

Rawls's political ontology

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abstract

The background thesis is that an implicit ontology of the people and the relation between the people and the state often shapes how we think in normative terms about politics. This article attempts to defend that thesis in relation to Rawls. The argument is that the rejection of an image of the people as a group agent connects with his objection to utilitarianism and the rejection of an image of the people as a mere aggregate connects with his objection to libertarianism. Rawls, it is argued, holds by an in-between picture and it is this that explains many of his most distinctive commitments.

keywords

Rawls, social ontology, group agent, solidarism, singularism, civicity

One of the more interesting perspectives on any author's work comes with finding an assumption that motivates or constrains a lot of the argument, but is never spelled out explicitly. I think that I see such an assumption operating in the oeuvre of John Rawls and I would like to outline an interpretation of his approach in which the role of that assumption is made explicit and visible.

Every political theory, every theory as to how the polity ought to be constituted and governed, presupposes an account of the relationships and structure in virtue of which individuals in a polity constitute a people, a nation, and a state: if you like, it presupposes a political ontology. The assumption that I see working through most of Rawls's writing, and shaping a central strand of the argument, bears precisely on these ontological matters. It amounts to a particular view of political society: a particular view of the structure and relationships among individuals in the society for which he wants to design a just basic structure.

I make two claims, one negative, the other positive. On the negative side, I argue that Rawls rejects two extreme views of the people and that this explains his opposition, on the one side, to utilitarianism and, on the other, to libertarianism. The first of these views, political solidarism, would represent the people as

a unified agent or agency; the second, political singularism, as a mere aggregate or collection. On the positive side, I hold that Rawls endorses a third view of the people, distinct from either of these, and that this helps to explain important elements in his own normative view.

My discussion will be divided into five sections. First, I draw attention to Rawls's rejection of political solidarism in conceptualizing the people and to how he uses this in arguing against utilitarianism. Second, I sketch in some theoretical background to this solidarism and to the political singularism with which it has traditionally been contrasted. In the third section, I suggest that the rejection of political singularism is tied to his hostility to libertarianism, in particular the sort of libertarianism espoused by Robert Nozick, as the rejection of solidarism is tied to his hostility to utilitarianism. In the fourth section, I introduce an alternative way of thinking about political society that is neither solidarist nor singularist. Then, in the fifth section, I reconstruct Rawls's own approach around the claim that the people are a group of precisely this third kind. This kind of group I describe, for want of a better word, as a 'civicity' (pronounced on the model of 'velocity'). The word nicely catches welcome associations with 'civic' and with 'city'.

1. Rawls's rejection of political solidarism

For much of the early part of the 20th century, the heritage of 19th-century utilitarianism weighed heavily on political theorists. The utilitarian doctrine had taken shape in the work of English masters such as Jeremy Bentham, John Austin, and John Stuart Mill. The key idea was that people should be thought of as consumers in relation to government policy and that the aim of such policy should be to maximize overall consumer satisfaction. This should be the aim, indeed, even if it meant that some did rather better than others. Classical utilitarianism gained enormous theoretical influence through being taken up (if also transformed) in the thinking of economists about how to track and measure progress and welfare. Those economists gave utilitarianism a practical impact, persuading governments to adopt essentially utilitarian criteria of where public policy should be moving. Cost-benefit analysis and related measures can be traced back to this utilitarian origin.

Utilitarianism had been exposed to philosophical criticism in the early and middle part of the 20th century, but mainly on grounds of supporting this or that counter-intuitive result. Rawls took the critique to a new level, arguing against the core assumption that, in his own words, 'a society is properly arranged when its institutions maximize the net balance of satisfaction'.¹ He argued that this assumption is founded on an inappropriate conception of how individuals relate to one another in a polity – on an inadequate political ontology.

By Rawls's lights, it is fine to think that since someone is the same person throughout his or her life, the gains they have at a later time can compensate for

sacrifices in their early life. But he rejects out of hand the utilitarian view that what holds among 'person-stages' can hold in parallel among persons (unlike Parfit).² 'Just as it is rational for one man to maximize the fulfillment of his system of desires,' according to utilitarianism, 'it is right for a society to maximize the net balance of satisfaction taken over all of its members.'³ He sees this view as straightforwardly mistaken. 'The principle of choice for an association of men is interpreted as an extension of the principle of choice for one man.'⁴ 'Utilitarianism', he charges, 'does not take seriously the distinction between persons.'⁵

Rawls thinks that this mistake comes from thinking, first, that what is right for the society as a whole is what the ideal impartial spectator would judge to be right; and second, that this spectator should be imagined as calculating on behalf of the society as if everyone's experiences were his or her own.⁶ C.I. Lewis formulated the principle of ideal-spectator reasoning in a way that reveals this identification with people as a whole: 'Value to more than one person is to be assessed as if their several experiences of value were included in that of a single person.'⁷ Rawls believes that this sort of impartial-spectator reasoning is the source of the utilitarian view that the people should be viewed as if they were a single agent whose welfare is to be satisfied.

