

1. Questions of Justice

Lecture 2: Rawls - the Big Ideas

2. Philosophical context of Rawls's theory of justice

- (i) 'Ordinary language', Wittgenstein, Quine
- (ii) Rawls's 'independence thesis'
- (iii) Political philosophy: a branch of moral philosophy - the 'concept of right' applied to social institutions and practices

3. The good and the right

- But there is a different distinction to be drawn here – between the good and the right. Rawls's theory of goodness is in some respects (cf. TJ ch. 7) fundamentally 'naturalist'. He takes it that at a fundamental level, goodness is defined by reference to the actual 'plans for life' (projects) that make us each the person that we are: something is 'good for me' where it advances my 'rational plan for life', - my actual plan modified to take account of better information.
- By contrast, his theory of justice (and rightness generally) is more strongly rationalist: duties, responsibilities and rights are features of social practices whose rules are predominantly rational and reasonable (more on this later in connection with 'Kantian constructivism').

4. Moral philosophy? What assumptions does Rawls make?

- One traditional dispute: in 'metaethics' - moral realism vs. non-cognitivism (sentimentalism).

Rawls develops a new approach - 'Kantian constructivism' to provide a 'third way': an attempt to base morality on moral reasoning, rather than the moral realist's 'intuitions' and the non-cognitivist's 'feelings'

- Another traditional dispute : in moral theory - between deontology and utilitarianism.

Rawls intends that his contractualist theory should be a 'third way'.

- For Rawls, following Quine, these points are connected

5. (Hume vs Kant? (Desire / passion vs Belief / Reason))

- Sometimes in *TJ* Rawls aligns himself with Hume and the British 'moral sense' tradition: e.g. 'a theory of justice is a theory of the moral sentiments' (esp. of our sense of justice) (p. 44) But in setting out his theory of justice, and esp. the idea of justice as fairness, Rawls explicitly draws on Kant: 'The theory that results is highly Kantian in nature' (*TJ* p. viii).

6. 'The Kantian interpretation'

- In TJ §40 Rawls sets out 'the Kantian interpretation' of his position, according to which living in accordance with the principles of justice is an expression of one's 'autonomy' as a rational person, since the principles of justice are precisely those in accordance with which a rational person would choose to live, on the assumption that s/he is to live in a community of other persons who are equally free and rational.
- For Kant, this position comes with a metaphysical conception of ourselves as fundamentally non-empirical 'free' beings.
- Rawls does not share this metaphysics. Instead he seeks to provide a 'naturalised' version of Kant's moral philosophy (cf. Quine and 'naturalised epistemology'). This position is worked out after TJ in 'Kantian Constructivism'.

7. The Political Context of Rawls's writings

- (i) For any citizen of the USA, the US Declaration of Independence has a quasi-sacred status, especially the preamble, which is primarily the work of Thomas Jefferson and Benjamin Franklin:

8.

We hold these truths to be self-evident,
that all men are created equal,
that they are endowed by their Creator with certain
unalienable Rights,
that among these are Life, Liberty and the pursuit of
Happiness.

That to secure these rights, Governments are instituted
among Men, deriving their just powers from the
consent of the governed,

That whenever any Form of Government becomes
destructive of these ends, it is the Right of the People
to alter or to abolish it, and to institute new
Government, laying its foundation on such principles
and organizing its powers in such form, as to them
shall seem most likely to effect their Safety and
Happiness.

9.

We will see reflection on several themes from this remarkable document, one of the great achievements of the British enlightenment, recurring in different ways in Rawls's work:

- (a) 'Self-evident truths' – that is the intuitionist position Rawls rejects
- (b) 'All men are created equal' – Jefferson's famous claim (not easily combined with his position as a large slave-owner). Rawls in fact prefers the Lockean (cf 2nd Treatise §4) phrase 'All men are born free and equal', which occurs in the Massachusetts Constitution of 1780.
- (c) 'unalienable rights': for Rawls, the first principle of justice affirms (in effect) certain fundamental rights. These rights are not thought of as 'natural' (i.e. as belonging to man 'in a state of nature'); they are inherently social and political. But they are requirements of any decent society.
- (d) 'Life, liberty and the pursuit of happiness' – Rawls certainly affirms the priority of liberty and the pursuit of happiness over the protection of 'property', which figures so prominently in Locke's 2nd Treatise.
- (e) Notice the way in which the US Declaration is conceived as a response to an unjust Form of Government.

