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Comment on Andrew Lister. Just Distribution(s) for Mutual Recognition

Abstract: This comment questions Lister's reading of the reciprocity condition in three respects. First, it challenges the view that this condition necessarily leads to egalitarian claims about just distribution. Secondly, it questions Lister's argument that the reciprocity condition is linked to substantial schemes of egalitarian distribution irrespective of context. Thirdly, it claims that entitlements to justice for people with mental or psychological impairments cannot be based on a distinction between willingness and unwillingness to contribute to the cooperative venture of a society.

1. Introduction

The reciprocity condition is often subject to two criticisms. Firstly, disabled people, while being permanent members of a specific society, are not able to contribute reciprocally to the cooperative venture of a society on an equal footing. Secondly, foreigners who might be in social relationships with citizens of a country do not actually partake fully in the cooperative venture of a society. Thus, basing justice on a condition of reciprocity might lead to ethically unappealing results with regard to people with disabilities and to foreigners. In both cases there is a risk that, due to the reciprocity condition, people with disabilities or foreigners will be ascribed a status inferior to other members of society. In his article, Lister provides a reading of the reciprocity condition which is meant to solve this difficulty. Lister proposes that the reciprocity condition should be seen as comprising two aspects since, on the one hand, it restricts conditions under which duties of justice apply while, on the other hand, it includes a duty to establish institutions ensuring relationships of mutual recognition as equals. Such institutions should, according to Lister, lead to a fair distribution of cooperative benefits on egalitarian grounds.

Although I agree with Lister's interpretation of Rawls's reciprocity condition concerning duties of justice, this comment will question Lister's latter claim that a duty to establish relationships of mutual recognition as equals necessarily entails a duty to establish institutions ensuring an egalitarian distribution of cooperative benefits (2.). This has serious consequences with regard to Lister's solution concerning the problem of global justice and the duties we might have to

foreigners. As my argument will suggest, which substantial distributive scheme is appropriate to ensure relationships of mutual recognition as equals depends strongly on the specific context (3.). Consequently, the same applies to the distributive claims of people with disabilities. In addition, as I will show in the last step of my argument, arguing on egalitarian grounds for the distributive claims of mentally or psychologically disabled people contradicts our intuitions about justice in this context (4.).

2. Two Levels of Cooperative Benefits

Contractarian accounts of justice are committed to the idea of justice as mutual advantage. This commitment grounds claims of justice in the idea of reciprocity. In *A Theory of Justice*, Rawls claimed that justice applies only in circumstances where people are roughly equal in ability (1999, 109–12). Concerning the commitment to reciprocity, this means that only those who are roughly equal in their ability to contribute to the cooperative venture of a society are entitled to claims of justice as equals. However, this seems to conflict with Rawls's Kantian commitment to an equal standing of all individuals; disabled people are excluded from the scope of justice because they cannot reciprocally contribute as equals. In consequence, their standing cannot be that of equals, but only of inferiors relative to those able to contribute on roughly equal grounds. In addition, regarding questions of global justice, foreigners involved with citizens of a society are not entitled to claims of justice as equals because they are not cooperating members of a society in the full sense. In consequence, there is a risk that the standards of justice applied to foreigners do not ensure their equal standing either. Therefore, Nussbaum (2006, 119) seems right to observe that “[t]he structural feature of rough equality and the goal of mutual advantage [...] shape the account of who is initially included and what each party is trying to get out of cooperating”.

In order to address these issues, Lister puts forward two arguments. First, he claims that the reciprocity condition cannot by itself be the basis for justifying specific distributive claims. Instead, a baseline must be presupposed which serves as a standard by which to measure what counts as an entitlement to a fair share of cooperative benefits. Without such a standard, the reciprocity condition is arbitrary with regard to what benefits someone is entitled to if she or he enters a cooperative venture and contributes on an equal footing to its benefits. Thus, the reciprocity condition could also apply to claims about egalitarian justice as to claims about initial acquisition in a state of nature. While egalitarians claim that reciprocal contribution to cooperative benefits presupposes a standard of equal distribution, libertarians claim that the standard of reciprocal contribution lies in compliance with rules of just acquisition. Consequently, what counts as reciprocally contributing to the cooperative venture of a society depends on what theory of justice is presupposed and not on the reciprocity condition itself.

