this concern should be brought into the public discourse, or how he imagines that one can secure for an unborn child some elementary rights¹⁰¹⁰, giving it law protection during the first trimester. It seems as if Honecker in this debate withdraws to the “grounding reasons” alone, without really providing us with a view to be argued and justified publicly.

I think there may be practical reasons for Honecker’s somewhat reserved approach. The reason for this may very well be that he himself has been concerned with the problem as a member of political commissions and wishes to listen and reason openly before concluding. Let it here be inserted that somebody may think that we should always present

¹⁰⁰⁷ “Die katholische Kirche hat in der Enzyklika ‘Castrum connubii’ ...betont, der Grundsatz: ‘Du sollst nicht töten’ gelte unbedingt. Schwangerschaftsabbruch ist absolut verboten und in sich böse und Sünde (malum intrinsece)... Diese Überzeugung wird in einer Erklärung der vatikanischen Glaubenskongregation von 1974, ebenso in der Erklärung der deutschen Bischöfe vom 26. Januar 1976 ‘Zur Neuregelung des § 218’ erneut betont. Entschieden wird vor allem die soziale Indikation abgelehnt.” M. Honecker, *Grundriß der Sozialethik* (1995), p.97.

¹⁰⁰⁸ “Die Spannweite der Positionen, die in der *evangelischen Kirche* vertreten wurden, reicht sehr weit: Manche Stimmen vertreten wie die katholische Kirche eine eindeutige und rigorose Ablehnung jeden Abbruchs. Andere Stimmen vertreten die Fristenlösung unter Betonung des Selbstbestimmungsrecht der Frau.” M. Honecker, *Grundriß der Sozialethik* (1995), p.97 But he adds that: “Die Fristenlösung wird vom Rat der EKD als Konfliktlösung abgelehnt, weil sie die Tür zu grundsätzlichen Freigabe des Schwangerschaftsabbruchs öffnet. Bei der Indikationslösung ist jeder Einzelfall sorgfältig zu prüfen. Nur unter dieser Bedingung kann bei einem Abbruch der Schwangerschaft Straffreiheit eingeräumt werden.” *Ibid.*, p.98.

¹⁰⁰⁹ “Die Bibel bekennt: Der Mensch ist bereits im Mutterleib ein von Gott gebildetes und beanspruchtes Ich (Hi 10,10-12; Ps. 139,13; Jer 1,5). Der Lebensschutz auch des Ungeborenen fällt deswegen unter den Schutz des 5. Gebotes.” M. Honecker, *Grundriß der Sozialethik* (1995), p.95.

¹⁰¹⁰ He is not very specific about how far this protection should reach.

merely the “grounding reasons”¹⁰¹¹ for the public standpoints we take. I don’t think that Honecker’s intention is just to give an account of what he holds as objectively right from the perspective of the comprehensive doctrine he honours, thereby avoiding the practical “balancing”. Introducing the deeper reasons may be appropriate, but cannot take the place of public reason when public reasoning about concrete decisions gets hard. I think Rawls’, in his approach to the problem of abortion, has made it clear that this is not a recommendable course of action. Simultaneously, however, he has underlined that public decisions, and the laws enacted, may be imperfect. But the main concern may not be to establish truth or the objectively right as seen from the perspective of a particular comprehensive doctrine. Public reasoning requires that the aim of truth may be replaced by an idea of the politically *reasonable*, making it possible to maintain in pluralist societies a *shared* platform of political reasoning and to justify institutions and laws. Let it also be mentioned that Rawls takes this idea of public reason to be “fully compatible with the many non-public reasons.”¹⁰¹² As far as I can see churches would make it far too easy on themselves, if they avoided arguing in accordance with the terms of public reason when engaging publicly in matters of law, basic justice and fundamental rights. The very concern one has will suffer if one ignores the Rawlsian proviso.

But perhaps the debate about an abortion law has demonstrated that the Rawlsian proviso is not as easily practised in such sensitive cases, where the penetrating power of our comprehensive reasons and our ultimate grounds is so strong. On the other side, in such morally sensitive cases it should be particularly important to make efforts to satisfy the Rawlsian proviso, since these cases might very soon cause the greatest conflicts. And I think Honecker – in accordance with his theological concern – should very much approve of this.

6.4.2. Different addressees – different statements

The view taken by Honecker with regard to *abortus provocatus* and a *law* of abortion

¹⁰¹¹ The term “grounding reason” I have taken from Rawls, who uses the term for the comprehensive reasons that are backing up or underlying public reason: “I use the term ‘grounding reasons’ since many who might appeal to those reasons view them as the proper grounds, or the true basis, religious or philosophical or moral, of the ideals and principles of public reasons and political conceptions of justice.” J. Rawls, “The Idea of Public Reason Revisited”, *The University of Chicago Law Review* (1997;3), p.797.

¹⁰¹² J. Rawls, “The Idea of Public Reason Revisited”, *The University of Chicago Law Review* (1997;3), p.800.

should be considered reasonable and not untypical of most Protestant churches. Let me now, however, more thoroughly examine also how the Norwegian Church engaged in the discussion about a liberalisation of the abortion *law* in the nineteen seventies, since the church in Norway appears to have decisively opposed the law for religious reasons.

In 1975 a liberalisation of the abortion law was introduced in Norway.¹⁰¹³ On the 29th of May 1975, immediately after a new liberal law was passed, one of the church's bishops, Per Lønning, resigned from his office. He found the law to be fundamentally at odds with norms central to the Church. And in a state-church like the Norwegian Church, the tension also increased between state and church. The rest of the bishops had throughout the debate also taken a restrictive standpoint in the case of abortion, and they also judged the actual liberalisation of the abortion law which took place in 1975, in much the same way as Per Lønning, whom they supported.

a) The bishops issued – immediately after Lønning's resignation – a public declaration, stressing the gravity of the situation created by the legislators' passage of a law on abortion which, according to the Church, violated fundamental Christian norms. And it was underlined that the church had warned the legislative authorities for many years against taking a decision like this. Even if the law, passed in 1975, was formally in accordance with the principles of our legal system, it would according to the bishops legalise and pave the way for a practice which was in conflict with the law of God and with the unanimous vote of the entire Christian church.¹⁰¹⁴

The weight here is on an expected practice in conflict with the *commandment of God*. And this aspect was accordingly stressed in newspapers and in media after the declaration had been given. The addressees of the bishops were obviously not just the legislators, but the members of civil society as a whole.

¹⁰¹³ I cannot go in details about the new law as such, but should just say that the law still maintained certain specified, but wide criteria for having an abortion during the first trimester.

¹⁰¹⁴ Cf. "UTTALELSE FRA NI BISKOPER AV 29. MAI 1975 i forbindelse med biskop Lønning's fratreden fra sitt embete." The first point of this declaration is as follows: "1. Når biskop Per Lønning har søkt avskjed fra sitt embete understreker det alvoret i den situasjon som er oppstått ved at Stortinget har vedtatt en lov om abort som etter kirkens syn krenker grunnleggende kristne normer. Et entydig votum fra kirken både ved dens lovfestede og frivillige organer har advart våre myndigheter mot dette. Det har ikke kunnet hindre vedtak av en lov som setter skiftende sosiale vilkår eller en vanskelig livssituasjon opp mot retten til liv. Derved blir det rettsvern som også det ufødte barn har krav på, faktisk opphevet. Selv om loven formelt er i samsvar med prinsippene i vår rettspleie og ikke innfører retten til å ta liv ved selvbestemt abort, legaliserer og muliggjør den en praksis som er i strid med Guds lov og den samlede kristne kirkes ord i denne sak." Quoted from *Kirkelige abortuttalelser 1971 - 1977* (1978), p.27.

One would hardly expect bishops to avoid making references to the commandment of God. Indeed, it should have been more surprising if they had not referred to the normative basis of the church, even in a statement with a wide address. And I think that Rawls, as he argues in *The Idea of Public Reason Revisited* would defend, not just the right of churches to order freely their inner life¹⁰¹⁵, but also their right to address the wider society and the state-authorities in this way.¹⁰¹⁶ But there is nevertheless more to be said about this:

If a law of abortion really affects constitutional essentials, and both Rawls and Norwegian church-leaders seem to agree that it does, then it may be expected that the church-leaders should also strive to satisfy the Rawlsian proviso, which they did not really try to do in May 1975. The declaration ends instead with an urgent advice to the ministers and other fellow-workers in the (state-)church to stay in their offices and to continue preaching the commandment of God to the people and to its leaders. And the bishops indeed came very close to making the abortion-case a “casus confessionis”, which calls upon extraordinary steps.¹⁰¹⁷

By the strong commitment and the terminology they used, the church-leaders stressed, in a way that could hardly be misunderstood, the gravity of the situation. In this moment, when the law was settled, they found no time for arguing strictly in accordance with the constraints of public reason.

b) The bishops had already on the 20th of February the same year, before the law was settled, given an official “expert opinion” to a draft bill sent them from the department. Their statements concerning the first paragraph are of great interest. The first objection of the bishops refers to the formulation that “a pregnant woman has a right to abortion”. The bishops are of the opinion that this is a very unfortunate formulation, which might

¹⁰¹⁵ Rawls underlines that “the principles of political justice do not apply to the internal life of a church, nor is it desirable, or consistent with liberty of conscience, or freedom of association, that they should.” J. Rawls, “The Idea of Public Reason Revisited”, *The University of Chicago Law Review* (1997;3), p.788.

¹⁰¹⁶ “Of course there are no restrictions or requirements on how religious or secular doctrines are themselves to be expressed. ... They will normally have practical reasons for wanting to make their views acceptable to a broader audience.” J. Rawls, “The Idea of Public Reason Revisited”, *The University of Chicago Law Review* (1997;3), p.784.

¹⁰¹⁷ “Vi ber våre prester og andre medarbeidere i kirken om å bli i sitt kall. Mer enn noensinne er det nødvendig å kjempe for menneskeverdet og forkynne Guds Bud for folket og for dets ledere. Kirkens budskap kan ikke endres sammen med statens skiftende syn. Sammen er vi kalt til å stå vakt om den sannhet som vi er forpliktet på. I alle situasjoner må vi være beredt til å lyde Gud mer enn mennesker.” Quoted from *Kirkelige abortuttalelser 1971 - 1977* (1978), p.28.

even have a great influence on the general value-formation in society. Abortion should be considered a matter of emergency, to be used in cases where a lesser evil is preferable to a greater evil. But the difficult situation of weighing “evils” against one another is, according to the bishops, veiled if abortion is turned into a “right”, thereby converting it to something positive, a “good”. And the bishops consider it especially unfortunate that the *right* to abortion is made a sort of eye catcher for the whole law.¹⁰¹⁸ When the notion of “right” is introduced, it should instead be used in order to protect life. Now it was due time to stress that: “The right to live is the most fundamental human right.”¹⁰¹⁹

The way the bishops argue when addressing the legislators directly (in February 1975), giving an internal “expert opinion” regarding a new abortion-law, is very different from the way they later argued when addressing a wider publicum immediately after bishop Lønning had resigned after the liberal law had been enacted.¹⁰²⁰

In the utterance given in February it seems as if they intend to argue entirely within the limits of public reason. They don’t draw explicitly on widely held principles of justice, but there is in their utterance clear allusions to the most widely recognised human rights. And they avoid systematically reference to particular religious motives, although they very briefly refer to their own statements throughout the previous years.

At this stage the bishops demonstrate very clearly that they consider their concern *justifiable* in terms of public reason, and that they want to argue within a *shared* framework

¹⁰¹⁸ The bishops write: “...Vår første innsigelse gjelder formuleringen: ‘En svanger kvinne har rett til svangerskapsavbrudd ...’ Vi mener at denne uttrykksmåten er meget uheldig med sikte på den videre opinionsutvikling i samfunnet. I en abortkonflikt dreier det seg, etisk vurdert, om en nødvergesituasjon der det i foreliggende tilfelle er spørsmål om å avveie et større onde mot et mindre. Denne smertefylte avveiningskonflikt blir tilslørt dersom man gir det inntrykk av at det her dreier seg om ‘rett’ dvs. om rettigheter, om et positivt gode som et menneske har krav på på linje med andre rettigheter. At denne formulering kommer til å innlede loven og dermed blir stående som en slags blikkfanger, anser vi som særlig betenkelig.” *Utkast til lov om adgang til svangerskapsavbrudd* (Høringsuttalelse av 20.02.1975 fra Den norske Kirkes biskoper til departementet), p.1.

¹⁰¹⁹ *Utkast til lov om adgang til svangerskapsavbrudd* (Høringsuttalelse av 20.02.1975 fra Den norske Kirkes biskoper til departementet), p.2.

¹⁰²⁰ Let it here also be mentioned that Lønning himself clearly states: 1) Christian norms should never be enforced by law 2) the laws of a society should to some extent correlate with most citizens sense of justice, 3) the ultimate responsibility for abortion can never be lifted away from those most concerned, the parents. But he adds: “I vår foreliggende situasjon ser jeg imidlertid ikke at disse overveielser ville være tilstrekkelig til å rettferdiggjøre ‘selvbestemt abort’ som lovprinsipp. Når jeg skal gjøre meg til talsmann for en heller restriktiv lovgivning, er det ikke for å tvinge særskilt kristne prinsipper på et pluralistisk samfunn. Det er for å mane til beskyttelse av et menneskeliv og menneskeverd i samsvar med den gamle legeetik fra Hippokrates fram til idag, og med selve idéen om naturgitte meneskerettigheter, selve grunnlaget for hele vår vesterlandske bevissthet om lov.” P.Lønning, “Abortproblemet – et spørsmål om sosial-etisk bevisstgjøring”, *Derfor. Dokumentasjoner omkring abortdebatten og en embetsnedleggesle* (1975), p.60.

and are ready to explain in reasonable terms their view. And of course the bishops take for granted that threats, pressure¹⁰²¹ or oppressive means are in no way to be used. They behaved reasonably as required by the duty of civility.

