
35 Caring Relations and Principles of Justice

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The Controversy

The question of whether impartial, universal, and rational moral principles must always be given priority over other possible grounds for moral motivation continues to provoke extensive debate. David Velleman has recently added his defense of Kantian ethics to those offered by others against recent challenges to the priority of impartial rules. The challenges have come from Bernard Williams, among others, and especially from certain advocates of a feminist ethic of care. An example of the controversy was a session of the American Philosophical Association in Philadelphia in December 1997 where Velleman gave a paper called "Love and Duty," and defended Kantian ethics against the kind of challenge presented by Bernard Williams. Like most such defenses of the priority of universal moral rules, Velleman said nothing about the feminist critique, but other defenders of Kant and of the priority of universalistic principles have begun to address the feminist challenge. They have offered a variety of answers to the feminist critique of claims about the adequacy of moralities built on universal principles of rational impartiality. It is the feminist challenge that I will largely discuss and defend against these responses.

Velleman concentrates on the case that Bernard Williams discusses, originally put forward by Charles Fried and much discussed since, of whether a man may justifiably save his wife rather than a stranger, if he can save only one. Williams suggests that if the man stops to think about whether universal principles could permit him to give special consideration to his wife rather than treating both persons impartially, the man is having "one thought too many." Velleman argues that Kantian principles would include, not deny, that we have special responsibilities for the members of our families and that these can be consistently universalized, so there need be no conflict here. One commentator, Thomas Hill, changed the example to avoid any sexist stereotypes involved, but agreed with the defense of Kantian impartiality against this kind of attack. Harry Frankfurt, another commentator, gave more support to Williams's critique, but none of the three addressed the feminist versions of the challenge to Kantian principles, which resemble Williams's in some respects and differ from it in others.

Williams's arguments are presented from the point of view of a man with a set of projects, the sorts of projects that make life worth living for this man. The image, like its Kantian alternative, is still that of an individual deliberator. Williams

pits the individual's particular goals – to live life with his wife or, in another case, to be a painter – against the individual's rational and impartial moral principles, and he doubts that the latter should always have priority. Williams disputes the view that our particular projects must always be constrained by universal principles requiring that we should only pursue what universal principles permit (Friedman). If a man's life would be worth living only if he put, for example, his art ahead of his universalizable moral obligations to his family, Williams is not willing to give priority to his moral obligations. In the example of the man and the drowning others, the man's wife may be his project, but the dilemma is posed in terms of an individual's own particular goals versus his universal moral obligations. At a formal level it remains within the traditional paradigm of egoism versus universalism. Williams is unwilling to yield the claims of the ego, especially those that enable it to continue to be the person it is, to the requirements of universalization. But he does not reject the traditional way of conceptualizing the alternatives. Like Thomas Nagel in *The Possibility of Altruism*, and most other philosophers before him, the problem is seen as pitting the claims of an individual ego against those of impartial rules.

The feminist challenge to Kantian moralities does require a change in this paradigm. It does not pit an individual ego against universal principles, but considers a particular relationship between persons, a caring relationship, and questions whether it should always yield to universal principles of justice. It sees the relationship as not reducible to the individual projects of its members. When universal principles conflict with the claims of relationships, the feminist challenge disputes that the principles should always have priority. The feminist critique of liberalism as moral theory and of Kantian morality gives us reason to doubt that, in terms of how the debate has been framed, justice should always have priority over care.

In his new book, *Justice as Impartiality*, Brian Barry devotes a considerable portion of Chapter 10 to the feminist critique of impartiality. He attributes it to misunderstandings. Thoroughly disparaging the work of Lawrence Kohlberg, the psychologist of moral development criticized by Carol Gilligan, Barry blames Kohlberg for the confusions that he thinks are responsible for the feminist critique of impartiality. Barry fails to see that much of what feminist moral philosophers have written about feminist morality and the ethics of care has little to do with Kohlberg, but does have a great deal to do with the kind of justice as impartiality defended by Barry.