Second, Lister suggests that, instead of constituting a foundation for distributive claims, the reciprocity condition must be understood as a restriction

on the conditions under which duties of justice apply. Such duties demand that individuals should comply with just institutions and in so doing uphold justice itself. This includes two conditions for duties of justice to hold: on the one hand, institutions must exist and be just, on the other hand, it must be reasonable for individuals to expect that others gaining from such institutions do their part as well (Rawls 1999, 99). Consequently, Lister claims that duties of justice only apply when there is a cooperative involvement among individuals ensuring reciprocal compliance with just institutions. Should neither such cooperative involvement nor any just institutions to regulate the cooperative venture exist, then duties of justice do not apply. When at least cooperative involvement exists, these duties boil down to a duty to “further just arrangements not yet established [...]” (Rawls 1999, 99). This is a duty to establish appropriate institutions. In this sense, the reciprocity condition is only a condition of restriction and does not positively contribute to the defence of any distributional scheme.

However, Lister’s conclusion is unconvincing for those who believe that duties of justice do not only arise when social institutions exist but that the duties of justice are unconditional. According to Lister, though, not all duties are unconditional, because in the case of some duties it matters whether others can be expected to comply. Some duties would be over-demanding if our compliance were not restricted by others playing their part. Hence, such duties must only be fulfilled if all contribute. If, for example, building a drain depends on all affected land owners shouldering their share of the burden, then the duty on each to contribute to the project should be conditional on others fulfilling their respective duties as well. Otherwise, no-one is under any duty to do their share, because the drain can only be realized by all contributing and because, in the absence of everyone’s compliance, time could be used for more promising projects. It would simply be irrational to commit oneself to such cooperation (Hampton 1987, 261–2).

Following Lister, the same applies to duties of justice. However, the goal of their realization is not causally linked to contributors doing their part but constitutive of the duty itself. Lister claims that a constitutive element of duties of justice is to establish relationships of mutual recognition as equals. This goal needs reciprocal compliance by others, because relationships of mutual recognition as equals can only be established if all those involved show equal respect. Otherwise, such a duty would be over-demanding. It would have to be followed at the risk of being dominated by others, since respect and recognition would only be given one-sidedly. As such one-sidedness allows for no mutuality of recognition on equal footing, the overall goal of such duty cannot be reached. From this argument, Lister derives the further claim, that distributional schemes must start from a standard of equality. Otherwise mutual recognition as equals is not possible.

However, as plausible as this last step of the argument might look like for distributional egalitarians, it proceeds too quickly. It is not at all necessary to presuppose initial equality with respect to distribution in order to ensure mutual recognition as equals. There is a categorical difference between claiming that certain duties depend on the mutuality of recognition for each other as equals and

substantial claims about distribution (Miller 1999, 231–2). Mutual recognition as equals is a matter of status equality, which is a widely accepted social ideal in the context of justice and, at least in western societies today, very difficult, if not impossible, to put into question (Gosepath 2002; Kymlicka 2002, 3–5). In contrast, the answer to the question of what kind of substantial distributional scheme is appropriate for realizing such mutual recognition as equals is pretty unclear and, as Lister (in my view correctly) mentions, depends on what theory of justice is presupposed.

Hence, accepting the fundamental difference between establishment of relationships of mutual recognition as equals and an appropriate scheme of distribution shows that Lister's argument does not solve the problem of what substantial distributional scheme should accompany the reciprocity condition he argues for. This difference shows that cooperative involvement leads to benefits on two different levels. Compliance with duties of justice in a cooperative venture establishes relationships of mutual recognition as equals, which requires that institutions secure such a state of affairs. This is a first and fundamental benefit of such cooperation. Only on a second level, however, might such cooperation lead to just distributions defended on egalitarian grounds. Thus, if there is a difference between establishing relationships of mutual recognition as equals and adequate distributional schemes for its realization, then further argument is needed to explain why just distribution must start from a standard of distributional equality. Lister does not provide any such argument. In the next two paragraphs I want to illustrate, why this is especially problematic in his two contexts of application, global justice and people with disabilities.

