Ruud ter Meulen

Solidarity and Justice in Health Care : A Critical Analysis of Their Relationship

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SOLIDARITY AND JUSTICE IN HEALTH CARE.
A CRITICAL ANALYSIS OF THEIR RELATIONSHIP
– Ruud ter Meulen –

Abstract. This article tries to analyze the meaning and relevance of the concept of solidarity as compared to the concept of justice. While 'justice' refers to rights and duties (*Moralität)*, the concept of solidarity refers to relations of personal commitment and recognition (*Sittlichkeit*). The article wants to answer the question whether solidarity and liberal justice should be seen as mutually exclusive or whether both approaches should be regarded as complementary to each other. The paper starts with an analysis of liberal theories of justice which are followed by an analysis of the descriptive and a moral understanding of the concept of solidarity. The importance of solidarity lies in its relational aspects, particularly its emphasis on cooperation and commonality. The paper argues that while solidarity is more fundamental than justice, both concepts are important for the arrangement of health care practices. The paper gives special attention to the concept of decent care, reflective solidarity and humanitarian solidarity which is seen as fundamental for all health care policies and care practices.
Keywords: solidarity, justice, health care policy, liberalism, rights to health care, recognition, ethic of care, decency.

The concept of solidarity has for a long time been neglected in the field of bioethics. The importance of mutual obligations and responsibility for the other as suggested in the term "solidarity" does not fit well with liberal views which have become dominant in this discipline. This is particularly true for the Anglo-Saxon language area where liberal and individualistic approaches are more common, particularly in the context of the ethical debate on access to care and the allocation of resources: justice, not solidarity, is regarded as the main concept to analyze patterns of distribution of benefits and burdens in health care. While solidarity has for a long time been referred to as the core value underpinning European health and welfare systems, it is seen as vague and not useful to analyze new directions in the delivery of health and social care. The introduction of market reform, personal choice and individual private financial responsibility seem to make solidarity a redundant concept which, due to its alleged communitarian content, seems difficult to reconcile with the emphasis on individual freedom and personal autonomy in the delivery of health care.

However, contrary to the growing influence of liberal justice in the ethical analysis of access to care, one can also notice a growing criticism of liberalist and libertarian models in bioethics along with increased emphasis on social and relational approaches. These approaches – for example in feminist bioethics[1] – have led to a renewed attention to the concept of solidarity in theoretical bioethics. A special issue of the journal *Bioethics* (2012) on the contribution of solidarity to bioethics, as well as the report *Solidarity* published by the *Nuffield Council on Bioethics* in 2011,[2] may be seen as signs of the emerging interest.

In view of these conflicting tendencies, an interesting question arises whether solidarity and liberal justice should be seen as mutually exclusive or whether both approaches should be regarded as complementary to each other. In this paper I want to answer this question by an analysis of the normative foundations of the concept of justice, followed by a deeper understanding of the concept of solidarity as an alternative approach as compared to justice. I will then explore the possible links between the two concepts, with reference to the importance of relational approaches in social philosophy. I will finish with highlighting the concept of humanitarian solidarity which I believe is fundamental for any ethical debate and policy regarding the distribution of health care resources.

The philosophy of justice

The philosophy of justice interprets society and the problem of just distribution of resources in terms of a social contract based on the concept of autonomous individuals negotiating their interests. From this perspective, liberal debates tend to focus on the normative evaluation of the performance of the system in terms of the distribution of services. This model is most outspoken in the influential book *A Theory of Justice* by John Rawls[3] in which he proposed two principles of justice to evaluate the distribution of social and economic advantages in a society. According to Rawls, these principles would be accepted by individuals when they would deliberate about a just distribution behind a 'veil of ignorance,' that is without knowing their own particular circumstances or social position. The First Principle of Justice is that 'each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others.' The Second Principle is that 'social and economic inequalities are to be arranged so that they are both a) reasonably expected to be to one's advantage, and b) attached to positions and offices

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[1] Mackenzie, Stoljar [2000].

[2] Nuffield Council [2011].

[3] Rawls [1989].

open to all.'[4] While Rawls never applied his principles to health care, Daniels developed a theory of justice in health care from the perspective of this philosophy.[5] According to Daniels, health is important because it underlies normal functioning which in turn protects people's fair share of the normal opportunity range in a society. Daniels argues that society has the obligation to provide a minimum of health care, which should assure that every individual has access to a tier of services that promotes normal functioning and thus protects fair equality of opportunity.[6] Since health care is not the only important institution, resources to be invested in the basic tier should be appropriately and reasonably limited by democratic decisions about other investments (like education) as opposed to investments in health care.

