Lecture 10

Political Liberalism

1   Rawls as critic of TJ

- In the 'Introduction' to PL (pp. xv-xvi) Rawls says that the rationale for the reconsideration of his position which constitutes PL lies in a 'serious problem' inherent in part III of TJ, in that the argument there for the 'stability' of justice as fairness takes as a premiss the Kantian values of autonomy and equality which are worked up into the theory of justice as fairness.

- My objection to this part of Rawls' argument in TJ was that this argument is unpersuasive: Rawls is not entitled to assume that, for each of us, the Kantian values count for more than the concerns inherent in our own personal 'plan for life'. Rawls does not concede this point.

2 Stability and Legitimation

- Rawls's objection to the 'Kantian' argument of TJ is that he now takes it that he needs to construct an argument for the stability of justice which is not dependent on his Kantian ethics.

- The main reason for this is that he takes it that the requirements for the stability of a just society are more extensive than he had previously supposed. In TJ he concentrates on arguing for the 'congruence' of justice and personal good. In PL he adds a further requirement – that a just society should be able to provide a public legitimation of its basic structure. One might put the point in terms of the conception of a 'well-ordered' society: in TJ largely assumes that the requirements of justice, whatever they are, are to be thought of as applied within a well-ordered society whose members accept these requirements. He now accepts that he needs to show that his favoured conception of justice can indeed be used to characterise a well-ordered society whose members accept that the demands of justice are legitimate.

3 Pluralism

- The main point which motivates this development of his position is his recognition that he needs to take account of the 'fact of reasonable pluralism' – the existence of a the plurality of reasonable, but incommensurable, ethical systems, such as his own Kantian theory, but also: utilitarianism, 'rational intuitionism', liberal Thomism, liberal Islam and other 'reasonable' religious doctrines (more on this below)

- Given the fact of reasonable pluralism, he thinks that a public legitimation of justice to vindicate its stability, cannot be achieved by relying exclusively on just one ethical system, such as his Kantian ethics.

- Before pursuing this further, we should look quickly at Rawls's response to other critics of TJ -

4　Liberal critics – Hart, Daniels

(a) Hart.

- As we have seen, Rawls took to heart Hart's criticisms of his first principle, and reformulated it in PL in terms of a right to a fully adequate scheme of equal basic liberties. He also modified his account of the grounds of the priority of liberty by introducing his two fundamental 'moral powers' – the capacity for a conception of the good and for a sense of justice. (But is this moral psychology independent of his Kantian ethics?)

(b) Daniels

- Rawls also accepted Daniels insistence that these liberties be of 'equal worth' to citizens – i.e. that citizens should have access to the material resources necessary to exercise them. This sets up the 'zero' principle of justice:
'the first principle covering the equal basic rights and liberties may easily be preceded by a lexically prior principle requiring that citizens' basic needs be met, at least insofar as their being met is necessary for the citizens to understand and to be able fruitfully to exercise those rights and liberties'. (PL p. 7)

5 - Dworkin

- Dworkin argued that Rawls's reference to a hypothetical 'social contract' added nothing to his position, since a hypothetical contract could have no normative significance in the actual world.

- In response Rawls argued that his talk of such a contract was intended to capture a way in which we do in fact argue for the justice (or not) of the rules which inform actual practices and institutions – by showing that they are rules which we would (or would not) have agreed to impose upon ourselves.

- And at a deeper level the contract model was intended to capture his constructivist conception of morality.

6 Nozick

- Nozick argued that property rights, such as ownership of natural resources and of the means of production, are to be included among the basic liberties, and are thus covered by Rawls's first principle. If this thesis is accepted, then the 'entitlements' arising from property rights and exchanges would be violated by the redistributive implications of Rawls's Difference Principle.

- Rawls rejects Nozick's account of property rights (correctly, in my opinion).

- However Rawls does not attempt to defend the details of his Difference Principle. Instead he turns his attention to the contrast between 'welfare-state capitalism', which he rejects, and the ideal of a 'property-owning democracy', which he affirms.

