

## ON THE RESCUING OF RIGHTS IN FEMINIST ETHICS: A CRITICAL ASSESSMENT OF VIRGINIA HELD'S TRANSFORMATIVE STRATEGY

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### Abstract

The following paper focuses on Virginia Held's account of human rights. First, I provide an exegetical account of the feminist critique of rights. I then draw out and consider some of the tensions, differences, and challenges that exist between an ethics of care and an ethics of rights. Finally, I critically assess Held's response to the feminist critique. Held's contribution to an ethics of care signifies one noteworthy strategy for rescuing rights. Her transformative strategy is compelling, but her limited conceptualization of rights inclines her to opt for an approach that 'fits' rights within a framework of care. I argue that Held's attempt to rescue rather than abandon rights by narrowly characterizing rights as a subset of care weakens the potential role of rights. A rescue effort that reclaims rights as moral practice embodying the values of care and justice would better serve Held's transformative strategy.

"Feminism is a revolutionary program, since it is committed to overthrowing the deepest and most entrenched hierarchy of all – the hierarchy of gender. It does not seek to substitute women for men in the hierarchy of domination but to overcome domination itself. The care that is valued by the ethics of care can – and to be justifiable must – include caring for distant others in an interdependent world, and caring that the rights of all are respected and their needs met. It must include caring that the environment in which embodied human beings reside is well cared for. The ethics of care will strive to achieve these transformations in society and the world nonviolently and democratically but with persistence."

(Virginia Held, *The Ethics of Care: Personal, Political, and Global*)<sup>1</sup>

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<sup>1</sup> Held 2006, p. 66.

### ***Introduction***

Feminist ethicists have advanced one of the most important and sustained critiques of contemporary human rights. Narrowly defined liberal rights continue to reflect masculine interests and reinforce patriarchy, yet the potential of a more substantive moral conception and practice of rights that helps transform oppressive attitudes and institutions has inspired many feminists to rescue rather than abandon rights. Virginia Held's work has focused on the relations between justice and care and her contribution to the development of an ethics of care signifies one noteworthy strategy for rescuing rights.

In the following paper I focus on Held's account of human rights by specifically asking whether she effectively responds to the feminist critique. Care ethics is a promising and powerful corrective to traditional moral theory. With her work Held seeks to accommodate, while critically interrogating, an account of rights meant to fit within a globalized ethics of care. Out of sympathy with her transformative strategy I argue that her limited characterization of rights weakens the potential role of rights in contributing to her transformative vision. A rescue effort that reclaims rights as far-reaching moral practice embodying the values of care and justice, rather than one that limits rights to the procedural domain of state law, would better serve Held's transformative strategy.

### ***The Feminist Critique of Rights***

Rights are central to the language and issues of justice though sometimes rights and justice are characterized as conflicting ideals. Rights-based approaches to justice help connect our understanding of these concepts by making equality of rights a primary requirement of any just order. How rights are conceived to empower individuals directly informs the requirements we place on political institutions to achieve and reflect the demands of justice. Rights can be thought of as protections, entitlements, and/or claims, and can be negative or positive, legal or moral. There is a vast philosophical literature on rights that features many different and competing understandings of the concept of rights (for a very small representative sample see, for example, Edmundson, 2004, Gewirth, 1996, Gewirth, 1982, Gorman, 2003, Griffin, 2008, Held, 1998, Orend, 2002, and Talbott, 2005). While my present aim is critical, briefly stipulating my own understanding of rights will help define my terms and demarcate what I take to be a more substantive conception from the more narrowly defined liberal rights feminists primarily and rightly criticize.

