
36 Particular Justice and General Care

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Are there cases in which we must decide, ethically, whether to prioritize justice over care or to prioritize care over justice? Professor Held finds that there are and argues that, at least sometimes, we ought to prioritize care.¹ She has in mind cases in which the demands of a particular relationship, such as a parent-child relationship, collide with those of universal rules. My discussion is directed to her argument's presupposition that ethical concerns of care lie outside the scope of justice, and that concerns of justice lie outside the scope of care.

It is difficult to compare care ethics with justice because of the relative imprecision of philosophical accounts of care ethics. Justice has a longer and fuller academic philosophical history than care ethics. The requirements of care ethics are less clear, even if it is sometimes clear what caring for someone requires, or what someone needs for basic well-being, or what a relationship requires to survive or thrive. Whereas principles of justice have been elaborated in detail, the requirements of care ethics tend to be left at an intuitive level. Or, conclusions are drawn about what care requires in particular cases without a clear rationale for why care requires that rather than something else. How does care ethics determine which needs one ought to respond to and in which ways one ought to respond? Perhaps care ethics is not only about responding to needs.

If it is difficult to compare care ethics with justice, it is also true, because of narrow but common assumptions about what justice requires, that relationships between justice and care can seem clearer than they should. Justice is often assumed to be impartial and universal, as though "impartial justice" and "universal justice" were redundancies. Justice, Kantian ethics, and impartial rules are sometimes lumped together, as though they were more or less the same. Yet Kant's ethics includes what Kant called "duties of virtue" as well as his "duties of justice." Kant understands justice as pertaining only to what is appropriately enforceable. His duties of virtue include such unenforceable matters as gratitude. But even justice narrowly understood (as pertaining to the enforceable) requires more than consistency and impartiality in the application of rules. It matters what the rules are. Justice requires more than can be captured even by carefully formulated principles and rules. As Aristotle noted, equity is a kind of justice that eludes codification in rules, and we need equity for those inevitable cases in which correct applications of the rules (no matter how well designed they are) fail to yield a just solution.²

Justice has many strands, some very general and others very particular. A principle of formal justice requires us to treat relevantly similar cases in relevantly similar

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ways.³ It directs that we apply rules consistently. But it does not tell us what rules to have. Other principles of justice, such as those put forward and defended by John Rawls, are framed as bases for justifying or evaluating general rules (such as those of a political constitution or legislation).⁴ Yet, as Joel Feinberg argued long ago, justice is also a matter of responding to personal deserts.⁵ Justice is not concerned only with impartiality and universality. It is also concerned with treating particular individuals as they deserve, where what they deserve is a less formal matter than their entitlements (rights) or even qualifications, as determined by general rules. Feinberg claimed that the bases of desert are characteristics of the deserving individual or something that the deserving individual has done.⁶ Yet what a particular individual deserves is often deserved from a particular other. When that is the case, it seems to me that the desert is often (although not always) grounded in a relationship between them, such as friendship. Justice grounded in deserts is particular justice, by contrast with the justice grounded in universal or impartial principles applying to everyone alike.

Particular justice has received less attention in ethical theory than universal and impartial justice.⁷ John Rawls presents his principles of justice (as Kant does his Categorical Imperative) as imposing limits on the legitimate pursuit of goals.⁸ They serve as filters or "side-constraints," scruples. Considerations of care, on the other hand, may seem to set goals for us; the pursuit of human well-being, the maintenance of relationships. But deserts may also impose scruples on the pursuit of goals. The particular justice of being responsive to deserts may also be a way of caring that is better understood as a kind of scrupulousness than as the pursuit of certain goals.

The view of justice as imposing scruples and of care as setting goals could account for a common view, to which Professor Held objects, that justice and care are compatible in the following way: once the requirements of justice are met, we are permitted to act on considerations of care. This view may seem to reduce care ethics to matters of personal preference, optional deeds. Yet, one could understand care as imposing requirements also, but requirements that do not come into play until general principles of justice are satisfied. This appears to be Kant's understanding.⁹ His duty to help others is presented as "imperfect." Imperfect duties, he says, must always yield to perfect ones in cases of conflict between them, and duties of justice are perfect. On that understanding we have a lexical ordering of justice and care, one that prioritizes justice systematically over care.¹⁰ Professor Held's view is that care is not always simply optional and that it would be wrong to order its requirements lexically in that way with respect to justice.

I agree that the claims of particular relationships (such as friendships) are not always optional or reducible to matters of personal preference. Such relationships impose genuine responsibilities (obligations, although usually not correlated with rights). Although I am not yet persuaded that such responsibilities lie outside the scope of justice, I do find it plausible that no lexical ordering of universal justice and particular justice will withstand scrutiny.

