

Obligations to Animals Are Not Necessarily Based on Rights

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Abstract *I offer a very qualified argument to the effect that rights are grounded in a certain sort of prejudice that privileges individualistic and perhaps masculinist ways of thinking about moral life. I also propose that we look carefully at other conceptions of social ontology and moral life, including the much discussed care conception.*

Keywords: human rights, masculine philosophy, feminist philosophy, animal rights, patriarchy, care ethic.

I Introduction

I have been given the unpopular task of arguing that rights are grounded in prejudice. Even though I can see a way to argue this thesis in good faith with my own views of moral life, I have some reservations about this assignment and so I want to begin by making several important qualifications.

The word "rights," both in its moral and legal sense, is part of our everyday conversation, and by "our" I mean philosophers and non-philosophers, academics and nonacademics alike. For example, you have probably heard the following arguments: Even if Rodney King's rights were upheld (and this is dubious) surely his moral rights were violated; *Roe v. Wade* protects a woman's right to privacy, or *Roe v. Wade* violates a fetus' right to life; animals have rights not to be eaten, worn, or experimented on or the unborn have rights to a healthy environment; or some say hate speech regulations violate our First Amendment rights, while others say that since hate speech silences its victims, regulations protect First Amendment rights. We hear and talk about gay rights, workers' rights, women's rights, the inalienable rights of "Man." The word "rights" flags some of our most dearly held democratic values, and some of our most controversial contemporary moral debates.

Because the word "rights" obviously signifies something we believe exists and wish to defend, it is difficult to argue that rights are grounded in prejudice. I must argue that something which people hold very dear, at least in much of American cul-

ture, is somehow tainted by a preconceived preference, bias, an irrational hatred.

Is this an incoherent thesis? A dangerous one? A controversial one just for the sake of being controversial? While the thesis, at least as it is stated, is controversial, it is not controversial for its own sake, nor is it incoherent. Instead, it raises a significant issue with a literature, or probably several literatures, that address it. And, yes, the thesis is dangerous, inasmuch as it requires us to call into question some of our favorite presumptions about metaethics and about normative ethics, too. How this is so should become clearer below.

II Prejudice

When I say that rights are grounded in prejudice I mean two things. First, I mean that the rights perspective is a male perspective and, second, that the male perspective has been privileged by our society. So what I mean by "prejudice" is something more like a bias, a one-sidedness, and not exactly an irrational hatred, although the fact that we have privileged that perspective and either silenced or devalued other perspectives is also indicative of a prejudice in that other morally objectionable sense. I have made some enormous generalizations here, generalizations that should be qualified and narrowed in scope.

The claim that the rights perspective is a male perspective was first made by moral psychologist Carol Gilligan some ten years ago. Gilligan, along with her Harvard colleague, Lawrence Kohlberg, had been studying the moral outlooks of young Harvard males for some time, when it occurred to her that women's moral perspectives were different from those of the males they had been studying. It had already occurred to Kohlberg that women's perspectives were different, but he claimed, as had Aristotle, Kant, Freud, Piaget, and Erickson before him, that the differences indicated women's failings, a lack of moral maturity, a deviation from a standard derived from studies of males, and not females. Gilligan simply, or at least usually just described the differences. She claimed that men's and women's moral perspectives were different but equal.

When I say that the rights perspective is prejudiced because it is a male point of view, I should add the following qualification. The males that Gilligan and Kohlberg studied and to whom they attributed the rights view were Harvard males. They were males of a specific socio-economic class, probably a specific homogenous race and ethnicity, well educated and college aged, probably heterosexual and probably of a Judeo-Christian background. Gilligan's own studies of women were also fairly homogenous, although the educational and class levels of the women varied somewhat more than those of Kohlberg's males. So to say that the rights view is a male view is really to say that it is the view of a particular population of American males, and to say that women have a different view or "voice" is really to say that a particular population of women, those represented by the sample groups interviewed by Gilligan, have a different voice.