This spectator is the one self who includes all desires and satisfactions within one experience as he imaginatively identifies in turn with the members of the society. It is he who compares their aspirations and approves of institutions according to the extent to which they satisfy the one system of desire that he constructs as he views everyone's desires as if they were his own. The classical view results, then, in impersonality, in the conflation of all desires into one system of desire.⁸

Rawls barely stops to argue that, contrary to this picture of society, people do not share in any one system of desire or belief. There is no single agent or agency that separate persons constitute in the way that person-stages constitute a single person. To think otherwise, in particular, to think that the society or community or people is such an entity, he suggests, 'is not to take seriously the plurality and distinctness of individuals', each with his or her own system of belief and desire.⁹ Thus, he rejects the 'conception of society' that he finds in the utilitarian tradition.¹⁰ He believes that the tradition is born of a defective political ontology and that it falls with that ontology.

2. Political solidarism and singularism

Before looking at further aspects of Rawls's social ontology, in particular, his rejection of the political singularism associated with libertarian political theory, it may be useful to spend a little time on the view that he rejects in his assault on classical utilitarianism, and on the traditional alternative to that view. He appears to assume that taking the people to be a single agent is incoherent. But, strictly,

he is wrong about that – although he was surely right to think that as a matter of fact the peoples of contemporary states are not single agents.

There is a perfectly good sense in which a collection of people may constitute a group agent, supporting relationships with one another in virtue of which a single, collective system of belief and desire is established. Some respectable medieval and modern theories of the polity suggested precisely that the political people could be an agent of that general kind. While individuals will each have separate systems of belief and desire as the members of such a grouping, they will band together to set up a collective system of belief and desire that is distinct from their individual systems, and they will act, where appropriate, in the manner that this shared system requires. That happens, I would say, whenever people come together to form an association for the promotion of a common cause, or to set up a commercial corporation, or anything of the kind.

Take a simple, imaginary case in order to illustrate the possibility. Suppose that a collection of people jointly intend to promote a certain set of purposes in common. Roughly, they will each do their bit for those ends, being committed as a matter of common awareness to cooperating with one another; believing as a matter of common awareness that that commitment will be honored by others; being each prepared therefore to honor it themselves; and so on – the analytical details do not matter for our purposes.¹¹ Now suppose in addition that they jointly intend, implicitly or explicitly, that the actions which are taken on behalf of the collectivity in support of those ends should be directed by one and the same set of canonical, collectively endorsed judgments – say, at a first approximation, the set of judgments supported by majority voting or by some such procedure.¹² Suppose lastly that when they act on behalf of the collectivity (when they act in a representative role, as we may say), they allow their actions to be guided, not by their own particular beliefs, but by the canonical judgments. When conditions of this kind are fulfilled, it is perfectly reasonable to say that the collectivity constitutes a group agent.¹³ After all, it will have a set of judgments and a set of purposes (in effect, something like a system of belief and desire) that are distinct from the systems of belief and desire that its members individually instantiate – if you like, it will have a single vision by which it operates.¹⁴

It turns out that such a collectivity will have to be an emergent, solidaristic entity in an important sense. It will not be capable of varying independently of how members are disposed to behave, of course; it will not be as distinct from them as they are from one another. But it will be capable of varying from the individuals who compose it in the judgments that it endorses. On some matters, for example, it may be quite rationally led or required to form judgments that differ from what the majority judge on those issues.¹⁵

Why so? Well, suppose that there are three members in the group, A, B and C, and that they have to make judgments on whether *p*, whether *q*, and, at the same or a later time, whether *p* and *q*. A and B may vote that *p*, C against; B and C that *q*, A against; and A and C that not *p* and *q*, with only B opposing. But the group

cannot act on the single set of judgments that this voting would produce, for no agent or agency can act as if it is the case that p, as if it is the case that q, and as if it is the case that not p and q. Thus, the group members will have to find a mode of judgment making that allows the group to endorse judgments (and that requires members to act representatively on judgments) that the majority of them may individually reject. The agreement reached in our little group, for example, might be that the group will act as if it is the case that p, that q, and that p and q, though A and C both personally disbelieve that compound proposition.¹⁶

The possibility of a group agent of roughly this kind came to be identified in medieval legal theory, as the idea of the corporation was developed in order to cope with the realities of guilds, universities, cities, and the like.¹⁷ Thinkers in this tradition argued that a corporation was a *persona ficta* (an artificial person) that transcended its members. It survived changes of membership and had rights and responsibilities of its own, independent of those of its members. It was a unified entity that comprised any number of individuals and acted through representatives. The members or representatives would determine the *mens* of the corporation (its system of belief and desire) and the representatives would lend it their tongues and limbs when they spoke and acted in its name; it would speak and act through them.