3. Mutual Recognition as Equals on a Global Level

An appealing result of Lister's reading of the reciprocity condition is his claim that we have a duty to establish just institutions as soon as there is relevant interaction among individuals and no such institutional arrangements exist. In the context of global justice this leads to a duty to establish institutions regulating relationships under condition that reasonable assurance of reciprocity is given. This appears very sensible, since more comprehensive accounts of duties of global justice are often accused of being over-demanding (see, for example Gosepath 2007, 229–30). If such duties only persist under the condition of relevant interaction, and if they merely prescribe the establishment of just institutions, then these duties are much less demanding. In other words, these duties demand political action to help establish such institutions but do not claim for self-sacrifice with regard to the needs of those abroad. However, the question of the exact nature of these institutions remains unclear, because Lister is vague about what constitutes reasonable assurance of reciprocity.

Lister argues that for reciprocity to occur it is enough that sufficient causal contact exists among individuals. In our global world this could mean not only economic involvement but also the influence through tourism or reciprocal respect of private property. Therefore, the possible contexts in which duties of

justice may arise are very broad; too broad, in my view, to argue that a duty to establish relationships of mutual recognition as equals is necessarily linked with substantial distributional claims along the lines of egalitarian distributional justice. This becomes especially clear in the contexts of economics or of severe poverty in a country with tourism. In both of these contexts, the nature of the appropriate institutions to be established is different and in my view highlights the fact that different distributional schemes might be relevant leading to just institutions with respective nature.

Lister uses the example of international trade relationships to explore the benefit of his reading of the reciprocity condition. A duty to establish institutions ensuring mutual recognition and respect arises if relevant causal interaction exists, such as cooperation among market actors. However, cooperative ventures in international trade arise in an international free market system. In such a system, supply and demand regulate prices of products and goods. Actors in these markets negotiate within this framework for appropriate prices for their products and contributions to cooperative ventures. Thus, in a free market system distributions in cooperation are just if they are negotiated on fair grounds. Consequently, institutions to regulate free market systems only constitute background conditions under which such negotiations take place but do not prescribe any specific substantial scheme of fair distribution. The reason for this is that further regulation with regard to distribution would question, and possibly undermine, the function of free market systems in allocating and distributing prices for products and contributions to cooperative ventures through its own processes, a function which Rawls (1999, 242) ascribes to them.

This last point is important for determining actually what duties of justice demand if we follow Lister's reading of the reciprocity condition. The institutions in question should regulate negotiations so as to exclude exploitation and secure fair negotiating conditions for fixing shares proportional to market prices and contribution to cooperative ventures. In so doing, they ensure mutual respect and recognition as equals among trading partners. In addition, such institutions should enforce compliance with rules of fair negotiation. This allows for reasonable assurance of reciprocity concerning compliance with these rules. However, accepting a free market system as the framework for international trade does not, according to what we have said thus far, prescribe any substantial schemes of (egalitarian) distribution. But this is exactly what Lister believes stems from his reading of the reciprocity condition.

If this were indeed the upshot of Lister's reading of the reciprocity condition, then the whole economic system would have to be changed, maybe in the direction of a socialist market regime. However, according to Rawls, in the context of economics this goes way beyond the scope of a theory of justice. He believes that there is no general answer to what economic system is appropriate for fulfilling the requirements of justice. The answer to this question "[...] depends in large part upon the traditions, institutions, and social forces of each country, and its particular historical circumstances" (Rawls 1999, 242). In the context of international trade, it depends on these social and historical matters on a global level.

Lister of course could try to counter this argument for context sensitivity; he could argue that a theory of justice advances claims about ideal and not non-ideal theory, which has to respect norms existing under non-ideal circumstances. If that were the case, however, his theory would forfeit its applicability because it could only be defended together with a totally different understanding of how free market systems should work. Therefore, to retain the applicability of his theory Lister has to accept that in the context of international trade it is inappropriate to prescribe a specific substantial distributional scheme stemming from the duty to establish relationships of mutual recognition as equals. Hence, accepting Lister's reading of the reciprocity condition does not allow us to decide which substantial distribution of cooperative benefits is just with regard to international trade.

The same applies in the context of severe poverty. If we assume that sufficient causal contact exists among the severely poor inhabitants of a country and the tourists visiting this country, this interaction will trigger, as a matter of justice, the duty to establish institutions ensuring mutual recognition as equals among the poor locals and the tourists. Although in this case there might be no straightforward question about the fair sharing of cooperative benefits, the existence of such sufficient causal contact seems, following Lister's understanding of the reciprocity condition, to suggest that the poor locals would be entitled to claims of justice anyway.

