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# MORAL CONFLICT AND THE PLURALITY OF VALUES. THE PRIVATE TUITION SYSTEM\*

## Introduction

In the already classic “care versus justice” debate, philosophers either argue for or against the compatibility of the two perspectives. The goal of this paper is to emphasize the complexity of the issue, by focusing on cases when care and justice collide.

At the same time, this paper addresses the question of moral reasoning about public issues by analyzing a particular case study. It looks at the ways in which different – and sometimes contradictory – moral and political values have to be balanced against each other when people face difficult choices in the public realm.

Some philosophers, like Brian Barry, claim that there can be no real *moral* conflict between care and justice, because all reasons of care should pale before the requirements of justice. Reasons of care, he argues, count as moral reasons only to the extent to which principles of justice do not apply to a given situation. For such philosophers, (distributive) justice is the supreme moral value and the requirements of care, when colliding with those of justice, are to be understood as mere expressions of self-interest.

Other authors claim that, in some situations, people face genuinely *moral* choices between care and justice and that these choices may be extremely difficult. Some of the philosophers who admit a possibility of conflict argue for the superiority of moral choices based on care (generally portraying the choice as one between abstract, over-rationalized principles and the welfare of concrete, loved human beings).<sup>1</sup>

I start by looking at the way in which Carol Gilligan, in whose work the care versus justice debate originates, conceives their compatibility.

Then I proceed to discussing the views of Barry, who also believes there is no conflict between care and justice, but who presents their compatibility in an entirely different way from Gilligan. Barry, an influential philosopher of the distributive justice tradition, is representative of many authors' judgment of the relationship between care and justice. I argue that Barry's understanding of the ethics of care misses the most relevant features of care – the very features that make care so valuable.

Showing what is wrong with Barry's understanding of the compatibility between care and justice will involve making a case for the possibility of their moral conflict. As a first step in my argument, I shall discuss moral dilemmas in general, putting forward the view that various values can collide. The remaining part of this paper will look at a concrete dilemma between care and justice, and conclude by suggesting a practical strategy for mitigating some of the harm that inevitably results from situations of unusually difficult choices.

### **Care and justice: what could make them complementary?**

Gilligan's understanding of care and justice makes room both for possible conflicts and for harmony by representing them not as opposed moral views, but as different ways of interpreting particular moral situations. Care and justice, according to Gilligan, call for different models of moral deliberation, each focusing on different moral values. She draws an analogy with the duck/rabbit example from gestalt theory. Some ingeniously drawn images have the property that they can represent different things at the same time. Depending on how the viewer interprets them, they can be either a duck or a rabbit, or, in an equally famous example, either a young woman or an old one. The analogy is between a given image and a given moral situation. In the same way in which the viewer can see the same drawing as showing a duck or a rabbit, we will choose one of two ways of "reading" a moral situation when thinking about it. We may interpret the situation as being about fairness or equality, in which case we will try to find a solution that respects these requirements – i.e. a just solution. Alternatively, we could identify the issue as being about neglect and abandonment and seek a caring solution to avoid them.

The different interpretations of the same situation are made possible by the fact that care and justice have specific vocabularies; the two

work with different normative models of the individual and of relationships. When adopting a justice perspective, we start thinking of moral issues by assuming that the self is independent and that relationships are subsequent acts of the self. Gilligan's argument suggests that fairness should be the main concern of individuals seen as equal and independent. By contrast, the care perspective takes relationships as a basic moral fact, picturing individuals as profoundly dependent on each other and thus vulnerable to neglect and abandonment. Avoidance of abandonment is better secured by the deep connection brought about by understanding than by the cold calculations of rights and duties. Because both ways of representing the self and its relationships are ideal models, from each perspective the values of the other point of view are transparent (but of secondary importance). For example, when I evaluate a case from within the care framework I need not deny the importance of fairness, but it will be secondary to the importance of maintaining a connection. Similarly, if I frame the issue in terms of justice, I do not have to dismiss the values of care, but I shall consider them as less important than, say, equality. This is why care need not be unjust, or justice uncaring.

Following the analogy with the duck/rabbit example, most people are capable of seeing both perspectives, albeit not simultaneously. Gilligan is optimistic about people's ability to be aware of both models of moral reasoning, but believes that most of us are more at ease with either the language of care or with the language of justice. At the same time, she argues that both the justice and the care perspective are relevant to moral life, and that one is not superior to the other.

One issue Gilligan does not address, however, is what happens if, in a particular situation, the central requirements of justice (fairness, equality, agreement) come into conflict with the requirements of care (meeting needs, the avoidance of neglect and abandonment, understanding). What happens in cases when no moral solution can meet, to a satisfactory degree, both sets of requirements?

The picture Gilligan draws of the relationship between justice and care by analogy to the duck/rabbit image is somewhat ambiguous. Owen Flanagan argues that the metaphor from gestalt theory is misleading, since we can sometimes incorporate both the concepts of justice and those of care within the same "picture" (Flanagan, 1987, 626). Therefore, it may well be possible that the aims of care collide with those of justice. Equally, as, amongst others, Michelle Moody-Addams has argued, there are situations in which one moral language seems much more appropriate

than the other.<sup>2</sup> In the first cases, the agent would have to sacrifice one set of requirements for the other, while in the second case she would have to decide that one of the perspectives is more adequate.

Gilligan's solution is that *the choice of moral standpoint is an element of moral decision* (Gilligan, 1995b, 39). Although she does not say it explicitly, this claim seems to imply that whether one chooses to see the duck or the rabbit – the values of care or those of justice – can be determined by appeal to a higher-order moral principle. But she does not mention any such principle.<sup>3</sup>

Another reading of Gilligan's solution is that by adopting the standpoint of care instead of that of justice (or vice versa) one makes a decision about the kind of person one is – what kind of moral sensitivity and commitments one has. But this reading is also not very helpful as moral guidance, since it does not provide any further reasons for wanting to be one kind of person rather than the other.

