

Can Care Ethics be Institutionalized? Toward a Caring Natural Law

Theory*

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Daniel Engster
Assistant Professor
Department of Political Science
The University of Texas at San Antonio
6900 North Loop 1604 West
San Antonio, Texas 78249
dengster@utsa.edu

Carol Gilligan's *In a Different Voice* (1982) established care ethics as a major new perspective in contemporary moral and political discourse. Yet, two decades after the original publication of this work, it remains unclear whether care ethics can provide the basis for a distinctive political theory, or as Gilligan herself indicates, represents only a supplement to theories of justice (Gilligan 1982, 173-174). Taking up the latter line of argument, a number of scholars have argued that care ethics is appropriate only for private moral relations among intimates but unsuited for a general political morality (Barry 1995, 252-256; Habermas 1990, 179-181; Kohlberg 1981-84, 2:229; Mendus 1993; Puka 1990, 1991). Some feminist scholars have criticized this argument as an attempt to contain care to private relations, but have failed to show how care ethics can be translated into a consistent and robust institutional political theory (Tronto 1993, 87-91).

This article develops an institutional political theory of care by integrating care ethics and natural law philosophy. Martha Nussbaum, John Finnis and others have in recent years revived a natural law approach to morality and politics that avoids the biological and metaphysical premises of classical and medieval authors (Finnis 1980; Nussbaum 2000). Yet their theories remain tied to an implicit and contentious teleology of human flourishing that limits their plausibility. The argument here is that care ethics can provide an immanent and free-standing foundation for natural law that avoids the problems of recent natural law theories, and, in turn, that natural law can provide a framework for formulating a concrete and institutionally-oriented caring political theory. Shifting the basis of natural law from a naturalist teleology to care ethics entails some amendments to natural law principles. But the two theories are generally complimentary and symbiotic: the revival of natural law can be successfully carried out by drawing upon care ethics, and care ethics

can be formulated into a robust political theory by building upon the insights of natural law philosophy.

The Particularity of Care

There are a number of different ways of defining care ethics, but a core element in all definitions is an emphasis on the concrete and particular (Dancy 1992). Care ethics takes the concrete needs of particular individuals in specific circumstances as the starting point for what must be done (Tronto 1994, 105). Care ethics is thus distinct from moral theories that start out from broad principles and rules of action, and it is this particularism that has led many writers to conclude that it is unsuited for general moral and political relations among people. Two of the writers who have developed this critique of care ethics most forcefully are also two of their strongest proponents. Nel Noddings and Jacques Derrida both identify care ethics as a superior moral orientation to impersonal theories of justice based upon principles and rules, yet both also argue that it is untranslatable into a general moral and political theory.

Noddings roots care ethics in the “attitude which expresses our earliest memories of being cared for and our growing store of memories of both caring and being cared for,” and as such, claims it is “universally accessible” (Noddings 1984, 5). All people have experiences of being cared for, and most have experiences of caring for others, that they intuitively recognize as good. Everyone thus implicitly acknowledges the morality of caring relations – even if only among family or friends (49, 79-81). To reject care on principle is to reject the basic conditions of human development and sociability.

Caring is superior to principled moral theories, she continues, because it involves attending to the particular needs of concrete others. Here she draws upon Martin Buber’s account of ethical relationships in *I and Thou* (32). Buber describes the I-Thou relationship as one of total and

immediate identification between two individuals. Noddings elucidates this relationship as one of engrossment.

Caring involves stepping out of one's own personal frame of reference into the other's. When we care, we consider the other's point of view, his objective needs, and what he expects of us. Our attention, our mental engrossment is on the cared-for, not on ourselves. Our reasons for acting, then, have to do both with the other's wants and desires and with the objective elements of his problematic situation (24).

In contrast to this notion of engrossment, principled moral theories distance us from the concrete and personal qualities of other human beings. Rather than meeting others on their own terms, we subsume them under objectifying categories. "The other's reality becomes data, stuff to be analyzed, studied, interpreted" (36). What is lost in these moral theories is connection with the other concrete person. One acts from principle rather than for persons in a manner that can be cold and calculating – and sometimes downright evil as, for example, when we view the other as foreign, menacing or in some sense deficient (Noddings 1989). Care places the particular needs of individuals at the foreground of moral action so that attention to immediate human concerns take priority over abstract principles and programs.

Noddings's definition of care necessarily entails a particular and situational morality. She acknowledges that we may "care about" strangers in the sense of maintaining "an internal state of readiness to try to care for whoever crosses our path," but she distinguishes this perspective from "the caring-for to which we refer when we use the word 'caring'" (Noddings, 1984, 18). Caring per se requires personal contact and varies according to individuals and situations. Indeed, because of the particularity of care, Noddings is wary of passing judgment on the caring activities of others. What is good for one individual in one situation may not be good for another in another

situation. “Since so much depends on the subjective experience of those involved in ethical encounters, conditions are rarely ‘sufficiently similar’ for me to declare that you must do what I must do” (5). Care ethics does not then stipulate any substantive norms, but rather consists of an attitude of attending to the other’s wants and needs. The goal “lies in trying to discern the kinds of things I must think about” in caring for others (13-14). Thus even though Noddings argues that care represents a universal morality, she claims it occurs only in intimate relations where it is highly variable and subject to the practical judgments of the care-giver.

Following directly from her definition of care, Noddings argues that caring cannot be taken as a model for general moral relations or a political theory. Caring occurs in circles of intimates and friends who are engrossed in one another. These circles may be linked through chains of affection when members of one circle form relations with members of another (46-48). Individuals may also choose to extend care to other particular strangers because they recognize it as the moral thing to do (83). Noddings calls this an ethical relationship of care. But she rejects “the notion of universal caring – that is, caring for everyone – on the grounds that it is impossible to actualize and leads us to substitute abstract problem solving and mere talk for genuine caring” (18). A person can only care for so many particular others, and since each of these must be treated particularly without general rules or principles, we must hold in abeyance our readiness to care for those whom we do not yet know. Noddings similarly rejects the possibility of translating care ethics into political theory. The commitment to caring, in fact, “invokes a duty to promote skepticism and noninstitutional affiliation. In a deep sense, no institution or nation can be ethical. It cannot meet the other as one-caring or as one trying to care. It can only capture in general terms what particular ones-caring would like to have done in well-described situations” (103). General legal rules and policies do violence to the particular and variable needs of individuals. Noddings

therefore advocates a form of philosophical anarchism: the caring individual should distance herself from the uncaring world of law and politics and attend primarily to those particular individuals within her circle of care.