The approach of the bishops in February should not be taken as mainly tactically motivated, but may as well be an approach entirely in accordance with the principles given in the doctrine of the two realms: The mandate of enacting laws belongs to the legitimate legislators, but a right to influence and criticise the laws belongs to citizens as well as associations as participants in the public forum of a democratic society.

c) But after the liberal law was settled, and after the first reaction was given, the question soon came up: How to cope with the new law practically? And now it may be of interest to focus on how the bishops in 1975 addressed Christian citizens who could be supposed to practice the new law as doctors, nurses, social workers etc.

Starting with those working in church institutions the bishops emphasised that their Christian attitude should always be made clear, but then it is immediately stressed that clients should not be set under pressure, they should be properly informed about what the law prescribes, and in no way be hindered in making use of it, – on their own moral responsibility.¹⁰²²

For those who are not working in church-institutions and may directly be involved in the practising of the law in public institutions, it is of importance to be conscious and honest about the moral dilemmas they are facing. And situations might even occur where it could be right to resign in accordance with Acta 4,19. But the bishops are nevertheless underlining that it would not be right to require of anybody directly involved in practising the law that he resigns.¹⁰²³ But simultaneously it is also stressed how important it is that state authorities do not strain the conscience of doctors, nurses and others who are

¹⁰²¹ Of course it represents in itself a “pressure” when those opposing the liberalisation of the law could hand over lists with hundreds of thousand of signatures to the governmental authorities. But this is a kind of pressure which is normal and legitimate in a democracy. (The broad movement was not initiated by the bishops).

¹⁰²² Cf. “Bispemøtets uttalelse 1975. den nye abortloven - et ord til rådgivere og helsepersonell”, *Kirkelige abortuttalelser 1971 - 1977* (1978), p.29.

¹⁰²³ For leger, helsepersonell og sosialarbeidere som ikke har sitt virke i tilknytning til kirkelige institusjoner, og som ønsker å legge kristne prinsipper til grunn for sin gjerning, er det klart at loven til dels skaper en mer enn vanskelig situasjon. I sine tilfelle vil vanskelighetene være av en slik art at det blir aktuelt å minne om prinsippet: Vi skal lyde Gud mer enn mennesker (Ap.gj. 4,19). *Kirkelige abortuttalelser 1971 - 1977* (1978), p.30.

directly involved, but grant them a fair right of personal reservation¹⁰²⁴, even if this might create some practical complications.

And the bishops further underline that in all cases it is important to avoid moralising, thereby leaving the client as the guilty party. Thus the bishops take an attitude that excludes entirely threats, pressure, use of force and other oppressive means against clients or institutions practising the law according to rules, principles and procedures that are constitutionally secured and democratically settled. But simultaneously the bishops obviously deny setting the question of abortion off the public agenda, rather it should remain a hot question on the political agenda (as well as in the moral considerations of individuals) in the years to come.¹⁰²⁵

The kind of advice that the bishops are giving in a very difficult case, just a few months after the abortion-law was settled, indicates as far as I can see that they are very uneasy about the problems of conscience that the law creates. But one might ask if they are not in fact also strengthening the elementary duty of civility. It is obviously very important to play by the agreed rules of a constitutional democracy, thereby respecting in practice that the law is correctly passed. And as underlined they avoid legitimating any kind of force and pressure. The freedom of patients and clients and their right to be fully informed about the law and to make use of it without hindrance is clearly respected.

It seems as if the bishops are quite clearly not ready to make the question of abortion a part of a church crusade against a society which is taken to be in conflict with central Christian principles and commandment, at the risk of provoking thereby a constitutional crisis.¹⁰²⁶ From my point of view it seems as if the bishops in this situation are exerting themselves to play by constitutional rules, respecting (at least after the first confrontation) clearly the value and limits of public reason. But the leaders of the church without

¹⁰²⁴ “Når det videre gjelder legers og helsepersonells adgang til å nekte å medvirke ved abortoperasjoner, har vi merket oss at det nå legges opp til en organisert ordning med slikt fritak. Imidlertid gjør det seg gjeldende en viss uro i forbindelse med det system for registrering av samvittighetsnektene som foreslås. ...Det må være maktpåliggende at våre helsemyndigheter snarest fjerner engstelsen på dette punkt”
Quoted from *Kirkelige abortuttalelser 1971 - 1977* (1978), p.31.

¹⁰²⁵ Let it, however, be mentioned that the abortion law of 1975 represented a short “interregnum”. A couple of years later it was succeeded by a new law, based on entire self-determination from the side of the pregnant woman herself within the first trimester.

¹⁰²⁶ Let me here refer to Rawls’ view that “The constitution is, as it were, honored as a pact to maintain civil peace.” J. Rawls, “The Idea of Public Reason Revisited”, *The University of Chicago Law Review* (1997;3), p.781.

doubt very strongly felt that public authorities themselves had now violated central human standards and had thereby themselves “run afoul of public reason”¹⁰²⁷ being incapable of balancing moral (and political) values properly. But like Rawls church-leaders are obviously considering the issue a serious, but *punctual* conflict.

6.4.3. A conclusion: Hard cases – low cost solution?

Political liberalism sets out from the idea of society as a scheme of fair co-operation between free and equal citizens. As shown, a liberal scheme of society cannot avoid producing some moral dilemmas. In the case of abortion one might say that a liberal approach might in itself rather strengthen this kind of dilemma. Even if one stresses the aspect that every-one is free to deny making use of a liberal abortion law, the straining of individual choice in a case like this seems insufficient. The law sets a framework for co-operation and individual choice, it is a manifestation of the will and values of society, it contributes in itself to the very value-formation. By straining the aspect of individual choice in matters which Rawls could himself consider an issue of basic justice or a matter belonging to the constitutional essentials, one might contribute to increasing both *interpersonal* and *intrapersonal* moral problems. Greenawalt seems, however, right when writing that: “Rawls does not deny that people may sometimes face conflicts between their own comprehensive views and public reasons, and that they must resolve these conflicts in light of their own comprehensive views.”¹⁰²⁸ But it may plausibly be assumed that liberalism, by the way it faces the fact of pluralism and simultaneously stresses individual liberty and personal freedom of conscience might in fact tend to generate the kind of conflicts actualised in the case of abortion.

The main concern of political liberalism, however, is that decisions concerning basic premises for social co-operation and coexistence, are to be taken with reference to *shared* principles of justice and widely *acceptable* procedures of fairness. But these things cannot secure an unquestionable truth, guarantee a perfect outcome or even a persisting agreement, as is for instance very clearly demonstrated in the case of abortion. A shared platform regarding some essential premises for coexistence is obviously not specific enough to solve many hard cases, yielding practical political (moral) solutions that can be accepted by all parties. An overlapping consensus as conceived of within

¹⁰²⁷ For the phrase cf. J. Rawls, *Political Liberalism* (1993), p.243.

political liberalism will certainly not remove disagreement from the public arena, but can nevertheless provide for a reasonable way of complying with disagreement within the limits set by public reason. The unconstrained “freedom” is thereby to be institutionally framed. The question is how far such constraints are supposed to be required.

A society where individual (religious) consciences are normally strongly constrained, controlled and overruled by governmental authorities, which are often forbidding people – under the threat of using force against them – to honour certain views, to live by them themselves and to express them publicly, has what I will call “a high-cost-profile” In such a society state-authorities are to a wide extent ready to use coercive force in order to rule society properly (at the high risk of overruling individual consciences in most matters.¹⁰²⁹).

A society where individual (religious) consciences are seldom overruled in this way, has what we will call “a low-cost-profile”.¹⁰³⁰ But a society with a “low-cost-profile” cannot be a society without constraints. Even a strong concern for individual freedom has to be balanced against a similar liberty for others, including the weakest and least advantaged, which means that the behaviour of individuals must be restrained if leading to a *practice*, which involves offence, violence or unseemly pressure towards others.

A society in accordance with political liberalism should most likely belong within the second category.¹⁰³¹ Rawls nevertheless assumes that certain restraints, reflecting the principle of reciprocity, are to be recognised by the different parties. When such constraints, however, are willingly accepted by the parties themselves as implied in an overlapping consensus, they should most appropriately be characterised with the term “self-restraint”, as discussed by Greenawalt. And a “high-cost-model” is thereby turned into a “low-cost-model”, and “private consciences” are *normally* not to be overruled.

But let it also be emphasised that the very practising of self-restraint as a part of a duty

¹⁰²⁸ K. Greenawalt, *Private Consciences and Public Reasons*, p.117.

¹⁰²⁹ Cf. To this problem Confessio Augustana XXVIII.

¹⁰³⁰ Such a profile might also be found in societies, where the cultural traditions are very homogeneous and the pluralism not very radical at the outset, so that an overlap is easily established According to Greenawalt the Dutch and the Scandinavian societies are societies of this kind. This observation might however be empirically controversial.

¹⁰³¹ This seems clear even Rawls holds “that under reasonably favourable conditions that make democracy possible, political values normally outweigh whatever non-political values conflict with them.” J. Rawls, *Political Liberalism* (1993), p.146

of civility presupposes that there is at least a minimum of *shared* premises among the citizens, that all of them can willingly approve of. That is what has to be secured by the parties by endorsing an overlapping consensus, as a referential basis for public reasoning, and as a basis for social co-operation and as a framework for fair coexistence and as a way “to maintain civil peace”.¹⁰³² Rawls can plausibly hope, I think, that Christians, engaged in social and political co-operation, may avoid invoking exclusive religious motives in public affairs and restrain their pursuit of particular religious interests if they are expected to be to the disadvantage of other groups, and play by constitutional rules and agreed principles of fairness when *shared* political values, matters of basic justice and the issue of constitutional essentials are at stake.

This would require from all parties a genuine willingness to strengthen the public forum, with the limitations and with the terms which apply here. Churches as well as Christians should for theological reasons accept that standards for the public political domain can in no way be set merely by reference to privileged insights in social ethics.¹⁰³³ The Rawlsian proviso is normally to be satisfied, which does not imply that Christian faith is undermined, but certainly it means that there is a theological “Fundamentalunterscheidung” to be respected at the very outset when entering the shared public forum.

¹⁰³² J. Rawls, “The Idea of Public Reason Revisited”, *The University of Chicago Law Review* (1997;3), p.781.

¹⁰³³ Cf M.Honecker, *Das Recht des Menschen. Einführung in die evangelische Sozialethik* (1978), p.155.

7. CONCLUSION

7.1. Towards a morally grounded consensus

7.1.1. A mere acquiescence?

According to Rawls a society requires a common institutional framework for social co-operation, regulated by a political conception of justice, which can also serve as a *shared* justificatory platform in public reasoning. The requisite political conception of justice should be such that it can be the focus of an overlapping consensus. In *Political Liberalism* Rawls accordingly underlines that:

“... three conditions seem to be sufficient for society to be a fair and stable system of cooperation between free and equal citizens who are deeply divided by the reasonable comprehensive doctrines they affirm. First, the basic structure of society is regulated by a political conception of justice; second, this political conception is the focus of an overlapping consensus of reasonable comprehensive doctrines; and third, public discussion, when constitutional essentials and questions of basic justice are at stake, is conducted of the political conception of justice.”¹⁰³⁴

Since citizens in modern constitutional democracies are deeply divided by the reasonable comprehensive doctrines they affirm, it seems impossible for them to reach any kind of “thick” agreement. And Nicolas Rescher even asserts that “the burdens that consensus is asked to bear is more than can justifiably be laid upon it”.¹⁰³⁵

Thereby Rescher challenges the validity of Rawls’ (as well as Habermas’) fundamental assumption that a certain political (value-)consensus is required for the sake of societal coexistence. Rescher admits that a basic consensus has usually been considered a condition for social co-operation, communication and progress.¹⁰³⁶ And he realises that a demand for a basic agreement in elementary matters of *value* might still be considered

¹⁰³⁴ J. Rawls, *Political Liberalism* (1993), p.44.

¹⁰³⁵ N. Rescher, *Pluralism. Against the Demand for Consensus* (1993), p.3.

¹⁰³⁶ “For much of the history of Western philosophy, consensus – uniformity of belief and evaluation – has been viewed as a desideratum whose ultimate realization can be taken as assured. Aquinas, in the Middle Ages, regarded consensus on fundamentals as a condition assured by *God*; Kant, in the eighteenth century, considered it as something rooted in the very nature of *Reason*; Hegel, in the nineteenth century, saw it as guaranteed by the spirit of cultivation working through the march of history ever enlarging its hold on human *Society*; Habermas in the twentieth century sees it as inherent in the very nature of *Communication* as an indispensable social practice. Throughout much of the tradition consensus was viewed not just as something to be desired, but as something whose eventual actualization is effectively assured by some principle deep-rooted in the nature of things as we humans confront them in this world.” N. Rescher, *Pluralism. Against the Demand for Consensus* (1993), p. 1.

urgent and necessary by influential “partisans of consensus”. That said, Rescher views any attempt to establish an agreement within the evaluative/axiological domain of a modern pluralistic society as a utopian project. The normative diversity of modern societies is simply too deep and requires from us that we take “a more realistic and pragmatic line.”¹⁰³⁷

Rescher therefore uses the less demanding notion of *acquiescence* for the co-operative attitude required in pluralist societies, a notion that in my opinion comes rather close to that of *tacit consent*, since it presupposes at least that some shared premises for peaceful coexistence are generally taken for granted. But according to Rescher we should simply;

“avoid letting our differences become a *casus belli* between us. ... The crucial fact about acquiescence is that it is generally rooted not in [active] *agreement* with others but rather in a preparedness to get on without it. What makes good practical and theoretical sense is the step of (on occasion) accepting something without agreeing with it – of ‘going along’ despite disagreement – an acquiescence of diversity grounded in a resigned toleration of the discordant views of others.”¹⁰³⁸

Rescher admits that having some shared *ideals* may be of great importance in society.¹⁰³⁹ But the *idealisation* of consensus as a premise for social coexistence should nonetheless be considered a utopian venture in the true sense of the word.¹⁰⁴⁰ The same problem arises when trying to convert an “idealised” consensus into a “real” one in modern societies. Idealisation entails the overestimation of the individual's moral resources, while setting out for a real consensus underestimates the inherent realities of pluralism.