10. More immediate political context of TJ (1971):

- (a) Rawls's experience of the defeat of fascism in World War II
- (b) The 'cold war', esp. the contrast between US-style capitalism, Soviet centralised communism, and European social democracy.
- (c) The civil rights movement in the USA
1963 March in Washington DC, with King's great address 'I have a dream ...'
1964 Civil Rights Act gets through Congress
- (d) War in Vietnam
1960's increasing US involvement
1968 Tet offensive
1973 US/North Vietnam Paris peace accords.

11. Now on to TJ (1971) itself -

- *A Theory of Justice* is a long book, divided into three parts.
- (i) In the first part Rawls lays out the foundations of his theory of justice;
- (ii) in the second he provides a sketch of a just state;
- (iii) in the third he attempts to demonstrate that such a state is likely to be stable because the practice of justice by its citizens is, in general, good for each of them individually.
- We start with Part I, the foundations of the theory.

12. 'Justice is the first virtue of social institutions' (TJ p. 3)

Comments

- (i) justice is essentially 'social' justice;
- (ii) justice is the most important criterion for the value of a society ('the first virtue'), though it is not the only one (e.g. efficiency is another; and also – cf. later – stability).

13. What's a 'society'

'A cooperative 'venture' for mutual advantage, .. typically marked by a conflict as well as an identity of interests' (p. 4)

Comments

- (i) 'Venture' is not a good term: for ventures are optional – but it is an important feature of R's position that membership of a society is not optional; as he says in his second major work, *Political Liberalism*, (PL) 'we enter only by birth and exit only by death' (PL 135-6; cf. TJ 302).
- Thus although Rawls acknowledges that it is sometimes possible for people to change their society by emigration, it is an important constraint on a theory of justice that this possibility should not be thought of as a live option.
- But, as we shall see from time to time, it is not always clear that Rawls thinks through the implications of this point.

14. 'The basic structure'

The rules of Rawls's societies are taken to define basic moral relationships between members, their rights and duties, which Rawls calls 'the basic structure of society' (*TJ* 6).

Because this structure is not optional, Rawlsian societies are to be thought of as assuming responsibility for protecting the rights of their members, and thus as having the coercive power to fulfil this responsibility (*PL* 136; cf. *TJ* 211). In this sense, therefore, Rawls's societies are *political* societies.

15. Territory

Rawls assumes that his societies occupy 'a definite geographical territory' (*TJ* 109), an assumption of territorial sovereignty which is central to the modern conception of a state. Rawls, however, makes almost no overt use of the concept of a state, even in his later explicitly political writings, for the odd reason that he takes the conception of a state's sovereignty to include the right to wage war in pursuit of its own interests, whereas he holds that there is no such right.

We will return to this point later in connection with international justice.

16.

So: a theory of justice aims to characterise the basic rules or practices within a society which would help to make it a good ('virtuous') society. Rawls thinks of this as based upon 'principles of justice' which define the 'basic structure' of a society – by assigning basic rights and duties and prescribing the distribution of benefits and burdens. (TJ p. 6)

17 'Well-ordered societies'

For Rawls, a theory of justice is supposed to be a theory about the justice of 'well-ordered societies' ,

where a society is 'well-ordered' iff

- (a) its basic structure satisfies principles of justice; &
- (b) everyone accepts (a); &
- (c) everyone accepts (b).

Comments

Rawls intends his theory to be a theory about well-ordered societies. As such it is an 'ideal' theory (p. 8) about a 'perfectly just society' (though not necessarily a perfect society).

18. 'Ideal theory'

- Hence R is not much concerned with the just response to unjust situations, - e.g. with just punishment, - or with the just distribution of assets between the partners to a marriage following divorce. So his 'theory of justice' is far from all-encompassing.
- I take this to be a serious weakness: it's basically a theory about the 'just constitution' of a state; not, a theory about the application of justice to social affairs generally. (There is one exception to this: Rawls's theory of civil disobedience – to be discussed later in the term)

19.

The reason R. concentrates on ideal theory is that he takes this to be the appropriate way to organise one's understanding: we understand how to think about what justice requires in less than ideal situations by contrasting these situations with ideal ones in which the requirements of justice are clear(er).

One might think here of the way in which explanations work in scientific theory: a theory is stated for certain ideal cases (frictionless surfaces, perfectly elastic spheres etc.) and then applied to the actual world via the introduction of extra parameters, (such as 'the coefficient of friction').

But is that the right model for moral and political theory?