In the “Force of Law,” Jacques Derrida even more forcefully develops this critique of moral and political theory from a caring perspective (1990). Derrida, too, associates morality with a caring perspective that emphasizes concern for “singularity, individuals, irreplaceable groups and lives, the other or myself *as* other, in a unique situation” (949). Rather than drawing upon Buber’s notion of total identification with the other, however, he invokes Emmanuel Levinas’s notion of the face-to-face encounter as his model of caring justice. In the face-to-face encounter, we are overwhelmed by the infinite uniqueness and particularity of the other and our very categories of understanding are overflowed. Given this understanding of the caring relationship, Derrida suggests that caring justice is probably impossible even among the closest of friends and intimates. “To address oneself to the other in the language of the other is, it seems, the condition of all possible justice, but apparently, in all rigor it is...impossible (since I cannot speak the language of the other except to the extent that I appropriate it and assimilate it according to the law of an implicit third)...” (949). Nonetheless, Derrida is in fundamental agreement with Noddings about the nature of morality, associating it with infinite attention to the needs and perspectives of others. His pessimism about our ability to identify completely with others serves primarily to remind us that, even when relating to our closest friends and lovers, there are parts of their being that always escape us.

Derrida’s skepticism about the possibility of caring among intimates makes him even more critical than Noddings of the justice of laws and institutions. He posits a sharp dichotomy between “[caring] justice (infinite, incalculable, rebellious to rule and foreign to symmetry, heterogeneous

and heterotropic) and the exercise of justice as law or right, legitimacy or legality, stabilizable and statutory, calculable, a system of regulated and coded prescriptions” (959). Law is always unjust because it fails to respect the particularity of individuals by treating them more or less the same according to fixed rules and statutes. A judge may take into account some of the unique circumstances of a person or case in applying the law, but is constrained by statute and precedents (or what Derrida calls the law’s interest in conserving itself) to fit particular cases into general categories (981-91). This conflict between law and justice is, from Derrida’s perspective, irresolvable. The legal system’s interest in consistency and continuity as well as the idea of equal treatment under the law necessitate a restriction of caring justice, and the moral idea of infinite and differential care cannot be formulated into general principles or laws.

Having drawn this sharp distinction between justice and law, Derrida adds that the distinction is never so simple in practice. Law is validated because it is supposedly based upon justice, and justice requires law in order to be manifested and enforced (959-61). The two are therefore intermingled in practice even though opposed in theory. The practical lesson Derrida draws from this *aporia* is that the infinity of justice “cannot and should not serve as an alibi for staying out of juridico-political battles, within an institution or a state or between one institution or state and others” (971). Politics always makes claims on justice, and this is what makes the deconstruction of politics possible (945, 957). Deconstruction appeals to justice in order to reveal the violence of laws and policies – not as exterior to politics but as always inherent within its founding and conserving acts (989) – and in doing so aims to make laws and policies more open and receptive to the otherness and difference of individuals. Derrida thus proclaims against his critics who have seen in deconstruction a tendency toward political quiescence and moral apathy that just the opposite is true: “Deconstruction is justice” (945).

One must be *juste* with justice, and the first way to do it justice is to hear, read, interpret it, to try to understand where it comes from, what it wants of us, knowing that it does so through singular idioms...and also knowing that this justice always addresses itself to singularity, to the singularity of the other, despite or even because it pretends to universality. Consequently, never to yield on this point, constantly to maintain an interrogation of the origin, grounds and limits of our conceptual, theoretical or normative apparatus surrounding justice is on deconstruction's part anything but a neutralization of interest in justice, an insensitivity toward justice. On the contrary, it hyperbolically raises the stakes of exacting justice; it is sensitivity to a sort of essential disproportion that must inscribe excess and inadequation in itself and that strives to denounce not only theoretical limits but also concrete injustices, with the most palpable effects, in the good conscience that dogmatically stops before any inherited determination of justice (955).

Derrida's rousing call to action here belies the claim that deconstruction is apolitical, but confirms its antipathy toward general moral and political theories. Deconstruction remains forever critical of general moral and political theories because they make claims on caring justice that they systematically and by their very nature necessarily violate.

Toward a General Theory of Caring Justice

A number of feminist writers have argued that Noddings's (and by extension Derrida's) definition of care is inadequate and may actually promote uncaring relations (Bubeck 1995; Card 1990; Goodin 1996; Hoagland, 1990, 1991; Tronto 1994; White 2000). In turn, they have

formulated more acceptable definitions of care that provide the basis for expanding care ethics into a general moral and political theory. Yet, none has thus far articulated a fully developed theory.

One criticism of Noddings's and Derrida's definition of care is that it accords little importance to caring for oneself, except perhaps as a means to provide further care for others. Susan Hoagland writes that a premium is placed in Noddings's theory on "always being other-directed" so that "being moral" comes to be indistinguishable from "being exploited" (Hoagland 1991, 255). The model care-giver by this definition would seem to be a martyr, servant or slave. Indeed, Diemut Bubeck observes that such an ideal of care "lies at the heart of women's exploitation as carers," since a good caregiver by this account selflessly gives herself to others without considering or complaining about the unjust distribution of caring activities (Bubeck 1995, 176-78). Moreover, as Gilligan argues in her account of women's moral development, there is something deficient in a wholly other-regarding caring morality (Gilligan 1982). A mature moral perspective involves concern for oneself and one's own well-being within relations of care. Grace Clement builds on this point to argue that "genuine care" requires the autonomy and concern for oneself, since an individual must first recognize her own distinct needs before she can recognize and empathize with those of others (Clement 1996, 27-31).¹

A second criticism of Noddings's and Derrida's notions of care is closely related to this first one. A number of critics have argued that the intense dyadic relationships described by Noddings and Derrida are likely not only to result in the exploitation of the caregiver, but also in smothering paternalism of the cared-for. Robert Goodin writes that "the trouble with subsuming individuals into relationships of 'we'ness," such as Noddings's proposes, "is precisely that we then risk losing track of the 'separateness of people. Within a full Buberian relationship of 'we'ness, we are a single entity, a single personality. Then any can speak for all. That, in turn, makes it easy

for everyone to impose upon (to exploit, if not strictly dominate) any or indeed every other” (1996, 507). Julie White observes in a similar vein that Noddings “assumes that needs are transparent to the caregiver” in such a way that the caregiver’s perceptions are privileged in the process of interpreting needs (White 2000, 116-120). Whatever he or she perceives the other to need appear to be true based upon the special relationship between them. Jean Grimshaw counters this view of care by arguing that good care always entails an element of distance between the partners in relationship.