Gilligan's picture of the relationship between care and justice leaves open the practical question of what one is supposed to do in case of conflict. This picture does not give guidance in choosing one perspective over the other, nor does it tell us what happens when circumstances force us to think about justice and care squeezed together in the same "picture" as competing, rather than complementary claims. The risk of leaving this question open is that our attempt to come up with a practical solution may result in underestimating the moral value of one of the perspectives. An illustration of this risk is Barry's approach to care and justice that underestimates the moral value of care. Although I do not discuss it directly, an example of the opposite approach – underestimating justice – is Noddings' initial way of construing an ethics of care as superior to an ethics of justice.

Barry's argument on the compatibility of care and justice is important because it assumes they share the moral domain in a harmonious way – with care being appropriate only in situations in which justice does not prescribe any definite action. This understanding of justice as setting a minimum floor for morality, with care being "allowed" to fill in any extra space, is tempting in a first encounter with the justice *versus* care debate and has sometimes been suggested by proponents of the ethics of care, who have subsequently revised their position (Held 1993 and Held 1995b).

Barry's rejection of the possibility that care can be at odds with justice relies on several assumptions. The most important refers to the kind of

impartiality that is required by justice. Many writers on care, including Noddings, have located the conflict between care and justice in the impartiality requirement. Barry brings the two into harmony by claiming that Rawlsian justice requires what Barry calls second-order impartiality and that is in many cases compatible with the impartiality of care.

Those who see care and justice as two competing types of ethics mistakenly take justice to entail a crude version of impartiality, which he calls “first-order impartiality”<sup>4</sup> and which would require us to treat all people equally, independently of any special relationships in which they may stand to us. This understanding of impartiality does not leave any space for specific obligations arising from particular social and institutional arrangements (such as the nation state, family, friendship and so on), nor for acting out of care beyond duty. But, Barry argues, we need not commit ourselves to such an impoverished understanding of impartiality. A richer, better conception of impartiality – a central value of an ethics of justice – is second-order impartiality as can be found in Rawlsian justice (Barry, 235). Far from banning special relationships and the obligations they involve, second-order impartiality endorses them. The ethics of care – which rightly rejects first-order impartiality – is compatible with an ethics of justice based on an appropriate conception of second-order impartiality. Therefore, if the ethics of care and the ethics of justice *are properly understood, there need be no conflict* (Barry, 237). “Proper understanding” here refers to getting a right sense of priorities between considerations of care and considerations of justice.

A second-order conception of impartiality prescribes impartiality at the level of evaluating the rules, principles and institutions that prescribe norms of behavior. Therefore, actions that would be prohibited by first-order impartiality – for example directing one’s resources of time and energy towards friends or family – are not necessarily condemned by second-order impartiality. Since a moral principle that equally allows all people to be partial towards some is impartial, the requirements of second-order impartiality are met. Care, seen as a special concern for those who are close, can be thus integrated into a theory of justice that embraces second-order impartiality.

Barry’s intention is *to argue that both of Gilligan’s ‘different voices’ – the ‘ethic of justice’ and the ‘ethic of care’ – are valid, and should be incorporated within any satisfactory account of morality* (Barry, 249). He proceeds by *ranking* care and justice and therefore has to deny the possibility of genuine dilemmas between justice and care.

A second assumption concerns the way in which Barry thinks that justice and care should share the moral terrain. Considerations of care, according to this argument, are relevant only when considerations of rights and duties do not determine the right solution of a particular moral issue. Otherwise, the second-order impartiality would be violated. As long as justice provides a conclusive answer to a moral question – by prescribing action via impartially justified principles – moral reasoning in terms of care has no chance to overturn (or even to balance) it. Therefore, care and justice cannot, as a matter of principle, be at odds, since, in a situation when care requires a different course of action than justice, morality will always require us to follow justice. Boldly put: *there is no plausible case of a genuine moral dilemma involving a clash between justice and caring* (Barry, 250).

The implication of this argument is that the partiality involved in caring, when incompatible with second-order impartiality, is not in itself morally valuable because it is merely a form of self-interest. In such cases, care's partiality amounts to forms of nepotism or misguided loyalty that one cannot morally endorse. In this account, the partiality of care can at best be tolerated – justified only as long as it does not conflict with second-order impartiality.

The problem with this account is that the value of care consists, in part, in the love that sustains it. Love cannot be separated from its partiality, and sometimes they enter into conflict with justice. Such conflicts are often more difficult than the examples of dilemmas which constitute the focus of Barry's criticism.

Barry's account of justice and care faces two different problems. First, as long as dependency relationships based on care result in the creation of particular duties (such as duties towards one's child), it is possible that in certain situations such duties collide with other duties, for example with the interdiction to violate norms of justice. Barry attempts to avoid this problem by arguing that such cases can only appear in unjust societies. He openly acknowledges that *second-order impartialist theories have not been developed in ways that are helpful in prescribing action under conditions where the legal framework is thoroughly bad* (Barry, 245). In such cases, justice requires us to change the conditions that make the conflict possible in the first place. This suggestion, which I take to be valuable and will discuss at length, is, however, impractical in many situations. It requires too high a price of individuals, and some of the price consists in sacrificing the wellbeing of the cared-for. More important,

we have good reasons to believe that people will always lead their life under less than perfectly just institutional arrangements, where real-life dilemmas between justice and care are possible and where theories of second-order impartiality are not very helpful.

The second problem is that it is sometimes possible to be caught in situations in which people for whom we care behave terribly unjustly and, because of our privileged access to these people, it is up to us to bring their injustices to an end.<sup>5</sup> Here we cannot avoid a dilemma between a duty of justice, even rightly understood as requiring second-order impartiality, and the specific “must” and “must not” of love. While it is contestable that love’s requirements are *prima facie* moral requirements, it is nevertheless clear that they are identity-shaping and therefore important practical reasons.

In spite of many efforts to depict the ethics of care and the ethics of justice as entirely compatible, choices between care and justice sometimes have important characteristics of moral dilemmas. In such situations, there seem to be no compelling reasons for sacrificing either care or justice, and this is likely to leave the agent with a sense of harm and loss no matter what she chooses to do.