7 'Communitarian' critics – Sandel, Taylor, MacIntyre, Walzer.

- Rawls's response to these critics starts from the thesis that society is not a voluntary association, like a political or religious movement, which will of course have its own particular values and shared goals. Instead political society is an involuntary association which one joins at birth and exits at death. Membership – citizenship – is inescapable; and because society defines and protects fundamental rights and public goods, it has to have coercive powers.

- Hence, Rawls argues, it would be oppressive, for political society to be governed by rules that express ethical or religious ideals which in principle place impose these ideals upon all members of society.

8 Communitarian toleration?

- Whether this is persuasive is debatable: here are two responses –

(i) While Rawls's point shows that any decent, non-oppressive, political society will have to tolerate diversity, more argument is needed to show that such a society cannot also give a privileged position to one historically dominant ethico-religious tradition.

(ii) Indeed is not Rawls himself guilty of the same error as those whom he criticizes, since his liberal society imposes its liberal values on all its citizens, whether or not they share them.

From a theoretical perspective, response (ii) is the more unsettling. And we will see that Rawls attempts to address it by means of his doctrine of 'political liberalism'.

9   'Justice as Fairness: Political not Metaphysical'

- *Political Liberalism* (PL) dates from 1993. It brings together materials from papers written from 1980 onwards, including his 1980 lectures 'Kantian Constructivism in Moral Theory' which provide the best account of his constructivist approach to moral and political theory.

- But Rawls does modify his position in a crucial respect over the next few years. The key paper is 'Justice as Fairness: Political not Metaphysical' (1985), much of which recurs in lecture I of PL.

- This paper is part of Rawls' response to his communitarian critics. He argues that his liberal political theory ('justice as fairness') is not 'metaphysical' – i.e. does not have a metaphysical or religious foundation. Indeed he does not aim to establish the *truth* of justice as fairness. Hence his new account of justice is one which 'deliberately stays on the surface, philosophically speaking' (p. 395).

10 'Political not Ethical'

- But what's more important is, one might say, the claim that his conception of justice is 'Political not ethical' – i.e. it does not presume any one ethical perspective (Kantian, utilitarian etc..).

- This is the point which comes from Rawls' own critical reflections about part III of TJ. What underlies this change is the acknowledgment of what Rawls calls 'the fact of reasonable pluralism' – 'that there are bound to exist conflicting and incommensurable conceptions of the good' (p. 408).

- Because (Rawls thinks) it would be oppressive to build a political theory on any one such conception (including his Kantian one), political liberalism has to accommodate itself to this pluralism by refraining from committing itself to any particular conception of the good.

11　But it is still a moral conception

- Although political liberalism is not tied to any particular ethical system, Rawls maintains that justice as fairness is still a 'moral' conception (p. 410-1). It is, he says, 'a natural moral conception that can stand on its own feet' (p. 411).

- There is, therefore, a distinction here between general ethical systems ('comprehensive conceptions of the good') and a narrowly political 'moral conception'.

- As we shall see, Rawls takes it that 'reasonable' general ethical systems include, or permit, justice as fairness. So the distinction here is not exclusive. But it is not altogether clear how this is supposed to work.

12 Politics and 'Philosophical' (Ethical) Toleration.

- Rawls often compares his move with the recognition that the theory of the state should be divorced from religion. Just as religious toleration expresses this separation of religion from politics, similarly, he holds, a principle of 'philosophical' (ethical) toleration should express the separation of ethics from politics.

- But does this really work? There isn't much problem with secular politics; but Rawls doesn't want his politics to be completely non-moral. Instead he wants to articulate and defend a distinctive 'political morality' which is not dependent on a single ethical foundation.

- This is his 'Machiavellian moment', since it is comparable to M's theory of politics; but it is not easy to grasp what is involved here since e.g. there is considerable moral content to his principles of justice. As mentioned above, what seems important here is the 'natural moral conception that can stand on its own feet' and vindicate Rawls's liberal political values.