If I see myself as ‘indistinct’ from you, or you as not having your own being that is not merged with mine, then I cannot preserve a real sense of your well-being as opposed to mine. Care and understanding require the sort of distance that is needed in order not to see the other as a projection of the self, or self as a continuation of other (Grimshaw 1986, 183).

Interestingly, Derrida acknowledges the importance of distance in his *Politics of Friendship* (1997, 251-257; 1988, 640-642). In every relationship of friendship, he argues that the friend wants not only to be treated as a concrete, unrepresentable individual person but also as a generalized other or moral person just like everyone else. Friendship thus involves the delicate process of trying to balance the demands of attending to the other’s particular needs while also respecting his or her general personhood. This obligation to respect the other’s general personhood follows logically from Derrida’s claim (borrowed from Levinas) that the other can never be fully comprehended. The only way to respect the otherness of the other is to respect his or her personhood - or in other words, to remain somewhat distant from them - even while attending to his or her particularity (1997, 52-65). When Derrida turns to discuss the differences between caring justice and legal justice in the “Force of Law,” however, he ignores this objectifying element of his theory of

friendship and defines caring justice strictly in terms of an infinite attentiveness to the other. An important element of caring thus drops out of his discussion.

One final criticism of Noddings's and Derrida's theories relates to their potential parochialism. Noddings in particular argues that we can only extend care to those whom we personally know thus rendering "as ethically insignificant our relationships with most people in the world, because we do not know them and never will" (Card 1990, 102). Joan Tronto notes that, given this definition, appeals to care ethics "could quickly become a way to argue that everyone should cultivate one's own garden, and let others take care of themselves" (Tronto 1994, 103, 171). Surely, this is not what Noddings and Derrida intended.² Any adequate definition of caring must include some attention to the effects of our care (or lack thereof) on other third-parties.

Joan Tronto has formulated a theory of care that addresses these criticisms and lays the groundwork for a caring political theory. Like Noddings and Derrida, she claims that caring begins with the willingness "to suspend one's own goals, ambitions, plans of life, and concerns, in order to recognize and to be attentive to others" (128). Yet, she departs from their definitions by arguing that care is not just a disposition or attitude, but a general practice with certain distinctive features including attentiveness, responsibility, competence and responsiveness (Tronto 1993, 118-119, 126-137). Moreover, she argues that the practice of caring is distorted when conceived narrowly in terms of asymmetrical and dyadic relationships, and instead should be understood to encompass attention to one's self, one's loved ones, third-party others, the social environment and world. She defines care most generally "as a species of activity that includes everything that we do to maintain, continue, and repair our 'world' so that we can live in it as well as possible" (Tronto 1993, 103). By defining care as a practice and placing it in an overall social context, Tronto avoids the dangers of self-effacement and parochialism inherent in Noddings's and

Derrida's accounts of care. Her emphasis on the importance of responsiveness in caring relationships also avoids the potentially paternalistic elements of their definitions. A good caregiver will not impose her own notions of care on others but rather will always remain attentive to the other's needs and concerns as he or she express them (Tronto 1993, 136). One might, of course, question the expressed needs of others, or suggest to them needs they have not yet imagined, or refuse to meet their needs on the grounds that they conflict with the care of self or others. But this element of responsiveness at least ensures that the otherness of the other will be acknowledged and respected rather than assimilated into one's own understanding of the good.

By broadening the definition of care to address some of the shortcomings of Noddings's and Derrida's definitions, Tronto opens the way for developing care ethics into a general moral and political theory. When we turn to her political theory of care, however, the results are disappointing. She argues that a caring political theory consists of liberal democracy infused with a more caring citizenry. Indeed, she argues that "care is only viable as a political ideal in the context of liberal, pluralistic, democratic institutions" because care presupposes "a politics in which there is, at the center, a public discussion of needs, and an honest appraisal of the intersection of needs and interests" (158, 168). Institutional principles such as the rule of law, the protection of rights and a commitment to due process "constitute part of care" because they promote "listening and responding" (215 n6). Democratic participation and debate are similarly important because they allow citizens to articulate and discuss their needs.

Tronto is surely correct to argue that rights and democracy are important to a caring political order, but they certainly do not guarantee it. Rights may just as easily lead to a highly individualistic and selfish society as a caring one, and participatory democracy may lead to majority tyranny and the oppression of minority groups. The success of Tronto's theory thus

comes to depend primarily on her claim that a caring political order will be a liberal democratic society inhabited by caring citizens. These citizens will vigilantly criticize and address power inequities wherever they may exist and make certain that all people are adequately cared for through provisions for good schooling, adequate health care, and so on (Tronto 1996, 145). Unfortunately, Tronto provides no suggestions for how such a caring citizenry might be fostered. She argues, in effect, that our existing liberal democracy would be more caring if people only cared more. Her proposal for translating care into political theory thus remains highly abstract, utopian, and ultimately incomplete.³

Seyla Benhabib outlines a different approach for translating care ethics into a general moral and political theory by integrating aspects of care theory with Habermas's communicative ethics.⁴ She begins by criticizing mainstream liberal theories of justice that associate morality with the standpoint of the generalized other. Her prime example is John Rawls who in his *Theory of Justice* suggests that we ought to place ourselves behind a veil of ignorance when thinking about justice so that we may abstract from all "contingencies" of race, class, gender, history, and identity and formulate general principles acceptable to all. Benhabib charges that Rawls's theory falls into "epistemic inconsistencies" because a person cannot know the wants and needs of others without knowing something about their contingent individual characteristics (1992, 161-64). Perhaps even more dangerously, by depriving individuals of information about the particular characteristics of others, Rawls's theory implicitly encourages individuals to treat others just like themselves. In practice, this usually means subsuming the views of all individuals under the perspective of the dominant group (153, 163). Benhabib suggests instead that a theory of justice acceptable to all must take as its point of departure the wants and needs of concrete others in all their particularity (i.e., the orientation of care).