The argument will proceed by proposing an example where care and justice dictate different choices, none of which can be dismissed as obviously lacking in moral relevance. On the contrary, widespread moral intuitions tell us that situations involving such conflict are very difficult, and any choice would call for moral compromise. The appeal to moral intuitions is not necessarily convincing; sometimes we have to either support intuitions within a general theoretical framework, or be ready to criticize them. For this reason, before looking at examples of difficult choices between care and justice, I will briefly discuss the general issue of moral dilemmas. The aim of this discussion is to show that in the cases considered here moral intuitions can indeed be supported by some theories about moral conflict.

What characterizes dilemmas is the impossibility to judge one solution as being right and the other as being wrong; this is because the reasons for one course of action do not clearly override the reasons for the other. More specifically, in our case, the reasons of fairness and equality and, in general, what we value out of a sense of justice do not always trump the reasons provided by a sense of care for someone near and dear.

## Moral dilemmas

Moral dilemmas have been defined as involving *a situation in which compelling moral considerations favor each of the courses of action open to him* [to a moral agent] (Mason, 1996, 3). Widely discussed examples of moral dilemmas involve either collisions between different applications of the same principle or collisions between different principles.

An example of the first type of moral dilemmas is that of conflicting promises made by the agent. One may find oneself in the situation of having promised one person to go with her to a party and another one to go with her to a movie, at the same time; but one obviously cannot do both. This is a case in which the same principle of keeping one's promise dictates incompatible actions. Of this kind of example of a moral dilemma it has been said that it is a helpful example because the situation only comes about by the agent carelessly promising incompatible things. That is, the conflict could have been avoided by a responsible agent. However, the example at least makes the case that situations of symmetric dilemmas are logically possible. Other situations were then thought of to illustrate this kind of clash – situations, for example, like Sophie's choice, when the agent (here, a mother) must choose whose life to save when she cannot save all lives (in this case, the lives of her own children).

A second type of moral dilemmas often discussed involves the conflict of distinct moral requirements, as in Antigone's choice, where the conflict is between two different principles, one commanding an action, the other prohibiting it.

The mere existence of dilemmas is puzzling to philosophers, because it raises fundamental questions about the nature of practical rationality.<sup>6</sup> If moral dilemmas exist, does their existence entail the inconsistency of moral theory? In other words, does it imply that the set of principles under which we define our obligations is inconsistent? The difficulty comes from the fact that to be caught in a moral dilemma means to be in a situation where you ought to do X and at the same time you ought to do Y, where choosing X and choosing Y are incompatible courses of action. This means you have to do both X and Y, but since X and Y are incompatible you cannot possibly do both. Moral philosophers have traditionally embraced the idea, as a general action-guiding principle, that "ought" implies "can": one is not supposed to be under an obligation to do impossible things. The principle that "ought" implies "can" would be difficult to reject because of the risk of ending up with moral theories

that require super-human powers. How then are we supposed to assess the significance of moral dilemmas for morality's claim to be action-guiding?

Different philosophers have answered this question differently. Many have accepted that the existence of moral dilemmas conceptually entails the failure of practical reason, and have responded in two ways. Some have argued that moral dilemmas are not as "real" as they appear to be. In moral philosophy, we should be able to decide on a hierarchy of principles so that any moral problem has a morally right solution. In this case, situations involving very difficult choices are not proper dilemmas but, simply, hard choices. This means that for each course of action there may be several moral reasons to be considered, but a clear-minded agent should be able to see, with the help of moral theory, that certain reasons trump the others. Kant and, more recently, Richard Hare and Alan Donagan are examples of philosophers who reject the logical possibility of moral dilemmas.<sup>7</sup> Others, like Jean-Paul Sartre and Donald Davidson, have acknowledged moral dilemmas as genuine and interpret the existence of such dilemmas as an indication that moral theory is inconsistent. This inconsistency would imply a failure of practical rationality.

None of these answers is going to lead us too far when thinking about care and justice. Following the first answer would entail the denial of genuine conflict between care and justice and that is equivalent to a failure to recognize the full value of either one or the other moral value. In turn, this would place a limit on one's willingness to further explore the many connections between care and justice, and would bring the discussion back to the stage of deciding which of the two is more fundamental. A reason for rejecting the first answer as single-minded is that it does not do justice to the complex nature of (moral) values. The second answer to the existence of moral dilemmas, although closer to the position which I argue, is unnecessarily pessimistic. In what follows I will look at an approach to this problem that avoids both the denial of the existence of genuine dilemmas and the pessimistic conclusions about practical rationality. Ruth Barcan Marcus has argued, in a Hegelian vein, that the existence of dilemmas shows that something is wrong with our world, not with our reasoning.<sup>8</sup> When particularly difficult moral choices have to be made, this is a sign that the institutional arrangement of the world is defective, because it gives rise to such situations.

## Responses to moral dilemmas: “stacking the deck”

Marcus’ approach to the puzzle of moral dilemmas is original and interesting in that it rejects traditional answers to dilemmas. On the one hand, she thinks that some moral dilemmas cannot be resolved: these are indeed situations of moral conflict in which there is no right choice. This approach has the advantage of being intuitive: it makes sense of our moral emotions when faced with dilemma-like situations. The presence of guilt and regret that follow hard choices suggests, in hindsight, that indeed both courses of action must have had compelling moral reasons in their favor.<sup>9</sup> On the other hand, while admitting the existence of moral dilemmas, Marcus rejects the claim that their existence is a proof of the inconsistency, or irrationality, of moral theory.

Let us suppose that it is impossible to attach indexical order to various moral principles. Does this imply that moral theory is inconsistent? Marcus’ answer is that it depends on how we define consistency. Her solution is based on the analysis of the meaning of “inconsistent” when we think of moral choices and principles. She distinguishes between different possible degrees of consistency. A “hard”<sup>10</sup> understanding of consistency defines a set of rules as consistent if in *all* circumstances all the rules from the set can be satisfied. A “soft” understanding of consistency defines a set of rules as consistent if there are at least *some* circumstances in which all the rules can be satisfied. Morality, according to Marcus, is better conceived in terms of a “soft” understanding of consistency.