Sometimes the demands of a particular relationship or a person for whom one cares can be momentous, as Professor Held notes, whereas a conflicting demand based on a general moral rule may be relatively trivial. One may have to break a

promise to meet someone for coffee, for example, in order to render aid to a seriously injured person or just to "be there" for a partner in crisis. Keeping the promise may be naturally understood as a requirement of justice. But isn't the requirement to aid the injured party, or to be there for one's partner, also a demand of justice?

Lest one object that such a case simply illustrates a conflict between two general rules (keep promises and aid those in trouble), let me vary the case so as to particularize the demand for care more. Suppose that keeping a promise not to reveal a secret conflicts with the demands of loyalty to a friend, because you have learned, since you made the promise, how seriously knowledge of that secret could affect your friend's welfare. It may not be obvious what you should do. But it is possible that the promisee will not release you, even though the reason you were asked to keep the secret is relatively trivial, whereas the potential impact on your friend of the knowledge of that secret is momentous. If your friend's future welfare would be seriously endangered by not knowing the secret, breaking the promise could be the right thing to do. Does this mean that care would triumph over justice? Or was what your friend deserved from you a more important demand of justice? Couldn't it be unjust (to your friend and to the relationship between you) to be a stickler about promises here?

Deserts of punishment and reward are paradigms of justice. But these are not the only morally significant kinds of deserts. People can also deserve trust and loyalty. Betrayal of a friend can be deeply unjust even if no promise was made. If the demands of a particular relationship or individual can be articulated in terms of what that person or relationship deserves from us, then, even though the same demands might also be articulated in the language of care, it is misleading to say that we confront a conflict between justice and care. Some demands of justice (those based on deserts) can be in conflict with others (those based on impartial rules).

Although failing to treat others as they deserve is a paradigm of injustice, it need not take the form of violating rights. People often deserve rewards, for example, but seldom have a right to them. Although sometimes rights and deserts may be interchangeable, they are not always. Following Feinberg's distinctions, deserts more often tend to be relatively informal, in contrast with entitlements (rights) and eligibilities (meeting minimum qualifications). Deserts elude codification in rules – desert of gratitude, for example. Where deserts are relatively informal in this way, it is sometimes more natural to speak of being unfair to someone than to use the language of injustice. Yet the values may be the same. Whether we call it injustice to someone or unfairness to someone, we are honoring what makes an individual special, rather than what all individuals have in common. Where there is no enforcement or even codification of the appropriate conduct, it takes a stronger, more developed, more nuanced sense of justice to do what is required.

Aristotle presented justice as giving each their due. "What is due" did not mean, "what one has a right to." Aristotle appears to have had no conception of rights. "Due" appears to mean something like "deserved." What our children deserve from us is different from what our parents or lovers deserve. We cannot

talk about Aristotelian justice without also talking about relationships – not just in an abstract logical sense, but relationships in the sense of connections. Aristotle observes that “friendship and justice ... seem to be concerned with the same objects and exhibited between the same persons”; that “the claims of justice differ too; the duties of parents to children and those of brothers to each other are not the same, nor those of comrades and those of fellow citizens”; and that “the injustice increases by being exhibited towards those who are friends in a fuller sense; e.g., it is a more terrible thing to defraud a comrade than a fellow citizen, more terrible not to help a brother than a stranger.”¹¹ He continues, saying that “the demands of justice also seem to increase with the intensity of the friendship, which implies that friendship and justice exist between the same persons and have an equal extension.”¹² These remarks may seem difficult to reconcile with his earlier observation that “when men are friends they have no need of justice”¹³ unless we take it that “needing justice” in that context means “needing enforcement.” But he goes on to note that when people are just, they need friendship as well and “the truest form of justice is thought to be a friendly quality.” These observations suggest that relationships underlie justice and determine its scope.

Although Feinberg claimed that deserts are based on some characteristic of the deserving person, or on something that person has done, I would point out that deserts often seem grounded more generally in the relationship between the deserving person and the person or persons from whom certain kinds of treatment are deserved. Friends deserve our loyalty, not simply on the basis of their characteristics as individuals or even on the basis of what they have done simply as individuals, but because they are our friends – at least, if they are good friends (or, perhaps, friends in good standing). Benefactors deserve our gratitude; being someone’s benefactor – befriending someone – is being in a certain kind of relationship to that person.¹⁴ Repentant wrongdoers may sometimes deserve forgiveness. Rescuers may deserve praise. A lover may deserve one’s trust. Because failing to treat people as they deserve can be unjust to them, justice has a wider scope than that of rights. It is not merely a legal or legalistic concept.

