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Feminist Contractarianism

> Like any good theory, [a woman's moral theory] will need not to ignore the partial truth of previous theories. So it must accommodate both the insights men have more easily than women, and those women have more easily than men. It should swallow up its predecessor theories. Women moral theorists, if any, will have this very great advantage over the men whose theories theirs supplant, that they can stand on the shoulders of men moral theorists, as no man has yet been able to stand on the shoulders of any woman moral theorist. There can be advantages, as well as handicaps, in being latecomers.
>
> Annette C. Baier[1]

Is it possible to be simultaneously a feminist and a partisan of the contractarian approach to moral and political theory? The prospects for a successful marriage of these two positions look dubious if one has read recent feminist criticisms of contemporary contractarian theories. Moreover, this brand of moral theory has been suffused with the technical machinery of game theory, logic, and economics of the sort often thought to attract male philosophers and repel female ones, making such theorizing, in the words of one feminist philosopher, a "big boys' game" and a "male locker room" that few female philosophers have "dared enter."[2]

But this seemingly inhospitable philosophical terrain has been my intellectual home for some years now. And I have been persistently attracted to contractarian modes of theorizing not merely because such

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[1] Annette C. Baier, "What Do Women Want in a Moral Theory?," *Nous* 19, no. 1 (March 1985): 56.

[2] Ibid., p. 54. And see Ian Hacking, "Winner Take Less: A Review *of The Evolution of Cooperation* by Robert Axelrod," in *New York Review of Books,* June 28, 1984.

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theorizing offers "good clean intellectual fun"[3] but also because it holds out the promise of delivering a moral theory that will answer to my political – and in particular my feminist – commitments. This is not to say that particular contractarian moral theories don't deserve much of the feminist criticism they have received. In this chapter, I will explore and acknowledge the legitimacy of these feminist challenges. Nonetheless I want to argue that one version of this method of moral theorizing offers us what may be the keystone of any truly adequate moral theory.

In a nutshell I will be contending that contractarianism illuminates distributive justice, and this form of justice is required not only in relationships between strangers but also in relationships between intimates, including husbands and wives, parents and children, friend and friend. In making this argument I am opposing conventional philosophical wisdom going back as far as Aristotle, who writes, "If people are friends, they have no need of justice."[4] Among contemporary theorists, David Hume's claim that justice is necessary only in circumstances in which people have limited feelings of benevolence or friendship toward one another has been accepted by virtually every political philosopher since then, including Karl Marx and John Rawls. But I will contend that distributive justice, understood in its deepest sense, is inherent in any relationship that we regard as morally healthy and respectable – particularly in a friendship. Indeed, Aristotle himself hinted at this idea immediately after the passage just quoted – he says not only that those who are just also require friendship but also that "the justice that is most just seems to belong to friendship."[5] The reflection in this chapter might be taken as a way of exploring this enigmatic passage.

I. Hearing Voices

Recent work by Carol Gilligan has reinforced the general tendency of philosophers to see the concerns of justice and friendship as distinct from one another. Using interviews with older children and adults that address real or hypothetical moral problems, Gilligan attempts to display two different "moral voices" – voices she calls the "ethic of justice"

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3 Baier, "What Do Women Want in a Moral Theory?," p. 55.

4 Aristotle, *Nicomachean Ethics,* trans. by T. E. Irwin (Indianapolis: Hackett, 1985), 1155a22 (p. 208).

5 See 1155a27 (Irwin translation, p. 208). It may be, however, that Aristotle is primarily arguing that if one is just, one is also friendly (as part of his concept of civic friendship), whereas I want to emphasize that if one is friendly, one is also just.

and the "ethic of care" – and finds some evidence (albeit controversial) associating the first with men and the second with women.[6]

Two of her interviews with older children have always struck me as highly interesting. Eleven-year-old Jake, whose answers to the interviewers earned him high marks on Lawrence Kohlberg's moral maturity scale, gave the following answer when asked, "When responsibility to oneself and responsibility to others conflict, how should one choose?" He replied with great self-assurance, "You go about one-fourth to the others and three-fourths to yourself."[7] Contrast the following answer to the same question given by eleven-year-old Amy, whose answers to the interviewers earned poorer marks on Kohlberg's scale:

Well, it really depends on the situation. If you have a responsibility with somebody else [*sic*], then you should keep it to a certain extent, but to the extent that it is really going to hurt you or stop you from doing something that you really, really want, then I think maybe you should put yourself first. But if it is your responsibility to somebody really close to you, you've just got to decide in that situation which is more important, yourself or that person, and like I said, it really depends on what kind of person you are and how you feel about the other person or persons involved.[8]