To show this, Marcus proposes to consider moral consistency through an analogy between moral choices and a card game. She suggests we think about a card game with two rules only: black cards trump red cards and high cards trump lower valued cards. The winner is the player whose cards trump the other players’ cards more often. Now, from this description of the game it is clear that in some situations the two rules might come into conflict, since one player may have a black card of a lower value than his partner’s red card. However, such a situation need not necessarily arise. This means that it is possible that no dilemma-like situation will arise during the game, but it is also possible that some configurations of cards will not be resolvable.

In the game described above, the risk that unsolvable situations appear is indeed quite high. But we may as well imagine a game with a much more complicated structure so that *its being dilemmatic under any circumstances is very small and may not even be known* (Marcus, 27).

Such a game would be consistent, Marcus claims, using a certain understanding of consistency – i.e. *if there are possible circumstances in which no conflict will emerge* (Marcus, 27). In order to be able to play card games characterized by a “soft” consistency, we would have to stack the deck to prevent dilemmatic situations, i.e. situations in which the continuation of the game is prevented by the rules’ inability to determine any outcome. When it comes to games, Marcus argues, “soft” consistency is not enough.

“Hard” consistency may be appropriate and, indeed, necessary in some situations, like games. For a card game, the “soft” understanding of consistency would be frustrating, because it would prevent us from playing unless we either change the rules or stack the deck. However, we cannot be content with the solution of stacking the deck because card games are about luck – part of their fun is that players have different luck. Therefore card games require a “hard” type of consistency, otherwise situations would occur when we would have to change player’s luck by stacking the deck, and thus missing the whole point of playing.

By contrast, in the analysis of morality we often do not have a choice between hard and soft consistency, but have to settle for the “soft” kind, if we want to rescue at least some degree of consistency. Morality, according to Marcus, is in some respects similar to the example of the complex version of the card games she described: conflicts between different principles may arise, but only very rarely. The reason why “soft” consistency is good enough for morality comes from its dissimilarity with card games. The fundamental difference between card games and morality is that while we appreciate the impact of luck when playing games, in the ethical life we hope to eliminate it. When it comes to ethical theory, a set of rules is consistent enough if there are at least *some* situations – and the more the better – when all rules can be met. When they cannot, and we have to choose between “stacking the deck” and altering the “rules”, we have reasons to be reluctant to take the second course of action, since this would entail denying the moral value of some choices. But we have no reasons to refrain from interfering with luck. On the contrary, as moral agents we can hope (and should aim) to change the conditions of reality so that we can only bring about situations in which the rules do not collide.

Marcus’ analysis of dilemmas entails that as rational moral agents we should be committed to the improvement of social arrangements. Thus, we should endorse a second-order principle: *as rational agents we ought*

to arrange our lives and institutions with a view of reducing conflict (Marcus, 23). What we want to change, in cases of conflict, are not our moral values but the circumstances that makes their collision possible.

The appeal of Marcus' analysis of moral dilemmas consists, to a large extent, in her willingness to do justice to our moral intuitions (by not denying the genuine nature of moral dilemmas) and in the optimistic and engaged attitude it sustains. But her suggestion of "stacking the deck" of morality, of altering the circumstances of human life, has some obvious limitations. One is a factual limitation, which pertains to our ability to "stack the deck" at the institutional level.

A second limitation, especially from the perspective of an ethics of care, becomes apparent if we read Marcus' solution as advice in arranging our *individual* lives so as to minimize conflict. The more caring relationships one engages in, and the deeper they are, the higher the risk of conflict becomes. Since care is about meeting needs, and our needs are many and conflicting, the best way of avoiding moral dilemmas under given external circumstances is to commit ourselves to the welfare of as few people as possible. But while this ideal of *apatheia* may be in line with more stoical ethics, it is certainly not what a proponent of an ethics of care wants to argue. For an ethics of care will not want to eliminate luck from moral life at any costs. The very things that engender risks – namely close relationships in which the interests of those involved and their wellbeing are interdependent – are at the same time the source of much moral goodness.

By contrast, if understood as applying at the *institutional* level, the solution offered by Marcus may be particularly fertile for an ethics of care. However, some dilemmas may remain unavoidable no matter how well people manage to "stack the deck" in their lives. Another shortcoming of Marcus' solution goes even deeper, beyond the problem of the limits we have, as human beings, in affecting institutional change.<sup>11</sup>

### **The private tuition system: a dilemma between care and justice**

The ideal of justice and care working in harmony raises serious problems under the conditions of unjust, or seriously failing, institutions. I argue for this by means of analyzing a situation taken from the field of education which forces those involved to choose between incompatible courses of

action. The example concerns the widespread, large-scale practice of offering extra training to one's children, in addition to the ordinary lessons they receive in Romanian schools. I call this "the private tuition system".

The private tuition system represents an informal practice, which became endemic from the 1980s onwards. The extra training, commonly paid for by the pupil's family,<sup>12</sup> is offered by school teachers and, often, university professors. It is mainly meant to help the pupil cope with the many exams he or she has to pass as part of the Romanian education system in order to gain entry to high school or university. In general, this training is given in small groups of two or three pupils (although there are some cases when larger "classes" are formed) and is often even conducted in a one-to-one situation. The tuition takes place at private locations, typically at the teacher's or the pupil's own home. Most, if not all, ministries of education in post-communist Romania have declared war on this practice and have looked for ways of eradicating it. However, the private tuition system proved enduring and very difficult to tackle by state control.