A comprehensive theory of rights focuses on the most important questions concerning their application, content, justification, meaning, and relations to other values. (Gewirth, 1982, p.ix) As a first approximation, rather than a detailed systematic account, I offer a brief working conception of rights in terms of what justifies rights, how rights are defined, and how we ground the specific content of rights. Rights are justified by an ethical argument about the valued capabilities of individuals and should entail, as well as emphasize, the interdependence of civil and political liberties and economic and social rights (for the capabilities approach upon which my account is based see, for example, Nussbaum, 2006, Sen, 2009). As an underlying starting point, fundamental assumption, or primitive diagnosis of value I claim that since there is an inherent value and dignity to life, irrespective of one's nationality, race, sex, or species membership, each individual is fundamentally entitled to the opportunity to live a life worthy of that value and dignity. Having a right means having a fundamental entitlement to a certain level of capability to function. That is, having a right means being entitled to be empowered with the genuine opportunity to live a life of dignity by being able to do certain things and by being able to be a certain way, above a minimum threshold. As fundamental entitlements rights are prepolitical moral claims, not merely artifacts of laws and institutions. The contents of rights are grounded in our reasoned judgment of a species' moral value generally and, more specifically, in our best determination of what basic capabilities must feature in an individual life so that we can reasonably say her actual life is sufficiently dignified. In my view, securing a right is an affirmative task, not simply a matter of negative liberty where rights are regarded as secured if the state – or anyone in a position to help – refrains from interference on the matter. To properly respect rights is to value the realization of rights such that the responsibility to defend, secure, or uphold rights falls on whoever is in a reasonable position to do so. This focus on the central moral importance of rights, including their immediate practical significance for individuals, their cosmopolitan flavour, their explicit connection to responsibility and well-being, and their inclusion of non-human animals within the sphere of justice is what makes them a powerful and integral ally to an increasingly global ethic of care, not just a limited and subordinate formal resource. It also has the distinct advantage of emphasizing the expression of a plurality of values in the very practice of rights.

Rights have been highly criticized from many perspectives. Feminist critiques of rights have in particular been some of the most probing and extensive. There are a wide range of feminist criticisms of the meaning, nature, and use of rights, and the following section

offers a brief summary of the major recurring themes that emerge from these otherwise varied and diverse criticisms. Held characterizes the feminist critique of rights as twofold. The feminist critique of rights emerges from skepticism about traditional rights-based moral theories and demonstrates the manner in which actual legal systems utilize rights to reinforce patriarchy and oppressive power structures. Mainstream liberal rights have come under the heaviest criticism for their emphasis on impartial justice, individual autonomy, and the separateness of persons. The feminist critique of rights regards the traditional liberal understanding of rights as overly individualistic, as obfuscating the real political issues, and as isolating people from one another. Fiona Robinson maintains:

Rights-based ethical theory is based on untenable assumptions about human rationality and the universality of human nature; it is an abstract impersonal, rule-oriented morality which obfuscates the social and political dimension of global moral problems, and which can tell us remarkably little about who or what is responsible for ensuring that the claims of rights-holders are met. (1998, p.60)

Mainstream rights theories, it is argued, remain too general and impractical, restricted to a limited range of abstract moral problems, void of contextual details and often restricted to negative obligations of non-interference (Brennan, 1999, pp.262-264). Catherine MacKinnon argues that by encouraging a detached, procedural, and legalistic account, dominant rights discourse promotes an ideological commitment to the external rules of authority and with it a defense of patriarchy:

In the liberal state, the rule of law – neutral, abstract, elevated, pervasive – both institutionalizes the power of men over women and institutionalizes power in its male form ... [M]ale forms of power over women are affirmatively embodied as individual rights in law ... abstract rights authorize the male experience of the world. (MacKinnon, 1989, pp.238-248)

Peterson and Parisi (1998, p.144) argue: “The masculinist state institutionalizes and sustains gender hierarchy – which denies women equal ‘human’ rights – both directly and indirectly.” By equating the practice of rights with obedience to the rule of law we risk authorizing and reinforcing conventional morality and the traditional power structure. By equating moral rights with rational calculation, dutiful conformity to principle, and the illusion of autonomous moral action free of dependency and power imbalances we also risk adopting a self-interested atomistic and adversarial outlook detached from others as related possessors of moral value. In Nel Noddings’s (1984, 47) words, if we “come to rely almost completely on external rules [we] become detached from the very heart of morality: the sensibility that calls forth caring.” Feminist critics have argued that thinking in terms of rights reinforces this divisive tendency to think of ourselves as separate from

