***TJ, sections 33-35, 39-40***

**31. *The Four-stage Sequence*** *(unassigned)*

We’ll begin by talking about unassigned material between sections 30 and 33:

* 1. The purpose of Part II – to show that the principles can be implemented in a constitution and institutions which fit with our considered judgments of justice.
	2. The four-stage sequence for implementing the principles
1. ***Equal Liberty of Conscience***
	1. What is Rawls’s argument for equal liberty of conscience at pp. 180-81?

* + 1. Note that this is an argument that parties in the OP would protect equal liberty of conscience. Now recall that at pp. 131-32, Rawls said that the argument for his two principles draws on “the notion of a free person”. Where do you see that notion at work in the argument on pp. 180-1?
		2. How does Rawls respond to the counter-argument that religious believers should not compromise because religious and divine law are absolute? Is the response persuasive?
	1. Note that a crucial step in Rawls’s arguments is that the failure to favor equal liberty would show a failure to take religious conviction seriously. Rawls says that argument for equal liberty of conscience can be generalized so as to support equality of other liberties. But are the analogues of the “crucial step” plausible when we substitute, say, “freedom of the press” for “religious freedom”?
	2. What are Mill’s utilitarian arguments for liberty? Why does Rawls find them inadequate?
	3. Explain the very important contrast between utilitarianism and the contract doctrine drawn in the last paragraph on p. 185; be sure you can explain the important phrase “when each is fairly represented *as a moral person*”.
1. ***Toleration and the Common Interest***
	1. May the state favor religious belief as such, contrary to what Rawls says at the beginning of §34?
	2. On p. 187 Rawls says liberty of conscience can be limited only for the sake of public order. What does he mean by that? What is public order? What is the common interest?
	3. Consider Rawls’s claim that liberty should be limited “only by reference to a common knowledge and understanding of the world”.
		1. What sorts of argument for the limitation of liberty do you think Rawls would allow?
		2. What would he rule out (HINT: see the discussion of Aquinas on p. 189)? Is he right to do so?

*Note that Notre Dame and Oxford law professor John Finnis has a* [*different view*](http://winst.org/wp-content/uploads/Finnis-Religion-and-State.pdf) *of the matter.*

*Note that some people think that the US should be a Christian or a Judeo-Christian nation; see this* [*video of Congressman Steve King*](http://www.youtube.com/watch?v=zP08NBHDlsA&list=UUvdJ--cxsVyght3ZDise0mw&feature=c4-overview). *What would Rawls say? What do you think?*

* + 1. Is Rawls correct to say that “the case for religious liberty” does not depend upon “skepticism in philosophy or indifference to religion”? (p. 188) Who would disagree with this?
		2. Is the distinction Rawls wants to draw between Locke/Rousseau and Aquinas/the Reformers tenable?
1. ***Toleration of the Intolerant***
	1. What three questions does Rawls distinguish in treating of tolerating the intolerant?
		1. Why do the intolerant have no right to complain if they are treated intolerantly?
			1. Is Rawls right that the principle of equal liberty is consistent with the claim that all should obey God and accept the truth? (p. 191)
		2. Why and under what conditions should the intolerant be tolerated? when not and why not?
			1. What does Rawls mean by the phrase “inherent stability” on the bottom of p. 192, and how is it connected to the psychological principle he cites? Is the principle plausible?
			2. Is Rawls correct that his argument does not depend upon the maximization of liberty?
	2. What two kinds of circumstances justify a restriction of liberty? What is the difference between lesser liberty and unequal liberty?
	3. What do you think Rawls means by saying on p. 194 that “The principles that would be chosen in the original position … define a pact of reconciliation between diverse religious and moral beliefs, and the forms of culture to which they belong.”
		1. Compare and Rawls’s claim with that advanced by the great Catholic theorist of religious freedom, the American Jesuit John Courtney Murray in [this famous essay](http://www.library.georgetown.edu/woodstock/murray/whtt_c2_1954d).



* + 1. Note the cloying hint “If this conception of justice seems largely negative, we shall see that it has a happier side.”
1. ***The Priority of Liberty***
	1. Explain the distinction between ideal and non-ideal theory, and the two kinds of cases with which non-ideal theory deals.
	2. What is the problem of paternalism? under what conditions may some individuals act on behalf of others?
	3. Explain the remark:

“the force of justice as fairness would appear to arise from two things: the requirement that all inequalities be justified to the least advantaged, and the priority of liberty. This pair of constraints distinguishes it from intuitionism and teleological theories.” (p. 220)

1. ***The Kantian Interpretation -*** Rawls did much to revive interest in Kant’s moral philosophy. The fact that justice as fairness admits of a Kantian interpretation is both interesting and important, drawing our attention to some of the most important features of Rawls’s view. Rawls offers lots of difficult arguments in this section and we cannot go through them all. But let’s go through some of the important points:
	1. Let’s start by recalling the three formulations of the Categorical Imperative:
		* 1. The universal law formulation
			2. The principle of humanity
			3. The Kingdom of Ends formulation

In interpreting Kant, why might it be tempting to emphasize the generality and universalizability of principles? Why is it a mistake to do so? (HINT: It will help to recall why generality and universalizability are just two of the formal constraints on the concept of right enumerated in section 23.)

* 1. That it is a mistake to emphasize generality and universalizability suggests that for Kant, moral principles must be substantive. To see what their substance might be, note that Rawls says “Kant held … that a person is acting autonomously when the principles of his action are chosen by him as the most adequate possible expression of his nature as a free and equal rational being.”
		+ 1. What do you think this means?
			2. See if you can connect the remark with the remark further down the same page: “to express one’s nature as a being of a particular kind is to act on principles that would be chosen if this nature were the decisive determining element.”
			3. Does Rawls think that our nature the “decisive determining element” in the original position? Explain. (HINT: note that Rawls has said several times that in the original position, we are represented as moral persons.)
	2. If you have answered the questions immediately above, then you are in a position to explain how the principles of justice analogous to categorical imperatives. Do so.
	3. In some important passages on p. 225, Rawls seems to say that we have a desire to “express most fully what we are or can be, namely free and equal rational beings with a liberty to choose.”
		+ 1. What evidence would count in favor of our having this desire?
			2. Note that if we have that desire -- and if what Rawls says in the passage quoted just above in (b.2) is right -- then we can satisfy the desire by acting from the principles chosen in the original position. Why might this be important?
	4. Explain the important last paragraph on p. 225.