This liberal-egalitarian approach differs to some extent from the approach by libertarian authors who reject the outcome-based or goals-based approach as proposed by Rawls and Daniels. For example, Nozick[7] argues for a freedom-based concept of justice in which distributions of goods are made in accordance with the consent of the individuals. In libertarianism, justice is defined as beneficence constrained by the principle of autonomy. Engelhardt[8] follows Nozick's libertarian concept of justice, arguing that justice is first and foremost giving to each the right to be respected as a free individual in the disposition of personal services and private goods. Applied to health care this means that health care systems should have two tiers, one tier allowing private choices, and another basic tier supporting a 'general social sympathy' for those in need.[9] However, such a 'compromise' between communal provisions and individual choices should not be based on outcome-oriented criteria (like fair equality of opportunity) but on the consent of individuals and societal choices. What constitutes a communally provided level of care can only be created in a process of negotiation between individuals.

The *Theory of Justice* by John Rawls, and the philosophy of justice in general, is often criticised for its individualistic bias and for ruling out any communitarian sentiments or mutual interest between individuals in their personal circumstances. Both libertarian and liberal discourses tend to define issues of justice as the result of negotiations between rational individuals who share no element of commonality and

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[4] Ibidem, p. 60.

[5] Daniels [1985].

[6] Ibidem.

[7] Nozick [1974].

[8] Engelhardt [1986].

[9] Ibidem, p. 361.

mutuality. According to Nagel, the original position as proposed by Rawls 'seems to presuppose not just a neutral theory of the good, but a liberal, individualistic conception according to which the best that can be wished for is the unimpeded pursuit of his own path, provided it does not interfere with the rights of others.'[10]

Solidarity

In many European countries solidarity, not justice, is the main concept guiding social and health care policies.[11] While the concept of justice abstracts from social interdependencies and mutual relationships, the idea of solidarity is associated with mutual respect, personal support and commitment to a common cause.[12] In European welfare states, the basic understanding of solidarity is that everyone is assumed to make a fair financial contribution to a collectively organised insurance system that guarantees equal access to health and social care for all members of society. This equally applies to other systems of social protection, which are operating in European welfare states, such as social insurance systems covering the financial risks of unemployment and work-related illness and disability, as well as old age insurance systems and pension schemes. In this context, solidarity is an instrumental value insofar as it aims to promote equal access to healthcare for all citizens, independent of income or health risk. This would mean, for example, that individuals with a high risk of a disease, such as older people, people with chronic diseases or people who are suffering from mental health problems, would have equal access to healthcare as people with a lower risk of such conditions.[13]

However, at the same time solidarity can also be regarded as an *intrinsic* value, meaning the unselfish dedication to a fellow human being who is in need. This can be care for one's partner who is struggling with dementia or for a neighbour who due to physical handicaps is not able to take care of himself. It can also be a more general identification with the needs of individuals in society, for example people with disabilities, dementia, and mental illness. Solidarity means the willingness to protect those human persons whose existence is threatened by circumstances beyond their control, particularly natural fate (for example genetic disease) or unfair social structures. There is no self-interest at stake in this type of solidarity: you support the other because he or she needs your protection and is

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[10] Nagel [1989] p. 10.

[11] Meulen, Arts & Muffels [2001].

[12] Meulen, Houtepen [2011].

[13] Meulen, Made [2000].

worthy of your protection. According to Van der Wal,[14] vulnerable people are worthy of our protection and support because they are a person with self--awareness, sorrow, anguish and despair. They are persons with whom we can share their existence and fate. It is a solidarity that takes responsibility for the existence of the other who is not able any more to take care of himself or herself. It is called *humanitarian solidarity*, because it is not a solidarity based on personal interest but on identification with the values of humanity and responsibility for the other.