There may, of course, be many justifications for the private tuition system.<sup>13</sup> It offers access to supplementary education, which nobody should, in principle, be prevented from getting. It provides an extra source of income for teachers who, under current conditions, face serious economic hardship. It may even provide teachers with an opportunity to hone their pedagogical skills, because it gives them a unique chance to engage in one-to-one teaching situations (or small-group arrangements). Such teaching situations are different from – and pedagogically much better than – the mass education practiced in virtually all Romanian schools.

However, the arguments against the private tuition system seem to be even stronger. The private tuition system perpetuates a vitiated system of evaluation in education (based on future candidates' ability to memorize unnecessary information). It decreases the quality of teaching in schools, because much of the teachers' resources are channeled into giving private tuition. It distorts the relationship between the pupil and the private teacher, which becomes overly commercial instead of being based on trust and admiration. And it introduces a generalized attitude of duplicity (both pupils and teachers know that the "real stuff" is what goes on in private tuition, rather than in school), encouraging at the same time a public culture of clientele.<sup>14</sup>

Most importantly, the private tuition system can be qualified as deeply unjust by many different understandings of justice. It violates procedural justice because it imposes a double standard of examination, where the pupil has to know the subjects studied in school as well as what is provided in terms of “clues” via private tuition. Officially, the first should be enough to pass the examination. Sometimes things go even further: the same (university) professors – those who decide the content of exams and later mark them – themselves establish large tuition “industries”, and their own private pupils are of course the most privileged of all.

The private tuition system is also unacceptable by the standards of distributive justice, because those who do not have the means to pay for it are excluded. In Romania, an increasing number of people lack the means to pay for extra tuition for their children and, as the gap between rich and poor is constantly widening, it is likely that private tuition will become entirely inaccessible to some. Moreover, those with no access to private tuition are also likely to be members of social groups whose access to the official – i.e., public and free – education system is limited due to economic constraints. This mainly means children from rural areas<sup>15</sup> or from large families living in town suburbs.

In summary, the main argument against this informal practice comes from justice: the private tuition system represents a serious attack on the ideal of equal opportunity.<sup>16</sup>

What kind of moral choice do parents face whose child is about to take important exams? On the one hand, no matter how evil the system is judged to be, one can argue that there is always a responsibility of care – maybe even a duty of care – which provides justification to any given parent, who has the means, to provide her child with extra-training. Care does of course go beyond the duty one has towards one’s child<sup>17</sup> and this is important because it makes the reasons of care even weightier. On the other hand, sending a child for private tuition means encouraging the system and, to an extent, legitimizing it, thus contributing to the exclusion of those who cannot or do not want to be part of it. Depending on how realistic the chances of an efficient boycott of the system are perceived, and the consequences this has for their children, we can even say that parents have a duty of justice to refrain from perpetuating it.

One may argue *contra* Barry that this is an example of a genuine moral dilemma in which reasons of justice and reasons of care command opposite courses of action.<sup>18</sup> Even those who think the reasons are not of the kind which lead to clear duties – either of justice or of care – can

hardly claim that duties can easily be arranged in a hierarchy. I believe the seriousness of this choice and the fact that, apart from being a real-life example, it is also probably very widespread in more than one society, proves that conflicts between care and justice are serious issues. They are also merit renewed attention.

How do parents, whose ethics is informed by care deal, with this situation? Most often they are strongly inclined to put up with the constraints of the given situation and send their children to private tuition. Refusing children the chance of extra training, whether out of moral considerations or for other, more practical reasons, would, from this perspective, amount to abandonment. It would mean leaving children alone to face a problem bigger than themselves, knowing that the failure to find a solution will have life-long repercussions.

From the perspective of justice, the proper language for describing the situation will be different. The parent may think that paying for private tuition is unfair to children with no access to it and maybe even go as far as thinking that it will do moral harm to the child, who will become part of a corrupt practice.<sup>19</sup>

Following Gilligan, I see no reason why people who adopt the care perspective cannot also embrace the perspective of justice. What happens if the parent has at heart both the value of care and the value of distributive justice? To start with, such a person will be in a better position to recognize the situation as a genuine dilemma. Not just the commitment to justice, but also the commitment to care, speak in favor of staying on the formal path of education for their children, since in Romania education is, at least in principle, free and equally open to all. The Romanian welfare state does provide, nominally, the institutions endorsed by theories that require a just public distribution of care. Perpetuating the private tuition system can only weaken the legitimacy of the welfare state. However, involvement with an urgent and very important need for one's own child feeds a much more direct and concrete reason of care. It is not just care and justice that are in conflict, but also "concrete care" and principled care. Depending on whether the balance tips more in the direction of a commitment to justice (and more abstract care) or towards a caring commitment to the welfare of the child, the parent can choose whether or not to "boycott" the system of private tuition. But no matter what she chooses in the end, she will feel a deep uneasiness about her choice, to such an extent that she identifies each possible course of action as a violation of the other one of the two values. The residual guilt for not

being able to choose differently is, according to some philosophers, a distinctive feature of moral dilemmas.

To be sure, such choices, if taken seriously as moral choices, are unfair burdens for care givers, and the responsibility should probably not rest entirely on the shoulders of individuals. There must be something wrong with the political set-up of societies that systematically generate these difficult choices. However, in this case, the guilt of political institutions is limited and it consists mainly in their inability to contain the phenomenon of private tuition. As already mentioned, the authorities of Romanian state education have made efforts to limit the informal practice of private tuition. No matter how imperfect these attempts have been, they prove that the state itself does not endorse the practice.<sup>20</sup> Much of the problem seems to lie with the population's readiness, or lack thereof, to cooperate with the state – i.e., to refuse to perpetuate the system. Parents play a crucial role here since they have the power of choice.<sup>21</sup> When the political institutions in a given society are shaped by the right principles – at the formal level of legislation and institutional set-up – the biggest challenge is for the people who live under them to respect the rules. Beyond any state-given incentive to follow the rules, this is ultimately a question of decision by the citizens. Such decisions can sometimes be very hard, and it is far from the intention of this article to suggest there is one right answer in this particular case.