These responses – loyalty, gratitude, forgiveness, praise, trust – are also instances of caring, are they not? If so, they show that caring is wider in scope than caretaking, caregiving, or benevolence. Loyalty might require caretaking on some occasions, but I can be loyal on other occasions simply by refusing to betray someone. Caring is often a matter of taking an appropriately supportive or appreciative attitude toward someone, one that shows that you value that person or your relationship with that person in a certain way. Fred Berger argued that gratitude is important because it shows that we value our benefactor not just as a source of our own welfare.¹⁵ Such responses are not deserved by just anyone from just anyone else. They are particularized. They demonstrate concern and appreciation for the individual. They share emotive elements commonly associated with caring. As with caring, generally, it can be difficult to specify what particular acts, if any, are required for having the appropriate response.

Not all responsiveness to deserts exemplifies caring; arguably, for example, responsiveness to desert of punishment and blame does not. But responsiveness to many kinds of deserts that Feinberg classified as “non-polar” – the kinds mentioned

above: gratitude, loyalty, trust, forgiveness – does exhibit behavior that is also naturally recognized as caring behavior, and such responsiveness may be essential to the maintenance of relationships such as friendships.

In her “Look at Some Cases,” Professor Held comments briefly on the story in Genesis 22 of God’s testing Abraham by asking him to sacrifice his son Isaac, a case much discussed by proponents of care ethics. She then presents at greater length her own case of a father who has special skills that could help many other children besides his own, but only at the cost of his leaving the care of his own child largely to others. Regarding Abraham, she notes that “the relationship between parent and child should not always be subordinated to the command of God or of universal moral rules.”¹⁶ Yet it seems arbitrary to regard Abraham’s relationship with God as giving only the side of justice and not care, and to regard Abraham’s relationship with Isaac as giving the side of care but not justice. If there is obvious justice on either side, is it not in the obligation not to kill? Kierkegaard found the claims of universality on the side of not killing when he presented God’s demand as a “teleological suspension of the ethical.”¹⁷ Actually, Abraham is caught between two special relationships: with God and with Isaac. God tests Abraham’s trust, and Isaac trusts Abraham. Insofar as God deserves Abraham’s trust, and Isaac deserves to be able to trust Abraham, there are demands of particular justice on both sides. There is also a demand of universal justice on the side of not killing.

Professor Held’s case of the father who has special skills in helping troubled young children succeed academically shows, I think, something very wrong with a utilitarian conception of justice. It also illustrates how difficult it can be to identify what appropriate care requires for all those who may make claims on one’s care. The father’s child has special claims on his attention. Unless he has already accepted a position of responsibility for the care of other children, it is not unjust favoritism to give special attention to his own child rather than others (when he cannot do both). It might be difficult for him to decide whether to take on the responsibility to care for other children where no one else who had the requisite skills was readily available. But saving others the inconvenience of having to look elsewhere for those skills, perhaps at some expense, need not be sufficient to justify his acceding to their demand. He could justifiably refuse on the grounds of his prior commitment to his family. If securing someone else with the requisite skills proved costly (or even impossible), the responsibility would not be simply the father’s. The other children’s needs are, presumably, the responsibility of a wider community. A problem with utilitarianism is that it distributes responsibility too expediently.

But, further, in this kind of case, as in Abraham’s case, there are demands of care on both sides. Corresponding claims of justice argue each way. On one side is what a particular individual, your child, deserves from you, the parent. On the other is the general demand to help others where you can do so without excessive cost. Care is deserved on one side but also demanded on the other (even if not deserved by the other children from this father). To represent only one side as that of care oversimplifies care ethics. Presumably it is not Professor Held’s view that, in general, from the point of view of care ethics, the claims of particular

relationships (such as fatherhood) always take precedence over the needs of strangers. Yet no rationale is provided for why they do so here. Pointing out that the child is the father's own, as an answer to that question, only suggests that, from the point of view of care, special relationships always take priority. Yet that is not plausible. On the other hand, within the idea of justice, we have a case in which the son's particular deserts are pitted against a more general rule of helping those in need, particular justice against universal justice. To present only the claims of universal justice as "the side of justice" is to suggest, inevitably, that universal claims always win out over particular ones from the perspective of justice. Yet that is also implausible.

The case of the father who has skills reminds me of another case, somewhat similar but also different, documented in Jung Chang's narrative of the Cultural Revolution, *Wild Swans: Three Daughters of China*. Her father, as a public official, refused to take advantage of his access to medical supplies to bring home more than the allotted share of medications for his own family, who needed them badly. He refused on the grounds that doing that sort of thing was just the kind of corruption that had caused so many problems with public life in China.¹⁸ At first, the mother could not understand his attitude, and he could not understand how she could expect him to do such a thing. But eventually, they came to understand each other's point of view without abandoning their own values and principles.