Barry advocates what he formulates as second-order impartiality. This kind of impartiality requires that the moral and legal rules of a society be such that they are "capable of attaining the ... assent of all" taken as free and equal individuals (Barry, p. 191). This does not require or imply first-order impartiality, the kind of impartiality that dictates that we should not be partial to our own friends and family members. Barry argues that as long as we can all accept the rules, these rules can, of course, permit us to give special consideration to our friends and families.

Barry points out that most second-order impartiality theories, such as John Rawls's theory of justice, are designed for judging institutions, not the actions of

persons in personal situations, and for judging institutions in "nearly just" societies. This renders them of little use for recommending actions in the context of the seriously unjust conditions of currently existing institutions. According to Barry, there can be second-order impartiality theories that support the morality of breaking some bad laws rather than merely waiting for them to change. Thus, his arguments for impartiality are an improvement over many others. But Barry supports the position of impartialists generally in holding that justice, now formulated as second-order impartiality, always has priority over considerations of care, not just in legal but in all moral contexts. In Barry's view, care can justifiably be the basis of choice only after the demands of justice as impartiality have been met. He argues that there can be no genuine conflicts between the rules of justice and considerations of care: they deal with different matters. We are morally obligated to fulfill the requirements of impartiality, and then, we can be moved as we choose by our feelings for friends and family.

This interpretation of the issues sidesteps rather than addresses the arguments of many defenders of the ethics of care. The latter question the priority of justice as impartiality (including second-order impartiality) and are not willing to relegate care to an optional choice about preferences once all the requirements of justice have been satisfied (Baier). These advocates of care deny that we are simply talking about different matters; they hold that those who defend the priority of justice and those advocating an ethic of care are, at least sometimes, both talking about the same topic – morality – and are disagreeing about it. The debates have often seen the issues as being about which kind of approach would be better for a given problem: the approach of justice or the approach of care? And they reject the view that considerations of care are appropriate only in personal relations after the rules of justice have decided them to be permissible. Questions of care can appropriately arise in public as well as personal contexts, and we can wonder at fundamental levels whether we should always treat people as if the liberal assumptions of impartial justice take priority in our dealings with them. Sometimes the points of view of care and of justice provide different moral evaluations of and recommendations for the same problems and matters. When they do, we need to choose between them rather than simply talking past each other.

Stephen Darwall is another philosopher who has tried to address the challenge presented by feminist ethics. He finds that the ethics of care usefully calls attention to the actual relationships that are such an important part of our lives. But he denies that the ethics of care really presents an alternative opposed to the moralities of impartial universal principles, the moralities of Kant and utilitarianism. He argues that we arrive at the basic idea of utilitarianism, "that everyone's welfare matters and matters equally" (Darwall 1998, p. 226), by thinking about why we value an actual particular child who engages our attention. We realize that it is because the particular child we care about is "someone with a conscious life that can be affected for good or ill," and that the sympathy we feel for a particular child is something we can feel for any other. Similarly, according to Darwall, Kantian respect for persons "involves recognizing an individual's dignity or value in himself, but it is grounded in features that a person shares with any other moral agent" (p. 227). Hence, we extend to all persons the kind of respect we can

recognize that an individual we know deserves. To Darwall, then, the ethics of care is a "supplement" to "morality as conceived by the moderns" (p. 228), but both aim at the same ideas of equal concern and respect.

This interpretation, like Barry's, fails to recognize the challenge to moralities of universal, impartial principles that the ethics of care, or Bernard Williams, present. And to an advocate of an ethic of care, Darwall's interpretation of what it is in our child that leads us to value or respect him is rather questionable in terms of descriptive persuasiveness. What a parent may value in her child may well not be what makes this child like every other, but the very particular relationship that exists between them such that she is the mother of this child, and this particular person is her child. If we think of how we would respond to the question "Why do you care about this child?" asked perhaps by an official of a hypothetical regime threatening to take the child for adoption by more favored parents, or for a scientific experiment authorized by the regime, we are probably more likely to imagine our response being "because she is my child" than "because she has a conscious life, like all children." This does not mean that we associate our child with our property, thinking of her as belonging to us, or thinking of ourselves as individuals who own our children as well as our property. Nor does it mean we think the reasons the government should or should not take our child are like the reasons it should or should not appropriate our property. The relationship we have with our child is very different from the relationship we have to our property. We might favor policies that would allow governments to appropriate significant amounts and kinds of property in ways that would be fair, yet strongly oppose policies that would sever bonds with our children, even if they would be fair.