When I say that the rights perspective, as a male one, has been privileged by our society, I mean, more specifically, the perspective of a certain population has been accorded a privileged status. When I say privileged status I am referring to the way

the perspective has been designated variously as the human "norm" and as definitive of the moral point of view, while other perspectives are deemed non-moral. All of this will become clearer as I explain the specific features of the "rights" perspective and contrast it with the "care," or women's, perspective.

III Rights Versus Care

From her own studies and from reviewing Kohlberg's studies, Carol Gilligan found that the men and women represented by her sample groups had different perceptions of self, self-in-relation, differing conceptions of what constitutes a moral dilemma, differing resolution strategies and conceptions of what constitutes a satisfactory resolution. In short, their social ontologies and epistemological orientations differed significantly, so that their moral lives had a very different cast.

First, and more specifically, Gilligan found that men and women tend to have a different core sense of self. Women tend to identify themselves relationally, as connected in an intimate and intricate web of relationships. Men, on the other hand, tend to identify themselves through separation and individuation. Secondly, and as a result of these differing conceptions of self, men and women tend to view relationships differently. Women view them as safe and important and ultimately as the glue which holds the social world together. Males view relationships hierarchically, with a good deal of suspicion and as subordinate to the business of individual autonomy. Third, due to these differing social conceptions, men and women tend to conceptualize moral problems differently. For women a crisis is often perceived in terms of a threatened relationship, a potential tear in the web. But for men, who recognize the primacy of the individual, whose interpersonal orientation is atomistic rather than cohesive and connected, threats against the individual are perceived as a crisis, an unwarranted and unjustified intrusion onto one's moral turf. Men and women may even view the same set of social facts so differently that men will see a moral dilemma in those facts while women will not and vice versa.

Fourth, men's and women's moral epistemologies differ significantly. While men may attempt to generalize and abstractly characterize a particular situation in order to identify a crux of the problem, e.g., a conflict of duties or a distribution problem, women insist on sorting through the many and various details of a particular and concrete situation. While men may rely on their capacities to abstract the wheat from the irrelevant chaff, women may rely on their communicative, empathetic, and perhaps intuitive capacities to assess the messy and complex situation. Once men have pared the situation down to its most abstract and generalized crux of conflict, they may apply a principle, equally general and abstract, a justice or utilitarian one, to resolve the conflict, usually a conflict of individuals' interests. Women, too, may use general principles, but only after carefully assessing the contextual details in order to determine which principles, if any, apply. Principles may also be tailored somewhat to fit the moral context and sometimes principles will be jettisoned altogether when they simply are not relevant to a particular situation. As Alisa L. Carse (1991) has pointed out, from the women's point of view good decisions take priority over principled ones. When principles fail to yield decisions that we might judge good

on some other grounds, sometimes including emotional grounds, we throw the principles out.

Carse notes how "powers of discernment," such as emotional attachment and empathetic insight, are crucial for women in their assessment of and in choosing a response to a situation. Such discernment entails assessing the situation of particular and not – from the male point of view – abstract bearers of rights. We must attend to the contexts of particular others. We must attend to "the unique and unrepeatable features of other persons, our relationships to them, and the circumstances in which we find ourselves with them" (Carse, 1991: 12). The positive duty to be generous or even the negative duty to refrain from lying are not good in themselves in the abstract, but only in relation to the right people, at the right time, in the right circumstances, in the right amounts, as Aristotle would say.

Fifth, and finally, satisfactory resolutions reflect and are relative to men's and women's original conceptions of self, relationships, and moral crisis. Men want to see the individual protected or in some way given what is owed the individual by the principles of justice, fairness and equality. Women want those in the web to empathetically care, respond to and take responsibility for actual or potential tears in its fabric.