This case of a moral dilemma, between promoting justice and acting upon care, is unfortunately not singular. There are many other situations, both public and private, though often on the borderline between the public and the private, when we have to decide whether we want to reinforce the vicious circle of unjust practices. For example, each time someone decides to bribe their way through a corrupt health system for the sake of a friend's life, or each time someone accepts the unwritten and unjust rules of, say, an educational institution for the sake of the students' welfare (and the stream of examples goes on and on), they decide between limiting the chances of bringing about (distributive, often caring) justice and compromising on the needs of those they care for.

For many of the people I spoke to about "the private tuition dilemma" (people with extensive knowledge of the state education system in Romania), the situation did not look at all like a dilemma, at least not at first glance. The reason for this was that, since it is improbable that any single parent can make a difference by her decision to "boycott" the system, it thus seems extremely unreasonable to refuse their child access

to private tuition. To many the situation did not look like a dilemma because for them the answer was easy to give. But, as Greenspan puts it, while referring to another moral dilemma, the issue is *not what to do in such cases but whether the action one must do, morally speaking, can still be wrong* (Greenspan, 9).

The relevance of this type of dilemmas is very broad, because in most societies individuals support unjust practices on a daily basis for the sake of those for whom they care and for whose welfare they are responsible for. These people have to deal with the question of what to do when by choosing to no longer contribute to an unjust system would result in wrongdoing vis-à-vis their own children (or family in general, or friends).

Parents' dilemmas regarding the private tuition system are of course much less tragic than the usual examples of moral dilemmas involving hard decisions about whose life to sacrifice, or whether to engage in negotiations with terrorists or not. But they are also much more pervasive, and this gives them a significant relevance in the lives of common people. In this section I tried to show that the possible decisions one can take, if caught in such situations, are not morally easy, and that they sometimes polarize reasons of care and reasons of justice. It is possible to present these choices as philosophically trivial, but only at the expense of ignoring, or minimizing, the moral emotions of those required to take them.

### **Moral dilemmas and the limitations of institutional change**

Even if we recognize the insoluble nature of dilemmas from the point of view of the agent who faces them, we should still point out that some conflicts can be prevented by institutional improvement. Thus, choices between care and justice, like the one in the private tuition dilemma, are possible only because the protagonists live in an unjust society. In a well-ordered society, with no structural corruption, including no underground educational systems, these dilemmas would not be possible.

Thus, the proper answer from the perspective of distributive justice is, as Barry points out, that those involved should take action in order to change the unjust practices of providing education or medical care. But, as we have seen, this answer is not entirely satisfactory. It is only a partial answer since it cannot satisfy the legitimate and *urgent* interest we have in ensuring the wellbeing of those we care for. Part of a proper response to the very existence of moral dilemmas is that we should try to change the

external circumstances that made these dilemmas possible in the first place. However, campaigning for social justice cannot be the whole answer to this type of dilemma. In one of the described cases, the moral dilemma is partly about the costs involved in taking direct action against the unfair procedures of hiring teaching staff. In the other case, individual parents were unlikely to see a chance to eliminate the private tuition system before it would be too late for their own children to complete their education.

Speaking of Rawls' theory of justice and its limits, Barry mentions the failure of theories of justice based on second-order impartiality to deflate structurally unjust societies. The scope of Barry's remark can be broadened to refer not only to the legal deficiencies of a certain society, but to all sorts of institutional deficiencies, covering practices that are unregulated or that survive in spite of being outlawed.<sup>22</sup> A theory of distributive justice like that of Rawls primarily aims to provide guidance at the level of institutions, but seems unable to offer guidance to people trapped in difficult moral choices under conditions of an unjust society. However, these situations occur frequently and it is unrealistic to assume that we will ever be able to eradicate them completely. How then should we make decisions when we unwillingly find ourselves in situations we would not be in had we lived in a structurally just society?

If the parents concerned about their children's education act on care, they contribute to the perpetuation of unjust practices and to the frailty of the official, formally just institutions. This is why we can rightfully describe such moral choices as dilemmas involving considerations of justice *versus* considerations of care.

On the one hand, it cannot be just for someone to get involved in a system that distributes a basic good in a thoroughly unfair way, and thus vastly discriminates against some. Supporting a system such as private tuition goes against the rights of those who cannot afford private education. On the other hand, people have special duties towards their children and family dependants. They cannot refuse to provide basic goods for them without failing to meet these duties. Moreover, certain relationships, including those with one's own children, provide us with reasons of love, that go well beyond duty, to look after those with whom we are in that particular relationship. These two considerations combined – the special duties we have towards our dependants and the reasons of love that go beyond duty – represent the answer of the ethics of care to dilemmas of the private tuition type. In such dilemmas, both justice and care provide different solutions and, hence, they are in conflict.

A characteristic of moral dilemmas is that there is no conclusive way of deciding what is the right thing to do by appealing to moral reasons alone. Even when the choice is between a moral duty of justice and a duty of love that does not necessarily fall into the scope of morality, acting on justice may require too high a non-prudential cost. The conclusion that sometimes we cannot escape from facing impossible moral choices seems to cast a tragic light on the human condition, making us dependent on moral luck. Should we see ourselves as mere victims of circumstances? I have already argued that a proper response to the existence of dilemmas would be to change the external conditions that make their appearance more likely. However, in certain situations the very attempt to bring about institutional change may give rise to dilemmas when people have very limited resources and special duties towards their dependants.

Under the model of liberal democratic societies, we would ideally expect it to be possible to correct failures of justice without major sacrifices for the individual agents – and, particularly, without important *moral* sacrifices. If institutions were self-correcting and could be changed from within, little individual effort would be needed in order to start such processes. Unfortunately, past experience teaches us that, before gaining momentum, major changes require painful choices that often have moral dimensions. Persistent attempts, therefore, to effect institutional change more often than not require the sacrifice of some of the interests of those who are dependent on or close enough to the agent of change.