In elaborating the reasons that the two kinds of cases are different, we might refer to the conscious life of our child and all other children, or to Kantian principles against treating persons as means. But the relationship between a particular child and a particular parent is a more plausible source of the valuing of each by the other than are the features they share with all other children and parents. And so if the moral recommendations grounded on this relationship ever conflict with the moral recommendations derived from universal moral principles, the problem of which has priority remains, despite Darwall's efforts to dissolve it.

Differences Among Feminists

Martha Nussbaum is another philosopher who argues for liberal universalism against the ethics of care; she believes that the kind of liberalism for which she argues will be better for women than care ethics and should be embraced by feminists. She acknowledges that some of the feminist critique of liberalism can conflict with what she sees as the "norms of reflective caring that are preferred by liberalism" (Nussbaum 1997, p. 30). The latter norms would demand that love or attachment be based on an uncoerced choice from a position of equality, whereas an ethic of care recognizes that many of our attachments cannot or need not be based on such choice. A most obvious example is that no child can choose her parents, who are for many years more powerful than she. Though Nussbaum

does not acknowledge it, many defenders of an ethic of care favor reflective care over blind care, but they part company with Nussbaum in not seeing care primarily in terms of individual interest or choice, as does Nussbaum. Nussbaum cites Nel Noddings's description of the maternal paradigm of care and writes: "Liberalism says, let them give themselves away to others – provided that they so choose in all freedom. Noddings says that this is one thought too many – that love based on reflection lacks some of the spontaneity and moral value of true maternal love" (p. 30). To Nussbaum, such a view does present a challenge to the Kantian liberalism she defends. But she thinks the position of the ethics of care should be rejected; she thinks it is bad for women. Her reasons, in my view, are based on too limited a view of the ethics of care, a view that identifies it unduly with its earliest formulations.

Many feminists who criticize the liberal individualist view of persons do not deny, as Martha Nussbaum implies, the importance of rights for women who lack them (see Held 1998). When women are denied, as they are in many parts of the world, an equal share of the food or education available to a family, when women are subject to marital rape and domestic violence, extending liberal rights to women is, of course, enormous progress. So is it when, as is still widely the case in the United States, women receive equal shares of basic necessities but are still expected and pressured to make greater sacrifices for their children than are men. The point that feminists often make, however, is that the progress should not stop with equal rights and that the liberal individualist way of formulating the goals of morality is one-sided and incomplete. Nussbaum claims that "what is wrong with the views of the family endorsed by [many liberals] is not that they are too individualist, but that they are not individualist enough" (p. 15) because they do not extend liberal individualism to gender relations within the family as Nussbaum thinks they should. Contrary to Nussbaum's characterization of them, however, most feminists, including those who defend an ethic of care, agree with her that various individual rights should be extended to gender relations in the family. The right not to be assaulted, for instance, should protect women and children in the family, and women should assert rights to a more equitable division of labor in the household. But those who advocate an ethic of care have a very different view from liberal individualists of what gender relations, relations between children and parents, relations of friendship, and human relations generally, should be like even when these rights are extended to those previously left out from the protections they provide.