¹⁰³⁷ N. Rescher, *Pluralism. Against the Demand for Consensus* (1993), p.3.

¹⁰³⁸ N. Rescher, *Pluralism. Against the Demand for Consensus* (1993), pp.164; 166.

¹⁰³⁹ “Like ‘liberty, equality, and fraternity’, an ideal represents a state of affairs whose pursuit in practice is to be regarded as pre-eminently ‘a good thing’. By its very nature as such, an ideal is something towards whose realization right-thinking people would deem it appropriate to strive.” N. Rescher, *Pluralism. Against the Demand for Consensus* (1993), p. 1.

¹⁰⁴⁰ *Utopia* is here taken in its literal sense about that, for which there is no place (ου=) to/πο) in the real world. Let it be underlined that Rescher distinguishes an *idealisation* from a mere *ideal*: “An idealization ... involves the projection of a hypothesis that removes some limit or limitation of the real (a perfectly elastic body, for example, or a utopia comprised only of sensible and honest people). An idealization is accordingly a thought-instrument – a hypothetical state of things that it may be profitable to think about, but towards whose actual realization in practice it may be altogether senseless to work for. And so, while idealization can prove helpful in theoretical matters, in practical matters it can often do damage. Ideals, in sum, are constructively action-guiding while idealizations need by no means be so. ... This distinction between ideals and idealizations bears directly and informatively on the status and standing of consensus. For there is no doubt that consensus is merely an idealization – and neither a sensible goal nor a plausible guide for action, seeing that it prescind from the variety, diversity, and dissonance that inevitably characterizes the beliefs, opinions, goals, and values of any sizable human community.” N. Rescher, *Pluralism. Against the Demand for Consensus* (1993), p. 196.

Rawls for his part nevertheless hopes for more than just a mere acquiescence and a more or less arbitrary “convergence of interests”.¹⁰⁴¹ He holds that the moral resources required for bringing about a consensus even in pluralist societies are at hand. To make his own approach plausible he proceeds in several steps:

Rawls first demonstrates how people, involved in endless strife made efforts to establish a workable *modus vivendi* that all parties could realistically stick to, in order to avoid destructive clash of interests. As a central historical example he can refer to the way the religious wars – following the Reformation – were brought to an end by the best achievable balance of competing interests and power.¹⁰⁴²

But even a *modus vivendi* involves some tendency to recognise coexistent (liberal) values. Once having achieved a foothold in the political institutions of society “might liberal principles of justice gain allegiance to themselves.”¹⁰⁴³ Thus Rawls finds it plausible that citizens, when first acquainted with these liberal principles, will also tend to accept basic principles of a *liberal* constitution. A consensus on constitutional essentials should therefore be in sight.¹⁰⁴⁴

Rawls assumes, however, that since a constitutional consensus will only cover a very limited part of the vital political issues in society, there will also be a need for broadening the liberal approach “covering the basic structure as a whole.”¹⁰⁴⁵ And in doing so it will be necessary for citizens to more deeply explain and justify to one another the basic principles of justice they act from and the reasons they have for taking certain positions or making certain decisions in matter of shared interest. This will bring persons out of their narrow circles, thereby increasing mutual understanding, making it

¹⁰⁴¹ Rescher also emphasises that; “It is a highly important and positive aspect of social life that people can and do co-operate with one another from the most diverse of motives” but he adds: “agreement need not enter into it all. What is needed for co-operation is not consensus but something quite different - a *convergence of interests*.” N.Rescher, *Pluralism. Against the Demand for Consensus* (1993), p. 180.

¹⁰⁴² “Suppose that at a certain time, because of various historical events and contingencies, certain liberal principles of justice are accepted as a mere *modus vivendi*, and are incorporated into existing political institutions. This acceptance have come about, let us say, in much the same way as the acceptance of the principle of toleration came about as a *modus vivendi* following the Reformation: first reluctantly, but nevertheless as providing the only workable alternative to endless and destructive civil strife.” J. Rawls, *Political Liberalism* (1993), p.159.

¹⁰⁴³ J. Rawls, *Political Liberalism* (1993), p.160f. Let it be added that Rawls also employs arguments from moral psychology to support the plausibility of the assumption that liberal principles of justice, when first introduced, will gain allegiance to themselves. Cf. *Political Liberalism* (1993), p.163.

¹⁰⁴⁴ A consensus on constitutional essentials was more thoroughly considered in chapter 4 of my thesis.

¹⁰⁴⁵ J. Rawls, *Political Liberalism* (1993), p.167.

more likely that some shared standards can be agreed upon. The idea of a genuine overlapping consensus should not be considered a utopian project.

“I have outlined in this and the previous section how an initial acquiescence in a liberal conception of justice as a mere *modus vivendi* could change over time first into a constitutional consensus and then into an overlapping consensus. In this process I have supposed that the comprehensive doctrines of most people are not fully comprehensive, and this allows scope for the development of an independent allegiance to the political conception that helps to bring about a consensus. This independent allegiance in turn leads people to act with evident intention in accordance with constitutional arrangements, since they have reasonable assurance (based on past experience) that others will also comply. Gradually, as the success of political co-operation continues, citizens gain increasing trust and confidence in one another. This is all we need to say in reply to the objection that the idea of overlapping consensus is utopian.”¹⁰⁴⁶

Even if it seems as if Rawls takes an approach very different from Rescher’s, one can hardly avoid seeing that Rawls in some respects also comes rather close to Rescher. He avoids as far as possible comprehensiveness, thereby taking the fact of pluralism into account. And he is concerned about avoiding “thick” projects of idealised consensus.

But Rawls strongly focuses on “the willingness to co-operate with others on political terms that everyone can publicly accept.”¹⁰⁴⁷ He is concerned about the very terms of co-operation, which can *voluntarily* and deliberately be recognised. The Rawlsian approach is therefore far more demanding than, for instance, the approach that we find in Rescher’s attempt to reduce such active consensus to mere acquiescence.

7.1.2. Lazy compromises or binding standards?

The very idea of founding social co-operation on an overlapping consensus requires a co-operative attitude from the different parties. Liberal institutions presuppose and promote a co-operative and compromising spirit.

“The basic institutions enjoined by such a conception [of liberalism], and its conception of free public reason – when effectively working over time – encourage the cooperative virtues of political life: the virtue of reasonableness and a sense of fairness, a spirit of compromise and a readiness to meet others halfway, all of which are

¹⁰⁴⁶ J. Rawls, *Political Liberalism* (paperback edition 1996), p.168. It may also be interesting to see that Rawls in fact takes as a presupposition that “Most people’s religious, philosophical, and moral doctrines are not seen by them as fully general and comprehensive, and these aspects admit of variations of degree. There is lots of slippage, so to speak, many ways for liberal principles of justice to cohere loosely with those (partially) comprehensive views, and many ways within the limits of political principles of justice to allow for the pursuit of different (partially) comprehensive doctrines.” *Ibid.*, p.160

¹⁰⁴⁷ J. Rawls, *Political Liberalism* (1993), p.163.

connected with the willingness if not the desire to cooperate with others on political terms that everyone can publicly accept consistent with mutual respect.”¹⁰⁴⁸

Like Honecker, Rawls has no place for absolutism in politics and seeks *reasonableness* rather than ultimate truth. Treating political inquiry as a search for reasonableness, allows one to pursue the relatively best and find the most workable political solutions. A readiness for dialogue and for reasonable solutions and a willingness to meet others halfway in matters of politics in order to make society work as a co-operative and fair venture, may also be justified from the standpoint of theological social ethics as conceived of by Martin Honecker. In applied political ethics – at least – he takes a pragmatic approach.¹⁰⁴⁹ While he warns against “lazy compromises”¹⁰⁵⁰, Honecker considers a readiness to meet others halfway within the domain of politics an unavoidable necessity both from a political and from a theological point of view.¹⁰⁵¹

- In a *political perspective*, it might be morally legitimate to aim for the most reason-

¹⁰⁴⁸ J.Rawls, “The idea of an overlapping consensus”, *Oxford Journal of Legal Studies* (1987; vol.7; no 1), p.21.

¹⁰⁴⁹ This aspect of Honecker’s pragmatic approach is more thoroughly discussed in chapter 5.

¹⁰⁵⁰ One should avoid “die faulen Kompromiße”, Cf. *Einführung in die Theologische Ethik* (1990). p.236.

¹⁰⁵¹ It seems as if Martin Honecker is trying to find his own way between well-known positions. *Helmuth Thielicke*, one of the theologians with a reputation within the field of theological ethics, has developed “a theology of compromise” in *Theologische Ethik II/1*, 1965 (third edition), p.56-201. In “conflict-situations” compromises are unavoidable. Simultaneously the compromise is characterized by Thielicke as a sign of the fallen world. In this world man has to live without any possibility of avoiding non-ideal solutions and escaping personal guilt. The necessity of compromising is in a way ontologically given. Even God has accommodated his will to the given *structure* of a fallen world, by admitting for “a noachitic order”, what means that God himself takes into account that sin, egoism and conflict have to be taken account of in all institutional arrangements of this world. Cf. Matt.19,3ff., which demonstrates an appropriate accommodation of the will of God to the structure and reality of the fallen world. But the problem with the approach taken by Thielicke, is that it will be almost impossible to qualify any merely political standards as absolutely binding. Any merely political decision seems in the end to be just a more or less reluctant tribute or accommodation to the existing empirical circumstances, human weakness and the condition of a world, fallen from God. *Wolfgang Trillhaas*, also a German professor of ethics, has chosen a quite different approach to the ethical question of compromising. First of all the problem is theologically differently located within his conception, as an issue belonging to the ethics of democracy. “Daher handelt er den Kompromiß unter der Überschrift ‘Ethik der Demokratie’ ab. Das Ethos der Demokratie folgt dem Grundsatz: ‘Wir wollen und müssen miteinander und füreinander leben.’ Kompromiß bedeutet hier im Wortsinn: Übereinkunft, Ausgleich, Vergleich.” (Quoted from M.Honecker, *Einführung in die Theologische Ethik*. p.239.) This is after all a more limited approach. Meeting others halfway and compromising in matters of *politics* is seen in the perspective of consensus-building, what might even render a renunciation on particular interests in order to achieve a greater common good for all citizens highly reasonable. “Kompromiß ist eine freie Vereinbarung unter gegenseitigem Verzicht auf bestimmte Interessen, um dadurch ein höheres gemeinsames Gut zu sichern.” *Evangelische Staatslexikon*, (1966 first edition, column1414). And one of the greatest common goods is, according to Trillhaas, (internal) *peace*. And democracy should be recognised as a peace-maintaining method. Therefore democratic societies should provide the best institutional conditions required for all groups to participate fairly in political discourse and activity.

able political arrangements and the relative best within a limited range of possibilities.

- Then there is the deeper *theological perspective*. Existing disintegration, conflicting perspectives and different interests, – all these things have to be taken as an indication of a world deeply in conflict with the original will and plan of the Creator. And compromising can in itself be seen as a necessary adjustment to the prevailing conditions of this world, – and bears witness of the existence of the Christian as “simul peccator et iustus”.¹⁰⁵²

Martin Honecker, as a theologian, is willing to go to a considerable length in meeting others halfway in order to secure a *shared* platform for social co-operation. In matters of social ethics and politics Honecker therefore will avoid, as already asserted, a kind of approach, which might best be characterised as “instruktionstheoretisch”, what means that divine revelation is introduced as an exclusive and indisputable source for settling political aims and ordering social institutions. According to Honecker one cannot make “revelation” an *exclusive* constructivist principle for establishing *shared* moral standards and a *common* institutional framework. Neither politics nor social ethics should be made a matter of privileged (religious) insight.¹⁰⁵³ One cannot solve the decisive normative problems in modern pluralist societies by taking the approach exclusively from a specific religious or theological version of political ethics. (Or as Rawls would say it: from a particular comprehensive moral doctrine). What citizens really have in common are problems, uncertainty and immense challenges according to Honecker. Therefore he underlines that:

“Keine Ethik verfügt nämlich über einen Vorrat an abrufbaren Einsichten für alle Lebenslagen. Sie teilt vielmehr die Ratlosigkeit und Verlegenheit der von neuen

¹⁰⁵² “Kompromiße sind also unter zwei Gesichtspunkten zu betrachten: einmal unter dem ihrer sittlichen Legitimität, Zulässigkeit, zum anderen als Hinweis auf das ‘simul peccator et iustus’ - das Sein des Menschen in der gefallenen Schöpfung.”, M. Honecker, *Einführung in die Theologische Ethik* (1990), p.243.