20. Certainty and Injustice

- Thus an important challenge to Rawls's approach comes from the belief that we are often more certain about the injustice of certain types of situation than about the ideal requirements of justice. Think of the familiar complaint: 'it's not fair'.
- For example: we are often confident that certain distributions of wealth or power are unjust without similar confidence about the requirements of justice in these areas.
- Come back to this in connection with 'reflective equilibrium'

21. Rawls's theory as a reaction to some injustices?

In fact: one can see that important features of Rawls's theory are a response to four fundamental forms of injustice of which Rawls had experience –

- (a) Fascist dictatorships – hence his emphasis on the intrinsic value of democratic institutions
- (b) Oppressive restrictions on free thought, including religious persecution; Rawls frequently emphasizes the value of religious toleration
- (c) Racial discrimination – a cruel and inexcusable violation of the status of citizens as 'free and equal'
- (d) Substantial inequalities in wealth and opportunity, leading to class divisions and social exclusion.

22. The 'main idea' of the theory: 'Justice as Fairness'

Rawls says that the 'main idea' of his theory is to generalize and carry to a higher level of abstraction' the theory of the social contract as found in Locke, Rousseau and Kant (TJ p. 10). This is NOT the idea that the legitimacy of the state, or civil society, derives from the 'fact' that citizens have made a contract whereby they agree to institute a society, or government, with authority over them.

Instead it is the thought that a just society is one whose fundamental principles can be regarded 'as if' the members of that society had agreed to impose these principles upon themselves. Thus, for Rawls, the principles of justice are to be identified by a procedure, as the principles which free and rational persons who regard each other as equals would agree to impose upon themselves in a situation in which they agree that they need some principles to regulate their cooperative activities – i.e. where 'the circumstances of justices' apply.

This is not the thesis that justice *is* fairness (TJ 11). Instead Rawls's thought is that the principles of justice are to be understood as principles whose adoption by those who are to be bound by them is the outcome of a fair procedure.

23.

In his paper 'Justice as Fairness' he explained this, his core thought, as follows:

'The question of fairness arises when free persons, who have no authority over one another, are engaging in a joint activity and among themselves settling or acknowledging the rules which define it and which determine the respective shares in its benefits and burdens. A practice will strike the parties as fair if none feels that, by participating in it, they or any of the others are taken advantage of, or forced to give in to claims which they do not regard as legitimate. A practice is just or fair, then, when it satisfies the principles which those who participate in it could propose to one another for mutual acceptance under the aforementioned circumstances. Persons engaged in a just, or fair, practice can face one another openly and support their respective positions, should they appear questionable, by reference to principles which it is reasonable to expect each to accept.' (JF p. 59)

24. Procedures and 'constructions'

- Thus the core of 'justice as fairness' is the claim that the principles of justice are the outcome of a fair procedure. Since justice (or 'rightness') is the core of (normative) morality, this 'proceduralist' approach is central to Rawls's moral theory.
- In later writings the idiom of 'procedures' is accompanied by the idiom of 'construction', and the resulting position is presented as 'constructivism' – as in 'Kantian constructivism in moral theory'. Here is the key thesis of this position:
- 'Apart from the procedure of constructing these principles [of justice], there are no reasons of justice. Put in another way, whether certain facts are to count as reasons of justice and what their relative force is to be can be ascertained only on the basis of the principles that result from the construction.' ('Kantian Constructivism in Moral Theory' *CP* 351)

25. From Fairness to Reciprocity

So far we have 'justice as fairness', and this is the official headline Rawls employs in TJ. But in his 1971 paper 'Justice as Reciprocity' (TJ is also 1971), Rawls reformulates his position and argues that what is fundamental to both justice and fairness is 'reciprocity'.

What motivates this change is, first, the thesis that the distinction between justice and fairness is simply a distinction between involuntary and voluntary social institutions; and, second, the further thesis that it is 'reciprocity' which, in both cases, makes an institution either fair or just. Thus Rawls now uses the term 'reciprocity' (and cognate terms) much as he had previously used the term 'fairness' (and cognate terms) before, as in the following passage:

- A practice will strike the parties as conforming to the notion of reciprocity if none feels that, by participating in it, he or any of the others are taken advantage of or forced to give in to claims which they do not regard as legitimate. (JR 208)

26. Reciprocity

What, then, is reciprocity? It is, he says, the mutual recognition by the members of society of each other as 'free and equal persons'; and 'justice as reciprocity' is the thesis that this mutual recognition is the value which is to inform the procedures by which it is determined what is just or fair. So reciprocity turns out to be the fundamental social value.

We shall see that other conceptions of reciprocity enter into Rawls's development of his theory in *TJ*. But the fundamental conception is the mutual recognition of persons as free and equal, and this value remains the fundamental value of Rawls's moral and political theory throughout his life.