

Okin's Attempt at a Caring Justice

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Proponents of an ethic of care emphasize the promotion and well-being of care-centered relationships that involve a partial attention to the needs of others, at both interpersonal and global levels (Norlock 2019). This has often been contrasted with the ethic of liberal justice, where justice is a set of universal principles that apply to all people, leading to equal respect and treatment. Much ink has been devoted to the reconciliation of these two ethics. I will look specifically at Susan Okin's attempt to reconcile them. She advocates for a reinterpretation of John Rawls' original position as a situation in which the theory calls for us to care for others, ultimately arguing that distinctions between ethics of care and justice are overdrawn. I will argue that this attempt is unsuccessful. In fact, I believe that Okin's interpretation is both an unjustified and incoherent reading of Rawls. This is for three reasons. First, her move to caring agents in the original position is not logically necessary. Second, she equivocates the word "care" in her attempt to reconcile the ethic of justice

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and the ethic of care. Third, the move to caring agents in the original position creates large problems of its own.¹ Let's begin.

In her essay "Reason and Feeling in Thinking About Justice," Okin argues for a moral interpretation of John Rawls' argument from the original position. Her suggested interpretation, she says, will show that "one is not forced to choose between an ethic of justice and an ethic of sympathy or care, nor between an ethic that emphasizes universality and one that takes account of differences" (Okin 238). She starts by recognizing that Kantian individuality and moral theory have a large influence on the language Rawls uses to describe the agents in the original position, and this leads readers of Rawls, and even Rawls himself, to associate his arguments with rational choice theory. Consequently, the role of empathy, benevolence, and care in the original position has become hard to acknowledge. However, Okin thinks the rational, Kantian tone in which Rawls presents his ideas is purely a tone and not an indispensable feature of Rawls' theory. Furthermore, Okin says if Rawls is to be understood solely in terms of rational choice theory, his specifications about how the agents in the original position deliberate become ambiguous. She thinks that those agents, according to Rawls' specifications, need to rely on empathy and care to decide on the principles of justice.

Okin supports this last point by noting that Rawls himself has reconsidered how strongly his principles of justice should be thought of as derived from rational choice theory. Rawls said that his formulation in this context was "very misleading" and that "there is no thought of trying to derive the content of justice within a framework that uses an idea of the rational as the sole normative idea" (*Justice as Fairness* 82). To understand the reasons for his reconsideration, we need to understand conventional rational choice theory and its implications for Rawls' original position.

Rational choice theory makes distinctions between three modes of choice that are associated with three different sets of assumptions about the knowledge of the choice-maker. Okin explains, "Choice under certainty depends on the agents knowing with certainty the outcome of each choice and the utility of that outcome. Choice under risk occurs when all the possible outcomes and their utility are known, as well as the probabilities of their occurrence. Choice under uncertainty occurs when knowledge of the probabilities is absent or incomplete" (241). The question is, which mode of choice occurs when agents in the original position deliberate

¹ I will refer to those in the original position as "agents," though Rawls sometimes uses the word "parties." Any differences between the terms are not pertinent to my argument.

on the principles of justice? The circumstances in the original position are such that the agents do not have any knowledge of their individual interests. This, Okin says, rules out choice under certainty. How can the agents know which decisions will bring the most personal utility when they are not aware of their own interests? The only options left are choice under risk and choice under uncertainty.

Choice under risk quickly gets ruled out due to another stipulation Rawls makes. He says that being in the original position “excludes all but the vaguest knowledge of likelihoods. The parties have no basis for determining the probable nature of their society, or their place in it” (Rawls, *Theory of Justice* 155). The parties having no knowledge of interests or probabilities, Rawls is left to conclude that “the veil of ignorance leads directly to the problem of choice under uncertainty” (Rawls, *Theory of Justice* 172). This presents a problem. There is no uncontroversial theory about what a rational choice looks like under conditions of uncertainty, and so it remains unclear exactly how the agents might deliberate in the original position.

Here, Okin makes her central claim. Because reliance on rational choice theory to explain the decisions made in the original position leads to ambiguity, the agents “have to rely on empathy, benevolence, and equal concern for others as for the self, in order to have the parties come up with the principles they choose” (Okin 243). She comes to believe this is a justified reading of Rawls by reading too much into his view on moral development and how the agents function in the original position. Okin quotes Rawls as saying, “The combination of mutual disinterest and the veil of ignorance achieves the same purpose as benevolence. For this combination of conditions forces each person in the original position to take the good of others into account” (*Theory of Justice* 148). Okin takes this to mean that those in the original position are perceived as self-interested only because “they do not know which self they will turn out to be and, therefore, must consider the interests of all possible selves equally” (244). What does it mean to consider the interests of all possible selves equally? Okin makes her position on this question clear with an example. When Rawls argues for a principle that protects equal liberty of conscience, such as freedom of religion, he says that those in the original position “must choose principles that secure the integrity of their religious and moral freedom” (*Theory of Justice* 206). But, Okin says, if agents are to do this without knowledge of what their religious preferences will be, they will have to imagine themselves in the positions of “those whose religious practices and beliefs or lack thereof will require most tolerance on the part of others” (245). To do this requires a sense of empathy and care for those who might be in that situation. She thinks this same requirement is

needed for the formation of the difference principle as well. Summing up her view, she says, “The original position requires that, as moral subjects, we consider the identities, aims, and attachments of every other person, however different they may be from ourselves, as of equal concern with our own” (Okin 246). The centrality of agents being concerned for others in the original position, to Okin, gives us “another piece of argument that questions the wisdom of distinguishing between an ethic of care and an ethic of justice” (247).