¹⁰⁵³ The way Honecker describes the dilemma that theological ethics is facing in modern societies demonstrates clearly the way he himself thinks: “Das Problem des theologischen Konstruktivismus führt in der Ethik also vor ein grundsätzliches Dilemma. Entweder wird die Offenbarung für die Erkenntnis der gesamten Wirklichkeit beansprucht. Dann verfällt eine theologische Ethik aber unentrinnbar dem Irrtum des Konstruktivismus, auch dann, wenn sie sich statt auf Vernunft auf Offenbarung als konstruktives Prinzip beruft. Oder theologische Ethik anerkennt, daß die ihr vorgegebenen Werte, Normen sich nicht auf ein einziges Erkenntnisprinzip zurückzuführen lassen, sondern als ‘gewordene’ Werte vielfältige Wurzeln und Ursachen haben; in diesem Fall kann sie der Wirklichkeit Rechnung tragen, vermag jedoch Ethik nicht mehr einfach als Applikation theologischer Dogmatik darzustellen ...” “Das Problem des theologischen Konstruktivismus”, *Zeitschrift für evangelische Ethik*, 1980, pp. 97 - 111, p.100.

Herausforderungen, neuen Situationen und neuen Aufgabenstellungen Betroffenen. Sie kann allenfalls versuchen zu klären wie man mit derartigen Verlegenheiten und Ratlosigkeit umgehen kann. Versteht man die Aufgabe der Ethik als die eines Dialogpartners im Orientierungsprozess der Gesellschaft, so besteht allerdings in der Tat ein echter Bedarf an Ethik.”¹⁰⁵⁴

But sharing the “Ratlosigkeit und Verlegenheit” of societies characterised by complexity and diversity still does not provide us with any standards for coexistence and fair co-operation, even if a co-operative attitude and a search for shared solutions and proper compromises should in many respects be taken as a decisive step in that direction.

Upon examination, we find that Rawls for his part seldom draws heavily upon the idea of compromise as such, even if the willingness to meet others halfway and a co-operative attitude is clearly taken by him as a prerequisite for social coexistence. But the category of compromise seems largely to be ignored, – maybe because it should lead us to think of the required agreement as a *modus vivendi*. Standards of fairness, incorporated in the very basic structure of society are, according to Rawls, to be settled by the parties, voluntarily binding themselves. As thoroughly discussed in chapter 4, Rawls used the “device” of a hypothetically constructed original position, which does not provide for any kind of compromising or bargaining, to make an initial agreement on acceptable principles of justice possible and plausible. The required moral premises and constraints were actually built into the very *structure* of a fairly constructed original position, thereby securing an essentially moral outcome. This is the way Rawls tries to solve the normativity problem and avoid a mere *modus vivendi*, – by making the parties bind themselves and thereby one another through an active agreement¹⁰⁵⁵ brought about under fair conditions which are hypothetical, – but with a real and reasonable argumentative force in public reasoning. The basic standards defining the fair institutional scheme of coexistence are settled by Rawls in a way which does not render them a subject of permanent and ongoing bargaining and compromising.

¹⁰⁵⁴ M. Honecker, *Einführung in die Theologische Ethik, Grundlagen und Grundbegriffe* (1990), p.x.

¹⁰⁵⁵ For a more thorough discussion of the different aspects of a basic agreement I refer to chapter 4. Let me also refer to footnote 301, where I cited from a book, recently written by Gerald F.Gaus, where he stresses that “the facts of disagreement and agreement alike are intelligible only against a background of massive agreement.” Gerald F. Gaus, *Justificatory Liberalism* (1996), p.49.

7.1.3. The very idea of endorsing an overlapping consensus is demanding

Standards of fair co-operation are not just to be imposed on citizens by some external authority supposed to have an absolute power, but are to be *endorsed* by the co-operating parties themselves. I have already underlined that to *endorse* a proposition is to accept it actively, deliberately and voluntarily. Rawls has obviously chosen a strong term for contributing to a basic agreement – much stronger than the comparatively passive *acquiescence* proposed by Rescher. An endorsement could, for instance, mean to acknowledge some kind of document by deliberately placing one's signature on it.

The Lutheran World Federation's (LWF's) stance towards the Declaration(s) of Human Rights might be considered a paradigmatic example of a Rawlsian endorsement. When addressing matters of human rights, LWF sets out by explicitly recognising the efforts “stemming not only from the churches but also from governments and non-governmental organisations within the framework of the UN, from voluntary action groups and other bodies.”¹⁰⁵⁶ Thereby LWF supports efforts already made by “foreign” instances and *underwrites* (not literally) documents already conceived of by others.

Endorsement can never be carried out in a vacuum, there is a history leading up to it, as in the case with the Lutheran World Federation and the foregoing efforts of the United Nations in elaborating declarations of human rights. One accepts that propositions and conceptions that may not (directly) be “stemming” from theological sources or churches, might nevertheless be recognised by the churches as expressing essential concerns, very much in accordance with genuinely theological (moral) concerns. One is faced with something which is historically and politically mediated. By recognising a proposition, however, one takes an active interest in it. There are ideas, principles, conceptions, shared cultural achievements and vital decisions already made, which Christians (and churches) might find it well worth supporting on theological premises (as for instance the idea of toleration).

Endorsing an overlapping consensus in a Rawlsian sense would imply that citizens intentionally, deliberately and voluntarily join into an agreement about premises for a

¹⁰⁵⁶ *Theological perspectives on human rights. Report on an LWF consultation on human rights, Geneva, June 29-July 3, 1976, Lutheran World Federation 1977, p.9f.*

scheme of coexistence, – thereby also accepting an obligation to comply with the agreed terms.¹⁰⁵⁷

7.1.4. What is to be endorsed?

A crucial question now, however, is *what* should be endorsed. In accordance with what I have written earlier, – let me consider two possibilities:

I. A conception of justice, or at least certain principles of justice established in the most fair way, are taken by Rawls as a focal point for an overlapping consensus and thereby also as a shared referential basis for citizens' public reasoning. Therefore it seems most plausible to say that a conception of justice is what should be endorsed. Of course one might discuss how specific an endorsable conception of justice should be. Rawls himself holds that one might aim for shared principles of justice on three different "levels":

a) On a first level one might say that pursuing justice is a matter of establishing constitutional essentials which people of a society can accept as fair. Recall that constitutional rules should;

- regulate the governmental structure and the powers of the legislature, executive and judiciary, as well as provide procedures for political election, practising of the majority-principle and for handling issues democratically, and guidelines for assessing evidence and for conducting public inquiry etc. There is a clear emphasis on the *procedural* aspects.
- single out the basic rights and liberties in a society which should be permanently guaranteed and be removed from the agenda, so to speak, of daily political struggle.

Thus, the constitutional essentials define and settle the guidelines and rules which are most essential for fair coexistence in a society. A fair constitution, incorporating these essentials, is characterised by Rawls "as a pact to maintain civil peace."¹⁰⁵⁸

¹⁰⁵⁷ When employing the idea of the original position as a hypothetical device for settling these terms, Rawls succeeds in establishing a simultaneity of an initial agreement and the actual endorsement, the past and the present, which makes it possible to take the very institutional scheme of society both as a scheme already settled and as a voluntary scheme to be (continually) endorsed. This may be of importance for appropriately understanding the Rawlsian idea of endorsement.

¹⁰⁵⁸ I refer once more to: J. Rawls, "The Idea of Public Reason Revisited", *The University of Chicago Law Review* (1997;3), p.781.

In terms of the basic rights and liberties which should be permanently guaranteed in society, one will find that they are provided for in **the first principle** of justice set forth by Rawls:

“Each person has an equal claim to a fully adequate scheme of equal basic rights and liberties, which scheme is compatible with the same scheme for all; and in this scheme the equal political liberties, and only those liberties, are to be guaranteed their fair value.”¹⁰⁵⁹

It would, however, be possible also to consider the merely procedural aspects of a constitutional scheme – to a certain extent – from the perspective of Rawls’ **second principle** of justice, which is divided into the so called difference-principle and the fair-opportunity-principle:

“Social and economic inequalities are to satisfy two conditions: first, they are to be attached to positions and offices open to all under conditions of fair equality of opportunity; and second, they are to be to the greatest benefit of the least advantaged members of society.”¹⁰⁶⁰

As far as I can see, the way society regulates the governmental structure and the powers of the legislature, the executive and the judiciary etc. will determine whether social and political positions are equally open to all and may have a decisive impact on its citizens' chances of satisfying elementary social needs.

b) But it might easily be seen that Rawls’ second principle transcends what can be covered by mere constitutional essentials even when concerned with the most fundamental liberties and rights, and therefore paves the way for more complex questions of justice. These more complex issues, concerned with “the principles covering the social and economic inequalities”¹⁰⁶¹ in society, should be considered matters of basic justice,

¹⁰⁵⁹ Quoted from the very beginning of J. Rawls, *Political Liberalism* (1993), p.5. It is well worth noticing that Rawls does not just care for a formal codification of the most basic liberties, but is also much concerned about having them effectively secured. T.W.Pogge reminds us for instance that: “Es gibt genügend Staaten, in denen z.B. das Recht auf freie Religionsausübung offiziell garantiert, aber doch nicht sicher ist. Wer sich zu einer mißliebigen Religion bekennt, wird vielleicht von der Verkehrspolizei oder der Steuerfahndung schikaniert oder von Halbstarcken zusammen geschlagen, während die Polizei tatenlos zusieht. In solchen Gesellschaften ist das von Rawls geforderte Grundrecht auf freie Religionsausübung und damit auch sein erster Gerechtigkeitsgrundsatz nicht verwirklicht.” T.W. Pogge, *John Rawls* (1994), p.109.

¹⁰⁶⁰ Quoted from the very beginning of J. Rawls, *Political Liberalism* (1993), p.6. As made clear earlier, I shall not here focus on the problem of the lexical ordering of the two principles paradigmatically set forth by Rawls.

¹⁰⁶¹ J. Rawls, *Political Liberalism* (1993), p.229.

and are also to be provided for by the very basic structure of society.¹⁰⁶²

For a society to be well-ordered and sufficiently just there must necessarily be principles both guaranteeing the fundamental liberties and rights, and there must be principles providing effectively for a fair regulation of more complex social and economic affairs (concerning the difficult issues of social equality and inequality). Most matters of social and economic justice (beyond an elementary level of securing elementary needs) are very complex, which makes it unlikely that agreement will as easily be attained – as Rawls hopes.

“Whether the constitutional essentials covering the basic freedoms are satisfied is more or less visible on the face of constitutional arrangements and how these can be seen to work in practice. But whether the aims of the principles covering social and economic inequalities are realized is far more difficult to ascertain. These matters are nearly always open to wide differences of reasonable opinion; they rest on complicated inferences and intuitive judgments that require us to assess complex social and economic information about topics poorly understood. Thus although questions of both kinds are to be discussed in terms of political values, we can expect more agreement about whether the principles for the basic rights and liberties are realized than about whether the principles for social and economic justice are realized. This is not a difference about what are the correct principles but simply a difference in the difficulty of seeing whether the principles are achieved.”¹⁰⁶³

In spite of these difficulties, Rawls obviously sees an urgent need for an institutional scheme, fairly regulating also rather complex matters of basic justice, concerned with social and economic inequality. A conception of justice, concerned with a fair scheme of society which is strictly egalitarian in the way Rawls’ conception is, cannot avoid addressing these complex socio-economic issues.

c) There is also a third “level”, consisting of all the other issues that might involve questions of justice. Such questions arise for instance, when people are concerned with educational problems, matters of ecology, even traffic control, etc., the discussion of which exceeds the scope of this dissertation.

¹⁰⁶² Some of these principles should nevertheless be reckoned as constitutional essentials (of the second kind): “But while some principle of opportunity is surely such an essential, for example, a principle requiring at least freedom of movement and free choice of occupation, fair equality of opportunity (as I have specified it) goes beyond that and is not such an essential. Similarly, though a social minimum providing for the basic needs of all citizens is also an essential, what I have called the ‘difference principle’ is more demanding and is not.” J. Rawls, *Political Liberalism* (1993), p.228f.

¹⁰⁶³ J. Rawls, *Political Liberalism* (1993), p.229f.

It should be underlined that Rawls is directly concerned with the two first “levels”. Simultaneously, Rawls appears to realise that his conception of justice as fairness can hardly be taken by all as *the* appropriate basis for coexistence, social co-operation and public reasoning in modern pluralist societies. Rawls encounters serious difficulties at the moment he attempts to step from seeking an agreement on a mere constitutional framework to seeking a morally grounded consensus that has a wider aim and is more substantial and in some way also deeper.

If the basic structure of society is to be regulated by a conception of justice as fairness which covers more complex issues of social justice than merely constitutional principles can deal with, and also draws on some deeper *moral* ideas, then the very “overlap” might in the end be deeper and broader than one should first suppose, and accordingly also more problematic to bring about and maintain. When seeking a consensus also beyond the level of mere constitutional essentials, Rawls is faced with rather complex issues of justice. He is without doubt aware of these problems.

As made clear in chapter 4, Rawls tries to meet the problem by seeking for a “possibility that is more realistic and more likely to be realized”¹⁰⁶⁴ than that of an agreement on strictly defined premises of justice, elaborated by a specific procedure. Instead, Rawls admits that the focus of an overlapping consensus need not be absolutely sharp. There is a whole family of interrelated conceptions of justice that might play a vital role in rendering modern democratic societies well-ordered and fair. I therefore feel justified in saying that what is to be endorsed, is not exactly the conception of justice as elaborated by Rawls in *A Theory of Justice* (1971), although one should have in mind that the conception of justice as fairness is still to be considered the *standard* example of a liberal conception of justice. It is supposed to have some paradigmatic role, – in spite of the latitude that Rawls now allows.