There is increasing uncertainty about whether solidarity still can be a guiding principle in the shaping of care arrangements within welfare states in the decades to come.[15] There are concerns that health care systems may not be able to meet the responsibilities associated with solidarity, due to increasing demands for expensive treatments, the ageing of the population and more demanding attitudes of patients and clients. Health and social care systems are increasingly confronted with cuts and reforms, particularly the reduction of the package of public services and the increase of private contributions of beneficiaries. Due to increasing constraints, one can notice a decrease of a benevolent attitude towards the 'needy' at both government and population levels. For example, governments are putting more emphasis on individual financial responsibility as well as personal responsibility for one's own health by healthy lifestyles.[16] Moreover, at the level of individual attitudes, solidarity has acquired the meaning of *interest* solidarity: individuals support the health care arrangements out of self-interest. They expect a satisfactory return on their 'investments' in the health care system and do not accept rising premiums if, at the same time, they are faced with poor performances, such as long waiting times or poor quality due to scarce resources. The modern patient is a well-informed, critical consumer who wants to get value for money. If the health system is not able to deliver, the modern patient-consumer will withdraw his support for the care system and will try to find his own solutions to deal with the scarcity of available services. At the same time, there is decreasing support for individuals who do not behave responsibly because of unhealthy life styles. From the perspective of interest solidarity, such individuals are abusing social solidarity and they do not 'deserve' to get their health care costs paid by the public healthcare system. Solidarity is less considered a one-way process: the transfer of

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[14] Van der Wal [1988].

[15] Meulen, Maarse [2008].

[16] Ibidem.

funds is regarded as *reciprocity*, meaning that the contributions by the 'givers' must be matched by the 'right' behaviour of the 'recipients' of health care.

The narrowing-down of solidarity seems to reflect a similar restrictive attitude that characterizes liberal, and particularly libertarian, conceptions of justice. In fact, the concept of justice, particularly the accompanying language of rights, legitimate interests and obligations, pervades much of the contemporary debate on solidarity. As discussed above, contractual liberalism transforms the concept of solidarity in a rational decision to support societal arrangements, which should guarantee the basic rights and interests of individuals. Solidarity is then primarily conceptualized as the motivation of individuals to support the existing systems of health care and social protection. This support is balanced mainly in regard to the financial contributions by the individuals to the system on the one hand and, on the other hand, the benefits they are expecting from the system in case they become needy themselves.

In view of these developments at the level of public values and public policies, we can wonder whether solidarity could or should be the main value for health care and social care arrangements. Another problem with regard to the concept of solidarity is the lack of a clear definition of the concept. Moreover, there is a general feeling that the concept of solidarity is suffering from vagueness and that it lacks a clear definition of the kind of responsibilities we owe to each other and particularly of the boundaries of such responsibilities. This may be one of the reasons of the decline of solidarity as a guiding principle for the organisation of health care systems and the rise of competitive concepts offered by the philosophy of justice. It might be important then to explore what the meaning of solidarity is or could be in order to get a better understanding of its role in the shaping of health and social care policies and practices.

An empirical understanding of solidarity

According to Bayertz,[17] the core meaning of solidarity is the perception of mutual obligations between the members of a community. Originating in the Roman law (*obligatio in solidum*), "solidarity" specifically designated the accountability of each member of a certain community for the debts of any other. Normally this would hold for families, but the French word *solidarité*, for instance, was originally used in the context of partnership in law firms. Since the end of the eighteenth century, solidarity has taken on a meaning beyond the context of the law and has come to suggest the idea of mutual responsibility between an individual

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[17] Bayertz [1999].

and society in the fields of morality, society, and politics: solidarity means a commitment of the individual to support the community and a commitment of the community to support the individual. As Bayertz argues, this commitment can be understood from a descriptive or factual level, on the one hand, and as a moral commitment, on the other hand.

A *descriptive* understanding of solidarity, for example in the work of sociologist Émile Durkheim (1858–1917), looks at the existence and strength of the commitment to support others within a certain society. It includes a description of the beliefs of the members of a society concerning the importance of mutual support among those members and of their motivation to contribute to that mutual support. It was Durkheim who coined the term *organic* solidarity to describe the transition from traditional to modern society and the transformation of traditional forms of cooperation and social relationships between individuals (the so-called *mechanical* solidarity) into relations based on division of labour.[18] Due to this development in modern society, individuals become highly dependent on each other because of this specialization. Organic solidarity is at the same time accompanied by a process of individualization, including a diversification of individual values, which replaces the collective conscience of traditional society. The sociologist Max Weber (1864–1920) comes to similar conclusions on the basis of his thesis of the modernisation of society. During the modernisation process, social relationships are increasingly influenced by rational planning, calculation and technical knowledge. As a result, communal relationships are replaced by associative relationships as the dominant type of relationships in society. In this process of rationalization, rational behaviour ('Gesellschaftshandeln') becomes dominant at the expense of affective relations ('Gemeinschafstshandeln').[19] Van Oorschot uses the phrases of 'shared identity' and 'shared utility' to characterize these distinctions as the motivation for solidarity.[20] According to Van Oorschot, the fundamental motivation for solidarity is the fact that people recognize each other as companions or fellow-travellers and the identification as members of the same group ('shared identity'). At the same time they recognize their mutual interdependencies to realise their goals and potentialities ('shared utility').