The feminist critique of liberalism that a view such as Nussbaum's misses is the more fundamental one that turning everyone into a complete liberal individual leaves no one adequately attentive to relationships between persons, whether they be caring relations within the family or social relations holding communities together. It is possible for two strangers to have a so-called "relation" of equality between them, with nothing at all to bind them together into a friendship or a community. Liberal equality doesn't itself provide or concern itself with the more substantial components of relationship. It is in evaluating and making recommendations for the latter that an ethic of care is most appropriate. As many feminists argue, the issues for moral theory are less a matter of justice versus care than of

how to appropriately integrate justice and care, or care and justice if we are wary of the traditional downgrading and marginalizing of care. And it is not satisfactory to think of care, as it is conceptualized by liberal individualism, as a mere personal preference an individual may choose or not. Neither is it satisfactory to think of caring relationships as merely what rational individuals may choose to care about as long as they give priority to universal, and impartial, moral principles.

Marilyn Friedman calls attention to when partiality is or is not morally valuable. "Personal relationships," she writes, "vary widely in their moral value. The quality of a particular relationship is profoundly important in determining the moral worth of any partiality which is necessary for sustaining that relationship" (Friedman 1993, p. 40). Partiality toward other white supremacists on the part of a white supremacist, for instance, does not have moral worth. When relationships cause harm, or are based on such wrongful relations as that of master and slave, we should not be partial toward them. But when a relationship has moral worth, such as a caring relationship between parents and children, or a relation of trust between friends and lovers clearly may have, the question of the priority, or not, of impartiality can arise. And as moralities of impartial rules so easily forget, and as Friedman makes clear, "close relationships call ... for personal concern, loyalty, interest, passion, and responsiveness to the uniqueness of loved ones, to their specific needs, interests, history, and so on. In a word, personal relationships call for attitudes of partiality rather than impartiality."

Evaluating the worth of relationships does not mean that universal norms have priority after all. It means that from the perspective of justice, some relationships are to be judged unjustifiable, often to the point that they should be ended to the extent possible, although this is often a limited extent. (For instance, we will never stop being the sibling of our siblings, or the ex-friend or ex-spouse of the friends or spouse with whom we have broken a relation.) But once a relationship can be deemed to have value, moral issues can arise as to whether the claims of the relationship should or should not be subordinated to the perspective of justice. And that is the issue I am examining. Moreover, the aspects of a relationship that make it a bad relationship can often be interpreted as failures to appropriately care for particular others, rather than only as violations of impartial moral rules. Certainly, avoiding serious moral wrongs should take priority over avoiding trivial ones, and pursuing highly important moral goods should take priority over pursuing insignificant ones. But this settles nothing about caring relations versus impartial moral rules, now that we know enough to reject the traditional view that what men do in public life is morally important while what women do in the household is morally trivial. Some caring relations are of the utmost importance, morally as well as causally – human beings cannot flourish or even survive without them – while some of the requirements of impartial moral rules are relatively insignificant. And sometimes it is the reverse.

The practice of partiality, as Friedman well argues, cannot be unqualified.

When many families are substantially impoverished, then [various] practices of partiality further diminish the number of people who can achieve well-being, integrity,

and fulfillment through close relationships. . . . Partiality, if practiced by all, untempered by any redistribution of wealth or resources, would appear to lead to the integrity and fulfillment of only some persons . . . (Friedman 1993, p. 59)

But this only shows, as defenders of the ethics of care usually agree, that partiality and the values of caring relationships are not the only values of concern to morality. The social conventions through which partiality is practiced need to be evaluated and justified, and impartial moral principles can be relevant in doing so. But a morality of impartial principles will be incomplete and unsatisfactory if it stops with impartial evaluations of what individuals are forbidden or permitted to do. Morality needs to evaluate relationships of care themselves, showing, for instance, how shared consideration, sensitivity, and trustworthiness enhance them and increase their value, while also showing how they can degenerate into mere occasions for individuals to pursue their own interests, or to reluctantly fulfill the duties imposed on individuals by impartial rules. When relationships are valuable ones, moral recommendations based on them may conflict with moral recommendations that would be made from the point of view of impartiality.

