Aleksandra Głos

Solidarity in health care. Philosophical and legal perspectives

Abstract

The aim of this doctoral dissertation is to make a philosophical analysis of the concept of solidarity, construct a cooperative model of solidarity in a state of law, and operationalise this model in the field of health care.

Based on these aims, the dissertation has been divided into three parts, with each one characterised by a different methodology. The first part, dedicated to analysis of the concept of solidarity, is philosophical in nature. It draws on the achievements of analytic philosophy and phenomenology. Analytical tools enable semantic analysis of the concept of solidarity, leading from its colloquial meanings and the presuppositions they contain, to the classic and contemporary theories of solidarity. Semantic and theoretical analyses are complemented by an analysis of the phenomenon of solidarity. The use of this method is dictated by the ambivalence of the concept of solidarity and its socialist debasement, which requires the concept to be clarified, and following the phenomenologists, necessitates the return to *zurück zu den Sachen selbst*. The phenomenon subjected to analysis is the 'miracle' of the Polish Solidarity movement. Polish Solidarity as a phenomenon is interesting for several reasons. Firstly, because it was a movement that developed in a country attached to solidarity in its utopian, socialist vision, and as such revealed the liberal face of solidarity. Secondly, because it is a relatively recent phenomenon and as such can be considered an experience-near concept[1] (and concepts which are close to experience are the easiest to describe and understand). Thirdly, because the practice of solidarity and its theoretical assumptions can be considered effective tools of solidarity (ending in historic success in Poland in the form of artistic explosions, social revivals, and the country's political transformation), and also in reference to I. Krzemiński's thesis, an "unfinished project"[2] worthy of research and continuation.

The second part of the dissertation is dedicated to building a legal model of solidarity, and utilises the classic methods of the philosophy of law to do so. Its aim is to present the place of the principle of solidarity within a liberal state of law. Referring to the classical concept of politics as polyethics – a way of reconciling various ethical visions in the spirit of caring for the

[1] Taylor [2001] – Taylor [2001] – Ch. Taylor, *Źródła podmiotowości. Narodziny tożsamości nowoczesnej*, PWN, Warszawa 2001.

[2] Krzemiński [2013] – I. Krzemiński, *Solidarność. Niespełniony projekt polskiej demokracji*, Europejskie Centrum Solidarności, Gdańsk 2013.

common good – solidarity is an ethical and political concept. The phenomenon of solidarity is analysed in the light of the ethical theory of "decent society"[3], which highlights the ethical conditions for the formation of a solidarity-based political community and contemporary concepts of justice, formulating its legal conditions. This part of the dissertation is divided into two subparts: the critical – criticism of the 'solidaristic' or welfare-based aspect of solidarity – and the constructive, wherein the cooperative model of solidarity in a state of law is presented. The traditional understanding of the principle of solidarity arises from the assumptions of a welfare state. The welfare-based model of solidarity stems from two erroneous premises: the first is reducing solidarity to an obligation to help and be charitable; the second is burdening the institution of state with fulfilling solidarity-based obligations. Therefore, two alternative theses are proposed in the constructive part. The first concerns the need to significantly modify the welfare-based definition of solidarity. Solidarity derives from an institution of Roman law, *obligatio in solidum*, which assumed the radical responsibility of each debtor for the entire obligation. Legal sources of the solidarity principle emphasise the fact that the obligation to help is secondary relative to the obligation of cooperation (civic friendship), which is omitted in the standard form of the solidaristic/welfare-based concept. The second thesis concerns the model of functioning of the principle of solidarity in a state of law. As a phenomenon situated between the public and private spheres, solidarity requires a distinction between its two dimensions. These are the legal domain (the minimum), within which limited obligations of solidarity can be enforced by the state with the use of coercive measures, and the Kantian regulative ideal (the maximum), whereby the appropriate legal measures can only bring us closer to it.