Organic solidarity has been described as 'an actual state of interrelations between individuals, groups and the larger society, which enables the collective in-

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[18] Arts, Verburg [2001].

[19] Verburg, Meulen [2005].

[20] Oorschot [1998].

terest to take priority over the interests of individuals or sub-collectivities.'[21] European health care systems can be seen as an example of organic solidarity in so far as the individuals are under the obligation to contribute to the interest of the community as a whole, that interest being understood as equal access to health care for all who are in need.[22] Individuals have a motivation to do so, as they expect to have access to care services in return for their financial contributions.

A moral understanding of solidarity

Interest solidarity must be understood in the context of the modernization of society, which includes the process of individualization and the dominance of contractual relationships.[23] According to Bayertz, contractual solidarity which is typical for the modern welfare state can be characterized as 'support… legally institutionalized by the state.'[24] Bayertz argues that this 'welfare state solidarity' is better understood with the Anglo-Saxon concept of justice:

> Since there is no (longer) reason to assume an existing perception of common ground, from which solidarity is known spontaneously to grow, it seems reasonable to deduce obligations to help from the principle of justice. Justice requires neither group-specific common ground nor emotional attachment, but is based instead on the distanced observation and the weighting up of competing claims from a neutral position.[25]

However, one can ask whether the concept of justice as advocated by Bayertz does indeed reflect the social circumstances of welfare state solidarity. The idea of the rational independent decision-maker, which underpins liberal theories of justice, does not reflect the social reality in which it is rooted. In fact, the idea of the rational decision maker can be regarded as an ideological construct: it is a correct *and* incorrect reflection of social reality.[26] It is *correct* in the sense that individuals are expected to deal with each other as self-conscious, rational beings with mutual respect. It is *incorrect* as it ignores the underlying, social processes which can be characterised as moving towards increasing social dependencies by which individuals are connected to each other. According to the sociologist Norbert Elias (1897–1990), the modern indi-

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[21] Ibidem.

[22] Meulen, Arts, Muffels [2001].

[23] Arts, Verburg [2001].

[24] Bayertz [1999] p. 22.

[25] Ibidem.

[26] Lorrain [1979].

vidual is seeing himself as a closed 'ego,' a *homo clausus*, who regards him or herself as distinct and independent of fellow human beings. This idea of human beings as independent decision-makers is a 'fiction', 'an artefact of human thinking that is characteristic for a certain level in the development of human self-understanding.'[27] Instead of seeing man as a 'closed' personality we should see man as an 'open' personality 'who in his relation with fellow human beings can reach a higher or lower level of autonomy, but never absolute or full autonomy, who during his life is continuously relying on and dependent on other human beings.'[28] The social interdependencies and the need to cooperate for one's own and society's interests are widely ignored by many liberal and libertarian authors as they focus on individualistic values and fail to see the social processes which are responsible for the process of individualization.

The transformation of the perception of solidarity in the direction of 'shared utility' and its subsequent replacement by the concept of justice ignore the social basis of this type of concept. Moreover, it conceals other moral, and particularly relational, meanings of solidarity.[29] A relational moral understanding of solidarity argues that the commitment to support others is an important moral value, not just because we have an interest to do so ('shared utility'), but because the other deserves our support as he or she is in need of it due to circumstances out of their control. According to Jaeggi, solidarity should not be equated with the 'shallower common interest of a coalition.'[30] On the one hand, solidarity may be based on common interest, a common fate and certain interdependencies. On the other hand, solidarity seems to express a deeper commitment than is necessary for a coalition, which is only formed in order to achieve a certain goal.[31] One does not change these commitments the way one changes sides in coalitions for strategic reasons. Moreover, Jaeggi argues, many attitudes of solidarity do not seem to be directed to simple self-interest or 'shared utility': they are not strategic relations as they try to transcend a narrow conception of individual interests.[32]

Jaeggi conceptualizes solidarity as a relational concept: it refers to relations of support and understanding between individuals engaged in cooperative practices. Acting out of solidarity means 'standing up for each other because one rec-

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[27] Elias [1971].