This notion of the corporation was applied to that of a political people in the work of 14th-century scholars such as Bartolus of Sassoferrato and Baldus de Ubaldis.¹⁸ Moreover, the tradition of representing the people as a corporate entity was maintained, in different forms and with different political purposes, in the work of the 16th-century, proto-contractarian monarchomachs;¹⁹ in the absolutist reaction of Hobbes's *Leviathan*; in the work, more sympathetic to the monarchomachs, of John Locke's *Second Treatise*; and in the radical, democratic vision of Jean-Jacques Rousseau's *Social Contract*.

The corporate view of the people present in the medieval and modern traditions of political theory did not retain assent in the 19th or 20th centuries, however, except perhaps in the romanticized image of the self-determining nation or in some of the rhetoric of socialist and communist parties. The intellectual tradition in which the notion of the corporate entity plays a crucial role lost its general grip on writers in the area. It spluttered into existence only for a short period at the end of the 19th and the beginning of the 20th century, when scholars who followed the German historian, Otto Gierke, sought to reintroduce the notion of the corporate persona into legal and political thought.²⁰ But though it did leave a mark on legal thinking about responsibility, the revival did not last.²¹ As an explicit way of representing the people, the tradition was well and truly dead even if, as Rawls believed, it or something close to it retained an influence in classical utilitarian presumptions.

The demise of the tradition is not surprising, at least in its application to the political people. For with the increase in population, the extension of citizenship, and the formation of ever larger states, there was little plausibility in the idea that

the people could be seen as a corporate entity. The state, conceived as a group agency represented by those in political authority, could be seen as a corporate entity, of course; but that state could no longer be identified with the people. The people had become too amorphous to be depicted as anything so unified, even if Rawls is right (and his claim, of course, is disputable) that classical utilitarians failed to register the full implications of the fact.

The tradition in which the people were depicted as a unified, corporate entity had been opposed from quite early on by a tradition in which the people were seen, not as a corporate *populus*, but as an aggregate, disjointed *multitudo*: a multitude or crowd of separate agents. Thus, Hobbes thought that prior to being represented in the person of the sovereign, the individuals in any society were precisely a 'heap, or multitude', unable 'to demand or have right to any thing'.²² Others argued, unlike him, that even when a monarch was established, the people remained nothing more than a disjointed rabble or crowd. Royalist opponents of those who fought for a commonwealth in the England of the 1640s argued that the people was a body 'in continuall alteration and change, it never continues one minute the same, being composed of a multitude of parts, whereof divers continually decay and perish, and others renew and succeed in their places'.²³

Under the solidarist view, the individuals who constitute political society have relationships with one another of such a kind that they constitute a group agent, establishing a single system of belief and desire. Under the singularist alternative, as we may call it, there are no particular relationships, or none of any particular importance, that individuals in the same political society have to bear to one another. There may be no particular natural relationships between them, of course, such as those that bind members of the same family or tribe. While it is possible that individuals will have entered various contractual relationships with one another, or even with government authorities, it is not essential that they should have done this. For all that belonging to the same political society requires, people may relate to one another in just about any fashion; they may be as heterogeneous and disconnected as the set of individuals who live worldwide at the same latitude. The point is naturally expressed by saying that the political people, far from being a group agent of any kind, are a mere aggregate of separate subjects.

The view of the people as a multitude became dominant in the 19th century and has survived fairly well since, notwithstanding the work of Gierke and others in seeking to rehabilitate the medieval perspective. It was often expressed as the view that talking of the people as if it were a single agent or body is simply a mistake, at least if taken literally; it wrongly implies that individuals are so related to one another as to constitute something approximating a group agent. As the 19th-century jurist John Austin said, collectivities such as the people can be described as subjects 'only by figment, and for the sake of brevity of discussion'.²⁴ It is a nice irony that Austin is one of those classical utilitarians in

whom Rawls, rightly or wrongly, saw a continuing, implicit reliance on the corporate image.

The singularist view of the people (and even, bizarrely, of groups in general) remains highly fashionable. It is present in Anthony Quinton's remark that 'To say that the industrial working class is determined to resist anti-trade union laws is to say that all or most industrial workers are so minded.'²⁵ In addition, it is reflected in the slogan famously ascribed to Margaret Thatcher: 'There is no such thing as society.' The doctrine is associated, in particular, with libertarian views to the effect that private ownership should be maximized and that the legal rights of ownership should be made as powerful as possible. 'From each as they choose, to each as they are chosen.'²⁶ Such views generally emphasize that individuals are the only bearers of rights; that the rights they bear accrue to them in virtue of their humanity, not their relations with others; and that those rights are the only basis for claims against government.

3. Rawls's rejection of political singularism

Given that political singularism has been the traditional alternative to political solidarism, the question that naturally arises at this point is whether Rawls espouses that alternative or not. I believe it is clear that he does not, but in this case we do not have the same explicit statement of opposition that is available in the case of political solidarism. We have to go by a somewhat more indirect route in showing that he rejects the view that the people or society is just an aggregate of individuals.