A Look at Some Cases

Let me now try to examine in greater detail what is at issue between an ethic of care and a morality built on impartiality, and why a satisfactory feminist morality should not accept the view that universal, impartial, liberal moral principles of justice and right should always be accorded priority over the concerns of caring relationships, which include considerations of trust, friendship, and loyalty. The argument needs to be examined both at the level of personal relationships and at the level of social policy. Advocates of an ethic of care have argued successfully against the view that care – within the bounds of what is permitted by universal principles – is admirable in personal relations, but that the core value of care is inappropriate for the impersonal relations of strangers and citizens. I will explore issues of both kinds.

Consider, first, the story of Abraham. It has been discussed by a number of defenders of an ethic of care who do not agree with the religious and moral teaching that Abraham made the right decision when he chose to obey the command of God and kill his infant son. (That God intervened later to prevent the killing is not relevant to an evaluation of Abraham's decision for anyone but a religious consequentialist.) From the perspective of an ethic of care, the relationship between child and parent should not always be subordinated to the command of God or of universal moral rules. But let's consider a secular case in which there is a genuine conflict between impartialist rules and the parent-child relation. Barry's and Darwall's attempts to reshape the Bernard Williams and the feminist problems so that there is no conflict merely deal with a different kind of case and fail to address the question of what has priority when there is a conflict.

Suppose the father of a young child is by profession a teacher with a special skill in helping troubled young children succeed academically. Suppose now that on a

utilitarian calculation of how much overall good will be achieved, he determines that, from the point of view of universal utilitarian rules, he ought to devote more time to his work, staying at his school after hours and so on, letting his wife and others care for his own young child. But he also thinks that from the perspective of care, he should build his relationship with his child, developing the trust and mutual consideration of which it is capable. Even if the universal rules allow him some time for family life, and even if he places appropriate utilitarian value on developing his relationship with his child – the good it will do the child, the pleasure it will give him, the good it will enable the child to do in the future, etc. – the calculation still comes out, let's say, as before: he should devote more time to his students. But the moral demands of care suggest to him that he should spend more time with his child.

I am constructing the case in such a way that it is not a case of the kind Barry suggests where impartial moral rules that all can accept permit us to favor our own children, within bounds set by impartial rules. Rather, I am taking a case where the impartial rules that all could accept direct the father to spend more time practicing his profession, but considerations of care urge him to spend more time with his child. It is a case where the perspective of impartiality and the perspective of care are in conflict.

No doubt there could be ways of interpreting the problem that would avoid a conflict between impartial moral rules and the pull of the relationship between parent and child, but then the problem would not be the one I am considering. Instead, I'm examining a case where the moral agent must choose whether impartiality or care should have priority. And moral philosophers must consider whether the decision such an agent might make in such a case can be normatively justified.

If there is an objection that this is not the way such calculations would in fact come out, my response is that, in evaluating alternative moral theories, we can be interested in imagined situations where it would be the case that the calculations came out a certain way. The force of the deontologists' objections to utilitarianism can appropriately rest on such arguments as that if, on a utilitarian calculation, a torture show would produce more pleasure for those who enjoyed it than pain for its victims and critics, then it would be morally recommended. That is enough of an argument against utilitarianism; we don't also need to show that the example is empirically likely.

The argument for impartiality might go something like this: Reasoning as an abstract agent (Darwall 1983), I should act on moral rules that all could accept from a perspective of impartiality. Those rules recommend that we treat all persons equally, including our children, with respect to exercising our professional skills, and that when we have special skills we should use them for the benefit of all persons equally. For example, a teacher should not favor his own child if his child happens to be one of his students. And if one has the abilities and has had the social advantages to become a teacher, one should exercise those skills when they are needed, especially when they are seriously needed.

But the father in my example also considers the perspective of care. From this perspective his relationship with his child is of enormous and irreplaceable value.

He thinks that out of concern for this particular relationship he should spend more time with his child. He experiences the relationship as one of love and trust and loyalty, and thinks in this case that he should subordinate such other considerations as exercising his professional skills to this relationship. He thinks he should free himself to help his child feel the trust and encouragement his development will require, even if this conflicts with impartial morality.