This rather tortured reply indicates considerable sensitivity and beneficent concern for others. Unsurprisingly, Amy's discussion of other moral problems reveals an interest in maintaining the well-being of others and in keeping relationships intact, which, according to Gilligan, shows that Amy values care. In contrast, Jake's remarks take for granted the importance of following rules that preclude interference in other people's pursuit of their interests, which, according to Gilligan, shows that Jake values justice. When asked to explain his answer to the question about responsibility to himself and others, Jake replies, "Because the most important thing in your decision should be yourself, don't let yourself be guided totally by other people, but you have to take them into consideration. So, if what you want to do is blow yourself up with an atom bomb, you should

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[6] Carol Gilligan's classic work is *In a Different Voice: Psychological Theory and Women's Development* (Cambridge, Mass.: Harvard University Press, 1982). She has revised and expanded her ideas since then. See a variety of articles about Gilligan's recent work in *Mapping the Moral Domain,* ed. Carol Gilligan, Victoria Ward, and Jill McLean, with Betty Bandige (Cambridge, Mass.: Center for the Study of Gender, Education, and Human Development, 1988). See also Carol Gilligan, "Moral Orientation and Moral Development," in *Women and Moral Theory,* ed. Eva Feder Kittay and Diana T. Meyers (Totowa, N.J.: Rowman and Littlefield, 1987), pp. 19–33.

[7] Gilligan, *In a Different Voice,* pp. 35–36.

[8] Ibid.

maybe blow yourself up with a hand grenade because you are thinking about your neighbors who would die also."[9]

As Jake's remarkable example shows, he regards "being moral" as pursuing one's own interests without damaging the interests of others, and he takes it as a matter of moral strength not to allow the interests of others to dictate to him what he ought or ought not to do. ("Don't let yourself be guided totally by other people," he warns.) In contrast, "being moral" for Amy means being responsive to the needs of others who are close to you or to whom you have made a commitment. Each child therefore makes a different assumption about the extent to which any of us is self-sufficient. Jake assumes that we are and ought to be interested in and capable of caring for ourselves, so that interaction with others is likely to be perceived either as interference or as an attempt to compromise one's independence. In contrast, Amy takes it for granted that we are not self-sufficient and that service to others will be welcomed as a sign of care and commendable concern.

Many feminist theorists maintain that the kind of moral voice that Amy exemplifies is clearly preferable to that of Jake. Annette Baier, for example, writes,

> Gilligan's girls and women saw morality as a matter of preserving valued ties to others, of preserving the conditions for that care and mutual care without which human life becomes bleak, lonely, and after a while, as the mature men in her study found, not self affirming, however successful in achieving the egoistic goals which had been set. The boys and men saw morality as a matter of finding workable traffic rules for self assertors, so that they do not needlessly frustrate one another, and so that they could, should they so choose, cooperate in more positive ways to mutual advantage.[10]

Certainly Baier is right that a "traffic rule" perspective on morality is neither a sophisticated nor a mature moral perspective. It appears to derive from the mistaken assumption that each of us is self-sufficient, able, and desirous of "going it alone." Amy is surely right that this is false. In contrast, a perspective on morality that emphasizes caring for and fostering the well-being of others appears to be not only a richer, sounder theory of what genuine moral behavior is all about but also a better guide to behavior that enables one to live a life full of friendship and love. Such a perspective is one that women (and especially mothers) are frequently thought to exhibit more than men. Baier concludes, "It

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9 Ibid., p. 36.
10 Baier, "What Do Women Want in a Moral Theory?," p. 62.

would not be much of an exaggeration to call the Gilligan 'different voice' the voice of the potential parent."[11]

Baier's way of responding to Jake's answer makes him into an archetype for a (commonly male) brand of moral immaturity. But one can respond to Amy's answer in a way that makes her an archetype for a quite different (and commonly female) brand of moral immaturity. Consider that Jake's answer is 13 words; Amy's is 109 words, and it is neither clear nor self-assured. *Maybe* she can put herself first, she says, if not doing so would mean losing out on something that she "really, really" wants. But only maybe. Jake is convinced not only that his interests count, but that they count far more than other people's (three-quarters to one-quarter). Amy appears to be having trouble figuring out whether or not her interests count at all. Consider her answer to the responsibility question:

Some people put themselves and things for themselves before they put other people, and some people really care about other people. Like, I don't think your job is as important as somebody that you really love, like your husband or your parents or a very close friend. Somebody that you really care for – or if it's just your responsibility to your job or somebody that you barely know, then maybe you go first.[12]

Again, note her "maybe." Even in a situation in which she takes her responsibility to others to be minimal, she is having trouble asserting the priority of her own interests. Here is a child who appears very much guided by the interests of other people and takes that guidance to be what "being moral" means. One worries that she will find it difficult to plan a life that takes into consideration what she alone wants, because she is highly susceptible to being at the beck and call of others.