and in conflict with others (Brennan, 1999, p.267). As Carol Gilligan (Gilligan, 1982, p.22) has suggested, “a morality of rights and noninterference may appear frightening to women in its potential justification of indifference and unconcern.” Coupled with the tendency of traditional rights theory to overlook or neglect large domains of women’s experience, including mothering and care giving, moral theories of rights may also appear to exist to benefit and reflect the interests of men: “Most feminist critiques of human rights focus on this androcentrism and argue that, ostensibly, human rights are in actuality men’s rights. As a consequence, exclusions, constraints and abuses more typical of women’s lives are neither recognized nor protected by human rights instruments.” (Peterson and Parisi, 1998, p.132) In this sense human rights are argued to express male bias, privileging male power and experience while neglecting women’s oppression and downplaying women’s concerns. This privileging in turn reinforces a public/private dichotomy that relegates women’s moral concerns to the private realm while valuing what is male as important and public, rendering women’s moral concerns separate from and secondary to the broad requirements of justice and public morality.

### *The Ethics of Care and Human Rights*

The ethics of care has developed, in part, out of dissatisfaction with traditional moral theory and is often juxtaposed with an ethics of justice. Whereas the justice approach is characterized as an impersonal and impartial morality based on abstract universal principles such as rights, the care approach acknowledges the existence of relationships of dependency, emphasizing the importance of caring for, helping, and expressing concern for others. As Brian Orend (2002, p.173) notes, “[c]are for others means sympathizing with them and supporting them, helping them develop their skills, being committed to a personal connection with them based on trust and mutual respect, taking on responsibility to do what one can to ensure their well-being.” Since we are not all equal, independent, autonomous, adult, rational agents of traditional moral theory, such theory is unhelpful in addressing practical moral issues that arise within the context of relationships, especially relationships of dependency involving unequal vulnerability. Traditional moral theory contributes to the view that women are morally deficient according to the scale of moral development developed through empirical interview-based study by Lawrence Kohlberg (see Kohlberg, 1981). On Kohlberg’s scale the indifferent and impartial autonomous rational man is placed at the top: “The morality of responsibility which women describe stands apart from the morality of rights which underlies Kohlberg’s conception of the highest stages of moral judgment.” (Gilligan, 1977, p.509) Gilligan famously criticized this

traditional model for largely disparaging and excluding the concerns and experiences of women. She argued for an alternative model that characterizes women's conceptions of self and morality in a different feminine voice than an ethic of justice modeled on male moral judgment:

The moral imperative that emerges repeatedly in the women's interviews is an injunction to care, a responsibility to discern and alleviate the 'real and recognizable trouble' of this world. For the men Kohlberg studied, the moral imperative appeared rather as an injunction to respect the rights of others and thus to protect from interference the right to life and self-fulfillment. Women's insistence on care is at first self-critical rather than self-protective, while men initially conceive obligation to others as negatively in terms of noninterference. Development for both sexes would seem to entail an integration of rights and responsibilities through the discovery of the complementarity of these disparate views. (1977, p.511)

Gilligan's view has been criticized for suggesting that moral development rests on gender-specific differences, lending itself to an essentialist view of men and women. Gertrud Nunner-Winkler (1993) reinterprets Gilligan's position as establishing two different types of moral duties within one morality, contesting the view that there exists a distinct male and a distinct female ethical approach. Michele M. Moody-Adams (1991) argues that the great strength of Gilligan's work is in its defense of considerations of care as morally important, but questions a strictly bimodal approach to moral thinking that frames the justice versus care issue along gendered lines.