### **Translating “justice” into “care”: a partial solution**

This section argues that, when facing certain moral dilemmas, the choice may be construed as less radical if one is able to “translate” the reasons of justice into reasons of care. Moreover, the two possible courses of action need not always be conceived in absolute opposition (i.e., we can avoid reasoning of the kind: “Either I give my child extra tuition and sacrifice the value of equal opportunities or I refuse to support the unjust practice and hurt my child’s chances”). When one works with “thick” examples of moral dilemmas, which are placed in time and therefore have consequences and possible continuations in the future, one can sometimes steer a middle course with compromise solutions. Such a solution would be for parents to give their child private tuition while taking civic or political action against the private tuition system.

The flip side to such solutions is that they attract the criticism that they are hypocritical because it looks as if the agent wants to have her cake and eat it. A key point of the previous sections was to show how sometimes commitments to care and commitments to justice cannot live in harmony. How to justify, then, the hope of finding a solution that will minimize the conflict between care and justice? This hope is legitimate, I argue, but only to the extent to which it is possible and desirable to translate the values of justice into the language of care. This will involve a shift of perspective – away from seeing the ethics of care and the ethics of justice as being in competition and back to the perspective of care. Moving back does not necessarily mean regressing. Initially, the perspective of care and the perspective of justice indicated different answers to the same moral question. Adopting both perspectives at the same time revealed that the moral issue was a dilemma. The return to the perspective of care retains the awareness of the moral conflict.

The argument in favor of translating the language of justice into a language of care will find some support in Virginia Held's and Michael Slote's suggestion that "justice" and "care for strangers" cover the same moral terrain. If such a suggestion proves fertile, it will provide a good justification for choosing compromise solutions in some cases.

How does the perspective change, in the case of the private tuition dilemma, if parents see themselves caught between care for their own children and care for the children of strangers? When a particular parent comes to see her choice in these terms, it may become easier for her not only to make a decision, but also to decide to use more of her resources in order to follow a complex, more demanding decision – for example, by getting involved with the problem on a longer term. She might, as already suggested, decide to provide private tuition for her child, but at the same time be critical towards her decision. This would involve making it clear for the child and for others how damaging the practice as such is and looking for ways to change it. Equally, the parent might ultimately decide against being part of the private tuition practice. In this case, translating justice into care would provide a better way of explaining the decision to the child. Reasoning in terms of care for children of strangers could make the child feel less abandoned in her need for support and more included (albeit in an uncomfortable way) in a larger chain of caring.

The translation cannot be a mechanical, or entirely intellectual, process. On the contrary, the exercise of looking at justice in connection with the care for strangers can, under favorable circumstances, be a

transformative process, enriching the motivational situation of agents. As we have already seen, one major problem of an ethics of care is the danger of parochialism. An ethics of care, however, has the potential to overcome this danger by acknowledging that care for a few opens the way towards universalizable morality. With the private tuition issue, caring for the educational opportunities of one's own child makes visible to some parents the fact that there are many children "out there" for whom it is crucial they receive an adequate education. Understanding the issue of private tuition from the perspective of an ethics of care as a conflict between two types of caring increases the likelihood that those who confront this issue will open up further towards the needs of strangers.

There are, therefore, advantages in conceiving this kind of dilemma as an issue of balancing care for close ones with care for strangers. This translation will not turn them into easy moral choices, but it will change the overall perspective and the focus of conflict. One will not have to choose sharply between following justice and acting on care, and thus one will not entirely fail to give active recognition to one of the two requirements. This approach creates more room for compromise solutions. If we consider given conflicts to be framed in terms of care versus justice, they become dramatic since any solution requires radical sacrifice (either of justice or of the loved ones). If the demands of justice are translated into terms of care for the ones whose needs risk being neglected, compromise solutions are more easily conceivable.

Moreover, the willingness to accept such compromises may better advance the cause of institutional change (advocated, as we have seen, in various ways by Marcus and Barry) by making the case for necessary changes more clear. The issue of the private tuition system, for example, is often perceived by those who are already used to this practice as a natural and therefore unavoidable problem. The general tendency is to perceive it as a matter of luck – bad luck for those who cannot afford it, good luck for those who can. When people come to see it as entailing a conflict between justice and care, the problem additionally reveals itself as being one of *moral* luck. But the perceived dependency on luck in general and of moral luck in particular does not necessarily call for action. (On the contrary, expressing an issue in terms of luck tends more to minimize, psychologically, the tendency to take action.) If, however, private tuition is seen as an informal practice that systematically places at odds care for one's own child with care for children in general, the need for change becomes more obvious.

One could argue that compromise solutions are still unjust; however, if one holds a conception of justice that admits several degrees of justice (as care certainly does) any attempt to reduce injustice is worthy, even if there is no hope of eliminating it entirely.

This argument does not go as far as to claim that we can *always* translate concerns of justice into concerns of care, or that *all* moral dilemmas have some kind of compromise solutions. The present suggestions are, unfortunately, irrelevant to dilemmas of the kind of *Sophie's Choice* – where a mother is brutally required to choose the life of one of her two children over the life of the other or to risk losing both.

## Conclusions

I have argued against two different ways of precluding any conflict (in the relationship) between care and justice. First, I rejected the view that care and justice are always complementary and harmonious perspectives on moral issues. Then I rejected the argument that, although care and justice belong to one and the same perspective, there is no possibility of moral conflict between the two since their moral domains do not overlap. By means of discussing an example of moral dilemma, I showed that care and justice sometimes place upon us equally weighty and incompatible moral claims.

Another conclusion is that, as actors in the civil sphere of Romania today – with its mixed intellectual and institutional legacies – we have important reasons to recognize a plurality of values, some of which collide in particular situations. As a more general point, people living in a society which has been through so many political upheavals – as is the case in Romania – cannot themselves contend with a procedural theory of just institutions. The perceived fragility of institutions and procedures makes clear the need for a richer understanding of justice, and sometimes values other than justice, in order to sustain social stability and continuity.