These interpretations are harsh and are probably not fair to the real children. But the fact that they are not only possible but natural shows the immature directions in which each child's thinking tends. Jack is susceptible to a brand of moral immaturity that manifests itself in an insensitivity to the needs of others and a failure to see himself as a fellow caretaker in a relationship. His remarks define a morality only in the most minimal sense. There is too much distance between him and others to enable him to be aware of and responsive to the needs or interests of others. In contrast, Amy is susceptible to a moral perspective that makes her too sensitive to other people, and her concern to meet their needs borders on

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[11] Annette Baier, "The Need for More Than Justice," in *Science, Morality, and Feminist Theory,* ed. Marsha Hanen and Kai Nielsen (Calgary: University of Calgary Press, 1987), p. 54.

[12] Gilligan, *In a Different Voice,* p. 36.

outright servility. Whereas the authority and importance of others' needs are clear for her, the authority and importance of her own needs appear not to be. Indeed, unlike Jake she can offer no principle upon which to adjudicate the conflict between her claims and the claims of others, presumably because she has difficulty seeing herself as entitled to make any claim at all. And because she is so readily able to appreciate and be responsive to the needs of others, she is potentially a highly exploitable person. Thus if we interpret Amy's remarks as typifying a brand of moral immaturity quite different from that of Jake, they define an "ethic of care" that is really just a mimicry of genuine morality insofar as "caring" actions are generated out of the assumption that the agent is worth less than (and hence the servant of) the people she serves. Such caring cannot be moral because it is born of self-abnegation rather than self-worth.[13]

Although she respects Amy's concern for care, Gilligan herself admits the immaturity of Amy's response (while also stressing the immaturity of Jake's perspective). Moreover, that this brand of caring is an imitation of a genuinely moral response to others has also been noticed by other feminist writers,[14] and it is a surprisingly common theme in literature by women. For example, Charlotte Bronte's heroine in *Shirley* begins the journey to genuine maturity when she comes to question her own propensity to offer to care for others:

"What was I created for, I wonder? Where is my place in the world?" She mused again. "Ah! I see," she pursued presently, "that is the question which most old maids are puzzled to solve: other people solve it for them by saying, 'Your place is to do good to others, to be helpful whenever help is wanted.' That is right in some measure, and a very convenient doctrine for the people who hold it; but I perceive that certain sets of human beings are very apt to maintain that other sets should give up their lives to them and their service, and then they requite them by praise: they call them devoted and virtuous. Is this enough? Is it to live? Is there not a terrible hollowness, mockery, want, craving, in that existence which is given away to others, for want of something of your own to bestow it on? I suspect there is. Does virtue lie in abnegation of self? I do not believe it. Undue humility makes tyranny: weak concession creates selfishness. . . . Each human being has his share of rights. I suspect it would conduce to the happiness and welfare of all, if each knew his allotment and held to it as tenaciously as a martyr to his creed."[15]

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[13] See Marcia Homiak's "Feminism and Aristotle's Rational Ideal," in L. Antony and C. Witt, ed., *A Mind of One's Own,* 2nd ed. (Boulder: Westview Press, 2001), which discusses the degenerative form of kindness that emerges when one lacks self-love.

[14] See, for example, L. Blum, M. Homiak, J. Housman, and N. Scheman, "Altruism and Women's Oppression," in *Women and Philosophy,* ed. Carol Gould and Marx Wartofsky (New York: G. P. Putnam's Sons, 1976), pp. 222–47.

[15] Charlotte Bronte, *Shirley,* quotation taken from edition of Andrew Hook and Judith Hook (Harmondsworth: Penguin, 1987), p. 190.

