Diametros 43 (2015): 79–95 doi:
10.13153/diam.43.2015.717

THE VEIL OF IGNORANCE AND SOLIDARITY IN HEALTHCARE: FINDING COMPASSION IN THE ORIGINAL POSITION

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Abstract. In this paper I will juxtapose the concept of the veil of ignorance – a fundamental premise of Rawlsian justice as fairness – and solidarity in the context of the organisation of a healthcare system. My hypothesis is that the veil of ignorance could be considered a rhetorical tool that supports compassion solidarity. In the concept of the veil of ignorance, I will find some crucial features of compassion solidarity within the Rawlsian concept of "reciprocity" (actually, not being reciprocity at all) – located between "impartiality" and "mutual advantage". I conclude that, even behind this "thick" veil, some essential, yet "particular" facts on health and wealth redistribution are available to decision makers. Lastly, I discover that by means of the assumption of self-interest in the original position the veil aims to convert egoism into empathy, thus invoking the solidarity of compassion that in turn could be translated into principles of the organisation of a healthcare system.

Keywords: veil of ignorance, solidarity, healthcare system, justice as fairness, John Rawls.

1. Introduction

Ruud ter Meulen rightly argues that solidarity should be given a greater role in healthcare. He points out, however, that the rights-oriented notion of justice – such as the Rawlsian justice as fairness – is in fact an obstacle to that. He finds that in this contractual liberalism

> … solidarity is … primarily conceptualised 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.[1]

[1] Meulen [2015] p. 6.

This "interest solidarity" – as opposed to "respect and compassion solidarity" – is based on some form of reciprocity: an exchange that is primarily supposed to be mutually beneficial for the individual. In healthcare systems, this means that 'the contributions by the "givers" must be matched by the "right" behaviour of the "recipients" of health care'[2] and the "givers" are finally entitled to some benefits.

And yet, Rawls' concept of the veil of ignorance – derived from his *Theory of Justice* published in 1971– is considered an impressive intellectual tool for developing theories of distributive justice. It has captured the imagination of many scholars (including Dworkin[3] or Harsanyi[4]), as it uses the premise of the liberal individualistic discourse of rights to build an egalitarian society. It should be no surprise that Rawls' theory has found its way to the theory of healthcare systems – most notably in the works of Daniels,[5] but also (not always affirmatively) in Korobkin,[6] Epstein,[7] Soto,[8] and others. The results of these intellectual (and even empirical[9]) experiments varied, but the impact of the Rawlsian theory only enforced the interest-oriented solidarity. An alternative to 'interest solidarity' would be 'compassion solidarity'.

Following the idea of 'respect and compassion solidarity' or 'reflexive solidarity,'[10] I define compassion solidarity as a type of cooperation that is based on reciprocal willingness to provide assistance to those in need;[11] a willingness that comes from compassion towards others – not from 'expectation of future benefits.'[12] It is 'standing in for each other'[13] because of genuine empathy. A question remains, however, whether it would be possible to find such compassion solidarity in the original position. Can we redeem the veil of ignorance from egoism and detachment?

In my paper I argue that the Rawlsian veil of ignorance in the original position – after a minor reinterpretation – could be a promising device for inducing an

[2] Ibidem.

[3] Dworkin [1981] p. 283–345.

[4] Harsanyi [1953] p. 434.

[5] Daniels [2001] p. 2–16, [1990] p. 273, [1985].

[6] Korobkin [1998] p. 801–836.

[7] Epstein [2000].

[8] Soto [2012] p. 387–404.

[9] Swope et al. [2008] p. 811–818.

[10] Houtepen and Meulen [2000] p. 374.

[11] Prainsack and Buyx [2011].

[12] Häyry [2005] p. 199–206.

[13] Jaeggi [2010] p. 288.

ethical sense of respect and solidarity among people. Firstly, I carefully examine the characteristics of knowledge that is ignored behind the veil. I notice that only the kind of knowledge that betrays our position should be "veiled", thus – even behind the "thick" veil – some essential yet "particular" facts on health and wealth redistribution are available. Secondly, I argue that the veil of ignorance does not provide impartiality by detaching us from society; rather, it submerges us in it through the idea of "reciprocity" – situated between "impartiality" and "mutual interest" (thus combining procedural and allocative justice). It should be noted here that these terms used by Rawls are somewhat misleading in terms of what they actually designate; hence, careful examination should be provided. Finally, I conclude that – with the presented reinterpretation – the veil could be considered a heuristic leverage converting self-interest into empathy and supporting compassion solidarity. While so doing, I explore some of the consequences of this mode of reasoning for the organisation of a healthcare system.