He reflects on what the motives would be in choosing between the alternatives. For one alternative, the motive would be: because universal moral rules recommend it. For the other, the motive would be: because this is my child and I am the father of this child and the relationship between us is no less important than universal rules. He reflects on whether the latter can be a moral motive and concludes that it can in the sense that he can believe it is the motive he ought to act on. And he can do this without holding that every father ought to act similarly toward his child. He can further conclude that if Kantian and utilitarian moralities deny that such a motive can be moral, then they have mistakenly defined the moral to suit their purposes, and, by arbitrary fiat, excluded whatever might challenge their universalizing requirements. He may have read Annette Baier's discussion of the possible tendency of women to resist subordinating their moral sensitivities to autonomously chosen Kantian rules. Baier writes:

What did Kant, the great prophet of autonomy, say in his moral theory about women? He said they were incapable of legislation, not fit to vote, that they needed the guidance of more 'rational' males. Autonomy was not for them; it was only for first-class, really rational persons. . . . But where Kant concludes 'so much the worse for women,' we can conclude so much the worse for the male fixation on the special skill of drafting legislation, for the bureaucratic mentality of rule-worship, and for the male exaggeration of the importance of independence over mutual interdependence. (Baier 1994, p. 26)

The father in my example may think fathers should join mothers in paying more attention to relationships of care and in resisting the demands of impartial rules when they are excessive.

From the perspective of all, or everyone, perhaps particular relationships should be subordinated to universal rules. But from the perspective of particular persons in relationships, it is certainly meaningful to ask: Why must we adopt the perspective of all and everyone when it is a particular relationship that we care about at least as much as "being moral" in the sense required by universal rules? This relationship, we may think, is central to the identities of the persons in it. It is relationships between people, such as in families, which allow persons to develop and to become aware of themselves as individuals with rights. And it is relationships between people that sustain communities within which moral and political rights can be articulated and protected. Perhaps the perspective of universal rules should be limited to the domain of law, rather than expected to serve for the whole of morality. Then, in my example, the law should require gender fairness in parental leaves. Beyond this, it might allow persons with professional skills to work more or fewer hours as they choose, but the case as I developed it was to consider the moral decision that would still face the father in question after the law had spoken.

Even if the law permitted him to work less, would it be what he morally ought to do? From the perspective of universal impartial utilitarian rules, the answer is no. But, from the perspective of care, the answer is yes. And it is this moral issue I am trying to explore. What I am arguing is that in the ethics of care, the moral claims of caring are no less valid than the moral claims of impartial rules. This is not to say that considerations of impartiality are unimportant; it does deny that they should always have priority. This makes care ethics a challenge to liberalism as a moral theory, not a mere supplement.

The Reach of Justice

The concern expressed by liberals such as Nussbaum that every person is a separate entity with interests that should not be unduly subordinated to the "good of the community" can be matched by a defender of care who maintains that relationships of care should not be unduly subordinated to universal rules conferring equal moral rights and obligations and designed for contexts of conflict. The law and legalistic approaches should be limited to an appropriate domain, not expanded to the whole of human life and morality.

Susan Mendus, in a discussion of Brian Barry's *Justice as Impartiality*, notes that the issues are often about the scope of justice: how widely should impartiality be expected to apply? Barry himself thinks it would be absurd to apply it in one's choice of friends, where we choose our friends because we enjoy their company, and discretion is permissible. But he holds that this is only because impartial rules have already been given priority, and some of them permit us to be partial to our friends up to a point.

Where to put justice first and where to consider it secondary or out of place is often the issue between those who argue for moralities of impartial rules, and their critics. The critics often want to shrink the reach of justice, recognizing that the values of caring relationships have been greatly neglected by traditional moralities. They resist the priority of impartiality in personal relationships, and then, having explored the moral priorities in these domains, they consider extending the values of caring, of trust, of solidarity, beyond personal relationships. Political and social life also needs to be rethought in the light of an ethic of care. It is here that those arguing for an ethic of care may meet up with communitarians. However, since the latter have so seldom dealt with the ethics of care, and since care ethics have serious disagreements with most forms of communitarianism, there is by no means a match between an extended ethic of care and communitarianism as so far developed (Frazer and Lacey 1993; Friedman 1993).