II. In his book about Rawls, Thomas W. Pogge points to some vital problems, widely recognised by Rawls himself, which arise when taking one particular conception of justice as the agreed basis of the institutional scheme of society. I will now quote rather extensively from Pogges' discussion on the question of whether a society might expectedly be fairly well ordered by Rawls' conception of justice as fairness. There can be

¹⁰⁶⁴J. Rawls, *Political Liberalism* (1993), p. 164.

little doubt that Pogge has thereby arrived at a critical point in determining how a Rawlsian idea of an overlapping consensus could eventually be supported.

“Das größte Problem für Rawls’ wohlgeordnete gesellschaft stellt sich mit der Frage, ob wir realistischerweise auf eine Gesellschaft hoffen dürfen, in der nur eine einzige Gerechtigkeitskonzeption vertreten wird. Warum sollte der von Rawls beschworene Wertpluralismus in freiheitlichen Gesellschaften ausgerechnet vor den für die Gestaltung der Grundordnung wesentlichen politischen Werten halt machen? ... Es wird immer Lehren geben, die wenigstens einige von seiner Konzeption postulierten Grundrechte und Grundfreiheiten nicht anerkennen und, wo möglich, abschaffen wollen würden (PL 65). Außerdem: ‘Es ist unvermeidlich und oft wünschenswert, daß Bürger hinsichtlich der angemessensten politischen Konzeptionen unterschiedlicher Meinung sind; denn die öffentliche politische Kultur wird verschiedene fundamentale Ideen enthalten, die sich auf verschiedene Weisen entwickeln lassen. Durch einen ordentlichen Wettbewerb zwischen diesen Konzeptionen läßt sich mit der Zeit zuverlässig herausfinden, welche von ihnen, wenn überhaupt eine, die vernünftigste ist.’ (PL 227) Diese Äußerung scheint zu implizieren, daß eine (selbst durch Rawls’ Konzeption) wohlgeordnete Gesellschaft unmöglich und vielleicht gar nicht einmal wünschenswert ist.

Im selben Zusammenhang skizziert er eine ideale Gesellschaft anderer Art, die er für realistischer hält. Das ist eine Gesellschaft, deren Mitglieder ein gemeinsames Ideal öffentlichen Vernunftgebrauches achten, das jedoch nicht an eine bestimmte gemeinsame Gerechtigkeitskonzeption gebunden ist. Dieses Ideal sieht vor, daß jeder Bürger nach bestem Wissen und Gewissen für eine bestimmte politische Gerechtigkeitskonzeption entscheiden – die er natürlich auch nach bestem Wissen und Gewissen revidieren kann – und sich dann in seinem politischen Verhalten zu Grundordnungsfragen ausschließlich von dieser Konzeption leiten läßt (PL 226f., 241). Die Bürger orientieren sich zwar an verschiedenen Gerechtigkeitskonzeptionen, haben aber dennoch gute Aussichten, ihre die Grundordnung betreffenden Meinungsverschiedenheiten durch zivilisiertes Argumentieren beizulegen. Allerdings geht es in ihren Diskussionen nicht mehr nur darum, wie eine bestimmte Gerechtigkeitskonzeption ein vorliegendes Entscheidungsproblem lösen würde, sondern auch darum, welche politische Gerechtigkeitskonzeption die plausibelste ist.¹⁰⁶⁵

As made clear in my thorough discussion at the end of chapter 5, Rawls elaborates criteria for public reasoning. Let me recall the five aspects of the idea of public reason:

- It is concerned with fundamental *political* issues.
- It applies primarily to persons as officials and as candidates for public office.
- Its content is given by a family of reasonable political conceptions of justice.
- These conceptions are concerned with the settling of binding norms (and legitimate law) for democratic societies.

¹⁰⁶⁵ T.W.Pogge, *John Rawls* (1994), pp.151-153.

- Principles set forward by citizens in the forum of public reason are to satisfy the reciprocity-criterion.

Rawls' conception of public reason also incorporates a moral ideal, materialised in the duty of civility, as thoroughly discussed in chapter 6. When discussing the idea of public reason and the civic duty following from this idea, I have especially concentrated on the Rawlsian proviso and on the moral conflicts that might arise when Christians as citizens are challenged to comply with a duty of civility. I shall not now discuss these issues any further. What I want to stress, however, is that the Rawlsian idea of public reason, including the ideal of a duty of civility, provides us with at least some essential ideas and ideals, which might in themselves be widely recognised as a shared basis for co-operative ventures and discourse in pluralist societies.

What is to be endorsed then, is not really a fixed and specific liberal-political conception of justice, but rather some essential ideals of a coexistent society as implied by the very idea of public reasoning – with its accompanying ideal of a duty of civility – underpinned by a family of reasonable (and liberal) conceptions of justice. It is in itself an important insight that there might be a *family* of such conceptions, which can provide us with guidelines required for handling *shared* political issues of vital significance for fair coexistence. This means that the third aspect of public reason focusing on its content or orientation – referred to in the third bullet-point above – is not any longer bound to one particular conception of justice. There is a family of conceptions that might serve as a proper orientation for our public reasoning with one another. Within this family, however, I think that Rawls' conception of justice as fairness might be considered one of the most impressing and most approvable conceptions of justice to go with the scheme of modern pluralist democratic societies. It is, however, important now to see that citizens – to a wider extent than was the case in Rawls' earlier writings – are expected to bring concerns stemming from their own conceptions of justice into the public forum, provided that these can be given a clearly political orientation and satisfy the Rawlsian proviso.

The (reasonable) comprehensive doctrines, with their ideas of justice, may be assumed to have some internal guidelines for how to transform their ideas of justice to the level of common politics and shared efforts. Rawls himself emphasises that the difficult problem of how this “transformation” is to be done, and which restrictions and accommo-

dations should be accepted, in the first place has to be resolved from within a citizens' own conception of justice.¹⁰⁶⁶

7.1.5. Who are the endorsing parties?

Even if there might be some latitude concerning the political values and principles of justice to be endorsed, it seems quite clear that a Rawlsian “overlap” has to be strictly *political*. This immediately raises the question of who is expected to endorse a strictly political “overlap” from the Christian side? The church institution? Individual Christians? Or maybe should churches and Christians entirely abstain from this kind of support?

The idea of establishing and maintaining a shared institutional framework through an overlapping consensus, thereby settling the conditions necessary for fair coexistence, public reasoning and the practice of civic duty seems to imply that individuals as well as groups and associations, Christians as well as Churches, have to be taken as the endorsing and participating parties. From Rawls' perspective this seems obvious. The endorsing parties are not just supposed to be citizens taken strictly as individuals. All parties involved in social co-operation within society, – either individuals or associations, are addressed as endorsing parties. But there may obviously be different ways that the different parties could appropriately give their support. Thus two closely connected questions are to be raised:

- **Who** is entitled to endorse (or reject) an overlapping consensus about political values if this implies a recognition *from within* the Christian doctrine?
- In what **form** should an endorsement eventually be given?

Let me turn first to the question of the **form** in which support should be expressed. Churches often address an audience by preaching. This “kerygmatic” approach transcends the domain of mere rational discourse, public reasoning and political deliberation. When churches interfere with politics from the perspective of theological social ethics, they should therefore normally avoid using a “kerygmatic” form, due to the very

¹⁰⁶⁶ This is clearly seen by Pogge, when he discusses the duty of civility in his book about Rawls. “Allerdings ist der Inhalt dieser Pflicht [the duty of civility] jetzt relativiert: Sie fordert nicht, daß jeder Bürger in seinem politischen Verhalten in der Öffentlichkeit, wo es um Grundordnungsfragen geht, seine persönlichen Werte und Interessen zugunsten *dieser* (etwa der Rawlsschen) Gerechtigkeitskonzeption, sondern

nature of politics, social ethics and the kerygma itself. And they have to take into account that in matters like this there is obviously widespread pluralism within the church itself, making unanimous, representative or categorical utterances nearly impossible.

In this connection it might be useful to refer to the so called “Denkschriften”, elaborated in the German church. They are often worked out in broadly representative committees, and thereby the categorical form is usually to be systematically avoided. The most the authors hope for, I think, is that the church (by the means of such “Denkschriften”) can focus on problems, raise questions and maybe suggest or propose some solutions in a rather tentative form. And even when presented in this tentative form, political utterances may lack clear and wholehearted backing from within the churches themselves.¹⁰⁶⁷ If the church as such were really challenged to endorse a conception of *political liberalism* or a *theory of justice* as conceived of by Rawls, a tentative and hesitating endorsement might, one expects, be the most one could hope for.

The question **who** is entitled to recognise or endorse political statements or doctrines of social ethics on behalf of the church raises difficult problems.¹⁰⁶⁸ In a Lutheran church

daß er sie zugunsten *seiner* Gerechtigkeitskonzeption beiseitesetzen soll.” Thomas W. Pogge, *John Rawls*, Beck'sche Reihe; 525; Denker, München 1994, p.153.

¹⁰⁶⁷ Honecker even says: “Die theologische Grundlage der Denkschriften ist bis heute unklar und strittig. Das teilen freilich Denkschriften mit der gegenwärtigen evangelischen Ethik weithin. Das sei im folgenden belegt und erläutert an der Selbstdeutung der Denkschriften, an der Denkschriften-Denkschrift: ‘Aufgaben und Grenzen kirchlicher Äußerungen zu gesellschaftlichen Fragen’ (1970).” M. Honecker, “Sind Denkschriften ‘kirchlicher Lehre?’”, *Zeitschrift für Theologie und Kirche* (1984), p.247. And he continues: “Die Argumente sind wechselnd und inkonsistent. Es finden sich unterschiedliche Lieblingsideen, Leitvorstellungen und Belege aus bisherigen kirchlichen Erklärungen; in dieser Hinsicht ist diese Denkschrift ein Musterbeispiel für einen Gremientext, in den unterschiedliche Meinungen eingehen und aus dem man dann je nach Bedarf recht Unterschiedliches, ja Gegensätzliches herauslesen und zitieren kann. Das ist eine Crux vieler Denkschriften, daß Argumente und Wertungen nicht durchweg zueinander passen, ja sich sogar widersprechen können. Die Denkschrift summiert verschiedene theologische Ansätze.” *Ibid.*, p.249

¹⁰⁶⁸ It would be beyond my scope to pursue in full extent the various aspects of this difficult problem here. Some of these issues are, however, discussed in: I. Asheim, *Embetsplikt og lojalitet. Betenkning avgitt til Bispemøtet våren 1980 og Bispemøtets vedtak*, Land og Kirke, Gyldendal Norsk Forlag, Oslo 1980. Here Asheim raises the question: “Hvem bestemmer i kirken?” (p.44). And he makes it clear that: “Reformasjonen var uhyre vår overfor enhver tendens til å gi Geistligheten og andre kirkelige instanser status som ville innebære umyndiggjørelse av menigheter og lekfolk.” *Ibid.*, p.46. But it is also worth noticing that Asheim adds: “To forhold er det imidlertid viktig å være oppmerksom på i denne forbindelse. For det første at Luthers lære om de troendes allmenne prestedømme *ikke er individualistisk å forstå*. Poenget er ikke individets selvstendighet overfor kirken, dets uavhengighet overfor alle formidlende instanser, dets rett til selv å etablere seg som religiøst subjekt og på egne vegne eller sammen med likesinnede ivareta tradisjonelt kirkelige funksjoner på den måte og i den utstrekning som man måtte føle seg kalt til. Poenget er heller ikke en ‘*demokratisk ordning*’ av forholdet prest – menighet i den forstand at grunnlaget for prestetjenesten skulle være summen av de fullmakter som selvstendige personer skulle være

no member can claim to make binding proclamations in matters of politics, as Honecker makes clear with his decisive rejection of the view that “ein authentischer Interpret für Glaubens- und Lebensfragen vorgegeben ist.”¹⁰⁶⁹ Accordingly, Lutheran churches have been very reserved about expressing direct support or recognition of specific *political* projects, philosophical conceptions and human enterprises. One might plausibly conclude that the church as such should be more cautious than individual Christian citizens in matters of political affairs, since there is no instance entitled to make statements on behalf of the church in strictly political matters, thereby threatening the freedom of the church members (and indeed undermining the very nature of the political). Honecker very appropriately criticises tendencies to *church*-authorisation of political programs, institutions, conceptions and principles.

In correspondence with this view it should be added that even if bishops can usually be considered representative of the church, Lutheran churches have always had good reasons for underlining that they;

“soll auch nicht in ein frembd Amt fallen; soll nicht Konige setzen und entsetzen, soll weltlich Gesetz und Gehorsam der Oberkeit nicht aufheben oder zurrutten, soll weltlicher Gewalt nicht Gesetze machen und stellen von weltlichen händeln, wie dann auch Christus selbs gesagt hat: ‘Mein Reich ist nicht von dieser Welt’; item: ‘Wer hat mich zu einem Richter zwischen euch gesetzt?’”¹⁰⁷⁰

villig til å overdra til presten som sin talmann og representant. Når moderne politisk tenkesett og individualisme på denne måten blir inntolket i læren om det allmenne prestedømme, lander man langt på siden av reformatorenes og våre bekjennelsesskrifters kirkesyn. Uten tvil var menighetslemmenes myndiggjørelse en hovedsak for Luther. Derfor hans gjentatte understrekning av at ‘vi har alle samme rett’. Men det er karakteristisk for reformatoren at han da samtidig fremholder at den rett det her er tale om, er en rett innenfor rammen av et fellesskap som ingen må bryte ut av.” *Ibid.*, p.46f.