And there is Virginia Woolf's well-known description of "the angel in the house" who threatens to take over and destroy a woman's soul:

She was intensely sympathetic. She was immensely charming. She was utterly unselfish. She excelled in the difficult art of family life. She sacrificed herself daily. If there was chicken, she took the leg: if there was a draught she sat in it – in short she was so constituted that she never had a mind or a wish of her own, but preferred to sympathize always with the minds and wishes of others. Above all – I need not say it – she was pure. . . . I turned upon her and caught her by the throat. I did my best to kill her. My excuse, if I were to be had up in a court of law would be that I acted in self-defence. Had I not killed her she would have killed me.[16]

Both novelists believe that a genuine moral agent has to have a good sense of her own moral claims if she is going to be a person at all and thus a real partner in a morally sound relationship.[17] She must also have some sense of what it is to make a legitimate claim if she is to understand and respond to the legitimate claims of others and resist attempts to involve herself in relationships that will make her the mere servant of others' desires. Both philosophical and commonsense understandings of morality have been so fixated on the other-regardingness of moral life that they have encouraged us to mistake archetypal Amy's response for a moral response.[18]

What happens when archetypal Jake and archetypal Amy grow up? If they were to marry, wouldn't Amy take it upon herself to meet the needs of Jake and do the work to maintain their relationship (giving up her career

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[16] From "Professions for Women" in *The Virginia Woolf Reader,* ed. Mitchell A. Leaska (San Diego: Harcourt Brace, 1984), pp. 278–79.

[17] See Blum et al., "Altruism and Women's Oppression," for a discussion of the way altruism must be accompanied by autonomy if it is going to be a morally healthy response.

[18] I take this to be an idea suggested by Susan Wolf in her "Moral Saints," *Journal of Philosophy* 79, no. 8 (August 1982): 419–39. Ironically, this fixation has been more the product of theories developed by males (e.g., Immanuel Kant and Jeremy Bentham) than by females. Perhaps such a fixation is the natural result of male dissatisfaction with a Jake-like moral perspective and an attempt to redirect the largely self-regarding focus of that perspective. But theorists, such as Kant, who stress the other-regarding nature of morality, invariably start from an assumption of self-worth and personal autonomy. In a paper that celebrates interdependence and connection, Baier notes that Kant thought women were incapable of full autonomy and then remarks, "It is ironic that Gilligan's original findings in a way confirm Kant's views – it seems that autonomy really may not be for women. Many of them reject that ideal" ("Need for More Than Justice," p. 50). But such a rejection may actually be evidence of these women's development into servile and dependent beings rather than free, self-respecting, and claim-making persons. For discussions on this general topic, see the contributions by DuBois, Dunlap, Carol Gilligan, Catharine MacKinnon, and Menkel-Meadow in "Feminist Discourse, Moral Values, and the Law," *Buffalo Law Review* 34 (1985): 11ff.

if necessary, insofar as she thinks that a job isn't as important as "someone you really love")? And wouldn't Jake naturally take it for granted that his interests should predominate (three-fourths to one-fourth) and be ignorant of many of the needs of others around him that might prompt a caring response? I find it striking that these children's answers betray perspectives that seem to fit them perfectly for the kind of gendered roles that prevail in our society. In their archetypal forms, I hear the voice of a child who is preparing to be a member of a dominating group and the voice of another who is preparing to be a member of the group that is dominated. Neither of these voices should be allowed to inform our moral theorizing if such theorizing is going to be successful at formulating ways of interacting that are not only morally acceptable but also attack the oppressive relationships that now hold in our society.

II. Two Forms of Contractarian Theory

So how do we set about defining an acceptable formulation of morality? The idea that the essence not only of human rationality but also of human morality is embodied in the notion of contract is the heart of what is called the "contractarian" approach to moral thinking. Advocates of this approach ask us to imagine a group of people sitting around a bargaining table; each person is interested only in himself. This group is to decide answers to moral or political questions by determining what they can all agree to or what they would all be unreasonable to reject.

However, both proponents and opponents of this style of argument have failed to appreciate just how many argumentative uses of the contract idea have appeared over the centuries. Arguments that self-consciously invoke a social contract can differ in what they aim to justify or explain (for example, the state, conceptions of justice, morality), what they take the problem of justification to be, and whether or not they presuppose a moral theory or purport to be a moral theory. Thus, even though theorists who call themselves "contractarians" have all supposedly begun from the same reflective starting point – namely, what people could "agree to" – these differences and disagreements among people who are supposedly in the same philosophical camp show that contractarians are united not by a common philosophical theory but by a common *image*. Philosophers hate to admit it, but sometimes they work from pictures rather than ideas. And in an attempt to get a handle on the nature of the state, the reasons for its justification, and the legitimate moral claims each of us can make on our behalf against others, the contract imagery has struck many as enormously promising. But how that image has been translated

into argument has varied considerably, and philosophers have disagreed about what political or moral issue that image can profitably illuminate.