"Liberalism," Nussbaum writes, "holds that the flourishing of human beings taken one by one is both analytically and normatively prior to the flourishing" of any group (Nussbaum 1997, p. 11). But Marxian and other arguments that human beings are social beings show how artificial such assumptions are, as we see how the material and experiential realities of any individual's life are fundamentally tied to those of others, and how the social relations in which persons are enmeshed are importantly constitutive of their "personhood." Feminist arguments

that take into account the realities of caretaker/child relationships show how misleading this liberal individualist assumption is, ignoring as it does how, for any child to become a liberal individual, it must have been enmeshed in the caring social relations of caretakers and children for many years (Kittay 1995). The adult liberal individual regarding himself as "separate" is formed as well by innumerable social bonds of family, friendship, professional association, citizenship, and the like. Certainly we can decide that for certain contexts, such as a legal one, we will make the assumption that persons are liberal individuals. But we should never lose sight of the limits of the context for which we think this may be an appropriate assumption, nor of how unsatisfactory an assumption it is for more complete conceptions of "persons." Nussbaum's revealing endnote on her experience of motherhood and of the essential separateness of herself and her daughter sidesteps many of the issues and is in no way conclusive.¹ It could well mark the beginning of a debate rather than a conclusion. A statement such as "My child and I are separate individuals" overlooks the relation between a mother and a child. In the absence of a debate about how it is or is not true, the liberal assumption remains an ideological and unexamined starting point with no more support than its familiarity.

Children do not develop adequately when others merely go through the motions of meeting their basic needs; children need to experience social relations of trust and caring. Arguably, then, caring relations are in some sense normatively prior to individual well-being in families. But the priority is not just developmental or causal. Without the social relations within which people constitute themselves as individuals, they do not have the individuality the liberal seeks. At the level of larger groups, persons do not constitute themselves into political or social entities unless social relations of trust and loyalty tie members together into a collectivity of some kind. As Neil MacCormick observes in a discussion of *Justice as Impartiality* and of Adam Smith, "Justice matters to people who are already in community with each other" (1996, p. 309). Arguably, then, social relationships of persons caring enough about one another to respect them as fellow members of a community are normatively prior to individuals being valued as holders of individual rights, or to citizenship in a liberal state, and the like. And perhaps gradually, the community within which such ties must be developed so that members can be respected as having human rights is the global, human community.

We might conclude, then, that what has priority are relationships of care or fellow-feeling within which we seek rules that can be agreed on by all for treating each other with equal concern and respect and for those kinds of issues where impartial rules will be appropriate, recognizing that much that has moral value in both personal and political life is "beyond justice." Such a view denies that the rules of impartial morality always have priority, and that we ought only to pursue what other values these rules permit. The outlook within the context of law is that law "covers" all behavior, allowing whatever it does not forbid, and demanding compliance on all that it does forbid. The view that moral rules of impartiality always take priority over considerations of care expands this outlook to the whole of morality. But we generally recognize a distinction between law and morality, and can well argue that morality has normative priority. Then, at the moral level,

on my argument we have good reasons not to give priority to moral rules of impartiality, but to acknowledge the claims of caring relations as no less fundamental. This view argues that, at the moral level, justice is one value among others, not always the highest value. Care and its related values of relationship and trust are no less important.

Susan Mendus, discussing Bernard Williams's argument about the man saving his wife, writes that the force of the argument is "that it is not merely impractical and politically inexpedient to force this extension of the scope of impartiality: it is also, and crucially, a deformation of concepts such as love and friendship, which are what they are precisely because they are not underpinned by completely justificatory explanations. In the example of the man saving his wife, willingness to pose the justificatory question is, in part, an acceptance of this deformed model" (Mendus 1996, p. 323). This way of putting the point assumes that "justification" can only be in terms of impartial rules, whereas a broader concept of justification might not be limited to just such forms. But from the perspective of an ethic of care, Mendus is entirely right to argue that accepting the demand to apply rules of impartiality is, in many cases of love and friendship and caring relations, to accept a "deformed model" of these.

