

謝世民  
中正大學哲學系

# **John Rawls's *Political Liberalism***

# John Rawls, 1921-2002

1. *A Theory of Justice* (1971)
2. *Political Liberalism* (1993; 1996; 2005)
3. *The Law of Peoples* (1999)
4. *Lectures on the History of Moral Philosophy* (2000)
5. *Justice as Fairness: A Restatement* (2001)
6. *Lectures on the History of Political Philosophy* (2007)
7. *A Brief Inquiry into the Meaning of Sin and Faith: With "On My Religion"* (2010)



# 哲學的價值

- John Rawls: 「每個文明都應該有人去思考這些〔哲學〕問題。不僅這種探究本身就有價值而已，一個沒有人認真去思考形而上學、知識論、道德與政治哲學的社會，其實是一個殘缺不全的社會。構成文明社會的部分條件，在於意識到這些問題的存在及其可能的答案。這些答案會影響我們如何看待自己在世界中的位置，而哲學如果做的好，要去提出合理的答案，以讓一般願意去深思的人知道這些答案，並成為文化的一部分。藝術和音樂也是這樣：如果你是好的作曲家或畫家，你的作品也會深化我們的瞭解。」

# 政治哲學的任務

- Practical role
- Orientation
- Reconciliation
- Realistic utopia

# 羅爾斯現象

- 羅爾斯現象是英美分析哲學界一項**沒有預先規劃的成就**：不論我們是否同意羅爾斯的理論，他的著作是英美分析哲學界**歷經三、四十年的討論和辯難所粹煉出來的經典**。

# Dworkin's "Rawls and the Law"

- '[Rawls] did not suppose himself as a legal philosopher, and though there are several important discussions of law in his work ..., he made his contributions to legal theory through his political philosophy, because legal theory is a department of political philosophy and Rawls wrote abstractly about the whole discipline.' (*Justice in Robes*, 241)

# Rawls's Political Turn

- In *A Theory of Justice* (1971), Rawls constructs and defends a conception of justice, which he calls Justice as Fairness.
- In *Political Liberalism* (1993; 1996; 2005), Rawls thinks that he can only show that Justice as Fairness is **stable for the right reasons** by recasting Justice as Fairness as a **political** conception of justice, or a political liberalism.

# Four Questions

- What is Justice as Fairness?
- What does Rawls mean by ‘a political conception of justice’, or ‘a political liberalism’?
- What does Rawls mean by ‘stable’?
- Why is it important that Justice as Fairness is stable for the right reasons?



# *A Theory of Justice (1971)*

- Its aim is to work out more clearly the chief structural features of a social contractualist conception of justice, which he calls ‘justice as fairness’, and develop it as an alternative systematic account of justice that is superior to utilitarianism. (TJ,?; PL, xv)

# The Two Principles of Justice of Fairness

- (1) 每個人都有權利享有一套適宜、相等而且相容的基本自由，其中政治自由的公平價值必須得到保障；
- (2) 社會和經濟不平等應該滿足兩個條件：
  - (a) 社會經濟不平等必須和工作或職務結合，而這些工作和職務必須在公平式的機會平等得到落實的情況下，對所有人開放；
  - (b) 社會經濟不平等必須讓社會中的受益最小者（人生前景最差者）獲益最大。

# The argument from stability

- The problem of stability is fundamental to political philosophy.
- But the account of stability of a well-ordered society in Part III of *Theory* is unrealistic and must be recast.

# 良序社會

## the idea of well-ordered society

- 根據羅爾斯的定義，良序社會具有一種特殊的穩定性。通常我們說，一個以憲政民主來建立公共秩序的社會，如果在面臨重大危機或重大衝突時，它的成員，不論掌控多大的權力，仍然堅持這些危機和衝突必須在憲政民主的體制內來化解，那麼這是一個穩定的憲政民主社會，但良序的民主社會所具有穩定性是更深一層的：是指社會成員不僅堅持在憲政民主的體制內來化解任何的危機、解決任何的衝突，而且還以一套「正義觀」作為他們解決憲政核心爭議和分配正義問題的共同基礎。

# It is unrealistic because

- the idea of a well-ordered society of justice as fairness *is inconsistent* with realizing the Two Principles of Justice as Fairness under the best of feasible conditions.

# Two fundamental Issues of Political Power in a democracy

- Legitimacy: How can it be legitimate for a democratic people to coerce all citizens to follow just one law, given that citizens will inevitably hold to different worldviews? (Leif, 2008)
- Stability: Why would a citizen willingly obey the law if it is imposed on her by a collective body many of whose members have beliefs and values quite dissimilar to her own? (Leif, 2008)

# The problem of Stability

- How is it possible that there may exist over time a stable and just society of free and equal citizens profoundly divided by reasonable though incompatible religious, philosophical, and moral doctrines?