[28] Ibidem.

[29] Meulen, Houtepen [2012].

[30] Jaeggi [2001] p. 289.

[31] Ibidem.

[32] Ibidem.

ognizes one's own fate in the fate of the other.'[33] As a moral concept solidarity implies a sense of non-calculating cooperation based on identification with a common cause. This interpretation of solidarity as non-instrumental cooperation connects this concept to Hegel's idea of *Sittlichkeit* or 'ethical life'. Jaeggi refers to Theunissen, who defines ethical life as 'those conditions in which the individual first and foremost finds his own self.'[34] According to Jaeggi, individuals realize themselves by connecting to those kinds of relations that are intersubjective conditions of self-realisation. The 'Other' is not the limitation but the pre-condition of my freedom. Human beings are socially constituted on a fundamental level:

> Embedded in a certain culture, acting within an already present structure of social cooperation, it would be mistaken to see [human beings] as using these relations in order to promote their own good. Rather it is only the very background conditions that provide him with the possibility to articulate his own good. To share a common life form… in this perspective is essential – not only with regard to the problem of social integration but also with regard to the individual's responsibility for self-realization.[35]

Hegel introduced the concept of *Sittlichkeit* as distinct from Kant's concept of *Moralität*: while *Sittlichkeit* refers to the relations of recognition, and to the struggle for recognition,[36] *Moralität* refers to abstract rights and duties.[37] In the Kantian tradition, justice is interpreted as a matter of universal duties between individuals, which can be justified on the basis of rational deliberations. Many theories of justice look at the fairness and rationality of procedures for the distribution or to the outcome of this process, particularly in reference to the position of the least well off.[38] As opposed to the Kantian concept of *Moralität*, Feuerbach, Marx, and more recently Habermas and Honneth, base solidarity on the mutual relatedness and fundamental interdependency of individuals. Inspired by Hegel, this approach is based on a relational and contextual view of individual development.

This relational aspect makes solidarity a distinctive concept in relation to justice. Habermas argues that liberal justice is not wrong, but one-sided. Its foundation in the calculations of autonomous individuals obscures the importance of an

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[33] Ibidem, p. 291.

[34] Ibidem, p. 295.

[35] Ibidem.

[36] Honneth [1995].

[37] Houtepen, Meulen [2000a].

[38] Verburg, Meulen [2005].

inter-subjective life-form that supports individual autonomy by keeping up relations of mutual recognition.[39] Habermas sees justice and solidarity as two sides of a coin: justice concerns the rights and liberties of autonomous, self-interested individuals, whereas solidarity concerns the mutual recognition and wellbeing of the members who are connected in the life world.[40]

The primacy of solidarity

While Rawls argues that the deliberations behind the veil of ignorance are led by rational and impartial motivations, one can also argue that these deliberations can only take place if there is some sense of benevolence among the individuals towards the less well-off in society. The obligations and principles which the individuals are supposed to agree with are in the end rooted in contingent and empirical conceptions of our obligations to the other.[41] In fact, they may have less universal significance than Rawls wants us to believe.[42] One can argue then that benevolence precedes justice and is more fundamental than justice. According to Sandel, justice has a 'remedial function' towards the circumstances of benevolence and fraternity when fraternity fades, justice may help to redeem the loss of benevolence that is typical for pre-modern relationships.[43] However, there is a risk that justice can become so dominant and restricting that it may destroy the relations of benevolence in which it is rooted. Sandel gives the example of the (ideal) family where relations are governed by spontaneous affection and circumstances of justice prevail to a small degree.[44] Individual rights are seldom invoked due to a spirit of generosity in which the members of the family do not have any inclination to claim a fair share. However, when the family is wrought with dissension and individual interests grow divergent, the circumstances of justice become more acute. The affection and spontaneity of previous days give way to demands for fairness and observance of rights. Even when the parents and children abide conscientiously by the rights and duties on which they agreed, something has been lost compared to the circumstances of the previous situation. However, a more worrying situation arises when from a misplaced sense of justice individuals take on a calculated attitude and claim a precise share of the expenditures or income.

[39] Habermas [1985].

[40] Houtepen, Meulen [2000b].

[41] Sandel [1998].

[42] Ibidem.

[43] Ibidem, p. 32.

[44] Ibidem, p. 33.