The third part of the dissertation is dedicated to the application of the assumptions of the cooperative model of solidarity in detailed issues of health care. It uses classic dogmatic-legal and comparative-legal analysis, broadened by philosophical criticism. This part presents, firstly, general issues of solidarity in the field of health care and bioethics, and in particular issues facing the contemporary theory of solidarity related to, amongst others, technological progress, the development of predictive genetic diagnostics, population genetics and modern pharmacology. The most classic problem in the theory of solidarity in health care is its progressive privatisation, concerning the area of health insurance, amongst other things. The essence of the solidarity principle in health insurance is the division of risk within a given

[3] Margalit [1996] – A. Margalit, *The Decent Society*, Cambridge: Harvard University Press, 1996.

community of insured persons, and so making the amount of the insurance premium independent of individual health risk. This collides with the interests of private insurance companies operating for profit. Therefore, the second area of analysis in this part of the dissertation also presents an analysis of the issue of private insurance in the context of solidarity in health care, as well as a comparative outline of the Dutch health care system, which can be considered a model for combining the principle of solidarity with the principle of free competition and the interests of private insurance companies. On this basis, a proposition of *de lege ferenda* for the Polish health care system is formulated. The third area of analysis in this part of the dissertation is the phenomenon of trust, which is a tissue of solidarity interpreted as a form of non-instrumental cooperation. Although it is an ephemeral and fragile phenomenon, trust is at the same time – as contemporary sociology convincingly proves – a form of social capital[4], a soft capital of interpersonal relations and civic connections. It contributes to the "enrichment of nations" to an often much greater extent than hard material or institutional resources[5]. The operationalization of the cooperative model of solidarity included in this part ends with the presentation of a catalogue of 'best solidarity practices' in the context of health care, illustrated by the example of dementia care. Due to its prevalence, costs, and growing incidence, dementia is becoming a catalyst for change in health care, both in the dimension of daily health care practice and the philosophical reflection of its principles and structure. The practice of caring for dementia sufferers has led to development of the concept of relational autonomy and an innovative model of supportive care, which could serve as an implementation for the assumptions of a cooperative model of solidarity. The solutions worked out in this and other areas of health care – a field affecting people's most important interests – could contribute to the dissemination of the cooperative model of solidarity in other areas of law, and thanks to the creative function of law, to an increase in cooperation and trust in society.

The main thesis of this dissertation is that solidarity, despite its annexation by the socialist tradition and its prevailing welfare-based interpretation, is originally and irreducibly a liberal phenomenon – a phenomenon that is based on freedom and is freedom-enhancing.

The philosophical argumentation for this thesis was carried out in several stages. Analysis of antique tradition brought a picture of solidarity as a civic friendship. This picture was then completed by the analysis of the Roman institution of *obligatio in solidum*, a relationship based

---

[4] Putnam [1994] –R.D. Putnam, *Making Democracy Work: Civic Traditions in Modern Italy,* Princeton University Press, Princeton 1994.

[5] Knack, Zak [2001] – S. Knack, P. Zak, "Trust and Growth", in: *Economic Journal* 111/2001, pp. 295-321.

on deep trust and radical responsibility ("one for all, all for one"). To this picture, Judaeo-Christian tradition added its far-reaching criticism of public authority and its contemplative – that is, radically individual – understanding of freedom (contrary to antiquity, Christian freedom does not have to be confirmed in a public arena, in domination of the enemy, but happens in a realm of Augustinian soliloquy and acts of artistic or intellectual creation). Analysis of a case-study, in this case the Polish Solidarity movement, confirmed the picture of solidarity as a liberal phenomenon. Finally, on the basis of the conducted argumentation, solidarity was defined as non-instrumental cooperation, based on trust and mutual radical responsibility.