Benhabib argues that a more particular and caring moral and political theory can for the most part be constructed out of Habermas's theory of communicative ethics with its emphasis on rational debate and agreement conducted through procedures that are open and fair to all. Yet, Habermas, too, remains attached to the standpoint of the generalized other by suggesting that individuals should put aside their particular interests when engaging in moral debate in order to achieve consensus with others. By contrast, Benhabib argues that individuals engaged in moral debate should attempt to understand one another in all their infinite particularity, and strive only to sustain a continuing moral conversation through reasonable and fair procedures (37-38). She thus shifts the focus of moral debate from achieving rational consensus to maintaining moral relationships.

Benhabib does not explicitly draw out the moral and political implications of her theory beyond suggesting that it requires a set of rights and institutions for ensuring open and fair debate.⁵ Nor is it, in fact, clear that her theory can be translated into a broad moral and political theory. Rather than treating care as a practice, she takes as her model of caring the intimate, face-to-face relation described by Noddings and Derrida arguing that we must in each case be attentive to the other's "concrete history, identity, and affective-emotional constitution" so that he or she "feels recognized, and confirmed as a concrete, individual being with specific needs, talents, and capacities" (159). In other words, we must bring the deeply caring attitude of intimate relations to bear on our relations with all others. Benhabib, however, fails to explain how this might be possible. Noddings and Derrida both pointed out the difficulty of translating intimate caring relations into a general moral and political theory, and Benhabib offers nothing to counter their views. In fact, her theory highlights some of the dangers and difficulties of attempting to extend an attitudinal approach to care to general moral and political relations. Stephen White writes that

the focus on intense and intimate care can result in “communal suffocation” when applied to general moral and political relations among strangers (White 1991, 104-105). Simone Chambers further wonders whether careful attention to the history and needs of concrete others is not contrary to the practicalities of politics. “Public policy is made about categories of people. Categories and classifications, by definition, generalize and so do not reflect variation in circumstances” (2000, 76). Because Benhabib fails to address these problems, her theory, like Tronto’s, remains incomplete.

Nancy Fraser suggests that Benhabib’s political thought can be made more viable by replacing her emphasis on the standpoint of the *individual* concrete other with the standpoint of the *collective* concrete other (Fraser 1986). The standpoint of the collective concrete other is different from the standpoint of the generalized other in that it focuses on the particular needs and concerns of groups of individuals within cultural contexts rather than on ahistorical, disembodied individuals. It is different from the standpoint of the individual concrete other because others “are encountered less as unique individuals than as members of groups or collectivities with culturally specific identities, solidarities and forms of life” (428). Fraser does not develop this theory of the collective concrete other into a general or moral political theory, but one might look to advocates of group and cultural rights such as Iris Marion Young or Will Kymlicka for guidance (Kymlicka 1995; Young 1990). A political theory organized around collective identities might include protections for the autonomy of different groups, provisions for group representation, and positive measures to ensure the preservation of cultural identities through resources for cultural and linguistic education.

Attention to group rights certainly has an important place within a caring moral and political theory, but as a caring moral and political theory, group rights approaches fail in two respects.

First, they do not outline an overall caring political theory but focus narrowly on one aspect of such a theory – attentiveness to groups and cultures. Second, group theories abandon care ethics’ characteristic concern with individual particularity and approach individuals as members of groups. The individual is accorded certain rights and resources based upon his or her group affiliation rather his or her particular uniqueness. The face-to-face relation is replaced with the group-to-group relation, quite contrary to care theory. Selma Sevenhuijsen observes that such an approach to care might be counter-productive insofar as it encourages individuals to subsume their particular identities to those of the group and think in terms of ‘them’ and ‘us’ rather than seeing the public realm as a forum of caring where “we can give shape to commonality on the basis of diversity” (Sevenhuijsen 1998, 146). The point here is not criticize group rights theories per se, but to highlight their inadequacy as possible frameworks for developing care theories. While these theories may have an important place within caring moral and political theories, they cannot take the place of them.

A number of other writers have further enumerated various aspects of a caring political theory in defending the view that care ethics can be expanded beyond intimate private relations. built upon the insights of Tronto, Benhabib and Fraser. Grace Clement, for example, contends that the public/private dichotomy used to define the proper spheres of justice and care is misleading. Caring activities underlie and pervade peaceful public behavior, and justice is important for ensuring moral relations not only among public citizens but also private individuals (Clement 1996, 69-75). Clement likewise argues that the simple contrast between caring and rights is invalid (Clement 1996, 80-83). Rights can be fruitfully conceived as rules specifying what people can do in relation to one another, and as such, may be used to institutionalize the commitments of care. “Indeed,” Rita Manning writes, “the blossoming of the language of positive rights seems

designed for this purpose” (Manning 1992, 154). Positive rights bring the priorities of care to the public sphere by establishing general caring relations among all people. In a similar vein, she suggests that social welfare programs, at their best, “exemplify the defining features of an ethic of care” by providing for the specific needs of particular individuals and groups (Clement 1996, 90). However, she adds that if these programs are to avoid the problem of paternalism, they must “begin with a public discussion of needs” and promote “healthy relationships between caregivers and care recipients” (Clement 1996, 104-105).

Julie White develops this last point in greater detail (White 2000; see also Sevenhuijsen 1998). When social welfare programs are conceived within the distributive paradigm, they almost invariably manifest paternalistic relations. Some group of experts decides to allocate some set of goods to individuals usually without “recognizing the particular identities of the actors involved” (White 2000, 72). White contends that these programs are uncaring (and often ineffective) both because they ignore the particular needs, circumstances and resources of those individuals whom they are intended to serve, and also because they fail to treat these individuals with the respect due to mature autonomous subjects – and hence often arouse suspicion and resistance. She thus argues that a caring approach to social welfare programs must involve a democratic process of needs interpretation in which the “needy” are given the opportunity to define their needs as well as devise and participate in programs designed to meet these needs (White 2000, 136, 164-167, *passim*).

Fiona Robinson takes this argument one step further in calling for a “critical ethics of care.” Like orthodox versions of feminist care ethics, she begins from “an understanding of morality characterized by sustained and focused moral attention arising out of the attachments and connections between concrete persons” (Robinson 1999, 110). Yet she further adds that caregivers

also must look beyond the immediate needs of individuals to understand the ways in which these needs have been created by social institutions and relationships.

What this means is not simply that the powerful must learn to ‘care about’ the suffering and the destitute in what could possibly – although not necessarily – become a paternalistic act which preserves existing power relations. It means that those who are powerful have a responsibility to approach moral problems by looking carefully at where, why, and how the structures of existing social and personal relations have led to exclusion and marginalization, as well as at how attachments may have degenerated or broken down so as to cause suffering (Robinson 1999, 46).