Were political society just an aggregate of individuals (just a multitude, in the traditional term) then one thing that would seem to follow straightaway is that being in society will make no difference to the claims that people have on one another. People may enter into contracts of various kinds with one another, of course, so that they create contractual claims. In the same way, aggregates of individuals (even the total aggregate involving the society as a whole) may enter contracts with individuals or bodies of individuals to further particular interests that they happen to share, thereby generating other kinds of contractual claims. But if political society is just an aggregate, then being in society cannot make a difference to the basic, pre-contractual claims that people have on one another. There are no distinctive relationships between people in political society, according to the singularist view, and so there are no relationships that might provide a basis for distinctive claims.

Since singularism implies that social and political involvement make no difference to people's basic claims or rights, we can make use of a thought experiment introduced by Robert Nozick to determine whether someone is or is not a singularist. Consider the imaginary situation in which a number of Robinson Crusoes live on the islands of an archipelago, mutually isolated from one another, and perhaps even mutually unknown to one another.²⁷ Suppose now

that they become aware of one another's existence. If the implication given holds, then political singularists will have to say that these people have no fewer basic or pre-contractual claims on one another than people who live in social interaction and involvement. Of course, that is precisely what Nozick himself holds, arguing that the claims involved are of the minimal, self-protective sort defended in libertarian doctrine. People have those claims on one another by virtue of their nature, not by grace of any particular contracts, and they have them whether or not they live with one another in a single society.

Using this test, it is easy to establish that, assuming he is not confused, Rawls rejects the political singularism espoused by Nozick, for it is a central feature of Rawls's view, both in his earlier and later work, that social relations make all the difference to people's basic claims or rights. Specifically, they make a difference in the theory of distributive justice: the theory as to what claims individuals may make against one another on grounds of fairness. Rawls argues that society is a cooperative venture for mutual advantage; that people retain their own interests even as they pursue that common interest; and that a set of principles is needed, therefore, to determine the fair or just way of allocating the benefits of social cooperation, that is, to determine people's entitlements in social justice.

The relevant passage from Rawls is worth quoting in full:

although a society is a cooperative venture for mutual advantage, it is typically marked by a conflict as well as by 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 live solely by his own efforts. There is a conflict of interests since persons 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. A set of principles is required for choosing among the various social arrangements which determine this division of advantages and for underwriting an agreement on the proper distributive shares. These principles are the principles of social justice: they provide a way of assigning rights and duties in the basic institutions of society and they define the appropriate distribution of the benefits and burdens of social cooperation.²⁸

Given these comments, Rawls could not say that in the scenario of Robinson Crusoes imagined by Nozick, the persons involved, should they learn of one another's existence, ought to recognize the demands of social justice upon them. He might maintain that the better off among them had duties in benevolence to help out the poorer. But he would obviously have to distinguish these claims that the poorer make on the benevolence of the more affluent from the claims that the poorer members of a true society would have on those who are better off.

In supposing that social cooperation gives rise to such basic or pre-contractual claims, Rawls is either rejecting singularism, as he rejects solidarism, or he is simply confused. Nozick takes the view that he is confused, alleging that 'the reasons for the view that social cooperation creates special problems of distributive justice otherwise not present, are unclear if not mysterious'.²⁹

This is really not surprising. The creation of a social order, as Nozick thinks of

it, will come about as an invisible-hand consequence of individual contracts or (an unlikely possibility) as the output of a multilateral contract to live under a certain dispensation. In neither case will it give rise to basic claims of justice of the kind that Rawls countenances. The multilateral contract might give rise to claims of justice, but would only generate contractual claims. While the more realistic invisible-hand process involves the generation of contractual claims between the individuals in local exchanges, it does not support any novel claims of justice, basic or contractual. 'Why does such sequential social cooperation, linked together by people's voluntary exchanges, raise any special problems about how things are to be distributed?'³⁰

Where Nozick thinks that Rawls is confused about the difference social cooperation makes, however, I see evidence that Rawls endorses an alternative to the singularist picture of society that Nozick takes for granted. Rawls thinks that social cooperation does make a difference to people's basic entitlements, and that is because he has a different, non-singularist idea of what is involved in political society. I turn now to explore this possibility.

4. A third ontology of political society

Before looking at what Rawls himself has to say it may be worth considering, more abstractly, whether there is a salient alternative to the conception of a group as a mere aggregate of separate agents and as a suitably organized agency in its own right. I want to suggest that there is a more or less obvious alternative and that this alternative may be instantiated in a polity. For want of a better name, I shall refer to the alternative sort of group that I envisage as a 'civicity', and to the sort of position Rawls endorses as 'civicism'.

Under both of the previous images of political society, whether as an agency or as an aggregate, there is room for the idea of government as a representative of the people. In the one case, the government will be an elected or unelected representative of the collective people, pursuing their commonly avowed purposes according to what are taken to be their canonical judgments; it will be like the *concilium* or council envisaged by the likes of Bartolus and Baldus. In the other, the government will be a representative of the various individuals who make up the people, espousing certain interests that they are presumed to have in common, but it will have to act according to its own judgments in pursuing those interests.