Therefore, the poor locals should, for instance, be provided with goods sufficient to live a human life in dignity. Certainly, such a distributional claim could be defended on egalitarian grounds but it would also be possible to defend it (and in my view it should be defended) on the basis of a non-relational (and in this sense non-egalitarian) standard of need. Institutions are necessary, from both perspectives, to provide resources and to distribute them adequately. Hence, although both views would accept that a just distribution of goods is necessary to ensure mutual recognition as equals among poor locals and tourists, it remains unclear what substantial distributional scheme is appropriate to realize this goal.

Thus, this argument shows again that establishing relationships of mutual recognition as equals is a cooperative benefit which is not necessarily linked with any specific substantial distributional scheme, a cooperative benefit located on a different level of cooperation. Which substantial distributional scheme is appropriate to establish such relationships is highly context sensitive and depends on the theory of justice presupposed. Hence, this applies, too, to the nature of the institutions to be established to fulfil duties of justice.

4. Mutual Recognition as Equals for Non-Contributors

Recently, Stark has argued that Rawls's theory of justice is incomplete with regard to people with disabilities. Rawls's presumption of rough equality in ability is neither needed for, nor does it fit coherently into, his theory of justice. In the original position, parties don't know anything about their natural talents. By denying such awareness Rawls wants to ensure that principles are chosen which

guarantee everyone an equal status, because such uncertainty makes it impossible to argue from strategic reasons concerning one's talents. If one accepts that disability is a lack of natural talent, then Rawls does not need to and cannot defend his background conditions of justice, which claim among other things that all individuals are roughly equal with regard to ability (Stark 2009, 79–80). Hence, disabled people must also be included in the group in the original position arguing for the principles of justice. The resulting principles of justice would then also legitimate claims of justice for disabled people. These, however, would have to exclude the condition of reciprocal contribution as that would undermine disabled people's own claims (84).¹

However, Rawls's statement in *Political Liberalism* that a necessary human condition to have legitimate claims of justice are normal abilities to cooperate, conflicts with his Kantian aim to guarantee equal moral standing for all. This is why Stark argues that, although natural talents as well as disability should be irrelevant with regard to legitimate claims of justice, one specific ability, the ability to engage in social cooperation, is not morally irrelevant. In consequence, Rawls's theory does not apply to those who are not able to cooperate. This leads Stark to the conclusion that Rawls only provides a theory of justice for those able to cooperate and not for the rest. Thus, Rawls's theory of justice is incomplete (Stark 2009, 89–91; cf. Nussbaum 2006, 108f.).

Lister does not go as far as Stark in his paper. He agrees with her with regard to the incompleteness of Rawls's theory, because he accepts that beings (animals and plants as well as perhaps some severely disabled people or psychopaths), not able to enter relationships of mutual recognition as equals are not owed justice. In contrast to Stark, Lister argues that his reading of the reciprocity condition allows the integration of disabled people's distributive claims in a Rawlsian theory of justice. Following his reading of the reciprocity condition, Rawls does not claim that demands of justice only apply to those able to contribute to the cooperative benefits of a society on roughly equal footing. Rather, because Rawls presupposes that the standard to measure contribution on the basis of reciprocity must start from a standard of equality, all those unable but willing to contribute to the cooperative benefit on an equal footing are entitled to an equal share, too.

In terms of egalitarian principles of justice, this means that an unequal contribution legitimates an unequal share of distributive benefits under the condition that it can be justified with regard to the choices and faults of those contributing (Arneson 1989; Cohen 1989). If such unequal contribution depends on circum-

¹ With regard to his description of the parties in the original position Rawls (1999, 118–9) could counter this argument: "It is assumed [...] that the parties do not know certain kinds of particular facts. [...] No one knows [...] his fortune in the distribution of natural assets and abilities. [...] The only particular facts which the parties know is that their society is subject to the circumstances of justice [...]." As circumstances of justice presuppose rough equality in ability to contribute and parties in the original position only have knowledge about these circumstances, they would have to assume that "individuals are roughly similar in physical and mental powers" (Rawls 1971, 126f.), which excludes people with disabilities. Although in a longer discussion of Rawls's theory this possible counter argument would have to be considered, I will ignore it in the following.

stances which do not lie in an individual's scope to take responsibility for its decisions, however, then unequal distribution of cooperative benefits cannot be justified. Hence, with regard to people with disabilities it is relevant to distinguish between those unable and those unwilling to contribute to the cooperative benefits of a society on an equal footing. Those willing but unable to contribute are entitled to an equal share of the cooperative benefits of society, even though they do not contribute as equals. According to Lister, this allows to argue for a claim of disabled people to be provided with adequate resources so as not to be dominated by those able to contribute as equals. Hence, disabled people are, as a matter of justice, entitled to assistance to preclude such domination.