The goal of a political theory of care, according to Robinson, should be “a restructuring of political action in such a way that enduring relationships can flourish and agents can focus their moral attention and, ultimately, act with the virtues of care – attentiveness, responsiveness, and responsibility” (Robinson 1999, 154). Unfortunately, she offers few concrete suggestions for achieving this goal beyond arguing, like White, that social policies should be shaped in “close face-to-face interaction between organizations and their constituencies...rather than in the upper echelons of remote and rule-bound bureaucracies” (Robinson 1999, 160).

Clement, White and Robinson highlight important elements of a political theory of care, but their theories, too, remain incomplete. Clement leaves unanswered what sort of rights and policies might follow from a care perspective. White provides valuable advice on implementing caring social welfare programs, but does not articulate an overall theory. And Robinson’s theory ultimately seems to depend more on an attitudinal change in relations among people than any specific institutional reforms.

Care and the Natural Law

All the writers discussed in the previous section take important strides toward developing a political theory of care, but none successfully outlines a broad institutional theory capable of giving expression to the various aspects of caring relations. The question thus remains whether care ethics is capable of generating a distinctive political theory, or as a number of theorists suggest, represents only a supplement to liberal theories of justice. In this final section, I argue that care ethics can be developed into a comprehensive political philosophy by building upon the work of two of the most prominent contemporary natural law (or neo-Aristotelian) theorists: Martha Nussbaum and John Finnis.⁶ At the same time, I suggest that care ethics provides an immanent foundation for these theories that overcomes some of their central shortcomings. In this regard, my purpose is emphatically not to subsume care ethics within natural law theory but rather to integrate the two theories into a new caring theory of natural law.

Care ethics and natural law theory share a number of important similarities. Both emphasize the inherently social nature of human beings. Both also view the most basic intimate relationships between individuals, such as parent-child relationships and friendship, as the model for theories of justice. Both likewise suggest that just relations among people require attention to the particular needs, concerns and characteristics of concrete individuals, and as such, endorse practical and situational moralities. Nonetheless, feminists have been hesitant to draw upon natural law theories in formulating their care theories - and with good reason. Traditional natural law arguments rest upon a natural teleology that translates biology into destiny and difference into hierarchy (Ruhl 2000; Traina 1999). Women in this scheme are usually said to be biologically destined for child-bearing and child-rearing but deficient in most other capacities. Indeed, the two most famous historical proponents of natural law arguments, Aristotle and St. Thomas Aquinas, both judged

women to be naturally inferior to men and assigned them to subordinate social roles (Traina 1999, 10-11, 85-86).

Both Nussbaum and Finnis, however, argue that natural law theory can be reformulated apart from a natural teleology, and hence in a manner devoid of the hierarchical elements that have made it unattractive in modern times.⁷ In fact, both have argued that traditional interpretations of Aristotle and Aquinas are mistaken, since neither philosopher rested his natural law theory on natural teleology in the manner usually assumed (Finnis 1980, 23-55; 1983, 1-25; 1998; Nussbaum 1995). Leaving aside the question of whether their interpretations of Aristotle and Aquinas are correct, I focus here on the sufficiency of their own natural law theories.

Nussbaum's theory is based upon the capabilities approach to human well-being pioneered in economics by Amartya Sen and inspired by her own research on Aristotle.⁸ The basic idea of this approach is that there are certain capabilities that are so central to what it means to be a human being, or we might say so essential to human nature, that a human being cannot be deprived of the opportunity to exercise them without at the same time being stripped of his or her humanity (Nussbaum 1995, 94-95). There are two components to this definition of capabilities: "first, that certain functions are particularly central in human life, in the sense that their presence or absence is typically understood to be a mark of the presence or absence of human life; and second – this is what Marx found in Aristotle – that there is something that it is to do these functions in a truly human way, not a merely animal way" (Nussbaum 2000b, 71-72). It is not enough, in other words, that human beings are able to exercise the essential human capabilities; they also must be able to exercise them at a certain threshold level of human dignity. Nussbaum formulates a list of ten central capabilities essential for human existence, but acknowledges the potential for future additions (Nussbaum 2000b, 77-80). Her current list includes the ability to live to the end of a

human life of normal length (clause 1); to enjoy bodily health and bodily integrity (clauses 2 and 3); to develop and freely use one's senses, imagination, emotions and reason (clauses 4 and 5); to exercise practical reason and form a personal conception of the good (clause 6); to engage freely in various forms of social interaction with others (clause 7); to live with concern for animals and the natural world (clause 8); to be able to laugh and play (clause 9); and to exercise control over one's political and economic life (clause 10).

Nussbaum's capabilities approach rests upon an evaluative concept of the human being that singles out certain capabilities as essential for human flourishing (Nussbaum 2000a, 119). Nonetheless, she insists that her theory is a "freestanding moral idea" that does not rely upon "a particular metaphysical or teleological idea" (Nussbaum 2000b, 83). "The body that labors," she writes, "is in a sense the same body all over the world, and its needs for food and nutrition and health care are the same." She further adds that the "search for competence and mastery and control over the conditions of their lives" is a common desire among all human beings around the world (Nussbaum 2000b, 22). Drawing on Rawls, she thus suggests that her list of capabilities represents "a type of overlapping consensus on the part of people with otherwise very different views of human life" (Nussbaum 2000b, 76). No matter what else people might believe about the nature of the universe and human existence, all can agree that the basic capabilities are good.

Nussbaum proposes her capabilities approach as the basis for a political theory. The aim "is to provide the philosophical underpinning for an account of basic constitutional principles that should be respected and implemented by the governments of all nations, as a bare minimum of what respect for human dignity requires" (Nussbaum 2000b, 5). She argues more specifically that every government should provide their citizens with the opportunity to practice at least a threshold level of each of the capabilities (Nussbaum 2000b, 12, 74-75). In this respect, she acknowledges

that capabilities approach is not a complete theory of justice. It does not specify the requirements of an ideally or fully just society, but instead outlines only a decent social minimum of public justice. Related to this point, Nussbaum argues that the political goal is to provide every individual with the opportunity to exercise his or her capabilities in a minimally human way rather than to promote the actual functioning of all these capabilities (Nussbaum 2000b, 86-96).

Individuals are left to themselves to choose which capabilities to develop or neglect (religion over sexual expression, play over work) according to their own conceptions of the good. Societies, in turn, are left to determine within reason the threshold level of each of the capabilities based upon their own unique circumstances and histories (Nussbaum 2000a, 126).