Once again, when I say that the rights view is grounded in prejudice – and here I am referring to the entire social, epistemological, and moral view – I am referring to the way a particular perspective, a world view, one that is representative of a *particular* population, is prescribed, as Kohlberg and other moral psychologists have done, as the human norm, or is taken as *the* moral point of view, as some contemporary philosophers argue, or is embedded in certain of our institutions, such as our legal or economic ones. All this is done at the expense of other populations' perspectives, including the perspective of some women, whose world views are deemed "immature," or defined out of the moral realm altogether and thus labelled non-moral, or simply ignored so that men can say that women are unfit for public life because they have some difficulty or aversion to the extremely adversarial posturing that goes on in the courts or beyond the glass ceiling as C.E.O.

IV Are the Rights and Care Perspectives Mutually Exclusive?

This is a controversial question, but hardly an original one. We are forever, as a society, trying to maintain a delicate balance between protecting individuals' rights and nurturing the health of the aggregate, the community. We are familiar and sympathetic with both the Kantian imperative to treat individuals as ends and never as means only, and the utilitarian one to act in the interests of the aggregate, even when, sometimes, as individuals we must make sacrifices to do so. In this culture the balance is lopsided in favour of the individual, but we are nonetheless familiar with and often give more than just lip service to the more web-like, communal, or women's-orientation. All this is true in general or perhaps true of our cultural consciousness. But what of individuals? Can an individual man or woman hold both the rights and care perspectives? Can they endorse very different world views without being and acting schizophrenically?

Gilligan (1987) has said it is possible. Just as an individual can see both figures in the Jastrow duck-rabbit figure, an individual can see from the perspectives of and operate from two different world views. She says that those who see predominantly from the care perspective are women, while most men will see predominantly from the rights-justice perspective. Even though both men and women can switch from one perspective to the other, most seem to favour one perspective. Individuals cannot see both perspectives simultaneously, and while the two perspectives are not strict opposites, they cannot be easily integrated.

In my view, Gilligan has never made it clear just what all this comes to. This is not a trifling academic point. A number of feminists have taken an interest in this issue for good reason. Rights, traditionally, have marked not only what one is justly entitled to in terms of society's goods and services, but also protect individuals who are vulnerable to the incursions of powerfully situated others and from the unjust demands of an aggregate. Women are particularly vulnerable in this society, both personally, as violence against women escalates, and to institutions, e.g., economic and legal ones, which do not recognize and often even thwart their interests.¹ So do women need rights? Are our world views self-defeating, literally suicidal? Is there some good reason for privileging the male or rights perspective and for urging women to adopt it given the apparent vulnerability and mistreatment of those who do not hold it?

I think that Gilligan best answers this concern in her original text, *In a Different Voice*.² There she notes, correctly, I think, how women tend to be self-sacrificial, other-oriented, to their own detriment. She notes how sometimes, because women's ego boundaries are so permeable, we cannot distinguish our own needs or goods from the needs and goods of others, which results in the negation of self in the other or in an extended web of others. Having permeable ego boundaries may be an asset inasmuch as they allow women to exercise some of the moral capacities that I mentioned previously, including the capacity to empathize, note and observe relevant details, including another's subtle emotional responses, and to respond appropriately to particular others. But when these boundaries are so permeable as to lose one's self there may be self-destructive or at least unhealthy self-sacrificial behaviours. Gilligan sometimes does suggest in this text that women should counter this tendency by adopting certain features of the rights perspective, but it is never clear how the two very different and, in some respects, significantly conflicting views are supposed to coincide. If one is significantly invested in the web metaphor of self and self-in-relation and in its attendant moral framework of responsibility and particularity, it will not be an easy thing to extract oneself from that ontological framework and to adopt the atomistic posture that grounds "rights" thinking. While we may be able to understand the rights position, intellectually, we may not be able to invest ourselves in it, to adopt it, either periodically or permanently, once we are identified with the care perspective. I am only speculating here. As far as I know Gilligan does not make this distinction in her more recent work, and I am not aware of studies which confirm or disconfirm my point. Regardless, however, even Gilligan has said that it is not necessary to adopt the rights perspective in order to take our own needs and goods seriously. Instead, we can begin to take responsibility for

ourselves, to care for ourselves, recognizing that we, along with those others we tend to in the web, merit care, too. In fact, Gilligan described women's self-abnegation as a second, or less mature and less desirable, stage in women's moral development and the stage at which women include themselves in the web of those who merit concern as a third and more mature stage of women's development.