I do not believe that this is a justified or coherent reading of Rawls. I will first discuss problems of this view’s justification and then move to problems with its coherence. Concerning the view’s justification, Okin is aware of the textual evidence in *A Theory of Justice* that does not support her reading. Rawls very clearly states that persons in the original position are mutually disinterested and he explicitly stipulates that “in choosing between principles each [agent] tries as best he can to advance his interest” (*Theory of Justice* 142). But she thinks that, due to the complications with rational choice theory, the better interpretation of these agents is that they are motivated by care. However, rational choice theory’s inability to give an account of deliberation behind the veil of ignorance does not suggest that empathy is the interpretation. In fact, Rawls seems to understand this, and it is not the route he takes to amend the problems of rational choice theory. In *Justice as Fairness: A Restatement* (published 30 years after *A Theory of Justice*), Rawls distances himself from rational choice theory, instead opting for deliberations to be understood in terms of “economic and social theory” where we have “rational persons making decisions, or arriving at agreements, subject to certain conditions” (*Justice as Fairness* 81). Furthermore, Rawls makes it clear that there are differences between his argument and the tenets of any one social theory. Perhaps he does not want to be subject to all the constraints of one theory as he was with rational choice theory. Still, Rawls makes it clear that he is sticking to rational, self-interested agents in the original position. Therefore, you do not, as Okin would like, imagine yourself in someone else’s position, *you imagine yourself actually occupying that position*. You agree to the principles of justice precisely for the reason that you may be the one in the least-advantaged position. So, Okin is right that rational choice theory is problematic for Rawls’ theory, but this does not exclude other methods of deliberation that are not associated with care for others.

Now, the idea of caring agents in the original position has problems of its own. Here I will discuss issues with the idea’s coherence. I believe that Okin is either equivocating the word “care,” or that her reading of Rawls calls for drastic changes to his theory, and it is not clear the theory can withstand them while retaining its own basic tenets. Neither outcome

is desirable if we want to show that “distinctions that have been made between an ethic of justice and an ethic of care may be at least overdrawn, if not false” (Okin 229).

The issue arises when we consider what form of care Okin wants those in the original position to take. Is it the kind of care that care ethicists discuss? If it is, what effect would this have on the deliberations of the agents in the original position? I will examine the former question first. If we are to think of moral agents in the original position as carers in the sense of the ethics of care, we would want them to be meeting certain conditions that care ethicists have discussed. For example, the very nature of the person is relational according to care ethics. According to Virginia Held in *The Ethics of Care*, “Persons [are] deeply affected by, and involved in, relations with others; too many care theorists persons are at least partly constituted by their social ties” (48). Other conditions of a caring actor are a kind of sensitivity and practical knowledge. Both of these are essential features of care. A caring agent must have the emotional capacity to recognize suffering or depravity and be willing and able to assist the sufferer. In addition, the carer must use their knowledge to properly understand the need. For example, if a parent cannot discern when their child is needy and when they are pretending, then efforts to care will become less effective (Held 53). Navigating each circumstance in a caring way will require different sensitivities and practical knowledge that are partial to the features of the situation, and the person in need.

These three features of care, as understood by care ethicists such as Held, do not constitute an exhaustive list. I have selected these features because I believe they show that Okin's conception of caring agents in the original position is inconsistent with the caring agents that care ethicists discuss. In Okin's version of the original position, the agents all maintain their atomistic individuality. In this way, Okin's agents do not depart completely from the Kantian influence. This conception of the self is at odds with care ethics. They reject the atomistic-self because “it obscures the innumerable ways persons and groups are interdependent in the modern world” (Held 14). The ethics of care also considers the atomistic-self an impoverished ideal. The ethic of care “values the ties we have with particular other persons and the actual relationships that party constitute our identity” (Held 14). In addition, care ethicists require sensitivity and knowledge that is partial to each situation in which care is called for. This partiality is unlikely to be acknowledged given the constraints of knowledge in the original position. It is hard to see how one becomes sensitive and acquires practical knowledge in a state in which one does not know what anyone's particular situation will be. Okin must then maintain a principle of impartiality that is once again at odds with care ethics. Care ethicists

are skeptical of impartial theories, including liberal justice, and they often point out where care can make up for what justice lacks in this area.