2. The veil of ignorance criticized

2A. THE DIFFERENCE PRINCIPLE AND THE VEIL

The main feature of justice as fairness applicable to healthcare is the 'difference principle' as a basis for positive social rights and the distribution of goods. The principle states that 'social and economic inequalities are to be ... to the greatest benefit of the least-advantaged members of society (the "difference principle").'[14] This is a part of a set of two rules that are to be the result of a social contract made in the 'original position' by equal, free and rational individuals.[15] The difference principle appears to represent the institutionalised solidarity of those better-off – wealthier and healthier – with those in a more difficult situation: the poor and the sick. Rawls notes himself that the difference principle 'provides an interpretation of the principle of fraternity' – 'the idea of not wanting to have greater advantages unless this is to the benefit of others who are less well off.' Fraternity implies 'a sense of civic friendship and social solidarity, but so understood it expresses no definite requirement.'[16] However, this does not mean that justice as fairness – with its individualistic inclination – can so easily be reconciled with compassion solidarity.

In order to explore this subject, I will revisit the Rawlsian argumentative strategy to see how he reached his conclusions. The key concept here is the idea of

[14] Ibidem, p. 53.

[15] Rawls [1999] p. 118–123.

[16] Ibidem, p. 90.

original position where parties are located behind the *veil of ignorance.* The veil of ignorance is to ensure that the individuals making decisions on the future terms of cooperation are not biased. It is an assumption that certain particular knowledge on the actual position of parties is to be "ignored". 'Since all are similarly situated and no one is able to design principles to favour his particular condition, the principles of justice are the result of a fair agreement or bargain.'[17] It is precisely the veil of ignorance – making the original position to be *fair* – that is the gateway to the Rawlsian theory of justice as fairness.[18]

2B. "AN INTELLECTUAL EXERCISE"

There are various philosophical critiques of the concept of the veil of ignorance; most notably the communitarian ones, pointing out that Rawls' theory depicts people as 'ciphers', turning them into 'unencumbered selves', thus rendering the whole theory pointless.[19] Rawls and his proponents defend it insisting that it is not an anthropological claim, but merely an argumentative tool. It is a hypothetical construct – an intellectual exercise – that serves practical and political purposes rather than philosophical ones.[20] As Richard Rorty points out, this approach should be perceived in the spirit of American pragmatism – as giving 'the priority of democracy to philosophy.'[21] The validity of the concept does not rely on the truth of its ontological assumptions, but on the ability to resolve current problems of policy and politics – at least in terms of establishing certain general principles or guidelines.

What is problematic here, though, is, of course, whether anyone would actually be able to perform such a feat. Obviously, finding oneself behind the veil of ignorance for the purpose of actually bargaining is not something that is supposed to actually happen. The veil seems to be a normative ideal that we should strive for in our personal deliberations – individual considerations of what would be fair. Hence, I will not dwell here on the issue of the probability of achieving such a virtue. Instead, I will try to inquire what kind of virtue or fairness the veil is intended to promote. Are the premises of the original position actually worth taking and to what end do they lead?

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[17] Ibidem, p.11.

[18] Rawls [1999] p. 118–123.

[19] Cf. Sandel [1982] p. 87, 179.

[20] Rawls [1996] p. 27.

[21] Rorty [1991] p. 179–196.

2C. THE NON-EGALITARIAN RESULTS PROBLEM

Interestingly, as some scholars note, the prerequisites of the veil of ignorance in the original position do not necessarily lead to the difference principle – especially in healthcare. Roemer argues that a 'properly modelled decision problem behind the veil of ignorance cannot be used to justify egalitarianism.' His calculations show that the veil (in his version) would establish a tax system that 'will generally behave "pathologically," from a resource-egalitarian viewpoint' – namely, ignoring the priority of those worst-off, for instance the disabled (i.e. not taking the "prioritarian" view as it should).[22]

Epstein's work seems to be perfect confirmation of concerns regarding such a counterintuitive conclusion. He argues that in the original position people would rather choose a free-market healthcare system. This is because the parties would also take into consideration the costs of positive rights to healthcare – the 'second-order costs of distorting the market incentives' and thus decreasing the overall wealth of society. The main argument is that community rating (equal and not risk-related contributions) in healthcare insurances would discourage healthy lives.[23] However, those conclusions, as Korobkin points out, seem to veer towards utilitarianism, which would entirely miss the veil's goal.