Even if women do not necessarily have to think in terms of rights in order to take seriously and assert their own needs and interests, someone may say that rights are necessary in order for women to take seriously the interests of others, those for whom they do not particularly care or who fall outside their relational web, for example. One such critic, Tom Regan, has asked ". . . what are the resources within the ethic of care that can move people to consider the ethics of their dealings with individuals who *stand outside* the existing circle of their interpersonal relationships? Clearly, the resources seem to depend entirely on *how much one cares* for these individuals. And yet this seems to be such a contingent, such a 'chancy' basis for such an important moral idea . . . And unless we supplement the ethic of care with some other motivating force—some other grounding of our moral judgment—we run the grave risk that our ethic will be expressly conservative and will blind us to those obligations we have to people for whom we are indifferent" (Regan, 1991: 95).

In conclusion, I will respond in two ways to this. First, this criticism does not give us any justification whatsoever for privileging the rights perspective, given that the vast majority of dilemmas involve those that we do care about, those with whom we have interpersonal relations, rather than strangers or those for whom we do not care. Thus, we might want to privilege somehow the care perspective, that is, to attend more closely to it, to regard it as the moral norm, rather than the rights perspective which is relevant to the exceptional rather than the more common cases of moral disagreement or quandary. Even on those occasions when we introduce rights talk into the interpersonal scene, we do so only after we have exhausted all appeal to ideas of responsiveness, responsibility, attempts at empathetic concern. We introduce rights talk only after a friend or parent has failed to take the notion of responsibility seriously and not before the failure is evident. For example, there is the estranged father who is delinquent in his child support payment or the friend who takes great economic advantage of a generous but strapped friend. We assert the child's claim or rights to the money after it is evident that the father is irresponsible, or does not care. Similarly, the aggrieved friend says "no more, you have no right," only after it is clear that the beggar friend does not take the relationship and his/her responsibility to it seriously.

Second, and even more importantly, this version of the care or women's perspective is terribly flawed. It assumes that one can only care for, include in one's web, those with whom one has interpersonal relations. This simply is not true. A number of women whom Gilligan interviewed identified the web with the global community. Other women who have identified themselves with environmental or animal rights causes have extended the web and the sphere of responsibility to include non-human animals or all of life, or to an ecosystemic perspective. This is not to say that we are not going to give special consideration sometimes to those who are related most intimately to us in that web, and some of those may well be non-humans. But

the rights perspective, too, recognizes and sometimes prioritizes these special relationships. So the care perspective is not unique in this way. My point here is that, contrary to what some critics say, the care perspective does not favour the interests of intimates any more than the rights perspective, nor must it neglect the interests of strangers for whom we may recognize a *responsibility* rather than a *right against*.

Now there may well be people whose web of concern is quite provincial, people who, because of race, class, homophobic or other bias, do not take seriously the moral status of others outside of a very constricted web. But then there are those who are not inclined to recognize the rights of others for similar reasons. Now one might argue that we, as rational moral agents, should take those others seriously for the sake of logical consistency, because "they" really are relevantly like "us" in morally relevant ways. Or one might say that it is desirable to expand our moral imaginations, our capacities to empathize, sympathize, to care to a wider range of humans and non-humans. This is not to reject the consistency argument. It is only to acknowledge the obvious fact that as human beings, and more specifically as moral agents, we have capacities, in addition to reason, that we should develop fully in order to live a full human life in the richest and widest of communities or webs. If anything, the rights perspective with its anemic conception of human beings as rational law givers and obeyers misrepresents actual moral life and severely limits the sphere of what constitutes moral actions by virtue of its narrow definition of it.