My own interest is in the development of an integrated moral theory. In agreement with Joan C. Tronto (1993, p.241), I regard the ethics of care as an important intellectual concern for feminists, but feel that "debate around this concern should be centered not in discussion of gender difference but in discourse about the ethic's adequacy as a moral theory." Specifically, the focus should be on what care ethics contributes to moral theory and practice and how it can be further developed, strengthened, and advanced. The ethics of care should be regarded as a vital component of, not simply as a necessary corrective to, moral discourse. Otherwise it will be treated as functional to the improvement of a specifically public morality and, to the extent that it remains associated with privatized women's morality, secondary and supplemental to impartialist views (Tronto, 1993, p.247). Instead of siding with an impartialist view of the domain of morality that denies the existence of conflict between justice and care, I agree with the advocates of care that both rights and responsibilities are central descriptive and normative features of moral

practice, public or private. Dominant liberal rights discourse prioritizes justice, stemming from what has sometimes been referred to as the stranger model of morality. Care ethicists such as Held (1999, p.294) regard such moral theories as poor models for relations between persons, pointing out that the relational care central to our interdependent society is absent from such models and that they are demeaning when applied to domains of experience in which care is the primary value. Annette Baier (1994, p.29) has argued: “Liberal morality, if unsupplemented, may unfit people to be anything other than what its justifying theories suppose them to be, ones who have no interest in each others’ interests.” Absent a sense and recognition of care, rights-based liberal morality appears to lend itself to a cold unfeeling vision of moral judgement and behaviour. The question for care ethicists, given their compelling insistence that care is as important for morality as justice, is how best to conceptualize this integrated view by looking critically at the promises and problems it presents.

Held maintains that most feminists recognize the important role rights continue to play in achieving feminist aims, from substantive equality rights for child care and maternity leave to the use of rights in combating racism and violence against women. Feminists have also emphasized the centrality of rights arguments in movements for social change, including the struggle for global justice. Rights may be unsuitable for dealing with particular moral issues arising in relationship contexts, where an ethic of care may be more appropriate. In other instances, however, a discourse of care separated from an emphasis on rights has been used to justify colonial domination. Uma Narayan (Held, 1998, p.506. See Narayan, 1995) has powerfully advanced this point, recalling “the colonialist project of denying rights to the colonized in the name of paternalistic concern for their welfare.” Feminist reconstructions of rights see opportunities for reformulating existing schemes, reworking the concept of rights, or limiting the reach of legal rights. Importantly, Held notes that,

Rights are not fixed but are contested, and political struggles are effectively organized around the indignation widely felt over clear denials of rights and persuasive reasons to recognize new rights. Among the strongest arguments women and minorities and colonized peoples have made are that they have not been accorded even the minimums of equal respect supposedly guaranteed by law. The basis for many of the most substantial advances made by disadvantaged groups has been composed of justice, equality, and rights; of course this discourse should not be abandoned. (1998, p.507)

For these reasons both care and justice must be regarded as essential to a substantive moral theory.



***Held's Account: A Critical Assessment***

In their otherwise well-aimed criticisms, care ethicists sometimes equivocate between the dominant discourse and practice of rights and the philosophy of rights. Put another way, they sometimes equivocate between the concept of rights as defended in traditional liberal theories and rights per se. By granting their critical interpretations of either the dominant discourse or the mainstream liberal theories as the correct view of what rights are, the otherwise contested concept goes undisputed and is then dismissed prematurely or shown to be limited and in need of supplementation. However, we should be cautious about restricting or dismissing the concept of rights based on the way mainstream liberal theorists and states conceive and utilize rights. My own worry is that human rights scholarship has undergone an ideological perversion wherein the rights once employed to positively transform the social and political landscape are now used to insulate dominant institutions from criticism. Held's account strangely reinforces this worry, though she might object by insisting her very point is to develop an ethic of care, not rights, to facilitate her transformative strategy. By tending to focus on the insulating role rights can play, the feminist critique sometimes neglects the transformative potential a more substantive integrated moral theory might have. While rights can be and are used as weapon-like instruments to insulate existing systems of power, historically rights have not been the predictable and logical products of states. Rather, they have been bitterly fought for and hard-won in an on-going struggle to pry open and make more accountable, democratic, and humane dominant institutions like the global market and the global system of states. (Chomsky, 1998, Hunt, 2007, Ishay, 2004) It remains an open question whether anything resembling the current global market and global system of states is ultimately compatible with a sufficiently rights-respecting world. Care ethics, in my view, presents as strong a case for reclaiming the concept in this manner as it does for seeking to transform the moral and political landscape with the cultivation of care. I argue, however, that Held's own approach to rescuing rights is misguided, aimed at reconciling rights with care by demarcating limits on the role rights can play in moral practice. Despite stressing the contested nature of rights, Held's account is limited by her own reluctance to strive for a more inclusive rights theory embodying care. In this sense Held's account is not an effective response to the feminist critique of rights, nor is it postured as one, which, as I argue, is its biggest weakness. The feminist critique of rights powerfully exposes the unsavory flaws of traditional theories and dominant discourses and practice. The motivation behind my own critical assessment of Held's account of rights stems from my view that a burgeoning theory of care is well situated to respond to, not simply advance,