The government in this second case will be like the board of a public company. The shareholders in a public company have as a common purpose, let us say, the maximization within certain legal and other limits of the profits on their shares. Shareholders recognize this common purpose but, not having any prospects of forming and acting on shared judgments, hand over the responsibility for pursuing the purpose to the company board and management. They appoint those representatives to form and act on their own judgments about how best to maxi-

mize profits, under the constraint that they may be fired or otherwise challenged at a general or special meeting of the company.

Under the first image of representation, then, the representer acts for the people's interests according to what are seen as the people's judgments; under the second, it acts for the people's interests according to what are seen as its own judgments. As soon as we see the two possibilities in this way, we make it possible to discern another way in which a representative government might relate to the people. This suggests a way of thinking about the people so that they are neither a single, solidarist agency nor an aggregate of separate, singular agents. It points us towards a political ontology that is neither solidarist nor singularist in character.

Suppose that while the individuals involved in a grouping have certain purposes in common, and have a representative agency in place to advance those purposes, they are unwilling in the manner of the represented aggregate to leave the judgments as to the interpretation and implementation of the purposes entirely in the hands of their representatives. They debate among themselves, in smaller or larger gatherings, about what exactly the purposes are, about what they require in this or that respect, about how they can be best served under such and such circumstances, and so on. They will not be able to agree on those questions, of course, and to require the representatives to take heed of the agreements reached; if they did, they would constitute a group agent. But they still expect the representatives to take their guidance from that public deliberation and debate, and they hold them to that expectation; the representatives can expect to be challenged and perhaps dismissed if they do not meet it.

But what can it mean for representatives to take their guidance from a public debate that does not reach agreement on specific judgments? If members debate about common purposes and how to serve them, they will inevitably have to give one another reasons for the different lines they support. Some of those considerations will not pass general muster; they will be dismissed as sectional or self-serving or clearly false. But, short of the debate going straight to the ground, many will command general acceptance.³¹ They will emerge as considerations that are treated on all sides as relevant to interpreting and implementing the common purposes of the group, even if they are not weighted in the same way by all. These considerations will constitute presumptions and valuations shared within the group (a sort of social capital³²) and they will generate a natural constraint on how the representatives are to form their judgments and decisions. The representatives will be held to the expectation that their judgments and decisions should be justifiable on the basis of those presumptions and valuations. Alternatively, if the presumptions and valuations are not determinate enough to support any particular set, the representatives will be held to the expectation that the judgments and decisions should be made under procedures that are supported by the presumptions and valuations.

A group that satisfies this sort of constraint may be described as a civicity. As

with a group agent, the members of a civicity will be committed to debating about the purposes they purportedly share. But as with a mere aggregate of individuals, they will not aim at establishing a body of common judgments on which to act; they will inevitably be divided on such detailed matters. Unlike both the group agent and aggregate, however, the members of the grouping envisaged will debate with a view to imposing a constraint on the individual or body commissioned to act in their name. This is the constraint of justifying the judgments and decisions taken, or at least the mode in which they are taken, on the basis of the shared presumptions and valuations authorized in that debate.

The notion of the civicity that we have identified may apply in a variety of contexts, ranging from the small to the large, the informal to the formal. But clearly it may apply, at least in principle, to the people of a polity. Democratic peoples do inevitably debate about how their government should be constituted, what sorts of things it should do, and the like; this debate will materialize in the workplace, café and home, at the hustings, on the television, and in a multitude of other sites. In debating about these matters, they will generate among themselves, again more or less inevitably, a fund of considerations that everyone is prepared to admit as relevant in the determination of public issues, even if individuals weight them differently in importance.

You and I may differ on whether there should be a public medical system, for example, or on whether our country should be involved in a certain war, or on how far the separation of powers should be enforced on the legislature and executive. But in debating about such questions, we will almost always agree in common on the relevance of certain presumptions and valuations, even if they do not lead us in the same direction. I may argue that a public health system is necessary to guard against severe deprivation among the poor, or that it should help to reinforce our sense of a common citizenship. Even while you disagree on the conclusion that I draw, you may well admit that those are indeed relevant considerations: that it is important to guard against deprivation and to promote a sense of common citizenship. You may admit their relevance, even if you think that they do not have the weight I attach to them or that they are outweighed by considerations on the other side.

So far as common considerations emerge and crystallize in the society, it will naturally be a matter of general assumption, however far it may be breached, that ideally government ought to justify its organization and operation on the basis of such commonly accepted presumptions and valuations. Those considerations will tend to support certain general arrangements and constraints of the kind that are typically registered in a constitution. While they provide the currency in which debate on other, more concrete, matters is conducted, they will not often support a particular alternative unambiguously. But they will certainly serve to reduce the number of alternatives that are found defensible and thinkable there. In addition, they will usually provide a base for determining acceptable ways for government to make a decision between the alternatives that remain. They may license the

rule of a parliamentary majority in resolving such matters, for example. Alternatively, they may argue for referring certain matters to a more or less impartial body (say, a court or tribunal or commission) that operates at arm's length from parliament.