Jung Chang's father, in my opinion, did the right thing. He was not a less caring parent for having so acted. As a public official, he had public responsibilities as well as private ones, and he was not being asked in his public capacity to make his family sacrifice more than other families were expected to do. Other families deserved to receive their share, just as his family deserved his special concerns. But the validity of his special concerns did not mean that his family deserved more than their fair share or that in respecting others' shares, he cared less than he should have for his own family.

It may be tempting to describe the case of Jung Chang's father as pitting care (for his own family) against justice (in administering the rules for distributing medicines) and say that, in contrast with Professor Held's case, here is one where justice wins out over care. Yet, again, I find this misleading, because there is justice on both sides and there are concerns of care on both sides, albeit particularized on the one side and generalized on the other.

The reader by now may be asking what difference it makes which language we use (that of justice or that of care) to describe these conflicts, as long as we appreciate that such conflicts arise and that there is no lexical ordering of values that will yield the right answer in every case. What difference does it make whether we label the demands of particular relationships those of "care" or those of "particular justice"? As long as we find care on both sides, or as long as we find justice on both sides, perhaps it does not matter which language we use. It is important, however, to recognize that there are importantly similar values at work on both sides of such conflicts. In particular relationships, we may be more likely to appreciate those values in a lively way if the relationship engages us positively and if it is especially vital to our well-being. On the other hand, if we have come to take particular relationships for granted and if we self-consciously identify with a more

public role (and the more formal relationships that define it), it may be easier to appreciate the values at stake in universal claims. In either case, the likelihood or ease of our appreciation of the relevant values does not, in itself, carry ethical weight. Feminist criticism of ethical theories that pay insufficient attention to the values at stake in particular relationships could exploit the concept of justice to make that point.

Notes

- 1 Virginia Held, "Caring Relations and Principles of Justice," in James P. Sterba, ed., *Controversies in Feminism* (Lanham, Md: Rowman & Littlefield, 2001), pp. 67–81.
- 2 Aristotle, *The Nicomachean Ethics*, trans. David Ross (New York: Oxford University Press, 1925), bk. 10, pp. 132–4.
- 3 For discussion of this principle and its role in generalization arguments, see Marcus G. Singer, *Generalization in Ethics* (New York: Knopf, 1961).
- 4 John Rawls, *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971), p. 60. He offers and defends the following principles: (1) "each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others" and (2) "social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone's advantage, and (b) attached to positions and offices open to all."
- 5 Joel Feinberg, "Justice and Personal Desert" in *Doing and Deserving: Essays in the Theory of Responsibility* (Princeton, NJ: Princeton University Press, 1970), pp. 55–94.
- 6 Feinberg, p. 58.
- 7 But see George Sher, *Desert* (Princeton, NJ: Princeton University Press, 1987).
- 8 Immanuel Kant, *Groundwork of the Metaphysics of Morals*, trans. H. J. Paron (New York: Harper Torchbook, 1964).
- 9 Kant, *The Doctrine of Virtue, Part II of The Metaphysics of Morals*, trans. Mary J. Gregor (Philadelphia: University of Pennsylvania Press, 1964). See Kant's "Introduction to the Metaphysics of Morals," pp. 7–28.
- 10 The concept of a lexical (short for lexicographical) ordering is discussed in Rawls, p. 42: "This is an order which requires us to satisfy the first principle in the ordering before we can move on to the second. . . . A principle does not come into play until those previous to it are either fully met or do not apply."
- 11 Aristotle, VIII:9, p. 207.
- 12 Aristotle, VIII:9, p. 208.
- 13 Aristotle, VIII:1, p. 193.
- 14 For more on gratitude and its peculiar obligations, see chapter 6 in Claudia Card, *The Unnatural Lottery: Character and Moral Luck* (Philadelphia: Temple University Press, 1996), pp. 118–39, or Card, "Gratitude and Obligation," *American Philosophical Quarterly* 25:2 (April 1988): 115–27.
- 15 Fred Berger, "Gratitude," *Ethics* 85:4 (July 1975): 298–309. See especially p. 307.
- 16 Held, "Caring Relations," p. 74.
- 17 Søren Kierkegaard, *Fear and Trembling and The Sickness unto Death*, trans. Walter Lowrie (New York: Anchor, 1954), pp. 64–77.
- 18 Jung Chang, *Wild Swans: Three Daughters of China* (New York: Simon & Schuster, 1991).