that critique by reclaiming a conception of rights.

Held's transformative strategy involves developing a feminist morality that cultivates what might be called the art of moral practice. She seeks to provide guidance in resolving actual moral problems and considers the implications care has for restructuring cultural practices and social and political institutions. She envisions a more caring society as providing more accountable and democratically run services, decreased expenditures on legal remedies for illegal actions, reduced influence of the realm of law, increased participation in and creation of culture, and increased global concern and awareness (1997, pp.153-154, 165, 2006, pp.75, 130). She has clearly and consistently rejected a view that would regard the value of justice as most appropriate to the public sphere and the value of care as most appropriate to the private one (1990, pp.334-337, 1998, p.509, 2006, pp.68-69). Importantly, she has always maintained an integrative, albeit limited, approach aimed at rescuing rather than dismissing rights:

The criticism of rights from the perspective of care may perhaps best be seen as a criticism of the conceptually imperialistic role that law has played in moral thinking. It is not directed at overthrowing rights in the domain of law, but at limiting legal interpretations to the domain of law rather than supposing them to be suitable for all other moral problems as well. Once the framework of justice and rights is understood as a limited one rather than as the appropriate way to interpret all moral problems, other moral arguments can become salient and social and political organization can develop around other aims than those of justice, law, and rights. (1998, p.509)

The problem with Held's account here, however, is that she allows her criticism of the legalistic use of rights by states to inform her restriction and discouragement of a more substantive conception of rights. While acknowledging the problematic way rights can be used by states she is too willing to concede the moral territory of rights to the domain of law. Inadequate, abusive, or imperialistic state practice should compel us to employ our entire arsenal of intellectual self-defence, including rights advocacy, to combat such moral failings.

Held's most recent and detailed account of the ethics of care also features this underestimation of the progressive moral power of rights, focused as it is on discerning the value of care in apparent response to Tronto's (1993, p.248) advice that, "[o]nly when care is assessed in its relative importance to other values can it begin to serve as a critical standpoint from which to evaluate public life. Such an assessment will require a full-

fledged moral and political theory of care.” We see Held (1999, p.302) working out the relative importance of other values when she states: “I am coming to the view that care and its related considerations are the wider framework – or network – within which room should be made for justice, utility, and the virtues. This perspective does not mean that all other values, points of view, or the institutions or practices they recommend can be reduced to aspects of care. Reduction does not seem like the right approach.” Held insists that care is both a practice and a normative moral value. While her account lends itself to the development of a more integrative approach, her focus on the value of care too often characterizes the motive of care as dichotomous with and having normative priority over the motive of justice, and this inhibits the role rights can play. Instead of developing an approach that integrates rights and care, rights are juxtaposed with a commitment to care and argued to entail different considerations. Rules, laws, and fairness underlie rights commitments while meeting needs, concern with well-being, or even the development of civil society is grounded on care (Held, 2006, p.40-41). By equating rights with justice and juxtaposing the value of justice with the wider moral framework of care into which justice should be fitted, Held appears to adopt the very notion of rights feminists primarily criticize, perhaps explaining her limited effort at rescuing them.

In her defense, Held sometimes moves beyond the either/or approach by repeatedly emphasizing the importance of both the values of care and justice. She is also explicit in reminding readers that her critique of rights concerns the mainstream liberal approach, at least leaving the door open for a more substantive conception of rights. She objects to the view that care should completely replace justice as the central concept of morality, insisting that rights, when viewed in the context of social practices, have a role to play in addressing discrimination and inequalities along with empowering women (Held, 2006, pp.62-63, 67).