Nussbaum presents her capabilities approach as a universal theory of justice but emphasizes its particular value for women, the poor and disempowered who often lack the opportunity to develop their fundamental capabilities because of cultural and financial factors. Her theory thus should assuage the doubts of feminists and others who regard all forms of natural law arguments with suspicion. Nevertheless, her theory as currently formulated is not entirely successful. One problem is that her theory rests upon, despite her claims to the contrary, a particular metaphysical doctrine. It may not rest upon a particular religious or cultural dogma (although it does appear to have much in common with western liberal ideals), but it does posit an ontology specifying what it means to be really human, or what Nussbaum calls an evaluative concept of the human being. As such, it suffers from the same weakness that afflicts all political theories that rest upon metaphysical definitions of human nature: her theory will be persuasive to those individuals who agree with her evaluative conception of human nature but will be unpersuasive to all those who regard domination and conflict as the essence of human nature, or who posit an essential difference in the nature of men and women. In short, by resting her argument upon a foundational claim

about human nature, Nussbaum casts her lot with all those other philosophers (Hobbes, Locke, Rousseau) whose theories are easily dismissed by individuals who hold different notions of what it means to be a human being (male and/or female).

A second problem of Nussbaum's theory relates to her account of moral obligation. Her argument, in brief, runs as follows: there is a set of basic capabilities that we are all obliged to respect and foster in all human beings since otherwise we fail to treat them in a manner worthy of the dignity of a human being. Covertly slipped into this argument is the assertion that we have a moral obligation to treat others in a manner worthy of the dignity of a human being. This argument works in traditional natural law teachings because the moral obligation to respect and develop others' capabilities is commanded externally by God or nature. Nussbaum's secular rendering of this theory, however, has no such external moral support. Even accepting Nussbaum's account of human nature and her list of basic human capabilities, one thus still might question: why am I obligated to respect others and provide them with the opportunity to develop their capabilities, especially when it may involve some cost to me? Nussbaum leaps from the claim that all human beings have certain capabilities to the claim that we have a moral duty to foster the capabilities of others – via political institutions – without providing any argumentative link between these two claims. She simply assumes our duty to respect and promote the human dignity of others.

John Finnis takes a different tact in outlining his natural law theory, but ultimately falls into some of the same problems.⁹ Like Nussbaum, he sets out to defend a natural law theory independent of metaphysics and a philosophy of nature, but as distinct from her, he also avoids substantive claims about human nature and builds his case for natural law strictly upon practical reasoning (Finnis 1983, 12-17). Practical reasoning is “thinking about what (one ought) to do...in

deciding, in adopting commitments, in choosing and executing projects, and in general in acting” (Finnis 1980, 12). When a person adopts the practical point of view, “we mean that he must assess importance or significance in similarities and differences within his subject-matter by asking what would be considered important or significant in that field by those whose concerns, decisions, and activities create or constitute the subject-matter” (Finnis 1980, 12).

Based upon this definition of practical reasoning, Finnis proceeds to outline a set of basic human goods, which he notes are not yet to be taken as moral goods. Basic goods are those goods that are self-evident to anyone who attends carefully and honestly to the relevant human possibilities (Finnis 1980, 64-73). They are the sort of goods that “intelligence makes evident and thus available to us” as “aspects of human flourishing or fulfillment,” and cannot be denied without involving oneself in absurdities or contradictions (Finnis 1983, 71-72). Finnis’s list of basic goods is similar to Nussbaum’s, and includes life, knowledge, play, aesthetic experience, sociability, practical reasonableness, and religion (Finnis 1980, 86-90). Like Nussbaum, he claims that none of these goods are superior to the others but all are potentially equally important to a good life (Finnis 1980, 92-95). Individuals thus may choose to emphasize some of these goods over others in their own lives, which explains the diversity of opinions among human beings about the good life, but no one who honestly considers the range of possibilities open to human beings and the fullness of human flourishing will fail to recognize the whole range of basic goods as potential goods for all human beings (Finnis 1980, 127).

The next step in Finnis’s argument involves providing an account of moral obligation to explain why we should respect and foster the basic goods in others, and for this he appeals to the requirements of practical reasonableness. A person who seriously engages in practical reasoning will recognize the full potentiality of human well-being, and hence the fundamental importance of

all the basic goods regardless of her own particular preferences. She will further acknowledge that the basic goods are potentially desirable for all human beings and respect their right to pursue them. Finnis calls this latter requirement the requirement of fundamental impartiality, explaining that “intelligence and reasonableness can find no basis in the mere fact that A is A and is not B (that I am I and am not you) for evaluating his (our) well-being differentially” (Finnis 1980, 107). There is, he notes, some room within practical reasonableness for self-preference, since “my self-determined and self-realizing participation in the basic goods” is part of realizing “the forms of human good” (107). But once an individual has realized a modicum of her own basic goods, she is required by practical reasonableness to favor and realize the fulfillment of basic human goods wherever and in whomever they exist. Finnis proceeds to list a number of other requirements of practical reasonableness including most importantly the duty to foster the common good of others, but this duty stems from the independent good of sociability rather than from practical reasonableness itself. The crux of Finnis’s moral argument from practical reasonableness hinges on the claim that a person must respect and foster the fulfillment of basic goods in others because practical reasonableness makes “no arbitrary preferences amongst persons” (106). This requirement amounts to a restatement of the Golden Rule: “Do to (or for) others what you would have them do to (or for) you” (107-108).

A number of writers have criticized Finnis’s reconstruction of natural law theory by claiming that it collapses without the backing of the philosophy of nature and human nature that supported classical natural law theory (Hittinger 1987; Lisska 1996, 139-165; McNerny 1991, 146-148; Veatch and Rautenberg 1991; Weinreb 1987). Lisska succinctly summarizes many of these criticisms with the following: “Traditionally, the concept of human nature or human essence has played a central role in determining the list of goods that are to be sought. Natural law

philosophers, Veatch in particular, ask if the dependence on human nature for the determination of the goods is eliminated, then what is the ground for these ends or goods?" (Lisska 1996, 143). Finnis, for example, excludes from his list of basic goods "selfishness, cruelty and the like" on the grounds that they "simply do not stand to something self-evidently good as the urge to self-preservation stands to the self-evident good of human life" (91). Yet, in *Genealogy of Morals*, Nietzsche argues just the opposite – that among "more primitive men" the qualities of "selfishness, cruelty and the like" were self-evidently good to human life, vigor and happiness (Nietzsche 1967, 67). The point here is not to endorse Nietzsche's account of goods over Finnis's but simply to note that a certain conception of human flourishing and good already stands behind Finnis's list of basic goods. The basic goods he lists are not self-evident but more precisely the sorts of goods that most individuals enmeshed within the Judeo-Christian tradition tend to endorse. An unstated theory of human nature therefore appears to stand behind his enumeration of self-evident goods.

