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JUSTICE AND SOLIDARITY: COMPOUND, CONFOUND, CONFUSE

– Thomas Nys –

Abstract. In response to Ruud ter Meulen’s contribution, it is argued that, although the relationship between these concepts is both tight and complex, solidarity should be carefully distinguished from justice. Although ter Meulen wants to defend a normative conception of solidarity, the relation to its descriptive component is not always very clear. As a normative concept it should not collapse into that of justice; and as a descriptive notion it is obviously defective. In order to successfully navigate between these unhappy alternatives, ter Meulen rightfully turns to critical theory. But then it is still not entirely clear how the normative considerations that ter Meulen wants to defend follow from this promising framework.

Keywords: justice, solidarity, critical theory, health care, health insurance.

The target article by Ruud ter Meulen offers a sincere and heartfelt plea for a health care system that is based on human solidarity. As such, it deserves the highest recommendation. It also provides clarification of a notion that is rarely scrutinized, the notion of solidarity itself. It gives us a better grasp on what solidarity means, and how it is (or could be) relevant in health care. This too is an extremely valuable contribution.

So there is much in ter Meulen’s paper that I like. However, for the purpose of this note, I want to focus on the relationship between the ideas of justice and solidarity. I believe this relationship to be highly complex, and I also believe that the danger of confusion looms large here. What I will say, will not by any means invalidate ter Meulen’s points, but should be conceived as a friendly attempt to further explore the ways in which justice and solidarity are related.

1. Cold, colder, coldest

Let me start by noticing that ter Meulen makes several distinct, though perhaps related, claims about the relationship between justice and solidarity. He claims that solidarity is *more fundamental* than justice,¹ that justice would need to

¹ Meulen [2015] p. 11, 15, also in the abstract.

be *complemented* by solidarity,² and that solidarity is an important *corrective* to justice.³ To the extent that these are, at least on a conceptual and theoretical level, quite different claims, it is not always very clear what the core tenet of ter Meulen's argument is.

What is also, at times, unhelpful is that, although ter Meulen offers much to clarify the notion of solidarity, we do not get a clear understanding of what justice entails. He just mentions the criticism that '[b]oth libertarian and liberal discourses tend to define justice as the result of negotiations between rational individuals who share no element of commonality and mutuality.'⁴ This, according to ter Meulen, is its main flaw. That may be true, but we should not forget that justice is essentially about what is *due* to others, about what we *owe* each other. As such, it is a social notion signifying that individual rights are met with corresponding duties.

Now, ter Meulen introduces the topic of solidarity as follows:

In many European countries solidarity not justice is the main concept guiding social and health care policies. [...] [T]he 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.⁵

To say that it is 'solidarity and not justice' that is the 'main concept' is a bit confusing. The fact that one is *assumed* to make a contribution to ensure 'equal access to health and social care' is actually an expression of the fact that we owe this to everyone. Justice demands solidarity. It demands that one *should* take the interests of others (as such) into account.

In this regard, we could say that justice has replaced a certain conception of solidarity. The solidarity that we display through justice is of a colder kind. Warm solidarity means that one personally and spontaneously takes the interests of the other into account. The Good Samaritan is a prime example of such warm solidarity.⁶ He just gives because someone needs help, and he does not expect anything in return. But, unfortunately, we cannot rely on 'Good Samaritanism'. Ter Meulen mentions that contemporary solidarity is mediated by the insurance system. This renders the type of solidarity that is at play here, a fair deal colder. Now, one gives

² Ibidem, p. 2, also in the abstract.

³ Ibidem, p. 18.

⁴ Ibidem, p. 3-4.

⁵ Ibidem, p. 4.

⁶ Schokkaert [1998].

because one expects to benefit from the transaction. Health care risks are divided over the population and to the extent that the risks are unbeknown to us, we have reason to make a (relatively small) contribution in order to share the (relatively high) costs of an eventual personal disaster. Notice, indeed, that considerations of justice do not play any role in this system: it is sheer *prudence* that drives the logic of the insurance market.