2D. SPECIFIC CASES OR GENERAL RULES?

There have even been some experiments testing people's choices under a "laboratory veil of ignorance" and whether it would produce results expected by Rawls' theory of justice. It turned out that the "veiled" preferences of individuals 'are less risk-averse and have greater variance than Rawls hypothesized.'[24] The problem with the experiment was that it was concerned with an actual money gambling situation, rather than with an actual deliberation on the principles of how future cooperation should be regulated.

In healthcare – in particular, in the resource allocation decisions – Carlos Soto claims that we should use other methods. He argues that the veil 'fails to provide clear guidance regarding resource allocation' because it 'does not determine which features are morally relevant for a given distributive problem.' Even if it produces definite results, however, these conclusions – as in Daniels' considerations on age[25] – 'do not in themselves have important moral standing.' A 'choice behind a veil of ignorance arguably fails to take persons seriously' – it

[22] Roemer [2002] p. 167.

[23] Epstein [2000].

[24] Swope et al. [2008].

[25] Daniels [1990] p. 53.

'does not treat various lives as actualities', instead merely as 'possibilities that may or may not occur.'[26] Such a decision is particularly questionable when made on some utilitarian criteria, such as the QALY indicator (quality-adjusted life-year).[27]

To address these remarks, one might observe, however, that the veil itself is not meant to solve any particular cases but is intended as a device to produce general organizational rules – principles of future cooperation. The Rawlsian veil could be considered an abstract and universal (or general) embodiment of the solidarity principle. It is abstract and general not in terms of being "detached" or impractical, but as opposed to a "specific" and "particular" level of solidarity – i.e. concerning general rules and principles and not individual cases. The distinction is important when considering how risk-averse parties in the original position would be. One might easily behave riskily when facing single or even several cases of betting on some benefits, hoping for better luck next time. However, when settling one's entitlements once and for all, one might not be so willing to gamble so easily with life. There is a vast difference between agreeing to one bet with a slim chance of winning and agreeing to such rules of the game that would make someone systematically loose every bet.

Obviously, when facing difficult decisions about who should receive a heart for transplantation, it would be absurd to ignore issues of age, individual health, etc. Ignoring personal information – on lifestyles, personal preferences, religious beliefs (as would occur behind the "thick" veil of ignorance), but even on social status, family background, profession and income – in choosing treatment for a given patient would entirely miss the point. However, could the veil of ignorance be "corrected" to serve for any dilemma – general and particular alike? To address this issue, I must explore to what extent the veil "detaches" us and makes us ignorant.

3. The veil of ignorance reinterpreted

3A. Peeking through the veil: How much can we know?

Roamer makes an interesting point in his critique of the veil:

> The benefit of the veil-of-ignorance construct is that it forces objectivity, or impartiality. But the cost is that we must make decisions with a great handicap – we have discarded massively important information that is available to us in the real

[26] Soto [2012].

[27] Singer et al. [1995] p. 144–150.

> world, namely, what the actual joint distribution of resources (here, wealth and internal sources) and types is. The veil-of-ignorance approach asks us how we would allocate resources if we did not know that actual distribution. But would it not be better to think about the problem of distribution (now, redistribution) knowing what the actual distribution is, if we could otherwise maintain impartiality? The answer is surely yes, because we, or the decision maker in question, would have much more information available.[28]

This corresponds with Soto's critique: 'if we want to take seriously the reality of each person's point of view, our distributive ethics ought to take as its starting point the actual positions of persons.'[29]

Indeed, the main problem with the veil is how much information it excludes from the decisional process. Rawls assumes that in the original position the parties do not know 'certain kinds of particular facts.' He then enumerates that behind the veil no one knows his or her 'place in society, his [or her] class position or social status;' 'fortune in the distribution of natural assets and abilities, intelligence and strength, and the like;' 'conception of the good, the particulars of his [or her] rational plan of life, or even the special features of his [or her] psychology such as his [or her] aversion to risk or liability to optimism or pessimism;' – but also – 'the particular circumstances of their own society.'[30] The latter concerns 'its economic or political situation, or the level of civilization and culture it has been able to achieve.' Parties do not even have 'information as to which generation they belong' to.[31]

This last exclusion is the most problematic part of the whole concept, one that makes the Rawlsian veil very thick and extremely detaching from the real world. This is in clear conflict with the idea of compassion for and responsibility to the actually existing poor and sick, by – seemingly – making us utterly unaware of their existence (Rawls anticipates: "some may object, principles should be chosen in the light of all the knowledge available"[32]). Why should the veil be so thick? Would ignorance behind the veil include information on a given society's "particular" (here and now) economic and health inequalities? This is perplexing, because such information is actually vital, especially in establishing healthcare systems.