A second, related problem arises in Finnis's list of the requirements of practical reasonableness. Finnis suggests that practical reason makes no distinction among goods or persons, but is oriented toward the fulfillment of as many goods as possible in whomever they may exist. Yet he simply asserts this point with little argumentation. A more practical rendering of practical reasonableness might hold that individuals need be concerned with other people's goods only insofar as they impinge upon or contribute to their own endeavors to realize the good life. Why, after all, must we – practically speaking – concern ourselves with others' pursuits of goods that we may not even consider to be personally worthwhile? Finnis is able to derive a theory of moral obligation from his account practical reason because he stipulates a theory of practical reason that rests upon moral presuppositions. To be reasonable for him means to be moral.

This brief discussion of Nussbaum's and Finnis's natural law theories aptly demonstrate the problems confronting the revival of contemporary natural law principles. Natural law theories appear necessarily to rest upon some metaphysical notion of human nature that render them parochial and easy to dismiss. An alternative, immanent ground for these theories can be found, however, in the intersubjective accounts of human existence developed by care theorists, Habermas and others. The reason contemporary natural law theories such as those of Nussbaum and Finnis are problematic is because they approach morality from the perspective of the self-contained, atomistic individual whose essence or practical reason points the way to moral obligations. These problems can be avoided by reformulating their theories in terms of the inherently intersubjective nature of human existence – an idea that is already implicit within but not central to their theories. Finnis's theory is especially helpful in formulating this immanent ground for natural law theory.

Sociability holds a special place among Finnis's list of basic goods as an independent basis of moral relations among human beings. In fact, Finnis writes that “very many, perhaps even most, of our concrete moral responsibilities, obligations, and duties have their basis in [the requirements of sociability],” but nonetheless subsumes these requirements within his account of practical reasonableness (Finnis 1980, 125). Finnis first argues that companionship and cooperation are basic goods of human life that all people at least implicitly acknowledge. This claim can of course be made stronger to assert that we all need companionship and cooperation for the fulfillment of any of our other basic goods (Baier 1993; 1997). Without the nurture of parents, children would never develop practical reasonableness or language – not to mention that most would have difficulty surviving for very long (Code 1987). Throughout our lives, we likewise all depend upon others for the fulfillment of basic goods and needs – at home, in the marketplace, in

business and politics, during sickness and old age (Baier 1997; MacIntyre 1999). Sociability is not then just a basic good of human beings, but also a basic requirement. Without the companionship, cooperation and care of others we would simply not be who we are, which is not to say that we need these goods to be essentially human. Rather the claim is that we are who we are – capable of using language and reason and making moral judgments and interacting peaceably with others – because we have enjoyed and continue to enjoy the care and cooperation of others, and being who we are, we cannot help but to regard the basic requirements of sociability as good.

Finnis suggests that the basic requirements of sociability are most fully revealed in the relationship of friendship. Drawing upon Aristotle and Aquinas, he defines friendship in the following terms:

In the fullest sense of ‘friendship,’ A is the friend of B when (i) A acts (or is willing to act) for B’s well-being, for the sake of B, while (ii) B acts (or is willing to act) for A’s well-being, for the sake of A, (iii) each of them knows of the other’s activity and willingness and of the other’s knowledge, and (iv) each of them co-ordinates (at least some of) his activity with the activity (including acts of friendship) of the other so that there is a sharing, community, mutuality, and reciprocity not only of knowledge but also of activity (and thus, normally, of enjoyment and satisfaction) (142).

Finnis’s definition of friendship here closely resembles the definitions of friendship and care discussed above. It includes attention to others’ needs, responsiveness to their opinions, and support for their capabilities. Yet, whereas writers such as Derrida and Noddings sharply differentiate friendship from general social relations, and many feminist theorists see care as only a supplement to general relations of justice, Finnis argues that the mutuality and attentiveness of

friendship manifest in ideal form the requirements of all social relations. At least in diluted form, all our moral relations with others require some modicum of mutuality, reciprocity and care.

The main difference between friendship and justice is the degree of intimacy among people. Friendship is a kind of particular justice in which individuals attend immediately to the particular needs of other individuals, while justice is a kind of general friendship in which individuals attend indirectly to the particular needs of other individuals (Aquinas II-II. 58 7-9). In both cases, mutuality, reciprocity and care are essential. Without some concern for the well-being of others, including their particular wants and needs, there is no community among human beings. Jessica Benjamin and Axel Honneth have recently defended this point by showing that disregard for others is a central source of social conflict and strife (Benjamin 1988; 1995; Honneth 1996). “Built into the structure of human interaction there is a normative expectation that one will meet with the recognition of others, or at least an implicit assumption that one will be given positive consideration in the plans of others” (Honneth 1996, 44). When individuals feel their particular needs and opinions are not being recognized or their opportunity to exercise their basic capabilities is being denied, they experience humiliation and anger and often resort to covert or open acts of rebellion to demand recognition, or in other words, they counter unsociable treatment with more of the same.

In friendship, one knows the particular goals and needs of the other and hence can discriminately provide for them. In society, however, the particular goals and needs of others are often unknown. Hence Finnis suggests that sociability requires respect for and attention to all that will promote the particular good of every person within the community and maintain a relationship among them. Since there are a variety of basic goods among human beings and individuals may choose to rank them differently, this means respecting and fostering the whole panoply of basic

human goods. “In the case of political community, the point or common good of such an all-round association...[is] the securing of a whole ensemble of material and other conditions that tend to favour the realization, by each individual in the community, of his or her personal development” (154).