According to Sandel, in such a situation individuals may lose the spontaneous mutual benevolence which may be typical for the previous situation. There may be no injustice, but the exercise of justice in such an inappropriate way may have brought about an overall decline in the moral character of the association: 'justice in this case will have been not a virtue but a vice.'[45]

Philosophical liberalism has been accused of an attitude of 'coldness,' concealed as rationality: social support is conceptually limited to the ascription of rights and the distribution of provisions.[46] Although many liberal philosophers and liberal politicians have endorsed fairly high minimum standards for collective distribution of basic goods, there is a strong stimulus in liberalism (particularly in libertarian approaches) to restrict the basic level of health and social services to a *minimum* of provisions and obligations for support. Since claims for support should be treated universally, they had better not be given too much leeway. Apart from problems of individualism and rationalism, the weakness of liberalism lies in the elements of reciprocity and the scrutiny of the behaviour of the 'receiver' of goods. As soon as the 'givers' perceive that the 'receivers' are making extravagant claims or are otherwise undeserving, there is less reason for a high standard of goods to be distributed. In such cases the support for a minimum of health care would crumble and would give way to narrow interpretations of what such a minimum should look like. Even advocates of a markedly social liberalism, such as John Rawls, cannot give sufficient countervailing philosophical arguments against such tendencies. Such distributions can be regarded as just, but one can question their moral content as seen from the perspective of solidarity. As Sandel argues, such patterns of distribution can become a vice instead of being a virtue.

Decent care

In his book *The Decent Society* Avishai Margalit[47] makes a distinction between a just society and a decent society. According to Margalit, a decent society is one in which institutions are designed to prevent the humiliation of people by other people. Humiliation is defined by Margalit as 'any behaviour or condition that constitutes a sound reason for a person to consider his or her self-respect injured.'[48] Institutions have an inherent tendency to humiliate people, for example by rejection, exclusion, paternalism and denial of rights. Margalit notes that many institutions of the welfare

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[45] Ibidem, p. 35.

[46] Houtepen, Meulen [2000b]; Pasini, Reichlin [2001] p. 322.

[47] Margalit [1996].

[48] Ibidem, p. 9.

state put their beneficiaries through humiliating procedures in order to obtain their rightful provisions. In contrast, a decent society is one that cares that the institutions themselves do not operate in a humiliating way:

> A decent society is one that fights conditions which constitute a justification for its dependents to consider themselves humiliated. A society is decent if its institutions do not act in ways that give the people under their authority sound reasons to consider themselves humiliated.[49]

According to Margalit, a *just* society is not necessarily a *decent* society. There is no doubt that the spirit of a just society, based on Rawls' principles of liberty and justified difference, conflicts essentially with a non-decent society.[50] But, Margalit argues, a Rawls-style just society and the just distribution of primary goods, can still contain humiliating institutions. According to Rawls, prior to all primary goods is the sense people have of themselves as having a value, and the sense that their life plans are worthy of realisation, as well as the confidence to be able to carry out this plan. Self-respect is the most basic primary good, as without it there is no point in doing anything whatsoever. Life has no meaning when one has no respect of oneself. Rational people wanting to establish a just society will do everything to avoid creating humiliating institutions or conditions, since these would diminish the most basic primary social good. One can accept differences in the distributions of some of the primary goods, but there is no room for any inequality in the distribution of self-respect.[51] If humiliating means damaging people's self-respect, it should be clear that a necessary condition for a just society is that it should be a society that does not humiliate its members.

In order to evaluate whether a just society is also a decent society, it is important to make a distinction between the *pattern* of distribution and the *procedure* to obtain the just distribution.[52] The distribution may be just and efficient, but it may still be humiliating. Margalit reminds us of the old fear 'that justice may lack compassion and might even be an expression of vindictiveness.'[53] In practice, justice may become very calculating about what is just, instead of being humane and gentle. This reminds us of the analysis of Sandel in the previous section: justice will then stop being a virtue and will become a vice. Margalit argues that the just society as defined

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[49] Ibidem, p. 11.

[50] Ibidem, p. 272.

[51] Ibidem, p. 273.

[52] Ibidem, p. 279.

[53] Ibidem, p. 280.

by Rawls is, in spirit, a decidedly decent society. However, Rawls cannot avoid that, in practice, the just society may be an indecent society, particularly in the *procedures* of how goods are distributed to needy individuals.