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[28] Roemer [2002].

[29] Soto [2012] p. 401.

[30] Rawls [1999] p. 118–119.

[31] Ibidem, p. 118.

[32] Ibidem, p. 120.

Rawls explains his intent in this exclusion with the example of not knowing one's own generation. He claims that such knowledge would ruin the fairness of justice between generations regarding 'for example, the question of the appropriate rate of capital saving and of the conservation of natural resources and the environment of nature.' As Rawls explains,

> … in order to carry through the idea of the original position, the parties must not know the contingencies that set them in opposition. They must choose principles the consequences of which they are prepared to live with whatever generation they turn out to belong to.[33]

Immediately thereafter Rawls adds:

> It is taken for granted, however, that they [the parties in the original position] know the general facts about human society. They understand political affairs and the principles of economic theory; they know the basis of social organization and the laws of human psychology. Indeed, the parties are presumed to know whatever general facts affect the choice of the principles of justice.[34]

He later stipulates that the intent of justice as fairness is merely that 'the differences among the parties are unknown to them, and everyone is equally rational and similarly situated, each is convinced by the same arguments.'[35] Following this remark, we could assume that the ignorance behind the veil concerns, for instance, the 'economic or political situation' of a given society when it is to establish rules of cooperation with other societies, in which case such knowledge would make this party biased. Otherwise – when such knowledge would not reveal one's own 'situation' – 'particular' knowledge on, for instance, health and wealth redistribution would actually be classified as such 'general facts' that 'affect the choice of the principles of justice' and thus should be considered.

As it seems, the veil is not about "not knowing" anything about ourselves, society, its values, resource redistribution, etc. In fact, it requires significant knowledge and understanding of those issues – especially the general truths about society, cultural diversity, class structure, vested interests, various life plans, etc. It merely asks us to forget for a brief moment – the moment of decision – all the information about our own particular preferences, interests and values. In the origi-

[33] Ibidem, p. 119.

[34] Ibidem, p. 121.

[35] Ibidem, p. 120.

nal position, we should know as much as possible about 'the actual distribution,' and ignorance behind the veil would only refer to my and others' actual share – knowledge that would make our decisions biased. In order to make a fair choice, we should know that there exist the unhealthy, disabled and in other ways disenfranchised. If we treat the concept of health determinants seriously, we should also know with what traits their disenfranchisement would be correlated; namely, race, gender, confession, ethnicity, education, residence, income, social class, etc. This information is necessary to properly deal with health problems related to the issue of inequalities. What we should not know – or rather ignore – is which traits are possessed by each individual.

3B. THE VICE OF DETACHMENT

One of the main problems with the veil of ignorance was pointed out by Soto in the conclusions of his paper:

> The charge that choice behind a veil of ignorance denies the reality of each person's point of view is clearest in certain cases. If a deliberator knew that it was unlikely that he/she would occupy a particular position, then that could lead to discounting the plight of someone who will actually come to occupy that position. This is implausible.[36]

This is very troubling, because the veil – by situating us outside the particular lives of actual persons, and thus making us unbiased and impartial, is also detaching us from real lives. This reservation is critical if we interpret justice as fairness as just another theory assuming that the best way to judge and organise society is to be "impartial" – hence "from the outside."

On the other hand, one might note that the construction of the original position does not actually locate us on the outside of society as an "unbiased", "uncommitted observer." In the original position, everyone is a party in the contract – a stakeholder – but being behind the veil everyone is completely unaware of what his or her actual stake is. Hence, to properly decide in the original position one should imagine oneself as everybody else. As Rawls puts it (referring to Rousseau's *Social Contract*), behind the veil of ignorance, 'whatever a person's temporal position, each is forced to choose for all.'[37]

3C. "RECIPROCITY": BETWEEN IMPARTIALITY AND "MUTUAL ADVANTAGE"

[36] Soto [2012] p. 401.