To the extent that a political society is organized in this way it will be a civicity. While not amounting to anything like a group agent, it will certainly constitute something more unified and arresting than a mere aggregate. Confronted with individuals who are joined in the relations required by such a civicity, it will be impossible to hold that really there is nothing more to this society than the individuals who make it up. It would be as silly to think that as it would be to say that there is nothing more to an organism than the atoms or molecules or cells out of which it is composed. The civicity is going to be composed at any time out of an aggregate of individuals, of course, but it will be unified across time by the structure among individuals (the constantly evolving structure, as it will be) that enables it to perform in its characteristic role. That structure, like the structure whereby individuals become a group agent, will make it into something more than the individuals who compose it. Let the structure survive, for example, and, even as generation succeeds generation, it will be possible to think of the society or people remaining the same.

5. Rawls's endorsement of this third ontology

We saw earlier that Rawls does not think that society is an emergent reality like a group agent, but that, nonetheless, he takes social cooperation (the cooperation associated with belonging to a single political society) to be capable of making a difference to the basic or non-contractual entitlements of those involved. He does not think, as political singularism would require him to think, that belonging to society makes no difference to people's basic claims; that is the point at which he breaks with libertarians such as Nozick. I now want to argue that Rawls endorses the image of political society as a civicity, or something close to a civicity (he is in that sense a civicist) and that this image explains why, according to him, social cooperation gives rise to new basic entitlements.

The image of the civicity, applied to political society, suggests that it will be a society that is ruled by a representative government in accordance with those presumptions and valuations that emerge and stabilize in public debate. This image is extremely close to Rawls's explicit depiction of political society as well ordered. That a political society is well ordered means, for him, that it is 'a society effectively regulated by some public (political) conception of justice, whatever that conception of justice may be'.³³ The difference between the image of political society as a civicity and this depiction of the well-ordered society comes only in the reference to a public conception of justice rather than to the commonly authorized presumptions and valuations of which we spoke. But this need not be very significant, for the commonly authorized considerations may

well provide grounds for preferring one or another way (or at least one or another family of ways) in which rights and duties may be allocated, and benefits and burdens distributed.³⁴ In that sense, it may serve to ground a conception of justice.

The commonly authorized presumptions and valuations of the civicity correspond roughly to what Rawls has in mind, at least in his later work, when he assumes that any democratic political culture will tend over time to generate certain widely accepted ideas and that these will determine the political conception of justice that is appropriate for the society.³⁵ The assumption, in his own words, is this:

the political culture of a democratic society that has worked reasonably well over a considerable period of time normally contains, at least implicitly, certain fundamental ideas from which it is possible to work up a political conception of justice suitable for a constitutional regime.³⁶

What Rawls describes as the fundamental ideas that will emerge under democratic life correspond extremely well to the presumptions and valuations of which we spoke in sketching the possibility of a civicity. We told a story about how they can be expected to emerge and evolve that is closer to the spirit of Habermas than to the spirit of Rawls, but they serve in more or less the same role that Rawls envisages for his fundamental ideas.³⁷ Rawls believes that the fundamental ideas that he expects to emerge will come to play the role of public reasons that are adduced in political debate for why this or that framework or policy should be supported or rejected. We envisaged the same role for common presumptions and valuations, though in our story those considerations are expected to play this role not just in formally political forums and venues, but also at informal sites.

The commonly endorsed presumptions and valuations will count as public reasons in Rawls's sense so far as they meet three conditions in particular: they govern judgments about public matters; they are publicly or commonly recognized as reasons that serve in debate about such matters; and they are not tied to any sectarian doctrine, that is, they are truly reasons of the public.³⁸ First, they will bear on public matters, since they materialize in debate about how government should be and should act. Second, they will be publicly recognized as reasons of this kind in the sense that it will be perceptible to anyone who knows how to debate with others in the society that they are endorsed on all sides, as a matter of common awareness; participation in debate will presuppose access to those considerations, the belief that others will have equal access to them, and so on. Lastly, the considerations will be non-sectarian (they will be considerations of the public) in the sense that they will not depend for being recognized as relevant on espousal of some doctrine about which people disagree among themselves. If they were dependent on espousal of such a sectarian doctrine, then they would not pass muster in general debate, only in relatively closed circles; those who reject the doctrine could not be expected to endorse them.

The civicist image of political society that I find in Rawls has a certain

presence in his early work, such as *A Theory of Justice*, since even there the notion of the well-ordered society plays an important role. In that early work, he examines different theories or conceptions of justice to see how far they have a claim on us, arguing in the end for his two principles. In the course of examining each such conception or doctrine, he looks at the ‘well-ordered society in which all its members accept the same comprehensive doctrine’,³⁹ surveying ‘the well-ordered societies corresponding to the different conceptions of justice’.⁴⁰ In the case of each conception of justice, he examines the civicity in which the presumptions and valuations held in common would derive explicitly from the relevant doctrine.