Though care for individuals may be just from the perspective of distributive justice, it can still be *indecent*, because of the humiliating way this care is provided.[54] This is particularly the case for individuals who have become dependent on our care and who are not able to take care of themselves, such as those suffering from dementia, psychiatric illnesses, intellectual disabilities or physical disabilities. As part of the pattern of just distribution of healthcare resources these individuals will receive health care, but the *way* this healthcare is delivered can be humiliating, not giving them the respect they deserve. For example, Alzheimer patients or people with severe intellectual disabilities can be ignored at hospital wards because of a lack of interest or understanding among health care personnel. They can be treated with diminished respect as they seem to lack the rational capacities of the 'normal' members of our society. They can be treated with a lack of respect and can suffer humiliation because they may display 'strange' behaviour which is often wrongly understood. This is particularly true for people with dementia.[55] Even when individuals with dementia or intellectual disabilities receive care that should be provided according to so-called quality frameworks, the care may be delivered in a paternalistic and humiliating way, denying them dignity, respect and understanding. For example, *indecent* care includes leaving a woman with dementia partially clothed in a communal room of a nursing home, or spooning food quickly into the mouth of a person unable to feed herself, or leaving her alone all day in complete passivity or in a state of anger, shouting and swearing without any attempt by the staff to understand her behaviour or to give personal attention.

Reflective solidarity

The presentation of the principles of justice as universal rights and obligations has contributed to the obliteration of the normative basis of these commitments which we have identified as solidarity. A practical theory of solidarity then does not focus on the moral rights and duties of individuals but wants to engage with the question how to promote relations of responsibility and recognition at an institutional level. The delivery of health and social care, including the rights and duties of individuals, should be arranged in such a way that it promotes the reciprocal recognition of identities and responsibilities. Though justice has become the

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[54] Meulen [2011].

[55] Nuffield Council [2009] p. 32.

dominant value in our societies, solidarity as recognition of the other can be considered the more fundamental value.

The *ethic of care* is one of the ethical theories that try to respond to the one-sidedness of the ethic of justice.[56] The ethic of care argues that caring relationships are not relationships between equals as presumed in liberal concepts of justice.[57] In many cases, care involves a relationship between people who are not equal, between a care giver and a patient suffering from a chronic illness, like a patient suffering from dementia, stroke or a heart attack. The ethic of justice and the contract perspective ought to play an important role in health care, as they give rights and protect the autonomy of individuals. However, contractual ethic needs to be balanced by a *substantial* ethic by way of an increased emphasis on responsibility, involvement and recognition.

The connection of solidarity to relations of recognition, dignity and recognition of identities, constitutes a challenge to traditional notions of solidarity as they are put forward by some communitarian authors. These notions have a tendency to emphasize the unity and coherence of the group as a way to protect the group from a threat from outside. Conventional solidarity has a problem of exclusion by the construction of 'us' against 'them'. In such notions, the range of individual differences and of their expression in different identities is restricted by the effort to maintain the unity of the group. For example, Robert Bellah, one of the leading communitarian thinkers, claims that such a manifestation of solidarity will support the development of identities.[58] However, such interpretations of solidarity are criticized because of their ignorance of the role of individual autonomy and recognition of individualities, which are highly valued in contemporary societies.

Pasini & Reichlin emphasize that the understanding of solidarity as the 'other side of justice' is different than advocating a communitarian sense of brotherhood of a closed community.[59] Solidarity in the sense of mutual recognition is not the solidarity of the 'us' against 'them': it is a sense of brotherhood but one that connects a concern for the well-being of the other with the universality of human rights and of protection of dignity. It is not an *exclusive* solidarity of the group or class, but an *inclusive* solidarity which promotes human flourishing in the context of human values and needs.

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[56] Tronto [1993].

[57] Held [2006].

[58] Bellah [1985].

[59] Pasini, Reichlin [2001] p. 324.