Models of Morality

At the level of morality, we need to decide which "models" are appropriate for which contexts. Many of the arguments of recent decades about the priority of justice were developed against a background of utilitarian ascendancy. Rawls's theory of justice and its many offshoots are good examples (Rawls 1971). Against utilitarian calculations subordinating all other considerations to the goals of general utility, or claiming that rights can only be justified on the basis of how well they serve overall welfare, arguments are persuasive that such views misunderstand what is inherent to rights. In Dworkin's memorable formulation, rights "trump" general utility, and just what we mean by a person having a right is that this claim is justified whether or not it promotes general utility: rights must stand firm against such maximizing calculations (Dworkin 1977). Basic to democratic theory, for instance, is the view that individual rights must be respected even when this does not maximize the satisfaction of majorities. Similarly, it has been argued, at the moral level, justice and rights have priority over general utility.

From the perspective of an ethic of care, however, this debate can be interpreted as being largely internal to the legal-political context. Rawls has explicitly confined his theory to the domain of the political and has argued that it should not be interpreted as a full-fledged moral theory (Rawls 1993). Dworkin is explicitly a legal philosopher. Utilitarians have not shown comparable modesty, but one may argue, as I have done elsewhere, that utilitarian calculations can be useful and appropriate for recommending various public policy choices even though they are inappropriate for judicial decisions and for a wide range of other kinds of choices (Held 1984; Goodin 1995). Perhaps, then, neither rights theory nor utilitarianism has the capacity to be made into a comprehensive moral theory. And many of

those who have continued to argue for Kantian ethics have interpreted Kant in ways that move the theory far beyond rules of impartiality (Baron 1997).

The moral supremacy of the state and its associated demands is an artifact of history. With a more satisfactory morality than one composed of rules of impartiality, the supreme state and its laws might shrink to more justifiable proportions. A culture liberated from commercial domination, for instance, might become the preferred domain of moral discourse out of which might come moral recommendations that could generally be accepted and acted on without the compulsions of legal enforcement (Held 1993). And these recommendations could include acceptance of the plurality of values, and of the primacy of trust and caring relations in various contexts.

An ethic of care suggests that the priority of justice is at best persuasive for the legal-judicial context. It might also suggest that calculations of general utility are at best appropriate for some choices about public policy. A moral theory is still needed to show us how, within the relatedness that should exist among all persons as fellow human beings, and that does exist in many personal contexts and numerous group ones, we should apply the various possible models. We will then be able to see how we should apply the legal-judicial model of impartiality to given ranges of issues, or the utilitarian model of concern for the general welfare to another range of issues, all the time recognizing other issues, such as those that can be seen most clearly among friends and within families and in cases of group solidarity, for which these models are inappropriate or inadequate. And we will see how the model of caring relations can apply and have priority in some contexts, and how it should not be limited to the personal choices made by individuals after they have met all the requirements of justice. A comprehensive moral theory would show, I believe, how care and its related values are not less important than justice. Whether they are more important remains to be argued, but not in this paper.

Notes

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1 Nussbaum's note 98 reads:

Perhaps I am handicapped by the fact that I simply do not recognize my own experience of motherhood in Noddings's descriptions of fusing and bonding. My first sharp impression of Rachel Nussbaum was as a pair of feet drumming on my diaphragm with a certain distinct separateness, a pair of arms flexing their muscles against my bladder. Before even her hair got into the world a separate voice could be heard inside, proclaiming its individuality or even individualism, and it has not stopped arguing yet, 24 years later. I am sure RN would be quite outraged by the suggestion that her own well being was *at any time* merged with that of her mother,

and her mother would never dare to make such an overweening suggestion [italics added]. This liberal experience of maternity as the give and take of argument has equipped me ill to understand the larger mysteries of Noddings's text.

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