In his later work, Rawls recognizes that ‘the fact of reasonable pluralism’ makes the idea of such a society ‘impossible’.⁴¹ It is at that point that he draws on the empirical assumption that any democratic society will tend to be well ordered in a weaker sense. Life in that society will not be regulated by any single comprehensive doctrine, since no such doctrine will be accepted in common there. But it will be regulated by ideas in the ‘overlapping consensus’ that different comprehensive doctrines may allow: the ideas that are invariably ‘implicit in the public political culture of a democratic society’.⁴² When he envisages that sort of society, his picture corresponds very closely to the sketch that we gave of a civicity.

With this shift, Rawls explicitly starts from a factual assumption about the democratic societies he envisages: that they instantiate the structure of well-ordered societies. He had previously suggested that the only societies (the only basic structures) worth examining from the point of view of justice will be well ordered, and well ordered around a comprehensive doctrine. He now holds that the sort of democratic society from within which he wants to theorize about justice is, as a matter of fact, well ordered, though well ordered around a non-comprehensive set of ideas. What had been an ontology of ideal societies now becomes an ontology of actual democratic society. Democratic society is not a group agent of a solidarist kind. But neither is it a mere aggregate of separate individual agents. It is, precisely, a civicity. Moreover, it is the fact of being a civicity that makes room for the enterprise of theorizing from within about the requirements of political justice – of ‘working up’ a conception of justice from the ‘fundamental ideas’ licensed within the society.⁴³ We may not think that the enterprise is likely to prove successful in identifying such a shared conception of justice (I am more skeptical than Rawls about that matter), but we must admit that at least the idea makes sense.⁴⁴

So much for the claim that Rawls endorses the idea of political society as a civicity, though in different ways in the earlier and later periods of his work. What remains now to point out is that if individuals form a civicity when they cooperate socially with one another (if that is what social cooperation is taken to involve), then Rawls will be able to defend himself against the accusation of confusion that Nozick brings against him.

The civicist image of political society removes any lack of clarity or mystery from the idea that social cooperation might transform the nature of people's basic non-contractual claims against one another. The fact of existing together in a civicity will mean that participants are able to make basic claims against their representatives, and ultimately against one another, on the basis of the common presumptions and valuations that are authorized among them as a by-product of continuing exchange and debate. If someone can invoke those considerations in support of this or that policy, or the use of this or that procedure in policy-making, then no one can simply dismiss the claim. It will command attention and response so long as people continue to affirm the mode in which they relate as civic partners, as they will do by virtue of maintaining the practices of a civicity. Just as friends can make claims on friends, as their friends, so members of a civicity will be able to make claims on fellow members, as their fellow members. Those claims will not rest on an implicit contract of any kind, any more than the claims of friends do; they will be grounded in the nature of civic engagement. Let people affirm their engagement and the mutual manifest reliance involved in a civicity (they will do this *ambulando*, as in the case of friendship) and it will be inconsistent of them to dismiss the claims made by others on the putative basis of considerations endorsed in common among them.

Consider, then, the position of the mutually isolated Robinson Crusoes that Nozick envisages. These individuals, not living in a civicity, will have no access to common presumptions and valuations as a ground for making claims against one another. They will live in a morally or politically barren world, deprived of the grounds for mutual address and appeal that a shared civic life would provide. There will be no difficulty about holding, then, that the rights that these people have against one another fall well short of the entitlements that social cooperation brings with it – and brings with it, of course, independently of any particular contracts between people. Rawls will be able to maintain his position in the face of Nozick's assault.

This completes the case I want to make about Rawls's social ontology and about the role that it plays in his normative theory. But I have been concerned solely with normative theory in the domestic sphere and, in conclusion, I would like to draw attention to the fact that the ontology also has an impact on his thinking about justice between peoples.

Rawls is committed not just to regarding democratic political societies as civicities, but some other societies too. One sort of society that he would have to regard as a civicity, of course, is the democratic society in which everyone happens to accept the same comprehensive doctrine; while he thinks that no such society is likely to be realized in practice, it remains an abstract possibility. But Rawls extends the notion of the civicity, if not in so many words, to certain other cases too.

Consider societies that are not democratic at all, or at least not liberally democratic: they presuppose the priority of a certain comprehensive doctrine, but one

that is not shared by everyone. In his later work, Rawls clearly acknowledges that such societies may still be ‘well-ordered in terms of their own ideas of justice’ and may constitute ‘well-ordered peoples’.⁴⁵ They may not be civilities in the full sense of societies in which everyone is free to speak and only considerations endorsed by all have a claim to being empowered in the determination of public policy. But they will approximate such civilities (they will be of a ‘decent’ if not ‘liberal’ character) in being ordered around a more or less widely shared view of the common good, in particular, a view that leads them not to be aggressive towards other peoples. As we might say, they will be closed as distinct from open civilities.