¹⁰⁶⁹ “‘Wer redet?’ Es gibt bekanntlich kein Lehramt der evangelischen Kirche in Glaubensfragen, erst nicht ein Lehramt für ethische und politische Entscheidungen. Dies ist im römisch-katholischen Verständnis prinzipiell anders, weil im Papstamt ein authentischer Intepret für Glaubens- und Lebensfragen vorgegeben ist. Nun darf man freilich nicht unterstellen, päpstliche Enzykliken seien unfehlbar. Ihre inhaltlichen Aussagen machen, wie sich an den Sozialenzykliken zeigen läßt, zudem im Lauf der Zeit nicht unerhebliche Wandlungen durch. Überdies ist die Grundlage der päpstlichen Soziallehre eine Sozialphilosophie, für welche das Naturrecht steht. ... Dennoch hat der Papst als Zeichen und Garant der Einheit der Kirche, hat das Papstamt als Institution iuris divini für die katholische Kirche eine andere geistliche Autorität als kirchenleitende Persönlichkeiten, Gremien, Organe – wie Synoden, Kirchenleitungen und Kammern – im evangelischen Verständnis. Die Lehrautorität evangelischer kirchenleitender Organe kann keine andere sein als die einer Sachautorität, die aus sich heraus überzeugt. ... Nach evangelischem Selbstverständnis kann die Frage: Wer redet geistlich legitim? gar nicht losgelöst werden von der Frage, was die Kirche als *Kirche* theologisch verantwortbar sagen kann, erörtert werden. Diese Was-Frage wird in der Denkschrift aber Nahezu im Nebel und im Unklaren gelassen.” M. Honecker, “Sind Denkschriften ‘kirchlicher Lehre?’”, *Zeitschrift für Theologie und Kirche* (1984), p.248f.

¹⁰⁷⁰ Confessio Augustana XXVIII,13. *Die Bekenntnisschriften der evangelisch-lutherischen Kirche* (1967, 6.durchgesehene Auflage), p. 122f.

It might nevertheless be asked, shouldn't the Christian churches as churches support at least the most elementary Rawlsian principles of justice required for settling and maintaining a fair institutional framework of coexistence? From a Rawlsian perspective churches are without doubt important associations within democratic societies, – sometimes going along with and sometimes competing with other associations.¹⁰⁷¹ And the vote of churches in matters of social ethics, human rights and political liberties is of considerable weight. And so one might expect that *churches* would endorse at least the most essential concerns of political liberalism, – as for instance the concerns covered by Rawls' first-principle – at least in the same way as Lutheran churches could also recognise elementary declarations of human rights. There are certain liberties, rights and standards that may plausibly be taken to be very much in accordance with a Christian moral doctrine, even if these standards are not to be derived exclusively from that doctrine. Let it be inserted, however, that the most efficient way of recognising the Rawlsian “first-principle-concerns” is that one stands up for them when violated, – as churches have in fact not seldom done. This should at least be considered a way of practically endorsing the essential liberties and rights, exposed by Rawls.

Even if Lutheran churches, in accordance with the doctrine of the two kingdoms, may appropriately emphasise that they “soll auch nicht in ein frembd Amt fallen”¹⁰⁷², it seems plausible to say that they should nevertheless be expected to support the “first principle-concerns” as concerns which are not “frembd”, but very much in accordance with central ground-assumption about man, freedom of faith and liberty of conscience as implied in the Christian (moral) doctrine itself. And the kind of (political) values and rights that Rawls aims at securing in the first principle, are to a wide extent the kind of elementary liberties and rights which churches themselves have sometimes felt inclined not just to make a concern of social ethics, but even to make a “casus confessionis”. And it might be rather easy to tell when elementary freedoms and rights of this kind are violated, which mean that these essentials could be unanimously defended for moral reasons. That may at least realistically be expected and hoped for.¹⁰⁷³ Churches have

¹⁰⁷¹ Associations as such have liberties and rights (for instance a right of free speech), and citizens are supposed to be free to join them or leave them. That is part of an elementary fairness and justice, as guaranteed by the very liberal institutional scheme of society.

¹⁰⁷² Confessio Augustana XXVIII,13. *Die Bekenntnisschriften der evangelisch-lutherischen Kirche* (1967, 6.durchgesehene Auflage), p. 122f.

¹⁰⁷³ Cf. J. Rawls, *Political Liberalism* (1993), p.230. Even if I shall not go in details in this concluding

good moral reasons for contributing to safeguarding the most elementary “principles of justice, specifying the equal basic rights and liberties.”¹⁰⁷⁴

However, the difficult problems in endorsing political principles, standards and values arise for the church when trying to take (the required) further steps: How can churches support, endorse or recognise principles for social politics, economic distribution and political arrangements, which in the end also depend on very complex deliberations?¹⁰⁷⁵ On the other hand, a church setting the questions of social ethics and justice on the agenda cannot ignore questions of basic justice when they turn complex. There can therefore be little doubt that churches are brought into dilemmas when faced with the kind of issues which are taken into account in Rawls’ second principle of justice. It can therefore plausibly be argued by Honecker that a church, when interfering with complex socio-economic issues, runs the risk of legitimating certain political standpoints without a clear mandate from within the (moral) doctrine it takes as its own *raison d’être*. It can therefore be taken as programmatic and typical of Honecker when he at the very outset of his *Einführung in die theologische Ethik* stresses that:

“Zurückhaltend bin ich freilich gegenüber allen emphatischen Postulaten einer (absoluten) theologischen Begründung. Denn alle derartigen Begründungsansprüche

chapter, it might nevertheless be appropriate to recall how T.W.Pogge comprises the Rawlsian “Grundrechtspaket”: “Rawls will nur die wichtigsten Rechte und Freiheiten aufnehmen, damit der – noch zu diskutierende – Vorrang des ersten Grundsatz über den zweiten einerseits nicht verwässert wird und andererseits, auch im Urzustand, plausibel ist. Er argumentiert für die Wichtigkeit eines jeden Grundrechts im Rekurs auf die Wichtigkeit eines Gegenstandes vom Standpunkt der drei höherrangigen Interessen. Jeder Mensch, der irgendwelche Interessen hat, braucht körperliche Unversehrtheit, Freizügigkeit, Rechtssicherheit und persönliche Eigentumsrechte. Wer das erste Interesse hat muß insbesondere am politischen Leben seiner Gesellschaft teilnehmen und seine Meinung frei äußern können. Wer das zweite Interesse hat, muß vor allem seine Werte und Ziele – und deshalb auch Freunde, Laufbahn, Religion und Lebensstil – frei wählen und auch unwählen können, was auch Gewissensfreiheit, freien Zugang zur Kunst und Literatur seiner Gesellschaft sowie auch die Freiheit voraussetzt, mit anderen in gegenseitigem Einvernehmen nach Belieben zu interagieren. Und für jemanden, der eine bestimmte, aber unbekanntes Zielsetzung erfolgreich verfolgen will, sind ebenfalls besonders Gewissensfreiheit und Schutz zu verschiedener Weltanschauungen und Lebensweisen von Bedeutung. Zu diesen Argumenten, die die Wichtigkeit eines Grundrechts für seinen Besitzer betonen, kommen noch weitere Argumente, die zeigen, wie es für jeden, wiederum vom Standpunkt seiner drei höherrangigen Interessen, ein großer Vorteil ist, in einer Gesellschaft zu leben, in der diese Grundrechte allen zustehen und als moralische Selbstverständlichkeit empfunden werden.” T.W. Pogge, *John Rawls* (1994), p.112f.

¹⁰⁷⁴ J. Rawls, *Political Liberalism* (1993), p.228.

¹⁰⁷⁵ It seems as if different aspects, concerns and reasons have to be reasonably balanced when interfering with matters of distributive justice in social and economic affairs. By using the term “Konvergenzargumentation”, a term that may seem rather loose, Honecker on his side seems at least to recognise the complexity of such issues, simultaneously making it quite clear that the Christian revelation alone cannot provide us with the premises we need for handling them properly and in the most fair way. For the term “Konvergenzargumentation”, cf. “Das Problem des theologischen Konstruktivismus”, *Zeitschrift für evangelische Ethik* (1980), p.100.

können leicht zum Zweck ideologischer Sanktion und Legitimation mißbraucht werden.”¹⁰⁷⁶

Thus, there are solid historical grounds (churches have without doubt falsely “authorised” certain political authorities) as well as good theological reasons (in the doctrine of the two realms) why churches as such should better accept the more reserved approach proposed by Honecker in complicated matters of social and economic politics. *Church-endorsement* in matters of politics has become problematic, and it can plausibly be claimed that Churches as such should enter the forum of public reason without “emphatischen Postulaten einer (absoluten) theologischen Begründung.”¹⁰⁷⁷ If bishops and church-officials interfere with *political* matters of basic justice – as they may freely do – they in fact take on themselves an obligation to argue in terms of public reason, to convince opponents by the means of good reasons, by referring to accessible moral values and by introducing sound political arguments. When churches (for instance through their officials) participate in public and political reasoning, they can *normally* be expected to go for reasonable arguments, valid within the strictly public forum, as required not least by the Rawlsian proviso.

Accepting the more reserved approach of Honecker in complex matters of social ethics and politics, – thereby abstaining from “emphatischen Postulaten einer (absoluten) theologischen Begründung”¹⁰⁷⁸ – does even not mean that complex matters of justice are to be ignored. There can for instance be little doubt that the difference principle, as introduced by Rawls and discussed in all its complexity, raises crucial questions which should better not be ignored by theological social ethics, concerned with matters of basic justice.¹⁰⁷⁹

However, in matters of complex socio-economic issues which “are nearly always open to wide differences of reasonable opinion [...] and] rest on complicated inferences and intuitive judgments that require us to assess complex social and economic information

¹⁰⁷⁶ M. Honecker, *Einführung in die Theologische Ethik, Grundlagen und Grundbegriffe* (1990), p.vi.

¹⁰⁷⁷ M. Honecker, *Einführung in die Theologische Ethik, Grundlagen und Grundbegriffe* (1990), p.vi.

¹⁰⁷⁸ M. Honecker, *Einführung in die Theologische Ethik, Grundlagen und Grundbegriffe* (1990), p.vi.

¹⁰⁷⁹ A church, taking “*diaconia*” as a central part of its mandate, can hardly avoid taking the more complex questions implied in Rawls’ second principle into account. There is, however, no agreement within the churches themselves about the political and socio-economical implications of “*church-diaconia*” (Let me define “*diaconia*” – not quite precisely – as “*church-social-work*”).

about topics poorly understood”¹⁰⁸⁰, the opinions within churches as well as among citizens in general will obviously differ. The route from the principles and values given within the Christian (moral) doctrine, to the more complex matters of basic justice covered by Rawls’ second principle, may be rather long and complicated to trace. But Christians, as citizens, as politicians, as judges, as participating in the public forum, should nevertheless be expected to seek for the most reasonable political principles of justice, to cohere with the comprehensive doctrine they honour.¹⁰⁸¹

In fact both Rawls, from a political point of view, and Honecker, from a theological point of view, are faced with the question how to properly cope with the kind of problem actualised in the *tension* which is characteristic of a *person*, as simultaneously “Welperson” and “Christperson”, or as both a citizen and a Christian.

According to Honecker the ground-situation of man is characterised by his living both “coram deo” and “coram mundo”, and there may be a fundamental tension built into the very existence of the Christian, as being simultaneously “Christperson” and “Welperson”. This is a tension which cannot ultimately be escaped from or resolved by any political means accessible within the scheme of this world.¹⁰⁸² But, as simultaneously “Christperson” and “Welperson”, a person can nevertheless be expected to strive to make his existence in both relations correspond.¹⁰⁸³

Rawls for his part is also – in a way – faced with the problem described as being simultaneously “Welperson” and “Christperson”. As made clear Rawls does not treat this *simultaneity* as a theological problem, but as a political problem. For Rawls takes it for granted that citizens in modern pluralist societies are not just honouring a political

¹⁰⁸⁰ J. Rawls, *Political Liberalism* (1993), p.229.

¹⁰⁸¹ If using Rawlsian terminology, the Christian doctrine should, however, only with some reservation be taken as a comprehensive moral doctrine, it should at the most be taken as partially comprehensive. And in a moral perspective it is open to different kinds of “substantialisation”. Let it, however, be noticed once more that “comprehensive” and “substantial” should better not be taken as synonymous.

¹⁰⁸² What Honecker characterised as “ein äonisches” approach to the doctrine of the two kingdoms is, as far as I can see, of importance for understanding the depth of this tension, built into the very ground-situation of man in the world. But – as previously mentioned – the theological notion of the “world”, which is ambiguous in itself, should not unproblematically be introduced into a political context.

¹⁰⁸³ Honecker all the way draws heavily upon the doctrine of the two realms. And it is important to stress that the two realms should be closely related in at least two respects. “Man darf freilich nicht übersehen, daß beide Reiche oder Regimente an zwei Stellen zusammentreffen, sich überschneiden: Einmal in Gott: beide Reiche sind Reiche Gottes, beide sind gleichermaßen vom Teufel bedroht, und sodann in der Person des Christen: er muß beide Reiche in seinem Gewissen vereinen können.”, M. Honecker, *Das Recht des Menschen. Einführung in die evangelische Sozialethik* (1978), p. 157. This makes the “double-relation” of the Christian rather complex.

conception, but also have some higher-order interests, the first of which is a determinate conception of the good, as “interpreted in the light of some comprehensive religious, philosophical, or moral doctrine.”¹⁰⁸⁴ It has to be taken into account that citizens are normally holding a political conception and simultaneously honouring a comprehensive (religious) doctrine. Therefore the question arises “How is it possible for citizens of faith to be wholehearted members of a democratic society?”¹⁰⁸⁵ This question differs radically from the question I raised when asking who was entitled to endorse a Rawlsian conception on behalf of the church, and in which form. In a way one might say that the question, raised in the “Introduction to the Paperback Edition” of *Political Liberalism* (1996) is a more individualised one¹⁰⁸⁶, indicating that the endorsing instance is foremost the citizen as member of society as a fair scheme of social co-operation.