Modern theories of solidarity, for example the work of Jody Dean *Solidarity with Strangers*,[60] try to reconcile the recognition of individual differences with an inclusive interpretation of solidarity. Dean argues that we need to create a communicative 'we' by referring to a 'third' as a way to create an inclusive community. She refers to the concept of the 'generalized other', introduced by the sociologist G. H. Mead as a way to organize and formulate the expectations of a group with regard to certain social roles and identities in a group. Dean opens the way for an interpretation of solidarity as a communicative practice in which the individuals create a 'we' by reflecting on expectations regarding the generalized other. In this process identities are affirmed and recognized as different ways to meet those expectations. Dean calls this *reflective solidarity* to describe the difference with conventional solidarity:

> In conventional solidarity our appeal is based on our common interests, concerns and struggles. With reflective solidarity we appeal to others to include and support us because our communicative engagement allows us to expect another to take responsibility for our relationship. Here we recognize the other in a way that is neither immediate nor restrictively mediated. We recognize her in her difference, yet understand this difference as part of the very meaning to be one of 'us'…we take the attitude of the group but we take it reflectively, attuned to the standpoint of the situated, hypothetical third.[61]

Procedural justice and common values

Liberal theories of justice are generally not interested in promoting the good life or 'ethical life' ('Sittlichkeit'), including relations of recognition and solidarity. They present themselves as universal theories of rights and duties ('Moralität') by abstracting from the particular conceptions of the good life and personal relationships. They do not regard such values as unimportant, but it is not the task of society to promote such values or to interfere in personal plans or life forms. The task of society is to enable individuals to facilitate their personal plans on the basis of a principle of equality or fair equality of opportunity.[62] Modern society should not be founded on a particular conception of the good life as that would discriminate against individuals with a minority view. The central ethic of procedural liberalism is the ethic of the *right* rather than the ethic of the

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[60] Dean [1996].

[61] Ibidem, p. 39.

[62] Daniels [1985].

good.[63] There are of course areas in society where individuals bond and share a conception of the good life, like families, friendship, social clubs and neighbourhoods, but on an institutional level such ties and bonds are irrelevant: institutions like health care or education are collective instruments to help individuals to reach their individual goals and fulfil their life plans.

According to Taylor, one can ask whether such atomist models of social life can be viable. Referring to the republican tradition in political philosophy, Taylor argues that in republican societies freedom can only flourish by a shared understanding of the common good or identification with common values.[64] Taylor makes the distinction between the self-interest of individuals to maintain certain public services and commitment to the welfare of others. The bond of solidarity with compatriots in a functioning republic is based on a 'shared fate, where the sharing itself is of value'. A society is more than just an instrumentality for individual life plans. It is also place for common action and common identification with values. Freedom is possible by identification with a common cause and by self-discipline 'because its members are asked to do things that mere subjects can avoid'. [65]

As many health and social care systems are struggling with financial constraints, there is an increased attention to the rationing of services and increased individual financial responsibility. However, such an approach should not divert attention away from the relational character of health care and from our responsibility to take care of the needs of vulnerable groups. Though health and social care systems are under increasing pressure, this does not mean that societies should ignore the bonds of solidarity and focus on individual interests only. The responsibility for others, particularly for those who cannot help themselves, should be cherished as a basic commitment of our society. People with dementia, learning disabilities, psychiatric problems and other vulnerable people are struggling with a loss of autonomy, failing health and a lack of security. Care for these vulnerable individuals will not only support their health and social needs, but will also keep them included in our society. Care for them can be regarded as an expression of humanitarian solidarity which is not a solidarity based on personal interest but on identification with the values of humanity and responsibility for the other. Humanitarian solidarity is a typical example of the common value or common cause as discussed by Taylor: it is a value that goes beyond self-interest and instrumen-

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[63] Taylor [1997] p. 186.

[64] Ibidem, p. 192.

[65] Ibidem, p. 193.

tal thinking which are typical for the liberal discourse. Humanitarian solidarity is a commitment that can define a particular society and should never be abandoned in favour of the rational self-interest of liberal justice.

Conclusion

The increased emphasis on the concept of justice to analyze distributions of benefits and burdens in health and social care has the risk of a diminishing of attention for the personal bonds and commitments on the level of care practices. This may result in an impoverishment of the relations in health care which are fundamentally based on benevolence and commitment to the well-being of the other. The concept of solidarity tries to capture this commitment by emphasizing the importance of recognition of identities and the promotion of dignity in the context of personal relationships. This is not to say that justice should be discarded in the arrangement of health care policies and practices in favour of solidarity: solidarity does not attempt to offer an alternative for distributive justice, but must be regarded as an important corrective to arrangements of health care practices that are based on a just distribution of goods only. Solidarity expresses a commitment to sustain the life of fellow human beings, particularly when their conditions are becoming difficult to bear. Health care policies and arrangements should go beyond merely meeting needs and rights, by exploring how people's personal dignity and sense of belonging can be sustained within relations of recognition, reciprocity and support.

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