[37] Rawls [1999] p. 121.

The idea of a social contract between free individuals leads Rawls to the conceptual distinction between *the reasonable* and *the rational*. In general, Rawls (referring to Sibley) described the difference between these concepts as follows:

> Knowing that people are rational we do not know the ends they will pursue, only that they will pursue them intelligently. Knowing that people are reasonable where others are concerned, we know that they are willing to govern their conduct by a principle from which they and others can reason in common; and reasonable people take into account the consequences of their actions on others' wellbeing. The disposition to be reasonable is neither derived from nor opposed to the rational but it is incompatible with egoism, as it is related to the disposition to act morally.[38]

It is reason – understood in this way – that is the foundation of justice as fairness. According to Rawls (who agrees with Allan Gibbard's interpretation), justice as fairness is based on reciprocity, which is between impartiality and mutual advantage. While *impartiality* – according to Rawls – is altruistic and motivated by the idea of the general good, *mutual advantage* is 'understood as everyone's being advantaged with respect to one's present or expected situation as things are.' Impartiality seems to refer to the concept of the detached impartial observer, whereas mutual advantage gives the impression of being attributed to a benevolent, sympathetic benefactor.

When studied carefully, some of these terms seem highly "technical", as their colloquial meaning might be somewhat misleading. In the case of mutual advantage, perhaps the term "general advantage" would be more appropriate, since "mutuality" refers to commutative justice – suggesting a sort of transactional, *quid-pro-quo* arrangement, which is evidently not the case. In this instance, the term "reciprocity" might also be misleading, since it also denotes the practice of exchanging things (with equal value) with others for mutual benefit. Either way, the Rawlsian reciprocity lies right in the middle of – or combines – these two. The concept is about benevolence combining the advantages of impartiality and sympathy without the drawbacks of either: i.e., the unfeeling detachment of the former or the involvement bias of the latter. It is 'a relation between citizens expressed by principles of justice that regulate a social world in which everyone benefits judged with respect to an appropriate benchmark of equality defined with respect to that world.'[39]

[38] Rawls [1996] p. 49; Sibley [1953] p. 554–560.

[39] Rawls [1996] p. 16–17; Gibbard [1991] p. 266.

This terminology might, to a certain extent, correspond to the distinction between procedural and allocative justice. Rawls argued that justice as fairness is not utilitarian allocative justice. It should be stressed, however, that it is not pure procedural justice either.[40] Reciprocity attempts to combine these two types of justice in order to create a fairer social order. Simply put, impartiality – as pure procedural justice – is blind to anyone's interests in the name of abstract rules: totally inconsiderate towards the actual results of the application of the rules. In this instance, it might be perceived as simply heartless. By being impartial in obeying any set of pre-established rules – with which we agree in general – we might not notice that in reality this hinders (even our own) chances, significantly reducing one's benefits from cooperation or even making cooperation harmful. Mutual advantage – or rather "general advantage" – on the other hand, ignores rules in order to satisfy certain interests based on actual needs. Actually, this type of justice does not require cooperation between individuals at all (or mutuality for that matter). It merely 'assimilates justice to the benevolence of the impartial spectator and the latter in turn to the most efficient design of institutions to promote the greatest balance of satisfaction.'[41]

The unique nature of "being behind the veil of ignorance" lies in the fact that it is supposed to induce the virtue of considering all the facts and being involved (perhaps even emotionally), yet still being unbiased towards anyone in particular. To be specific, apparently, the veil – instead of making us impartial – is supposed to make us "omni-partial". It introduces selflessness in establishing rules that should consider all parties and all interests.

3D. NEGOTIATIONS AND RECIPROCAL ALTRUISM VS. SOLIDARITY

Here another problem occurs. The idea of a social contract suggests that the principles of the organisation of society are reached through negotiations (rather than voting, since at this point everyone has a veto power, being able to "leave the table"). This is because of our colloquial and everyday experiential connotation of the term "contract". What is relevant in negotiations is the leverage power, because it is based on mutual concessions. Some parties have the upper hand: more to offer and more to resign from. Others must deal with having more to lose in the event of an absence of cooperation. This is a bargain where in fact information – for instance, on what the other party values most – is one of the greatest assets; thus, concealing information should be an appropriate tactic. A bargain implies

[40] Rawls [1999] p. 76.