V Conclusion

In this paper I have not claimed that we should privilege the care perspective. I have only tried to show how the rights perspective has been privileged, the subject of a certain favourable and unjustified bias or "prejudice." I have also tried to show how another moral perspective, care, has been the subject of an unfavourable and unjustified bias, and to clarify and redeem that perspective.

Postscript, March 1995

I am pleased to have the opportunity to respond in print to the paper that Tom Regan presented in Iowa nearly three years ago. This postscript will also serve as a response to his critique in "The Case for Animal Rights: A Decade's Passing" (Regan, 1994). I will focus on the section entitled "The Male-Mind Defense," which appears in both the paper that is included in this volume and in the "The Case for Animal Rights." Three of Regan's concerns in those papers are pertinent to contemporary debates around gender and ethics.

First, Regan is concerned about the empirical validity of certain claims that men think about morality in abstract, rights-justice terms and that women think more concretely in terms of responsibility and care. He is right to be sceptical of such empirical claims, although it is interesting that in "Individual Rights Are Not Grounded in Prejudice" he acknowledges that this characterization of a man's way of thinking about morality does have a "degree of psychological resonance" that other "feminist indictments" of the rights-justice perspective lack. He continues: "Any man

who has been acculturated in the ways of the Western world (and possibly any other part of contemporary civilization) 'knows' that such emotions as pity and empathy are not something he is encouraged to feel, let alone publicly to display. Indeed, men who are openly sensitive and caring often risk raising doubts about their 'masculinity'. In fact, Gilligan suggests that such socialization and other psychosexual factors of early childhood may account for gendered moral differences.

Gilligan acknowledges the limitations of her studies, and I also acknowledge those limitations and caution against making gross generalizations about men and women. What I should have done here is make a clearer distinction between a "masculine" moral perspective and a "male" moral perspective. In this way we could say, accurately, I believe, that the abstract, individualistic, rights-justice perspective is a feature of a certain (e.g., white, Western) socially constructed model of masculinity, and that the "care" perspective is a feature of a socially constructed model of femininity. Such social constructions are somewhat fluid. For example, it is now considered a "manly" thing for men (usually of some socio-economic classes and not others) to wear earrings and "femininely sexy" for women (usually of a certain socio-economic class) to have tatoos (albeit tiny ones on culturally "sexed" parts of the female body). Males may also adopt a few fairly circumscribed traditional feminine traits and tasks and females may also adopt a few fairly circumscribed masculine traits and tasks without suffering very much social disapproval. The relevance of this – the idea that masculinity and femininity are very familiar and compelling social constructions of some limited fluidity – is that we can make certain generalizations about males, who stand for the masculine, including a masculine moral perspective, and about females, who stand for the feminine, including a feminine moral perspective. The fluidity of what we call gender categories allows for plenty of exceptions, fluctuations and confusion, and importantly, whole classes of social actors may well cross categories or even, significantly, fall outside of these categories due to race, economics, or gay and lesbian histories and identities. So, the empirical data are controversial. Experts on both sides of the debate make varying claims. I am reasonably comfortable with certain generalizations about the moral perspectives of white, middle and upper middle-class Western populations of men and women, keeping in mind that the principle of fluidity will generate exceptions even among these populations. I am also quite comfortable saying that a particular moral perspective – the rights-justice one – is privileged in our political, legal, economic, and social institutions, in philosophic ethics, and in Tom Regan's work. That white, middle and upper middle class men control these various institutions and academic canons is not merely a coincidence. As I noted previously, such privilege constitutes a sort of prejudice against differing moral voices.