A number of feminist theorists reject out of hand the idea that this could be an acceptable approach to defining morality precisely because of what they take to be the unattractiveness of the contract image.[19] Virginia Held, for example, insists:

> To see contractual relations between self-interested or mutually disinterested individuals as constituting a paradigm of human relations is to take a certain historically specific conception of 'economic man' as representative of humanity. And it is, many feminists are beginning to agree, to overlook or to discount in very fundamental ways the experience of women.[20]

And at first glance this way of thinking about morality does seem rather Jake-like. People are postulated to be self-regarding rather than other-regarding and their project is to define rules that enable them to live in harmony – which sounds a great deal like constructing (to quote Baier again) "traffic rules for self assertors."[21] Moreover, their distance from one another seems to prevent them from feeling emotional bonds of attachment or concern that would prompt care without the promise of pay.

I will be arguing that this type of attack on contractarian theory is importantly misguided. But before I can begin that argument, I want to clarify in this section exactly what kind of contractarian argument I will be defending in the rest of the chapter. There are two kinds of moral argument that one contract image has spawned in modern times – the first has its roots in Thomas Hobbes and is exemplified in the work of David Gauthier, James Buchanan, Gilbert Harman, and John Mackie; the second has its roots in Immanuel Kant and is exemplified in the work of John Rawls and T. M. Scanlon. I will review these two forms of contractarian theory and the criticisms to which each is subject before I go on, in the next section, to locate my own contractarian approach in this conceptual space.

Hobbesian Contractarianism
Although Hobbes himself never repudiated a divine origin for moral laws, he and the moral philosophers who followed him have attempted

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[19] Virginia Held, "Noncontractual Society: A Feminist View," in Hanen and Nielsen, eds., *Science, Morality, and Feminist Theory,* p. 111.

[20] Ibid., p. 113. For similar criticisms, see Carole Pateman, *The Sexual Contract* (Palo Alto, Calif.: Polity/Stanford University Press, 1988).

[21] Baier, "What Do Women Want in a Moral Theory?," p. 62.

to develop an entirely *human* justification of morality.[22] Hobbesians start by insisting that what is valuable is what a person desires or prefers, not what he ought to desire (for no such prescriptively powerful object exists); and rational action is action that achieves or maximizes the satisfaction of desires or preferences. They then go on to insist that moral action is rational for a person to perform if and only if such action advances the satisfaction of his desires or preferences. And usually, they argue, for most of us the moral action will be rational. Because moral actions lead to peaceful and harmonious living conducive to the satisfaction of almost everyone's desires or preferences, moral actions are rational for almost everyone and thus "mutually agreeable." But in order to ensure that no cooperative person becomes the prey of immoral aggressors, Hobbesians believe that moral actions must be the conventional norms in a community, so that each person can expect that if she behaves cooperatively, others will do so too, and vice versa. These conventions constitute the institution of morality in a society.

So the Hobbesian moral theory is committed to the idea that morality is a human-made institution that is justified only to the extent that it effectively furthers human interests. Hobbesians explain the existence of morality in society by appealing to the convention-creating activities of human beings; they also argue that the justification of morality in any human society depends upon how well its moral conventions serve individuals' desires or preferences. So Hobbesians do not assume that existing conventions are, in and of themselves, justified. By considering "what we *could* agree to" if we had the chance to reappraise and redo the cooperative conventions in our society, we are able to determine the extent to which our present conventions are mutually agreeable and thus rational for us to accept and act on. Consequently, Hobbesians invoke both actual agreements (or rather, conventions) and hypothetical agreements (which involve considering what conventions would be mutually agreeable) at different points in their theory. The former are what they believe our moral life consists in; the latter are what they believe our moral life *should* consist in – that is, what our actual moral life should model.[23]

[22] Hobbes believed that moral imperatives were also justified by virtue of being commanded by God. However, his contractarian justification seeks to define the nature and authority of moral imperatives solely by reference to the desires and reasoning abilities of human beings, so that regardless of their religious commitments, all people will see that they have reason to act morally.

[23] Hobbes believes he performed the latter project in chapters 14 and 15 of *Leviathan,* ed. C. B. MacPherson (Hammondsworth: Penguin, 1968).