[41] Ibidem, p. 77.

that parties are primarily interested in their own interest and – when finally establishing cooperation – they actually compete.

However, the Rawlsian idea of a 'social contract behind the veil of ignorance' is something very different. Behind the veil 'the parties have no basis for bargaining in the usual sense. No one knows his situation in society or his natural assets, and therefore no one is in a position to tailor principles to his advantage.'[42] If you do not know whether you will be healthy or sick, rich or poor, industrious or clumsy, you do not treat others as competitors. It is precisely because you can be any of them that you want to know as much as possible about what they need and what can help them. Soto admits that the veil 'embodies a conception of others as possible loci of my own well-being.'[43] Therefore, behind it there is nothing like "not my problem."

Thus, the "contract" behind the veil of ignorance is supposed to make you want to know how it is – how it feels – to be a poor, disabled or chronically ill member of a disenfranchised minority. It is supposed to make you "feel" for such a person – to empathise with the self-interest of others. Quite possibly, the veil might resemble Ghandi's Talisman:

> I will give you a talisman. Whenever you are in doubt, or when the self becomes too much with you, apply the following test. Recall the face of the poorest and the weakest man [woman] whom you may have seen, and ask yourself, if the step you contemplate is going to be of any use to him [her]. Will he [or she] gain anything by it? Will it restore him [her] to a control over his [her] own life and destiny? In other words, will it lead to *swaraj* [freedom] for the hungry and spiritually starving millions? Then you will find your doubts and yourself melt away.[44]

In this state of mind one does not just want to negotiate: bargain for the best benefits "for a particular me." The veil is supposed to make you search for the best, fairest way to deal with health and social inequalities, especially those that are not choice-related.

The healthcare insurance dilemma is an excellent context to illustrate that the "reciprocal" nature of the veil is not at all about transactional mutuality. "Reciprocity", colloquially speaking, involves some kind of mutual exchange of goods or services. From the perspective of a selfish agent, it can generate seemingly altruistic behaviour (such as occasional generosity); however, such altruism is lined

[42] Ibidem, p. 120–121.

[43] Soto [2012].

[44] Ghandi [2004] p. 1.

with egoism because of the expectation of a delayed pay-off. Such reciprocal altruism – or "interest solidarity" – would mean, in the context of healthcare, that I contribute now to the treatment of others but one day others will pay for mine. To some extent – in such an insurance scheme – this could take the form of hypothetically reciprocal altruism: by contributing to the health fund I can expect that if I get seriously ill, I will get expensive treatment; for now, others benefit from my contributions just as I hypothetically could. In general, this self-interested *homo economicus* premise can be mitigated by the idea of reciprocal altruism, based on the concept of an iterated prisoner's dilemma.

A problem occurs when someone decides that he or she does not care about an insurance in which his or her contributions grossly exceed any benefits. Within reciprocal altruism, such a person could be concerned with how uneven the burdens are to any pay-offs. Even more, such a person could even claim that she or he does not need any insurance at all, because of her or his wealth and income or because of the certainty of being sufficiently healthy till the end of his or her life (or perhaps their unwillingness to go to the doctor at all) – thus ignoring even the hypothetical reciprocity idea.

Justice as fairness – precisely through the veil heuristic – is not based on that kind of reciprocity at all. Quite the contrary: according to Rawls, a party behind the veil of ignorance should prefer the difference principle – i.e. some mechanism of wealth redistribution that takes from the rich and healthy and gives to the poor and sick or disabled. However, he or she does not prefer it because, when the veil is removed and it turns out that he or she is rich and healthy (thus contributing more than gaining), the party expects at least some reciprocal benefits from others at some point in life (which might never happen). The party does that because of imagining him- or herself in the place of others – especially those in the worst possible position. Thus we reach the compassion solidarity: contributing despite the lack of reciprocity or mutuality in benefits.

3E. SUBVERTING SELF-INTEREST AND MELTING IT AWAY

For Daniels, the veil of ignorance is a particularly useful tool for considering the issues of ageing in healthcare,[45] because – as Soto puts it – since it concerns everybody, it transforms 'the age-group problem from an interpersonal to an intrapersonal problem: How should a prudent person distribute resources over the course of a lifetime?'[46] This approach, however, bears the very same drawbacks that liberal "interest solidarity" is criticized for: it reduces a complicated dilemma

[45] Daniels [1990a] p. 58.