# The problem of Stability

- How is it possible that deeply opposed though reasonable comprehensive doctrines may live together and all affirm the political conception of a constitutional regime?
  - What is the structure and content of a political conception that can gain the support of such an overlapping consensus? (PL, xviii)



# 兩種現代的哲學計畫

- 啟蒙與後啟蒙：
  - 正義觀與全面性學說
  - 政治正義觀與政治價值
    - 以分配正義為例：作為一項全面性的道德價值，分配正義指涉每個人得到屬於他/她的之理想狀態；作為一項政治價值，分配正義指的是：每個人得到他/她在合乎正義的社會基本結構中可以合理期望的社會基本財（social primary goods）之理想狀態。

# Political Liberalism: Overlapping Consensus

- 交疊共識論：政治正義觀的理論任務在於為憲政民主社會的公民提供適用於社會基本結構、最合理正義原則；政治正義觀，若要成為憲政民主社會中合理公民之間交疊共識的對象，不得建立在會引發合理爭議的全面性學說（終極價值觀）之上。
  - Reasonable citizens
  - Burden of judgment
  - Reasonable pluralism
  - Public political culture
  - Political conceptions of justice
  - Overlapping consensus

# Political Liberalism: Overlapping Consensus

- In an overlapping consensus each reasonable citizen affirms a political conception of justice wholeheartedly from within her own perspective, and will continue to do so even should their group gain or lose political power.
- An overlapping consensus is *stable for the right reasons*: each citizen affirms a moral doctrine (a liberal conception of justice) for moral reasons (as given by their comprehensive doctrine). Abiding by liberal basic laws is not a citizen's second-best compromise in the face of the power of others, but each citizen's first-best option given what they themselves believe. (Leif, 2008)

# Political Liberalism: Public Reason

- 公共理性論：公民在行使政治權力、參與政治決定時必須依循公共理性（public reason），也就是說，應該訴諸自己認為最合理的而且滿足相互性判準（the criterion of reciprocity）的政治正義觀作為決定的根據。對羅爾斯而言，我們認為最合理的政治正義觀是否滿足相互性判準，端視我們是否認為他人可以合理地接受這個正義觀，以及我們這樣認為是否合理。一旦公民依循公共理性參與政治決定，那麼表達多數人意見的法律或政治決定就具有正當性。

# 正義與人類存在的意義

- 「如果讓權力為社會所設定的目的而服務的正義社會是不可能的，而如果一般人，即使不是無可救藥地犬儒或自我中心，大體上也不關切道德，那麼我們就也許要和康德一起去質問，人是否還值得在這世界活下去？因此，我們的出發點必須是，一定合理程度的正義社會是可能的，而為了要讓這樣的社會成為可能，人必須具備道德稟性。這當然不是說人必須有完美的道德稟性，而是說人必須有能力瞭解合理的政治性正義觀之內涵、有能力依合理的政治性正義觀而行動，而且在心理上也能夠被合理的政治性正義觀充分驅動，進而去支持受這種正義觀所揭櫫的目標和原則所指導的社會。」

# Dworkin's Interpretivism

- 要確保人民享有法治下的自由，國家必須謹守原則一貫性的要求，那就是：立法者為某一群人所訂定的法律，其背後所預設（作為依據）的原則，必須的也是其他人有權利要求法官援引，作為法官判決的依據。（*Justice in Robes*, 249）
- 根據德沃金的觀點，人民的法律權利並不僅限於立法者制定、通過條文本身，立法者條文背後的原則也是人民法律權利的來源。根據德沃金說：
  - Principles applied to one person must be applied to others unless clearly directed otherwise by competent institutions. (*Justice in Robes*, 293, n. 12)

# Rawls, Positivism and Interpretivism

- According to Dworkin, if the representatives in the original position choose the Two Principles of Justice, then it would be natural for them to choose interpretivism over positivism. (*Justice in Robes*, 249)

# Rawls's case for interpretivism

- “The precept that like decisions be given in like cases significantly limits the discretions of judges and others in authority. The precept forces them to justify the distinctions that they make between persons by reference to the relevant legal rules and principles. In any particular case, if the rules are at all complicated and call for interpretation, it may be easy to justify an arbitrary decision. But as the number of cases increases, plausible justifications for biased judgments become more difficult to construct. The requirement of consistency holds of course for the interpretation of all rules and for justifications at all levels.” (*A Theory of Justice*, rev. ed., 209)



# Dworkin's Objections

- Rawls offers no reason to think that the test of reciprocity excludes any reasonable convictions beyond religious convictions. (253)
  - Certainly someone who believes that the religious truth is only available through divine grace, or some other privileged access, cannot hold that all reasonable citizens could reasonably embrace his own religious convictions. (253)
- There is no genuine distinction between political values on the one hand and comprehensive moral convictions on the other.

# Interpretivism as an alternative

- If we accept an interpretivist conception [of law], we do not need a separate doctrine like the doctrine of public reason. Judges may not appeal to religious convictions or goals in liberal societies because such convictions cannot figure in an overall comprehensive justification of the legal structure of a liberal and tolerant pluralistic community. (*Justice in Robes*, 254)