Morality needs to evaluate relationships of care themselves, showing, for instance, how shared consideration and sensitivity and trustworthiness enhance them and increase their value, and showing also how they can denigrate into mere occasions for individuals to pursue their own interests or to reluctantly fulfill the duties imposed on individuals by impartial rules. (Held 96)

Okin seems to suggest that what is required for care is simply putting ourselves in someone else's shoes. For reasons I have just argued, this renders her conception of care woefully insufficient in the eyes of care ethicists. If we are to understand the agents in the original position in Okin's way, then the tensions between justice and care, properly understood, still exist.

Furthermore, if we attempt to solve the issue of equivocation by saying that we can adjust the conditions of the original position to make them consistent with care ethicists' conceptions of care, then we run into serious issues. I will highlight two plausible ones. The first is that the conditions in the original position may essentially require an impartiality that cannot be reconciled with the essential partiality of care ethics. The second is that the agents who have taken up the perspective of care may not agree on the principles of justice as described by Rawls. I will consider each of these in turn.

First, it should be clear by now that partiality is an essential feature of care ethics. Care ethicists see the partiality of care as able to make up for what justice lacks, or even supersede justice in important ways. Held says, "To most advocates of the ethics of care, the compelling moral claim of the particular other may be valid even when it conflicts with the requirement usually made by moral theories that moral judgments be universalizable, and this is of fundamental moral importance" (11). Here Held is saying that a commitment to partiality will, at least sometimes, override commitments to impartial principles. The argument from the original position, it seems, could not be theoretically coherent if we gave our agents this kind of partiality. Rawls intended for every agent in the original position to come to an agreement on the principles of justice that will help constitute the basic structure of society. If all are given the partiality that will sometimes override their commitment to universality, then we would have to allow for agents to have knowledge and sensitivity that was previously restricted. In addition, they would have to be given enough knowledge about their interests and others' interests within the basic structure to apply this partiality in the way the care ethicists want. This collapses the veil of

ignorance. This situation also precisely illustrates one of the points that the ethics of care makes. Justice and care have serious tensions, and the tensions are so serious that the original position does not seem feasible from the perspective of care. Care is too involved in the practical and partial relations of people, and it cannot function well if abstracted from that. Neither can the argument from the original position remain coherent and instructive if the agents are given too much knowledge. Hence, Rawls says, "However rational it might be for the parties to favor principles framed to promote the determinate and known interests of those they represent, should they have the opportunity, . . . the limits of information (modeled by the veil of ignorance) make that impossible" (*Justice as Fairness* 86).

The second concern is of equal importance. It is not clear that the agents in the original position, after they have taken up the perspective of care (assuming the theory can withstand the agents doing this), will agree on the principles of justice as Rawls desires. A principle of justice given in the perspective of care will likely include features that reflect the ethic of care itself. It may emphasize partiality rooted in morally valuable relationships, and require care in the institutions of the basic structure. In this, we are far off from liberal justice. Rawls is clear that the argument from the original position is a thought experiment that shows how, given certain constraints and conditions, rational agents will agree on the principles of justice. It plainly follows that the changing of these conditions will likely change the outcome of the deliberations.

In sum, Okin has suggested that we should conceive of agents in the original position as caring ones to avoid the pitfalls of associating their deliberations with rational choice theory. I hope to have shown three reasons this argument does not work. First, it does not follow that agents must rely on care if rational choice theory is insufficient. There are a number of other options, including social choice theory, which Rawls eventually chooses as a loose framework for understanding how deliberations occur in the original position. Second, Okin has equivocated the word care. What she means by care has serious differences from care as understood by care ethicists. Third, if Okin wishes to avoid equivocating, then major theoretical problems within Rawls' theory of justice arise. It is likely that the conditions behind the veil of ignorance are essentially at odds with the features of care, and it is unlikely that the principles of justice would be agreed to from the perspective of care. To me, these concerns far outweigh any problems that might arise due to deliberations from self-interest.

In fairness to Okin, it should be noted that I have been using a conception of care ethics that has been developed further since she wrote this paper in 1989. But Nel Noddings, in her 1984 book *Caring*, has already argued for a conception of care that rejects universal prescriptions for

action and emphasizes attention to situational forces. Thus, my charge of equivocation stands.

In her conclusion, Okin claims, "I have presented another piece of argument that questions the wisdom of distinguishing between an ethic of care and an ethic of justice" (247). But, as I believe I have shown, the tension between these two ethics remains. Okin's attempt to unite these two ethics under the banner of Rawlsian justice cannot be done this way. The features of the ethic of care are too distinct from the ethic of justice, and vice versa. I feel to speculate that both ethics, no matter how they are conceived, are essentially distinct. Attempts to integrate them or understand one in terms of the other are doomed to fail. In the process of reconciliation, we may be taken down winding philosophical roads to nowhere. However dramatic that claim may seem, we know, at least, that the road Okin wants to take will not get us there.

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