Ter Meulen shows that this type of solidarity is under severe strain. The reason for contribution is, indeed, the expected 'return on investment' and if there is little to expect in terms of return – if it is just a cost without a benefit – people feel no need to display, what ter Meulen calls, *instrumental* solidarity.⁷ However, to the extent that it is indeed *assumed* that people make a contribution in order to guarantee 'equal access to health and social care,' to the extent that this is a demand of justice, we should be aware that solidarity could grow even colder. We can demand mandatory insurance fees from rich and healthy people in order to support those in need, and we can impose taxes in order to ensure equal access to health care.

This, no doubt, is as cold as it gets. We no longer care if people contribute because they care about the interests of others, or because it would be prudent for them to do so: we just expect them to give because we believe that this is what they *owe* to others. Now, one may believe that once the temperature has dropped to such a degree, solidarity is dead cold as well. To extract resources from those who are fundamentally unwilling seems very far removed from the ideal of solidarity. But we are talking *concepts* here, not ideals. And it seems convincing that solidarity can be involuntary and that it need not depend upon the agent's motive.

2. The dilemma

Ter Meulen, however, does not settle on a descriptive notion of solidarity, because

[...] solidarity can also be regarded as an *intrinsic* value, meaning the unselfish dedication to a fellow human being who is in need [...] [Y]ou support the other because he or she needs your protection and is worthy of your protection.⁸

⁷ Meulen [2015] p. 4.

⁸ Ibidem, p. 4-5.

Ter Meulen dubs this *humanitarian* solidarity, which is not ‘based on personal interest but on identification with the values of humanity and responsibility for the other.’⁹

This is warm solidarity. One is motivated by the sheer need of the other. However, it need not be based on any warm feelings, but could equally be spurred by the cold demands of duty. And it is at this point that a second confusion looms large. For the idea that there is a value that demands the ‘unselfish dedication to a fellow human being’ who is simply ‘worthy of your protection’ and which is ‘based upon identification with the values of humanity and responsibility for the others,’ sounds peculiarly like the idea of justice. Humanitarian solidarity is about us needing to take the interest of others (all others?) into account, because these human beings (*qua* human beings) and their interests really matter.

So here is the dilemma: on the one hand, ter Meulen needs to identify a norm or value – solidarity – that makes us take care of the health care needs of all, especially those that need our careful dedication, but *as a* value which simply holds because they are ‘worthy’ of this attention and dedication, it is difficult to distinguish it from the impersonal demands of justice; on the other hand, to escape the *quid-pro-quo* logic (the inherent selfishness) that ter Meulen attributes to the paradigm of justice, he steers away from the blatantly normative unto the more descriptive, emphasizing the felt empathy with those in need (‘a willingness to protect’¹⁰), thereby threatening to undermine the normative potential of his project.

Let me explain this last point more fully. Solidarity is a bad idea if it just depends upon *de facto* identification, for it would imply that we would only take the interests into account of those we *happen* to identify with, or care about. Ter Meulen fully acknowledges this.¹¹ But it still proves to be a nagging problem. For example, we could agree with Sandel that there is a type of benevolence (solidarity) – exemplified in the family – that is vitiated by the cold demands of justice.¹² Spontaneous altruism would be replaced by impersonal and perhaps begrudging expressions of what is simply due to others. That would be far from ideal. But, on the other hand, we should also acknowledge that if the bounds of empathy, identification, and solidarity are waning, or are otherwise inadequate in dealing with those who are “worthy”, then we should emphasize the requirements of duty and

⁹ Ibidem, p. 5, also on p. 17.

¹⁰ Ibidem, p. 4.

¹¹ Ibidem, p. 15.

¹² Ibidem, p. 11–12.

justice. Immanuel Kant, that eternal godfather of duty and justice, was right that the empirical foundation of felt sympathies provides a contingent and therefore uncertain basis for dealing with humanity. Justice comes first, and justice – as we have seen above – demands solidarity.