[46] Soto [2012].

of interdependencies in the healthcare system into individual calculations of one's interest over time. Soto points out that even before discussing the conditions and assumptions of 'a valid deliberation and choice behind the veil, there is a prior more important question: Why is this mode of self-interested choice appropriate for resolving interpersonal conflicts?'[47]

As ter Meulen points out,

> … 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 worthy of your protection.[48]

It seems that solidarity does not fit into the original position, since what motivates parties therein is egoism.

Evidently, one of the key features of the original position is that the parties are motivated by self-interest, being rational as in the fictional construct of *homo economicus* (which of course is merely a model for economic prognosis). It is hard to say to what extent such a party will be selfish, but given the abstract and hypothetical nature of the original position this does not seem relevant. One might argue that the premise of self-interest is a necessary safeguard for justice as fairness that protects it from inconvenient outcomes – those allowing (or demanding) extreme altruism (self-sacrifice, martyrdom) or even selfless evil (from envy or fanaticism). Also, it is supposed to make parties more risk-averse when deciding on principles of cooperation.

Without egoism, behind the veil, someone inclined to social Darwinism could decide, for instance, that if he or she eventually turns out to be the worst-off in the society, it is actually good, because by not being industrious enough he or she would deserve such a fate. Apparently, the assumed egoism prevents this possible outcome of impartiality where, for instance, someone decides – in a procedurally just manner – that harsh competitive rules will be most preferable for society as a whole, even despite the fact that those rules would harm him or her. Through the assumption of self-interest, the veil forces us to empathise with someone who is not willing to suffer for the benefit of others.

At first glance, the veil of ignorance transforms an interpersonal problem into an intrapersonal one. However, it is supposed to work the other way around

[47] Ibidem, p. 398.

[48] Meulen [2015] p. 4-5.

– it is supposed to utilize this prudence of self-care to consider others. It – paradoxically (and apparently counter-intuitively) – transforms an intrapersonal problem ("What is best for me?") into an interpersonal one ("What is best for others?"). And it does that by pretending that it is an interpersonal problem of 'not knowing one's own social or health/disability status.' In other words, the veil of ignorance is intended to provoke you to 'love thy neighbour as thyself,' but first it requires you (at least in this hypothetical situation) to actually 'love thyself.' However, when you finally find yourself behind the veil; when – to quote Ghandi again – you 'recall the face of the poorest and the weakest,' then 'you will ... yourself melt away.'[49]

It is true that the veil of ignorance is not supposed to overcome or eliminate selfishness. However, through a reasoned rhetoric it is supposed to subvert selfishness to serve compassion and to convince us to feel responsible for others when making institutional arrangements. It does this by forcing us to imagine our egoistic self in the worst health and social condition.

4. Conclusion

As I have shown, the Rawlsian heuristic of the veil of ignorance could be considered a way of integrating a liberal, individualistic sense of justice with the theory of solidarity based on responsibility and compassion. It seems that Rawls' theory reinforces the idea that even a liberal system of rights-based model is in fact grounded on benevolence and solidarity – even though in its liberal form it is highly artificial and reasoned.

Solidarity, in its most profound meaning, is based on empathy, that is, 'blurring the line between self and other.'[50] The main problem for empathy is of course the problem of 'other minds.'[51] As Hodges and Klein put it,

> … unless we are characters in a science fiction story, we can't actually get "inside" other people's heads to know their subjective experiences. Instead, we must rely on our imagination and knowledge of ourselves and people in general to infer what might be going on in the minds of others.[52]

[49] Ghandi [2004] p. 1.

[50] Davis et al. [1996] p. 713.

[51] Kant [1929].

[52] Hodges and Klein [2001] p. 437–452.

From this reinterpretation perspective, the veil is precisely that: it persuades us towards empathy by making us imagine ourselves in such a science fiction scenario.

The closest metaphor for the veil of ignorance would be some kind of memory manipulation device – one that confuses our memories for the duration of negotiations. It makes us forget entirely which side of the negotiations we are on. This goal would probably also require mixing all of the memories of the parties involved, because particular knowledge would give away parties' individual stories and identities. Thus, all parties would have the same set of information, including some socially shaped preferences and conceptions of the good. The actual bargain would disappear, because "mine" and "theirs" would be indistinguishable. It would thus be justified to say that the veil is aimed towards empathy, by 'bridging the gap that exists between the self experience and others' experiences.'[53]

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[53] Ibidem.

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