As a distinctively moral notion, human rights have obtained global status in at least the rhetoric of world affairs. The public discourse of rights serves as a reminder that people have justified and urgent claims to be treated in a dignified way irrespective of what society and the world have actually done about it. It highlights the great importance and role of the things rights represent, as commonly expressed in lists, laws, charters, and declarations. Rights language also emphasizes the importance of choice and the requisite preconditions that must exist to make such choices meaningful. Finally, the language of rights establishes a minimum threshold of basic entitlements and a sense of the terrain of

agreement about that minimum. Certainly rights continue to be debated and are subject to abuse, but the language and concept of rights demands a broad consensus concerning the core idea that individuals have rights that demand our protection. While the language of rights plays a powerful moral role in contemporary political discourse, human rights remain conceptually ambiguous and continuing theoretical confusion and disagreement serves as a barrier to what might be called the human rights project. Held's rescuing of rights involves embracing the powerful role the language of rights has. In seeking to limit the dominance of that morality she nonetheless concedes the conceptual terrain to traditional mainstream liberal theory and practice. Pragmatically, she appears convinced by the power of rights rhetoric but fails to assertively reclaim rights as a powerful moral practice that transcends legalistic power politics.

In her attempt to mesh care and justice, Held considers assigning moral minimums and constraints to rights, "a floor of moral requirements beneath which we should not sink as we avoid the injustices of assault and disrespect. In contrast, care deals with what is above and beyond the floor of duty," informing our vision of the good life (Held, 2006, p.71). Held thinks this solution, however, is unclear, noting that there also exist necessary minimums of care such as responding to the basic needs of children, which arguably set constraints on justice. For this reason she answers the question of how justice and care and their related concerns fit together by arguing that "caring relations should form the wider moral framework into which justice should be fitted. Care seems the most basic moral value. As a practice, we know that without care we cannot have anything else, since life requires it." (Held, 2006, p.71)

Surprisingly absent from Held's account is any explicit acknowledgment or exploration of a conception of rights that expresses both values simultaneously. As Brennan (1999, p.271) insightfully argues, "[s]ometimes what it is to care for a person is to take on concern for their rights. Concern for the rights of a loved one does not mean that one cares only for an abstract moral concept. One can be concerned about rights because of a direct love for the other person." A commitment to rights sometimes just is an expression of care. Rights-based practices often provide practical avenues to effectively channel our care for others. Although Held's account hints at this, her ordering and division of justice and care as concerning related but different considerations obscures this perspective and the concomitant conceptual and practical opportunities it entails. Consider the way Brian Orend's (2002, p.175) view mirrors Held's suggestion: "the ethics of rights is designed

to secure the floor and foundations, whereas the ethics of care is better thought of as constructing the ceiling, for the structures of our shared social life.” In Held’s haste to emphasize the limitations of a rights-based morality she adopts, like Orend, the assumption that rights embody one value, justice, distinct and separate from, and morally unequal to, care. Contra Orend, she simply reorders the values such that care underlies a rights-based approach rather than rights establishing the minimum upon which the aspirations of care are built. Instead of working within the realm of rights to articulate an alternative account of the content, practice, and motivation of rights, Held limits the role and meaning, not just the scope, of rights, leaving the development of rights in the hands of mainstream moral theory and practice (Brennan, 1999, p.272). Held’s strategy resembles what Joy Kroeger-Mappes (1994) has called the necessary-base thesis in which care is the necessary base for an ethic of rights. This strategy rests on the view that, when taken alone, rights represent an extremely inadequate moral guide for human behaviour. This leads Held to focus on the limitations, and thus duly limit, a narrowly defined conception of rights. Held (1999, p.302) often highlights the view that, “although there can be life without justice, there cannot be life without the care that has value,” repeating that, “[w]ithout care, however, there would be no persons to respect and no families to improve. Without care, there would be no public system of rights – even if it could be just.” (2006, p.72) She argues that rights entail a presumption of care but that such care has normative priority over rights. The evident tension, or inconsistency, that follows from her account is that a functioning conception of rights is necessarily care-laden, yet the notion of rights she employs to construct her ethics of care is limited to the legal realm of procedural justice because it is void of such value. Rights both do and do not embody the value of care.