3. The solution?

Is there then no way of arguing for the primacy of solidarity without invalidating or undermining the primal importance of justice? There is. We could argue that the impersonal demands of justice have no foothold if we cannot determine who belongs to the moral community. In that sense, there needs to be a “we” prior to the question of what ‘we’ owe to each other. If we understand it this way, then solidarity is indeed, as ter Meulen claims, ‘more fundamental’ than justice,¹³ for there can be no justice without solidarity.

Although this is perhaps *part* of ter Meulen’s answer, it is neither the end nor the core of it. His point is not merely conceptual, but normative. Indeed, he says that we should try to *establish* the value of humanitarian solidarity – conceived as the ‘identification with the values of humanity.’¹⁴ We should come to identify with the fate of others, who are in need of our protection and support. But we somehow require an answer as to *why* we should do this. Otherwise, the discussion is settled by way of postulate (“This value is valuable. Just act upon it.”), or is even in danger of being dangerously circular (“The problem is a lack of solidarity. What is the solution? More solidarity!”). So if it is not justice that underlies the idea that we should identify with the fate of others, then what else?

The answer lies in ter Meulen’s discussion of Hegel, Jaeggi and Honneth. Here, we seem to break through the dilemma mentioned above. But the danger – founding the normative on the descriptive – is still acute. Ter Meulen, for instance, says: ‘As a moral concept solidarity implies a sense of non-calculating cooperation based on identification with a common cause.’¹⁵ Why should *our* particular “common goal” not occlude and preclude our solidarity with the needs of vulnerable others? The question therefore becomes: What reason do we have for assuming such a common goal that makes us identify with the ‘values of humanity’? The fundamental Hegelian insight is that we are *always already* identified with others. This is what the practical (non-conceptual), transcendental analysis leads to: the individuality and individualism so praised and favoured by liberalism is only *pos-*

¹³ Ibidem, p. 15.

¹⁴ Ibidem, p. 17.

¹⁵ Ibidem, p. 10.

sible if we take into account the way in which we are dependent upon others in establishing our status as autonomous beings.

This is an immensely valuable insight. The way solidarity is conceptualized in the works of authors such as Habermas and Honneth points to a dimension or element of crucial normative importance beyond, or alongside, considerations of justice.¹⁶ The way in which the concept operates within Critical Theory gives ter Meulen the tools or vocabulary to overcome the normative/descriptive dilemma mentioned above. From the fact that we are social beings, i.e., that our relation-to-self is mediated and constituted by a relation-to-others, follows a normative dynamics or dialectics: a *struggle* for social recognition.

But I still think there is a long way to go from this fundamental insight to the concrete, practical normative recommendations that ter Meulen wants to establish. I do not see, at least not immediately and without further explanation, how health care, *good* health care for those who are now often ignored and neglected – for example, ‘those suffering from dementia, psychiatric illness, intellectual disabilities, or physical disabilities’¹⁷ – would simply follow from the dynamics of social recognition. I understand how ter Meulen wants to draw emphasis on *inclusive* (reflective) solidarity¹⁸ to avoid the problem of a particular ‘given’ solidarity between some at the expense of solidarity with others. But a vital worry remains: even if the goal of autonomy is socially mediated, a framework of institutions that is “just” in terms of its ability to protect and promote such autonomy would perhaps be inadequate in dealing with those for whom such autonomy may be forever out of reach. Anyway, without some further explanation of *how* this Hegelian notion of solidarity can be supportive to the situation of those our current justice-based health care system so crudely ignores, we are simply left with an account in which it is merely emphasized that we *should* take their needs and interests into account. This is not to say that such an explanation is impossible, and perhaps ter Meulen did not intend to address this deeper issue. But I do believe such a deeper analysis is necessary in order to truly understand how the ideas of justice and solidarity are related.

¹⁶ We should be careful, however, that for Honneth solidarity is also an *aspect* of justice, making the latter the encompassing notion.

¹⁷ Meulen [2015] p. 14.

¹⁸ *Ibidem*, p. 16.

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