13 Reciprocity and The Original Position

- In TJ the OP argument is closely linked to the 'Kantian interpretation', and one might have expected it to disappear in PL as a result, as contaminated with Kantian ethics. However what Rawls attempts to do in much of his later work is to 'decontaminate' central aspects of his early theory by a process of abstraction and reinterpretation. Thus 'Kantian constructivism' is set aside in favour of 'political constructivism' (PL lecture III).

- Similarly Rawls retains the OP argument, as a 'device of representation' which captures the considerations which we actually employ ('*here and now*' - CP p. 402) when discussing the terms under which fair agreements concerning cooperation might be arrived at.

- In PL Rawls suggests that we should think of these terms for cooperation as capturing a kind of reciprocity which is more than a mutual agreement for each other's interests and less than the abstract altruism to do what is for the good of any others (PL pp. 16-7). This conception of justice as reciprocity lies at the heart of his 'natural moral conception' of society.

- Since this conception of justice as reciprocity seems to me to have been the core of his position pretty much from the start, it is apparent that in this respect Rawls does not modify his position.

14   Overlapping consensus.

- In the later work the OP argument is complemented by a different thought: justice as fairness is supposed to capture the 'overlapping consensus' of the comprehensive positions to be found within the society. This is one place where things get difficult.

- Rawls insists that the idea of such a consensus is not just that of a compromise, a 'modus vivendi'; instead it is to manifest respect for what is 'reasonable'. But how is one to characterise this without circularity – i.e. in such a way that 'reasonable' positions aren't defined from the start positions which affirm justice as fairness?

- More on this difficulty later. But I think we can agree already that Rawls' later work does address a contemporary concern, a concern with the pursuit of justice in the context of pluralist, multicultural, societies. Even if Rawls does not give us a fully adequate position, at least he has started the debate.

15   The fact of reasonable pluralism

- This is not just the fact of ethical pluralism – i.e. the fact that there is a great variety of ethical doctrines with different political implications. Instead it includes a value judgment: that there is a variety of 'reasonable' ethical doctrines, or 'comprehensive conceptions of the good'.

- What lies behind this judgment is the acceptance of what Rawls calls 'the burdens of judgment' (PL 54ff.), according to which there are grounds for 'reasonable disagreement' concerning fundamental ethical questions (more on this below).

- But what is 'reasonable'? This concept barely occurs in TJ, but it is central to PL. Rawls differentiates the 'reasonable' from the 'rational'.

- Rationality is the intelligent pursuit of one's ends (instrumental rationality) plus the reflective choice of ends themselves (deliberative rationality).

16 The Reasonable

Similarly there are two related conceptions of the 'reasonable' -

- (i) The first concerns 'theoretical reason' and recognises both the standards and the limitations of what can be established on the basis of good evidence and reasoning. This is where the 'burdens of judgment' are in play. It is this conception which is in play where Rawls affirms the fact of 'reasonable pluralism'. There is a plurality of reasonable systems of values. I take it that Rawls is right about this point, and also right to take it that this is an important consideration for political morality.

- (ii) The second conception connects with 'practical reason' and is largely constituted by reciprocity. It assumes (i) – the fact of reasonable pluralism – and demands both a grasp of the position of other people who disagree with one, and of their reasons for this position.

17 Reasonable cooperation

- So 'reasonable' pluralism involves the acceptance that there are deeply held ethical points of view which one rejects but which one cannot expect to be able to be demonstrate to be unsatisfactory to those who hold them. Thus 'reasonableness' is itself a normative conception: it involves judgments as what it is reasonable to expect others to accept, or not –

  'Reasonable persons, we say, are not moved by the general good as such but desire for its own sake a social world in which they, as free and equal, can cooperate with others on terms all can accept. They insist that reciprocity should hold within that world so that each benefits along with others.' (PL 50)

- This requirement of reciprocity is closely allied to that of legitimation: reciprocity implies that political institutions should be capable of being legitimated to all reasonable people, including those with very different ethical standpoints from oneself.