Focus on the fundamental importance of care need not force care ethicists to prioritize care over rights by limiting the meaning and moral practice of rights. Care and justice are too important as allies in the struggle for a better world to allow the conceptual tensions and competing values they can occasion to unduly restrict our efforts. As Hilary Putnam (2004, p.4) says, “the function of ethics is not, in the first instance, to arrive at ‘universal principles.’ The primary aim of the ethicist ... should not be to produce a ‘system,’ but to contribute to the solution of practical problems.” Held aims to make such a contribution and the practical import of care ethics is part of what makes it so attractive, highlighting the importance of allying rights with care in a manner that builds upon Held’s increasingly global account. The constructive approach I recommend avoids the false dilemma between care and rights not by denying existing tensions or by assigning normative priority to one or the other, but by insisting on the potential of a more integrated approach. This

requires further exploration. Just as knowledge and enactment of rights, however defective or incomplete, emerges cross-culturally through the apparently universal idea of social protection against standard threats, so too a working knowledge of care, neglect, and abuse appears to exist in all cultures. Indeed, practices of direct personal care and support may be necessary conditions for cultural survival (Drydyk, 2006, p.73, 79, 84). While the expressions and requirements of care can be exemplified differently within and between cultures, “when it comes to identifying the most important types of protection, and probably even to ranking the worst cases of neglect and abuse, there is remarkable convergence. As a resource for moral understanding, this convergence is bedrock.” (Drydyk, 2006, pp.70-80) A double convergence, in which care and rights converge within cultures to establish social protections and these social protections converge cross-culturally to inform an increasingly global perspective on what constitutes a caring rights-respecting order, would appear to underlie what Jay Drydyk (2006, p.78) calls a global public sphere of moral deliberation. To the extent that this begins to accurately describe the dynamic relationship between care and rights globally, the moral practice of rights appears less adversarial and more integrated with care than Held suggests.

Just as rights without care are inadequate in the extreme, so too is care without rights. Admittedly, Held frequently stresses this and nowhere denies it and I am hard pressed to actually disagree with Held’s account. However, by too often associating rights with the value of justice, she maintains that without care there will be no human beings in a way that this is not true of a world absent rights (2006, pp.125, 132-134). This strikes me as a conceptually confused position, separating the practice of caring from an implicit respect for the right to life, concerned and committed to securing a life entitled to a dignified level of well-being. The problem is that the world is sorely lacking in respect for and realization of rights, yet I can scarcely imagine, nor do I care to, a world without rights. I am thus inclined to find fault with her account not for what it does wrong but for its focus, excluding from consideration the development of a richer conception of rights informed by care. Offered as constructive criticism, what is missing is an in-depth historical understanding and nuanced account of rights that recognizes the role rights play as an expression of care, along with their potential for realizing Held’s transformative vision by helping reshape a cold, uncaring world. A relational account of rights, coupled with a focus on moral character, represents one such approach, noted but unexplored by Held (see Nedelsky 2006, Brennan 1999). Held might fairly object to this criticism by claiming that she has left the development of a relational account of rights, which she continues to support, up

to others. Such a relational account rejects the traditional dichotomy between care and rights and a view of rights as merely individualistic and abstract principles, noting that moral rights are at play in our personal as well as impersonal relationships. Accounts of nonabsolute rights can directly attend to moral context (Brennan, 1999, pp.262-264, 271). Nedelsky (2006, p.100) insists that, “what rights in fact do and have always done is construct relationships – of power, of responsibility, of trust, of obligation.” Such accounts also emphasize the importance of caring about self and others by caring about, recognizing, and respecting your own rights and the rights of others, be they close relations or distant strangers. Brennan argues that,

As feminists we will want to reject theories of rights that have built-in assumptions of complete independence and separation, but it is open to us to develop accounts of rights based upon a relational account of the self. Obviously further work is required in this area, developing such relational accounts, but there is no good reason to throw out rights along with ‘autonomous man.’ (1999, p.266)