## NOTES

- \* This paper, focusing on the case of the private tuition system, is the result of a larger research project entitled "Negotiating Values: The Role of Justice and Care in Public Life".
- <sup>1</sup> See Nel Noddings' influential book on care *Caring: Gender-Sensitive Ethics* (1984). She later refined her approach to care.
- <sup>2</sup> Flanagan, as well as Moody-Adams, argues that certain situations may be much better captured by one perspective than the other (Flanagan, 1987, 626). Moody-Adams gives examples of cases of rape or sexual harassment in which the moral problems are adequately described in terms of justice, not of care (Moody-Addams, 1991, 203). Finally, Selma Sevenhuijsen has put forward the argument that the perspective of care is much better in capturing the moral issues involved in child custody than a language of justice, centered on rights (Sevenhuijsen, 1998, 107-121).
- <sup>3</sup> Nor does she give such a principle elsewhere, as far as I know.
- <sup>4</sup> Here the main target of Barry's criticism is Lawrence Kohlberg, the psychologist whose work on moral development has been criticized by Gilligan. Barry argues that Kohlberg was an easy target for Gilligan's criticism, since his view of justice is too simplistic.
- <sup>5</sup> In many legal systems, people are not required to get involved in the prosecution of their close ones. This fact need not be seen as an argument that there can be no conflict between care and justice. I take the positive law's acknowledgement that, for example, relatives should not testify against each other even in cases of serious infringement of the law, as a sign that law-makers pay due heed to the moral feeling of care and its implications.
- <sup>6</sup> For a thorough review of contemporary literature on moral dilemmas and the problems they raise for practical reasons, see the first chapter of Patricia Greenspan's *Practical Guilt. Moral Dilemmas, Emotions and Social Norms* (1995).
- <sup>7</sup> This answer to the challenge of moral dilemmas will not, however, be very helpful in dealing with symmetrical dilemmas like Sophie's choice.
- <sup>8</sup> A reason for paying special attention to Marcus' view on moral dilemmas is that it highlights a very important point in the dialogue between care and justice. Often people have to protect the interests of those they care about, and sometimes the only way of doing this is by neglecting the requirements of justice, or by engaging in action that perpetuates unjust practices. Defenders of justice, like Barry, argue that such examples do not necessarily show that there is a moral conflict between the two values, but that the problem is with the structural injustice that gives rise to painful choices. Under just social institutions, the legitimate interests of those we love would not be hurt in the first place. Both proponents of justice as the overriding value and those who defend an ethics of care, however, agree on the importance of just institutions and practices. In some respects, the realisation

of perfect justice coincides with the attainment of perfect care, thus eliminating the possibility of practical conflict. At least at the level of utopia, care and justice may be entirely compatible ideals.

9 This argument, first made by Bernard Williams in the 1970s, became a central issue in the analysis of dilemmas. There are, of course, philosophers who deny that the presence of guilt and regret indicates that an obligation has been neglected.

10 The qualifications “hard” and “soft” are mine.

11 A way of explaining this shortcoming could perhaps be found in Thomas Nagel’s idea of “the fragmentation of value”, the idea that our values do not have a unitary source. This explains why values sometimes collide even in an ideally organized world. Nagel’s argument alone cannot *prove* that genuine moral dilemmas are possible. For those who incline in the first place to accept the existence of genuine moral conflict, Nagel’s idea of the fragmentation of value is illuminating as a further exploration of the sources of such conflict.

12 Occasionally, the extra tuition is paid for by the pupils themselves, but this is the exception rather than the rule.

13 Between March and May 2004 I conducted research together with a group of students into the public perception of education in Romania. We interviewed 11 persons who all had substantial experience with the educational system. We discussed, among other things, the issue of private tuition. Some of the arguments discussed here, or only briefly mentioned, have been formulated – more or less explicitly – by our respondents. The resulting research paper has not yet been published. I would like to thank Madalina Darvaru, Alexandru Marin and Andreea Pavel for their participation. For the last three points, see Vlad Alexandrescu, et al (2000).

14 The percentage of these children reaching university level is anyway extremely low.

15 This ideal, which was part of the communist ideology, still officially informs the educational policies in Romania. Many recent documents on post-communist educational reform mention equal opportunities as an essential goal.

16 See Kroeger-Mappes’ (1994, 122) argument that, although in certain cases it is true that parents view their relationships with children as a mere matter of duties, this constitutes a basis for criticizing the relationship as impoverished.

17 Indeed, some of the respondents in the research mentioned above (note 32) perceived this choice as a moral dilemma. Others could not conceive that parents can be seriously said to have a duty of justice to “boycott” the system of private tuition. However, some people, especially those less familiar with Romanian realities, thought when presented with this case that, morally speaking, one should definitely act on justice.

- 19 I believe this example of a moral dilemma is rich enough to warrant an even lengthier discussion. Exhaustive treatment of it would require looking more closely at arguments *against* giving one's children access to private tuition, from an ethics of care. For reasons of space, I can only mention a reason of care against receiving private tuition. Overall, I believe that the reasons of care will tip the balance towards providing such tuition to children, given the strong (perceived) correlation between private tuition and academic success.
- 20 The state has no obvious reasons to endorse this practice, since the money earned through giving private tuition is almost never declared and therefore not taxed. There may be, however, some more perverse reasons for those in power to turn a blind eye to this practice, since it is instrumental in maintaining a critical mass of teachers and professors above the poverty line and thus helps minimize strikes and public protest against the under-funding in education. Here, of course, one may argue that this only proves that a much larger proportion of the budget should be allocated to education if the welfare state is to be more than a sham. But at this point one should remember that the Romanian welfare state is also in a relatively poor state.
- 21 Professors also have this choice, of course. But, since for most of them tuition is often a question of survival, it may be that it is less of a duty for them to refrain from participating in this practice than it is for parents.
- 22 This imposes a serious limitation on Rawlsian theory, and, in general, on all theories of distributive justice. Given the far from perfect character of the world, a theory of justice should provide us not only with a regulative ideal of justice but also with guidance for action in circumstances that fall short of that ideal. I consider the ethics of care to be more responsive to this need.

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