Second, Regan claims that those who "celebrate" the care perspective imply that it is "superior" to the rights-justice perspective. He also says that this is odd and perhaps dangerous given that the care perspective is likely a product of the "crippling vestiges of patriarchy," another tool, perhaps, that will keep women subservient and servile. First, we must be clear that to celebrate something is not necessarily to assert its superiority over something else. Many writers do celebrate – value and insist that others value – features of the care perspective. And some writers assert that

the care perspective is superior to and should supplant the rights-justice perspective.³ But many other writers argue equal but separate spheres for the two perspectives or else explore ways in which the integration of the two perspectives would beneficially inform each other or yield a whole new moral voice.⁴ Regan sometimes looks selectively at the abundant and varied literature on gender and ethics.

His concern that women who embrace the care perspective perpetuate an oppressive mode of thinking and acting has been expressed by other critics in the debates on gender and ethics, including and especially Claudia Card and Sara Hoagland.⁵ I share these concerns. But, my current sense is that these critics either do not understand or underestimate the injunctions, internal to the care perspective itself, to self-respect, to take responsibility for the self, and to assert personal boundaries. At times I find myself in sympathy with some critics' claims that we should "transvaluate" those tired old moral categories, categories that may be ineluctably bound to networks of institutions, traditions, and ways of conceiving of self and self-in-relation that ultimately impede human flourishing. We may need to turn to those who are living on the real margins of institutionalized power for direction in this.

Third, and finally, Regan seems to worry that the care ethic is so emotionally-driven (i.e. irrational, in his view) and particularistic that it will permit, even require, great social injustices with great regularity. In "Individual Rights Are Not Grounded in Prejudice" Regan says that carers give "independently of considerations of whether they (those cared for) deserve such concern" and that caring is "freely given" and is driven by "love or friendship or compassion, for example, not extracted from another as something that is due, after the fashion of a debt owed." I don't know why Regan would say that carers give independently of deserts. Those who have written favourably about the care perspective, and even Gilligan herself, make it clear that there are appropriate and inappropriate demands on carers. While caring is not extracted by debt, carers do and are entitled to expect some appropriate reciprocation. So deserts are *a* consideration as carers apportion their energies and factor in their own self-respect and integrity into relationships.

Empathetic imagination *and* reason (not so much in the sense of logical consistency and blind impartiality as in gathering and assessing relevant facts) do figure prominently in the care perspective. Certainly emotions can be triggered by erroneous facts, but judgments that we believe are principled, dispassioned, and thus "just" can be grounded in factual errors, too. Carers are just as diligent in gathering facts as are justice-thinkers, and the carers' insistence on attending to concrete particulars and on exercising empathetic imagination aids, rather than blinds, the carers in such gathering and assessment. The emotions that certain facts and empathetic imaginings can evoke serve important epistemological and motivational functions in moral life. I am not the first to make this point. Hume and Aristotle argued the case well, and such contemporary moral philosophers as Cora Diamond, Bernard Williams, and Martha Nussbaum have argued a similar point.

Giving a central place to empathetic imagination and the emotions does not necessarily render us provincially partial (unjust, in Regan's sense). These emotional responses – compassion or joy, for example – may be informed by and also balanced against certain values, maybe even justice, although the meanings of these values

may take on a different cast. They may be grounded in more communal and less self-interested, individualistic visions of social ontology and the ideal of the good life.

In fact, the empathetic imagination and the emotions have a significant meaning and function in what it is to be a moral animal. Without these capacities human beings are considered pitiable, at best, and monsters, more often. During the course of his long and brilliant career as a philosopher and activist Tom Regan has crusaded courageously enough against these dangerous human failures.

Notes

- 1 During the decade of the '80s in the U.S. there were 750,000 *reported* rapes, 50,000 women were murdered by their male partners, and more women were hospitalized as a result of beatings by their male partners than as a result of automobile accidents. These figures were cited in "Hate Crimes Bill Excludes Women," in *off our backs* 20, no. 6 (June 1990).
- 2 Gilligan (1982). See especially chapter 6.
- 3 See, for example, Whitbeck (1984), Ruddick (1989) or Nodding (1984).
- 4 See, for example, Gilligan (1982: chaps. 4-6) or Friedman (1987).
- 5 See several essays in Card (1991).

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