It is one thing to criticize Held for characterizing the role rights can play in too limited and unimaginative a light. It is quite another thing to begin to supply the more substantive account I demand of care ethics. How might a burgeoning theory of care respond to the feminist critique by rescuing rights? A relational account that acknowledges and builds upon our interconnectedness, our vulnerability, and the plethora of existing power imbalances and inequalities that exist in our increasingly global world rejects the central problematic assumptions of traditional rights theory. We probably should not, and for the most part do not, restrict our concern for the rights of others to hyper-rationalistic calculations about our own autonomy and individual advantage. Indeed, a relational, pluralistic, care oriented, capability-based conception of rights like the one I have very briefly sketched offers, among many other advantages, the prospect of more accurately reflecting what is decent about our everyday moral practices. It also highlights the transformative potential rights have to foster the kind of caring social relationships we correctly fault traditional rights theory for ignoring or discouraging:

[O]nce rights are conceptualized in terms of the relationships they structure, the problem of individualism is at least radically transformed. There will almost certainly still be people who want the kind of relationships of power and limited responsibility that the individualistic liberal rights tradition promotes and justifies. But at least the debate will take place in terms of why we think some patterns of human relationships are better than others and what sort of “rights” will foster them. (Nedelsky, 2006, p.101)



We need an account of rights that further cultivates the art of moral practice, that embodies the value of care without limiting or subordinating the potential role of rights, and that advances a practical integrative approach in line with Held's transformative vision, if not her strategy. Instead of pursuing this project Held largely relegates rights to the domain of law, collapsing a morality of rights into the descriptive practice of statehood, seeking to limit the conceptually imperialistic role that law has played in moral thinking. Held (2006, p.145) rescues rights by seeking to contain and reform them rather than reclaim them with a richer and more relational account. Held's particular vision is limited by her own reluctance to reclaim rights from their 'autonomous man' heritage. As noted earlier, sometimes the fault is not with the concept of rights but with the dominant discourse and practice. Held's account of rights concedes authority to this dominant discourse and practice and I remain at pains to see why we should grant this.

### ***Conclusion***

An advantage of adopting the kind of evaluative approach that capability theorists recommend is that it situates rights within a broader concern for human development and well-being, thereby challenging a limited view of rights as belonging solely to the domain of law and solely concerning the value of justice. Indeed, a capability-based conception of rights in which rights are fundamental entitlements to capability to function appears to be a promising theoretical approach that captures the central role and value of care that care ethicists like Held see as lacking from traditional rights theories while offering a substantive alternative to dominant liberal conceptions of rights feminists rightly criticize as too narrow. Held's account focuses too much on the differences between care and rights, stemming as it does from the feminist critique of rights, to effectively respond to that critique with the provision of a more substantive account of rights focused on the positive integration of the values of justice and care. Certainly rights can be used by the powerful to entrench and reinforce their dominance, but such abuse highlights the importance of pressing for and defending rights rather than limiting consideration of rights to an emphasis on their practical faults or failings. Rights should be fought for and a conception of rights reclaimed and shaped by a shared commitment to care and justice. Held's account concedes too much to authority and involves too little focus on the gulf that still exists between a substantive theory of rights and the existing political order. Held's ethics of care includes in its aim the cultivation of care for one's own and others' rights and I share her view that a rights-based morality includes a presumption of care. A rescue effort that reclaims rights as moral practice embodying the values of care and justice would better



serve Held's transformative strategy.

Acknowledgements: An earlier version of this paper was presented at the annual Philosophy Graduate Student Association conference at York University in Toronto, Canada, on April 30<sup>th</sup> 2010. I would like to thank Amanda Porter, Tracy Isaacs, Craig Roxborough, Mark Schranz, Jason Breen, Susan Dieleman, and Lorraine Code for their assistance, feedback, questions, and comments on earlier versions of this paper. I would also like to thank Jean Mueller and Hichem Naar, Editors of *Praxis*, and the two anonymous referees for their thorough and very valuable comments and suggestions.

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