The fact that liberal and decent societies are civilities means that they each have a basis of common ideas on which they can draw in seeking out (through their representative governments) the terms on which they should relate to one another. This is not so with non-democratic societies that are not ordered around a shared conception of the common good, whether because of despotism or extreme poverty. Rawls speaks of these as states, but not peoples (‘outlaw states’ or ‘burdened states’), and while acknowledging the possibility and need to help them change, does not regard them as fit to take a proper part in establishing the terms of international order.

Rawls’s representation of liberal and decent societies as civilities has a deep impact on how he thinks about how things ought to be ordered among them on the international scene. He rejects the cosmopolitan theory of justice that would treat individuals across the globe as members of a single society for which we are to work up a common conception of justice. His grounds for doing so are, essentially, that it would build on a false presupposition: ‘that all persons are to have the equal liberal rights of citizens in a constitutional democracy’.⁴⁶ He insists instead that any rules for how things should be arranged at the global level should proceed ‘from the international political world as we see it’.⁴⁷ In doing this, of course, he draws more or less explicitly on the sort of ontology of societies or peoples that we have been outlining here.

For someone of a singularist view, there might be a problem in thinking that the theory of domestic justice should not extend to the international world. After all, the only morally relevant entities that will exist in such a view are individuals and if justice is a matter of basic, non-contractual entitlement, then justice will make as many demands in the global as in the domestic context. But not so for Rawls. In his view, there are peoples as well as persons. The reality of peoples means that the law of international justice cannot engage with individuals directly, or at least not with the individuals who belong to liberal and decent societies. It has to be focused in the first place on peoples, and on the notion of justice between peoples, and only in the second place on the individuals who constitute those peoples. ‘That law applies to how peoples treat each other as *peoples*’.⁴⁸ In an ontology in which peoples disappear from view, a cosmopolitan theory of justice might have appeal; in the richer ontology that he espouses, it has little or none.

notes

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2. See Derek Parfit, *Reasons and Persons* (Oxford: Oxford University Press, 1984).
3. Rawls, *A Theory of Justice*, p. 26.
4. *Ibid.*, p. 24.
5. *Ibid.*, p. 27.
6. *Ibid.*, pp. 187–9.
7. C.I. Lewis, *The Analysis of Knowledge and Valuation* (La Salle, IL: Open Court, 1946), p. 550.
8. Rawls, *A Theory of Justice*, pp. 187–8.
9. *Ibid.*, p. 29.
10. *Ibid.*, p. 27.
11. See R. Tuomela, *The Importance of Us* (Stanford, CA: Stanford University Press, 1995); Michael Bratman, *Faces of Intention: Selected Essays on Intention and Agency* (Cambridge: Cambridge University Press, 1999); M. Gilbert, 'Collective Preferences, Obligations, and Rational Choice', *Economics and Philosophy* 17 (2001): 109–20; S. Miller, *Social Action: A Teleological Account* (Cambridge: Cambridge University Press, 2001).
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13. See Philip Pettit, *A Theory of Freedom: From the Psychology to the Politics of Agency* (Cambridge and New York: Polity and Oxford University Press, 2001); Philip Pettit, 'Groups with Minds of their Own', in *Socializing Metaphysics*, edited by F. Schmitt (New York: Rowan and Littlefield, 2003).
14. C. Rovane, *The Bounds of Agency: An Essay in Revisionary Metaphysics* (Princeton, NJ: Princeton University Press, 1997).
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 33. John Rawls, *Justice as Fairness: A Restatement* (Cambridge, MA: Harvard University Press, 2001), p. 9.
 34. Rawls, *A Theory of Justice*, p. 5.
 35. See John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993); John Rawls, *The Law of Peoples* (Cambridge, MA: Harvard University Press, 1999); Rawls, *Justice as Fairness*.
 36. Rawls, *Justice as Fairness*, pp. 34–5.
 37. See Jürgen Habermas, *A Theory of Communicative Action*, Vols 1 and 2 (Cambridge: Polity Press, 1984 and 1989). See Charles Larmore, 'Public Reason', in *The Cambridge Companion to Rawls*, edited by S. Freeman (Cambridge: Cambridge University Press, 2003): 368–93.
 38. Rawls, *Political Liberalism*, p. 213.
 39. Rawls, *Justice as Fairness*, p. 9.
 40. Rawls, *A Theory of Justice*, p. 457.
 41. Rawls, *Justice as Fairness*, p. 9.
 42. Rawls, *Political Liberalism*, p. 13.
 43. Rawls, *Justice as Fairness*, pp. 34–5.
 44. *Ibid.*, p. 31.
 45. Rawls, *The Law of Peoples*, pp. 68, 83.
 46. *Ibid.*, p. 82.
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 48. *Ibid.* For more on this theme see my 'Rawls's Peoples', in *Envisioning a New International Order: Essays on Rawls's Law of Peoples*, edited by Rex Martin and David Reidy (Oxford: Blackwell, 2004).