In my view, this argument is problematic for two reasons, firstly, it is plausible to distinguish between those who want but cannot contribute to the cooperative venture of a society if bodily handicaps are at issue. Such impairment does not entail any inability to state one's willingness to contribute and take responsibility for such a decision. Disabled people who have no mental or psychological impairments can express and reflect their willingness to contribute but are, due to their handicap, not able to do so on an equal footing. However, when it comes to people with mental or psychological impairments, such a distinction becomes more difficult, if not impossible. Someone with schizophrenic disorder cannot in full responsibility decide about his willingness to contribute to the cooperative venture of a society. A psychopath might intentionally object to such convention. Therefore, in the first case there is a risk that people with mental impairment are deprived of their legitimate claims to justice. In the second case a psychopath might be excluded from the scope of justice because he is misjudged as unwilling to contribute. However, in both cases, and in all other cases in which someone shows unwillingness to cooperate, in my view intuition tells us there is a legitimate entitlement to assistance as a claim of distributive justice, irrespective of any willingness or unwillingness to cooperate (cf. Nussbaum 2006, 129-30).

This leads to a second, much deeper, problem. In order to prevent the domination of non-contributors, a level of abilities must be reached sufficient to allow individuals to participate as equals in society. This is a claim Lister adopts from Anderson. In my view within a liberal framework such a level of sufficiency not only includes the resources necessary for participation but also the achievement of appropriate qualifications and abilities. Most important among these is an ability to make responsible decisions regarding one's own life and behaviour. However, with regard to mentally disabled or psychologically impaired people as well as children, lots of assistance is necessary to achieve such abilities, even if only to a minimal level. Admittedly, defending such an entitlement for assistance on egalitarian grounds is unfeasible. Egalitarian principles presuppose that individuals are able to take responsibility for their decisions because responsible choice is the only legitimate criterion to justify unequal distribution. As at least some people with mental or psychological impairments as well as children do not possess these abilities in the full sense such individuals' entitlement to a fair share of the cooperative benefits of a society cannot be judged by their willingness to contribute. Hence, an egalitarian theory of justice is incomplete

when it comes to questions about legitimate claims of justice with regard to such individuals.²

In consequence, Lister's reading of the reciprocity condition must either make a different distinction between disabled people and normal contributors, which allows us to decide who is entitled to assistance as legitimate claim of distributive justice even when he does not contribute to the cooperative venture of a society on an equal footing, or he must accept that Rawls's theory is incomplete. In the first case, it would be possible to argue on non-egalitarian grounds for an entitlement for all respected as equals to obtain the abilities necessary to responsibly decide whether they want to contribute to the cooperative venture of a society or not.³ In the second case, following Stark, one would have to argue for a theory of justice appropriate for mentally and psychologically disabled people, which cannot be understood as an extension of the theory Rawls provides. In my view, such a theory would have to be grounded on beliefs about justice which are not dependent on egalitarian principles. Therefore, this discussion shows again that it is, at the very least, unclear that a duty of justice to establish relationships of mutual recognition as equals must necessarily be combined with egalitarian principles of justice as the basis for its institutions.

5. Conclusion

The aim of this comment has not been to show that Lister's reading of the reciprocity condition is implausible. Rather, this reading is an appealing starting point of an interrogation of what reciprocity could mean in contractarian theories of justice, because it shows how the harshness of this condition could be overcome without downplaying its role. This comment has challenged Lister's view that his reading of the reciprocity condition is necessarily linked with egalitarian principles of justice. It has argued for three points. First, it is not at all clear that a duty to establish institutions guaranteeing relationships of mutual recognition as equals must necessarily be accompanied by substantial distributive schemes egalitarian in character. Second, with regard to global justice, what kind of distributive scheme is appropriate for realizing relationships of mutual respect as equals is highly dependent on context. Third, concerning people with mental or psychological impairments, Lister's reading of the reciprocity condition seems to advance criteria which cannot be appropriately linked with egalitarian principles for just distribution.

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² For a more detailed discussion of this point see Wallimann-Helmer 2011.

³ Following Krebs 2000, 21–4, this would be the way to read Anderson anyway.

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