For an endorsement to be brought about, it is necessary that a Christian citizen can see his political reasoning (within the forum of public reason) as somehow coherent with the moral obligation he has as a Christian. This concern explains my thorough discussion of the issues of public reason and the duty of civility in the chapters 5 and 6.

7.2. Theological social ethics – congruent with, or supportive of, or at least not in conflict with political liberalism, conceiving of an overlapping consensus?

7.2.1. Comprehensive doctrines – relating themselves to a strictly political conception

There are very different kinds of comprehensive doctrines, both philosophical, political, moral and religious. Rawls is therefore rather vague when choosing the terms that should most appropriately express the different ways comprehensive doctrines might expectedly be related to a strictly political ground-conception, – as for instance elaborated in *Political Liberalism*. He is just stating;

“... that there are many reasonable comprehensive doctrines that understand the

¹⁰⁸⁴ J. Rawls, *Political Liberalism* (1993), p.74.

¹⁰⁸⁵ J. Rawls, “Introduction to the Paperback Edition”, *Political Liberalism* (1996), p. xxxixf.

¹⁰⁸⁶ The more individualistic perspective might at the first glance seem surprising since Rawls (and Honecker as well) is usually stressing the institutional perspective. But the two perspectives obviously complement one another. Of course social and political institutions should not be conceived of independently of the persons affected by them.

wider realm of values to be congruent with, or supportive of , or else not in conflict with, political values as these are specified by a political conception of justice for a democratic regime.”¹⁰⁸⁷ .

What is of interest here, is that Rawls allows for a strong and morally reflected way of relating comprehensive doctrines to a political (liberal) conception as well as a much weaker way of setting up a connection, apparently characterised by the mere absence of conflict.

It also may be assumed that there are weaker and stronger ways that comprehensive doctrines might be supportive of a political view. One can for instance suppose that Rawlsian liberalism would have a much stronger support from within liberal theology, especially if influenced by Kantian philosophy, than from Barthian theology. On the other hand, one might expect that an overlap conceived of on Rawlsian liberal premises should receive very weak support, if not outright rejection by those tending towards religious fundamentalism. (In return Rawls may tend to label fundamentalism as unreasonable.)

It is hard to say exactly what Rawls means with the terms he uses to propose ways in which reasonable comprehensive doctrines might relate to political liberalism, – saying for instance that a comprehensive doctrine may be “congruent” with a political conception.¹⁰⁸⁸ But without doubt he starts with the *stronger* case, where doctrines and a political conception are very closely connected, ending up with the *weaker* case, where one might hope only that they are not mutually exclusive.

7.2.2. Three ways comprehensive doctrines might be expected to back up a political conception

In lecture IV, § 8, of *Political Liberalism* Rawls raises the question; “Conceptions and Doctrines: How Related?”¹⁰⁸⁹ In relating conceptions and (comprehensive) doctrines he specifies different ways political liberal ideas of justice could possibly be supported from the side of comprehensive doctrines. Rawls presupposes that a supportive ap-

¹⁰⁸⁷ J. Rawls, *Political Liberalism* (1993), p.168f.

¹⁰⁸⁸ In *Webster's Encyclopedic Unabridged Dictionary of the English Language* (1994 edition), ‘congruence’ is just defined as “the quality or state of correspondence or agreeing.” (p.310). (Let it, however, be mentioned that being *congruent with* can for instance also be taken in a more precise meaning in geometry; as “coinciding on all points ...”, p.310).

¹⁰⁸⁹ J. Rawls, *Political Liberalism* (1993), pp.168-172.

proach from the comprehensive doctrines might be given along different lines. He presents us with the following “approaches”:

a) First there is what one should most appropriately characterise as a *continuous* way of connecting the comprehensive doctrine one might have to the political values.¹⁰⁹⁰ The idea is that someone holding a comprehensive doctrine can consider the political conception he holds as continuous with, or following directly from, the comprehensive doctrine one honours. Thereby the question of support can easily be handled. Rawls himself makes it for instance quite clear that the philosophy of Immanuel Kant, although in itself a comprehensive and controversial philosophical doctrine, could be taken as a “deductive basis of the political conception” formulated in *political* liberalism.¹⁰⁹¹ Rawls would most likely not establish such a close and continuous relation between a strictly political conception of liberalism and a theological doctrine.

b) There might also be a relation between the comprehensive view and the political conception one holds that should best be characterised as a relation of *approximation*. This means that a (liberal) political conception can be considered “a satisfactory, perhaps even the best workable approximation”¹⁰⁹² to central concerns within the particular moral doctrine one holds. Rawls takes the classical doctrine of utilitarianism (as elaborated for instance by Bentham and Sidgwick) as a typical example of a doctrine that can be expected to endorse principles essential of political liberalism as principles that to a large extent can be approved of as the best workable approximation even when setting out from a criterion of maximising utility.¹⁰⁹³ In a similar way one might think that the most one could hope for theologically, is that main concerns within a Rawlsian con-

¹⁰⁹⁰ Rawls can even characterise this way of relating doctrines and conceptions as “*deductive*”, although he immediately adds that it is not strictly deductive. Taking Kant as the most characteristic example Rawls is saying that; “Here the relation is deductive, even though the argument can hardly be set out very rigorously. The point is that someone who affirms Kant’s doctrine, or one similar to it, regards that view as the deductive basis of the political conception and in that way continuous with it.” J. Rawls, *Political Liberalism* (1993), p.169.

¹⁰⁹¹ Cf. J. Rawls, *Political Liberalism* (1993), p.169. For my part I would like to use the notion “continuous” (that is also used by Rawls) instead of using the term “deductive”, which might easily be taken as too strong.

¹⁰⁹² Cf. J. Rawls, *Political Liberalism* (1993), p.170.

¹⁰⁹³ This is well worth noticing since Rawls in *A Theory of Justice* considers his own theory an alternative to Utilitarianism. “There are many forms of utilitarianism, and the development of the theory has continued in recent years. I shall not survey these forms here, nor take account of the numerous refinements found in contemporary discussions. My aim is to work out a theory of justice that represents an alternative to utilitarian thought generally and so all of these different versions of it.” J. Rawls, *A Theory of Justice* (1971), p.22.

ception of justice could be taken as the best approximation to central principles, which churches and most Christians hold to be in accordance with the Christian doctrine.

c) To a wide extent I will especially take into account the two possibilities sketched above; seeing political values either as *continuous* with central values within the religious doctrine one holds, or as the best *approximation*. But I will bear in mind the fact that Rawls also allows for a third possibility; a political conception may simply be considered the best *practical way of balancing* different values and judgements that are characteristic of diverse “value-spheres”, which cannot be reconciled within one overarching and coherent comprehensive system. Thus life-reality is taken as consisting of different value-spheres and norm-codes, each with a high degree of autonomy and with an internal logic of its own.¹⁰⁹⁴ However, the autonomy of each value-sphere cannot be taken as absolute. There are overlapping spheres of interest. Norms and values inherent in religion, science, economy, biology etc. might sometimes come into conflict, without any possibility of solving the conflict. A political conception, however, has to balance competing values and norm-codes in a fair way, – to make society function as a fair scheme of co-operation. A political conception which is successful in coping with this kind of pluralism by fairly balancing between competing values might be widely approvable – all things considered. Such an approach can also be characterised by Rawls as a “pluralist” approach.

Rawls summarises the three approaches sketched so far as follows:

“True, each comprehensive view is related to the political conception in a different way. While they all endorse it, the first does so deductively supported and so continuous from within; the second as a satisfactory and possibly the best workable approximation given normal social conditions; and the last as resting on considered judgments balancing competing values, all things tallied up. No one accepts the political conception driven by political compromise.”¹⁰⁹⁵

7.2.3. Political values rooted in the nature of faith itself?

Even if there might be different ways comprehensive doctrines might be supportive of political values and rights, Rawls correctly assumes that there might be in the (reasonable) religious *doctrines* themselves, as held by the churches and honoured by many

¹⁰⁹⁴ This is a view that is also reflected in the idea of “Eigengesetzlichkeit”, which is sometimes closely connected to the doctrine of the two kingdoms.

citizens within modern societies, sufficient motives that can be expected to converge with and strengthen basic elements of a political *conception* worked out for a constitutional democracy, securing elementary liberties and equal rights for the citizens.

To demonstrate more concretely how this might be the case according to Rawls I shall take as an example the way he draws on John Locke's *A Letter Concerning Toleration* (1690) where the Christian background is obvious. Freedom of conscience as a political and religious liberty is taken to be one element where there can be supposed to be a kind of convergence between a political and a Christian perspective. The arguments that Locke uses for claiming this elementary kind of freedom in society are partly theological ones (for instance that "only faith and inward sincerity gain our salvation and acceptance with God" and that one "cannot be compelled by force to belief") and partly more specific political ones (for instance that "excommunication does not affect civil relationship").¹⁰⁹⁶ As far as I can see, Rawls, supported by Locke, thereby takes for granted that the very principle of toleration that is of crucial importance for fair coexistence in society, can also be essentially rooted in the nature of faith itself. People might be supposed to affirm "a principle of toleration and underwrite the fundamental liberties of a constitutional regime"¹⁰⁹⁷ on the basis of central motives within the religious doctrine they hold.

By his reference to the nature of *free faith*, Rawls (supported by Locke), deliberately connects – not to something peripheral within the Christian religion – but to something essential. Some vital (political) liberties, as for instance the freedom of conscience and the liberties which correspond with this basic freedom, can be supposed to follow from the very nature of faith.

¹⁰⁹⁵ J. Rawls, *Political Liberalism* (1993), p.171.

¹⁰⁹⁶ "This idea is illustrated by various of Locke's statements in *A Letter Concerning Toleration* (1690). He says such things as: 1) God has given no man authority over another (p.129); 2) no man can abandon the care of his own salvation to the care of another (pp. 129, 139, 154); 3) the understanding cannot be compelled by force to belief (p.129); 4) the care of men's soul is not given to the magistrate as that would determine faith by where we were born (p.130); 5) a church is a voluntary society and no man is bound to any particular church and he may leave it as freely as he enters (p.131); 6) excommunication does not affect civil relationships (p.134); 7) only faith and inward sincerity gain our salvation and acceptance with God (p.143)." J. Rawls, *Political Liberalism*, p.145, note 12. (Rawls' page references are to the edition of J.W.Gough, *Two Treatises of Government with A Letter on Toleration*, 1956).

¹⁰⁹⁷ J. Rawls, *Political Liberalism* (1993), p.145. I cannot here enter into the full debate about toleration and Christian faith, but let me just refer to an instructive book on the issue, recently published: I. Broer and R. Schlüter (Hrsg.), *Christentum und Toleranz* (1996).

By using this central example, Rawls demonstrates that there might be good reason to believe that (the Christian) religion with its account of free faith – and on premises of its own – can underwrite some of the most fundamental liberties, rights and political values, taken by Rawls as the core for an overlapping consensus.¹⁰⁹⁸ In this case the line from the comprehensive religious doctrine to central political values may even be taken as rather continuous.

7.3. “Vermittlung” once more

There is no reason to deny that one can plausibly postulate that there may be a continuity between the nature of Christian faith and the defence for freedom of conscience and principles of toleration. But I cannot conclude by just postulating some kind of continuity, even if it might be important enough to find some convergent concerns in political liberalism and in the Christian doctrine. Let me instead conclude this chapter by emphasising some aspects that were of importance when I considered Martin Honecker’s “model of transformation” characterised by the seeking for a “Vermittlung von Motivation und rationaler Evidenz” within the domain of social ethics.¹⁰⁹⁹

I. Before considering the idea of “Vermittlung”, however, it is necessary to recall that Honecker all the way employs a theological fundamental distinction, which reflects the hermeneutic key-distinction between law and gospel, and most obviously gets manifest in the doctrine of the two realms. The doctrine of the two kingdoms – if really taking the worldly realm as a domain of political reason – would seem to go well with the idea of grounding an overlapping consensus which can be widely recognised as *reasonable*, – since the idea of the political domain, as a commonplace for common *reasoning* and

¹⁰⁹⁸ It might be of some interest now also to notice how W. Huber and H.E.Tödt consider the realisation of religious liberty, – citing from “die von der Ersten Vollversammlung des ÖRK in Amsterdam 1948 beschlossene ‘Erklärung über die religiöse Freiheit’”. Sie geht von folgenden vier Leitsätzen aus: ‘1. Jeder Mensch hat das Recht, seinen eigenen Glauben und sein Glaubensbekenntnis selbst zu bestimmen. 2. Jeder Mensch hat das Recht, seinen religiösen Überzeugungen im Gottesdienst, im Unterricht und im praktischen Leben Ausdruck zu geben und die Folgerungen aus ihnen für die Beziehungen in der sozialen und politischen Gemeinschaft offen auszusprechen. 3. Jeder Mensch hat das Recht, sich mit anderen zusammenzuschließen und mit ihnen eine gemeinsame Organisation für religiöse Zwecke zu bilden. 4. Jede religiöse Organisation, die entsprechend den Rechten der Einzelperson gebildet oder aufrechterhalten wird, hat das Recht, selbst ihre Grundsätze und ihre Praxis im Dienste der Ziele zu bestimmen für die sie sich selbst entschieden hat.’ W. Huber and H. E. Tödt: *Menschenrechte. Perspektiven einer menschlichen Welt* (1977), p.211. Huber and Tödt can obviously ascribe to religious liberty some paradigmatic significance for the whole field of liberties and rights.