This definition of solidarity lead to the main juridical thesis of the dissertation, which proclaims that solidarity, conceived as voluntary and responsible cooperation – that is, cooperative solidarity – can be best realised in a minimal legal state. Contrary to the concept of the welfare state, this enables, promotes and coordinates civic cooperation, reducing the institution of 'administrative benevolence' to the necessary minimum. The principle of solidarity cannot be brought down to just 'an obligation to help the suffering, those with problems, and the socially disabled'[6] (hence solidarity cannot be reduced to welfare state arrangements). Instead, it refers primarily to a commitment to creative cooperation, with the obligation to help being of a secondary nature. This relates to both the level of interpersonal relations (social solidarity), relations between institutions and citizens (public-private partnerships), as well as inter-institutional relations. Legal means can shape solidarity a) directly, on an institutional level (minimum dimension of solidarity), and b) indirectly, on an interpersonal level (maximum dimension of solidarity). Therefore, this model of solidarity is a minimum-maximum one. The maximum dimension of solidarity refers to the regulative ideal of social cooperation. Social cooperation is a 'fragile goodness', a bottom-up, spontaneous phenomenon stemming from individual, freely-made decisions. Nevertheless, institutions can facilitate these decisions by creating the proper legal and infrastructural framework, i.e. by coordinating private, for-profit entities, as well as promoting 'best practices of solidarity'. These could include tax-breaks for employers offering care leave to employees caring for sick relatives[7], subsidies for private foundations, promotion of voluntary service and various other forms of social engagement.

This model of solidarity is then operationalized in the domain of health care. Comparative analysis of health care systems in different countries proves that the most economically

---

[6] Kornai [2001] – J. Kornai, K. Eggleston, *Welfare, Choice, and Solidarity in Transition Welfare. Reforming the Health Sector in Eastern Europe*, Cambridge University Press, Cambridge 2001.

[7] Cf. Colombo et al. [2011] – F. Colombo, A. Llena-Nozal, J. Mercier, F. Tjadens, *Help Wanted? Providing and Paying for Long-Term Care*, OECD Publishing 2011, pp. 121-159.

effective, best-evaluated socially, and most advanced qualitatively are systems built upon the principle of cooperative solidarity[8]. The most prominent example of cooperative solidarity in health care systems is the Netherlands 'solidarity-state mix'[9], which combines the principle of managed competition on the private health insurance market with pro-solidarity state guarantees. The cooperative model of solidarity in health care is supported not only by 'hard' financial and organisational data, but also by the practical experience of different health care domains. One example is the model of 'supportive care' in dementia care, aimed at empowering patients with dementia and especially at maintaining the wellbeing of their private, informal carers, as well as building the links between health, social, and voluntary care. The example of dementia, which is a contemporary epidemic causing gigantic financial and social costs, clearly shows that such a paradigm shift – from a welfare-based to cooperative model of solidarity – is not only an academic issue, but an urgent practical necessity.

The most general and tacit thesis underlying this dissertation is the conviction about the emergence of a model of solidarity, despite a temporary state of anomia. The nature of this process was best described by E. Durkheim, who, facing 19th-century social transformations, observed the transition from 'mechanical solidarity', based on collective consciousness, to 'organic solidarity', based on division of labour[10]. The contemporary shift in the structure of solidarity create the opportunity for a new, deeper understanding of solidarity and construction of a legal model based on new, more cooperative foundations. Durkheim's studies allow for the preservation of optimism about 'new emerging forms of solidarity'[11]: solidarity in a contemporary time of crisis does not necessarily mean its decline, but indicates the creative action of freedom, which hopefully leads to new miracles of solidarity.

Aleksandra Gas

2017 -05- 14

[8] Por. np. Björnberg [2015] – A. Björnberg, *EuroHealth Consumer Index 2015*, Health Consumer Powerhouse 2015.

[9] Sowada [2013] – C. Sowada, *Łączenie solidaryzmu z wolnością w ubezpieczeniach zdrowotnych*, Wydawnictwo Naukowe Scholar, Warszawa 2013.

[10] Durkheim [1999] – É. Durkheim, *O podziale pracy społecznej*, Wydawnictwo Naukowe PWN, Warszawa 1999.

[11] Buyx, Preinsack [2011] – A. Buyx, B. Prainsack, *Solidarity: Reflections on an Emerging Concept in Bioethics*, The Nuffield Council on Bioethics, 2011.