¹⁰⁹⁹ M. Honecker, *Das Recht des Menschen. Einführung in die evangelische Sozialethik* (1978), p. 155.

social co-operation is crucial within Honecker's social ethics, just as it is within Rawls' conception. According to Honecker theological social ethics should legitimately – and as far as possible – contribute to “die Bildung eines ethischen Konsensus durch rationale Diskussion...”¹¹⁰⁰ This seems to be Honecker's basis for entering into a dialogue with Rawls about a possible “overlap”. And Rawls for his part would certainly also avoid confusing a genuinely religious doctrine with a strictly political and reasonable conception. I think it is important to stress this approach, before adding that Honecker will also avoid advancing a model of separation (as made quite clear in chapter 5.4.2.1.: neither a “Trennungsmodell” nor an “Identitätsmodell” will do.) But this means that the theological “fundamental distinction” used by Honecker has to be taken into account in the moment one seeks “Vermittlung von Motivation und rationaler Evidenz”.

The model of “Vermittlung” presented by Honecker establishes as far as I can see a certain *continuity* between the comprehensive (moral) doctrine one holds and the basic political and reasonable values one advances. Let me therefore once more briefly recall the stages of Honecker's three-levels-model of transformation (“Vermittlung”). Honecker holds that:

- There is in the Christian doctrine a strong *motivating* force towards a moral commitment.
- Basic assumptions about man, including values and norms closely connected with these assumptions, are to be transformed into groundvalues, which can *reasonably* be shared by all human beings.
- On the most concrete level, however, where groundvalues are to be realised, Honecker can open up even for a more pragmatic and situational approach, as I made clear in chapter 5.

This means that the very idea of “Vermittlung” elaborated by Honecker implies a “transformation”, especially in the sense that vital assumptions about man, which are implied in the Christian belief, seek at a transformation into groundvalues, i.e. such values that are assumed to be widely recognisable in a society.¹¹⁰¹ The “worldly realm”

¹¹⁰⁰ For this aim, let me once more refer to M. Honecker, *Sozialethik zwischen Tradition und Vernunft* (1977), p.200.

¹¹⁰¹ I recall that according to Honecker should “Grundwerte ... den fundamentalen Wertkonsensus einer

is taken as a domain where groundvalues, basic principles of justice and fundamental rights can and should properly be settled by political reason, – even if each citizen is simultaneously drawing on moral resources and ground-motives inherent in the particular doctrine he holds. This means that there is a driving force inherent in Christian belief itself towards a transformation into standards, norms, criteria and practices that can be reasonably argued for and rationally assessed through public reasoning. By using terms like “transformation” in this connection (instead of making Christian social ethics a matter of mere “derivation” from some dogmatic principles), Honecker is very much concerned about avoiding all tendencies to “politischen Programmatik”¹¹⁰² from the side of theological social ethics.

II. This may explain why Honecker so often stresses the role the reason should play within social ethics and politics. He is – as underlined – very much aware of the crisis of reason and of ethics, and he does in no way ignore the challenge of postmodernism.¹¹⁰³ Even if this is so he sees no alternative, except for irrationalism and even violence, to taking reason, with its obvious limitations and inherent ambivalence as the shared means of establishing a system of social cooperation.¹¹⁰⁴

Gesellschaft bezeichnen.” M. Honecker, *Das Recht des Menschen. Einführung in die evangelische Sozial-ethik* (1978), p.169. “Grundwerte” as conceived of by Honecker should in themselves be taken as an “overlapping” phenomenon, which can be discussed, assessed and recognised by all citizens, even if they hold diverse religious beliefs. The groundvalues for the political domain, which Honecker focuses, seem rather uncontroversial (as is for instance also the case for the list of primary goods proposed by Rawls). And he adds that “Grundwerte” can be converted into “Grundrechte”, setting elementary standards for all citizens. In his book about *Das Recht des Menschen. Einführung in die evangelische Sozial-ethik* (1978) Honecker makes a clear distinction between “Grundrechte” and “Grundwerte”. The former are the rights of citizens, guaranteed by the state according to the constitutional laws of a society. Honecker can therefore say that: “Grundrechte sind in der Verfassung eines States positiviert Menschenrechte” (*Ibid.*, p.188) while “Grundwerte sind gesellschaftliche Maßstäbe. Sie sollen Orientierungspunkte allgemeinemenschlichen Handelns sein.” *Ibid.*, p.185.

¹¹⁰² M. Honecker, *Sozial-ethik zwischen Tradition und Vernunft* (1977), p.117.

¹¹⁰³ These aspects are very clearly stressed in his article on “Ethikkrise – Krisenethik: Die Hinterfragung der Vernunft im ethischen Urteil”, in: *Das Ethos der Liberalität. Festschrift für HERMANN RINGELING zum fünfundsiebzigsten Geburtstag* (1994), pp.81-94.

¹¹⁰⁴ “Die vorherigen Überlegungen haben die Ambivalenz, die inneren Widersprüchlichkeit im Verständnis von Vernunft gezeigt. Ist es dann aber noch sinnvoll, sich überhaupt auf Vernunft zu berufen? Ist Rationalität nicht unvernünftig? Allein, was wäre die Alternative? Unvernunft, Übervernunft oder Gewalt? Die Aufforderung ‘Lasst uns miteinander vernünftig reden’ ist ein Appell an Gewaltfreie Verständigung... Gibt es zur Vernunft eine Alternative – ausser der Unvernunft und blinden Gewalt? Wäre etwa die Autorität der Offenbarung nicht ein finsterner Grund für eine Ethik als die fragile, unsichere Vernunft ihn anbiten kann? Der israelische Schriftsteller Amos Oz soll freilich einmal gesagt haben, aus dem Glauben sei Schlimmeres erwachsen als aus der Skepsis.” M.Honecker, “Ethikkrise – Krisenethik: Die Hinterfragung der Vernunft im ethischen Urteil”, in: *Das Ethos der Liberalität. Festschrift für HERMANN RINGELING zum fünfundsiebzigsten Geburtstag* (1994), p. 89f.

But it is important to see that it is the communicative aspect of reason which is to be stressed in this connection.¹¹⁰⁵ The Christian cannot introduce within the public field some kind of privileged political insight, but has nevertheless a moral commitment to enter into the role of “eines Dialogpartners im Orientierungsprozeß der Gesellschaft...”¹¹⁰⁶ Simultaneously, however, there is good reason – especially from a theological point of view – to be sceptical towards all “soteriological” ambitions inherent in ratio. Thus Honecker criticises tendencies within an age of modernity.

“Der Vernunftanspruch der Aufklärung ging dahin, den Fortschritt und die Humanität als Folge vernünftigen Handelns zu erwarten. Vernunft und logische Ansprüche konkurrierten miteinander, weil beide je für sich soteriologische Ansprüche vertraten. Wenn Vernunft das Heil, die Rettung der Welt gewährleisten soll, wird sie soteriologisch. Eine soteriologisch verstandene Vernunft ist in der Tat theologisch zu hinterfragen; für dieses Hinterfragen findet sich dann bei Luther Anleitung. Nur eine Vernunft, die sich nicht als Erlösungsmacht und Glaubensautorität betätigt, kann zu einer pragmatischen Vernunftethik führen.”¹¹⁰⁷

This explains how Honecker can still find it possible to define the “worldly realm” as a domain of reason. And it also explains the pragmatic approach he takes within the field of politics and social ethics. But it is in my opinion also important to see that a situational and pragmatic approach is to be framed. It should clearly be stressed “daß alle genannten Sachverhalte bezogen sind auf den *einen Wert* der *Personwürde*.”¹¹⁰⁸ Thus Honecker comes rather close to Rawls in one aspect: The reasonable is in the end to be morally qualified. Stressing the communicative aspect does even not mean that all substantive ideas are relativised or outweighed by mere procedural rules. Using Rawls’ own words, one might say that the concern for basic liberties and rights, as advanced by political liberalism, might be approved of as *approximative* to¹¹⁰⁹ or corresponding to

¹¹⁰⁵ Let it here just be underlined that Honecker is without doubt influenced by modern “discourse-ethics”.

¹¹⁰⁶ M. Honecker, *Einführung in die Theologische Ethik, Grundlagen und Grundbegriffe* (1990), p.x.

¹¹⁰⁷ M. Honecker, “Ethikkrisen – Krisenethik: Die Hinterfragung der Vernunft im ethischen Urteil”, in: *Das Ethos der Liberalität. Festschrift für HERMANN RINGELING zum fünfundsiebzigsten Geburtstag* (1994), p.91.

¹¹⁰⁸ M. Honecker, *Das Recht des Menschen. Einführung in die evangelische Sozialethik* (1978), p.169.

¹¹⁰⁹ The phrase “*approximative to*” seems to cover very well the approach here. In my opinion one cannot so easily distinguish between a view considering the political values as *approximative to* the comprehensive doctrine and a view taking them as the result of a legitimate *balancing* of competing norms. Sometimes Honecker comes rather close to Rawls’ third approach, stressing that theological ethics must “pluralistisch ... ansetzen”. There are in society diverse fields of relative “Eigengesetzlichkeit” and there are competing norms that must be balanced. Theological ethics, seeking principles for coexistence, should take into account and legitimately balance existing norm-codes, values given in history and tradition, different kinds of experiences and hope, as well as specifically Christian insights. In the article on “Das Pro-

central assumptions about man implied in the Christian (moral) doctrine.

III. I have already underlined that the recognition of an overlapping consensus might help strengthening the most fundamental standards covered by Rawls' first principle, allowing, however, for considerable flexibility in the more complex matters covered by the second principle. Churches as well as Christians must realise what Rawls has so clearly seen himself, – that “we can expect more agreement about whether the principles for the basic rights and liberties are realized than about whether the principles for social and economic justice are realised.”¹¹¹⁰ I have even suggested that I – in accordance with Honecker – find it problematic, especially for the church(es) as such, to advance one particular political practice or philosophical conception, especially if it goes beyond the concern for the most elementary liberties, freedom of conscience and basic rights, as Rawls conception obviously also does. Primarily it is the Christian, as simultaneously “Christperson” and “Welperson”, who is to provide for the “Vermittlung” in matters of social ethics and within the shared public domain. And he has to cope with uncertainty and conflicts, he will also have to comply with the disagreement of co-citizens as well as co-Christians, and I think that both Honecker and Rawls would agree that the tension there may be between one's existence as “Christperson” and as “Welperson” first of all has to be handled out within the comprehensive view(s) persons hold. A Christian citizen will naturally strive to see his political obligation as continuous with or coherent with the moral commitment he has as a Christian person, without making the latter a *derivative* basis for the former, ending up with some kind of substantive and religiously grounded “politischen Programmatik”.

IV. One can find a *shared* concern between Honecker and Rawls in the way the former establishes a model of “Vermittlung”, aiming at a transformation of Christian motives into (liberal) groundvalues, which can be widely shared, publicly discussed and reasonably assessed by (nearly) all human beings, and in the way the latter lets religious arguments into the public forum, provided they can be transformed into publicly accessible reasons, thus satisfying the Rawlsian proviso. There are convergent concerns in their

blem des theologischen Konstruktivismus” Honecker accordingly underlines that, “... dann kann auch theologische Ethik sich nicht *allein* auf Offenbarung berufen, sondern muß unterschiedlich, heute müßte man sagen: pluralistisch ansetzen”. *Zeitschrift für evangelische Ethik* (1980), p.100. I think that the very important phrase here is “nicht *allein*”.

¹¹¹⁰ J. Rawls, *Political Liberalism* (1993), ..229.

respective conceptions, which goes deeper than to just being a fortunate coincidence.¹¹¹¹ Both Rawls and Honecker provide for the required continuity between citizens' religious commitment and their political obligation. One should, however, be rather flexible when defining the different ways a continuity may take form. Honecker has made it clear that it would be the easier task to say how a continuity should *not* be defined. (He opposes the tendencies to "politischen Programmatik"). But Honecker for his part stresses that the Christian doctrine provides support for the very *reasonableness* of politics, – provided that the notion of the reasonable is morally qualified, as is the case in a Rawlsian reasonable "overlap". Thus I think Honecker would support the consensual efforts of political liberalism in so far as they prove morally and politically *reasonable*. And I believe that Rawls should support Honecker, when claiming "daß alle genannten Sachverhalte bezogen sind auf den *einen Wert* der *Personwürde*" [and that accordingly] sind Institutionen oder Sozialprinzipien lediglich auf diesen Wert *bezogen*".¹¹¹²

¹¹¹¹ It may be of interest to see how such convergence or deeper interdependence between theological and political perspectives is outlined in a recently published *Dictionary of Ethics, Theology and Society*: "Some general relations between society in its widest sense, and ETHICS and THEOLOGY can be determined. The first is one of interdependence; hitherto every society has presupposed a theology, every theology has presupposed a society and both presuppose and generate mores that when reflected on becomes ethics. In general terms an absolutist theology goes with an absolutist society, together with its associational mores and practices. A closed theology goes with a closed society with its closed mores, practices and ethical reflections; an open theology goes with an open society, while a diverse theology goes with a diverse society. Any attempt to modify this linkage is fraught with difficulty. To take one example, an absolutist and closed theology will not sit well with an open society or an open ethical outlook." P. B. Clarke in: *Dictionary of Ethics, Theology and Society* (1996, Article on SOCIETY), p.775. To some extent the correspondence between Rawls and Honecker may in many respects be taken as a result of their shared concern for some of the human values, rights and liberties traditionally promoted by liberalism.

¹¹¹² M. Honecker, *Das Recht des Menschen. Einführung in die evangelische Sozialethik* (1978), p.169.

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