Based upon this analysis of friendship and sociability, we arrive at the conclusion (peripheral to Finnis’s theory) that the basic good (or necessity) of sociability provides an independent reason for respecting and fostering the basic goods of others, and is the source of “very many, perhaps even most, of our concrete moral responsibilities, obligations, and duties” (143, 125). The argument may be briefly summarized in the following way: we all require social interaction with others for our development and well-being; the minimum requirements of sociability are defined by the practices of caring; and the practices of caring demand that we respect and foster all the basic goods of concrete individuals. It is not necessary, then, to resort to a philosophy of nature, or a theory of human nature, or an account of practical reasonableness to justify the principles of natural law. A foundation for natural law exists in the basic requirements of sociability encapsulated in the practices of care. We should care for others by respecting and fostering their basic capabilities because, as Annette Baier writes, “free riding on the generative scheme” of care and sociability is “at best churlish, at worst manifestly unjust” (Baier 1997, 30); and even more basically because, as Benjamin and Honneth suggest, we have all come to want and expect some modicum of care from others based upon our earliest experiences of human interaction with our caretakers. One certainly might choose to ignore or thwart the requirements of sociability associated with caring, (as many individuals choose to do everyday), without fearing the imminent collapse of society. Yet insofar as one desires to behave morally toward others and live within a moral society, and considers living within a society that maintains order by means of

coercion and force as wrong, one ought to respect and follow these requirements. Care is a hypothetical imperative for anyone who seeks moral relations with others as their end.

In reorienting natural law theory from a philosophy of nature to an ethics of care, certain amendments are necessary. The precepts of traditional natural law theory that derive from biology and teleology, including those associated with hierarchy and sexuality, are all shorn away. Natural law becomes limited to the subset of moral dictates associated with the requirements of sociability. Reformulated in this way, natural law theory provides an exemplary framework for formulating a caring political theory.

As noted above, natural law theorists do not sharply distinguish between friendship and sociability, but instead assert a seamless continuity between them. The basic rules of sociability, or justice, are a form of generalized friendship where each renders to others his or her particular due (Aquinas, II-II. 58 1; Finnis 1980, 161-2). Rendering to each his or her due in this framework means respecting and fostering their ability to pursue at their own discretion the whole panoply of basic goods, and entails the protection and enforcement of human rights – which Finnis claims represent simply a shorthand way for talking about “‘what is just’ from a special angle: the viewpoint of the ‘other(s)’ to whom something (including, *inter alia*, freedom of choice) is owed or due” (Finnis 1980, 205). A caring political theory begins, then, with a set of basic human rights designed to protect individuals’ pursuit of basic goods, including rights to life, liberty and the pursuit of happiness. The list of rights includes provisions for bodily integrity and physical security as well as protections for free speech, assembly and religion, since all of these rights are necessary in order to provide particular individuals with the widest scope possible for achieving their goods as they define them. Since the goal of a caring political theory is not merely to carve out a sphere of individual freedom but also to provide them with the opportunity to pursue the

basic goods in a dignified human manner, it also includes rights to bodily health and economic sustenance – both because these are basic needs of individuals and because the pursuit of basic goods can be severely compromised by illness and economic deprivation (Shue, 1980). For similar reasons, it includes the right to a broad quality education for all individuals so that they may enjoy knowledge, play, aesthetic experience and other goods; rights to childcare so that women in particular will not be restricted by cultural norms from pursuing their other basic goods; and cultural rights such as bi-lingual education and culturally-based curricula. The point of these rights, after all, is not to forge a common good but rather to meet the needs and foster the goods of particular individuals as they describe them. Practical considerations are certainly relevant here. There are limits to how much any society can spend on, say, health care or child care, and just as individuals face practical limitations to their particular care for others, so, too, do societies. But every effort can be made given the resources of a particular country to foster as many of these basic rights as possible. Nussbaum's position here is sensible. She argues that every society should work toward the goal of ensuring a threshold level of the basic capabilities given their current possibilities, and regard it as a tragedy if any individual is deprived of the opportunity to develop any of his or her basic capabilities (Nussbaum 2000a, 126-127).

A caring natural law theory must also include the right to political participation so that individuals and groups can gain public recognition and support for their needs, and attain representation in the political body that will ultimately be responsible for determining how rights to health care, economic sustenance, education, childcare and the like are actually delivered. The decision-making powers of democracy must be tempered, however, by respect for the rights promulgated above. If caring for others means to respect and foster the opportunity of each and every individual to exercise all of his or her potential capabilities, then there can be no justification

for restricting any of the capabilities individuals have thus far identified as important for their flourishing – unless, of course, they impede other individuals’ abilities to do the same. Thus, even if a society of atheists saw no use for the right to practice religion freely, they would nevertheless be wrong to abolish this right since some individuals might at some time develop the desire to exercise this capability. In short, the collectivism of democracy stands in tension with the particularism of care, and must be guarded against.

Closely related to this point is Julie White’s argument about the need for a democratic process of needs interpretation. White, it will be recalled, criticizes distributive theories of justice both because they adopt a paternalistic one-size-fits-all approach to social justice and also because they fail to show respect for the particular wants, needs and abilities of the individuals whom they are intended to aid. One might add based upon the above arguments that they also often deprive individuals of the ability to develop and exercise their own capabilities in forming their life plans, forming associations and so forth, by simply imposing programs upon them. Indeed, Finnis argues that a central principle of natural law theory is the principle of subsidiarity, or the idea that larger associations should never assume functions that can be performed efficiently by smaller ones, since individuals must practically partake in their pursuit of goods to fully enjoy them (Finnis 1980, 146-147; 1983, 38-39). Bringing together White’s and Finnis’s arguments, we may thus say that a caring natural law theory recognizes the importance of shifting policy-making away from national and state legislatures and bureaucratic organizations whenever possible to local communities and grass-roots organizations where individuals may actively engage in democratic processes of needs interpretation and delivery.

Finally, natural law theory provides a framework for understanding rights within relationships rather than as abstract possessions of individuals. Many feminist theorists have

called for such a reconceptualization of rights but few have actually described it. Since roughly the sixteenth-century, rights have been understood as possessions of individuals rather than as guidelines for relations between individuals. Mary Ann Glendon has dubbed this “the missing dimension of sociality” in modern rights talk (1991, 76-108). When rights are understood as the nearly absolute possessions of “the lone rights-bearer,” (to quote Glendon once again), they can have rather uncaring and unsociable implications – as, for example, when neo-Nazi groups are granted the right to march through a predominately Jewish neighborhood. A more caring approach to rights can be found in the pre-modern natural law understanding of rights as guidelines for relations between individuals within a community. According to this understanding, rights are not something people have as absolute and inviolable possessions but an expression of what is generally fair and sociable in relations between them. That is, rights are ‘what is right’ in a given situation between two or more persons in relation to an action, possession or state of affairs (Finnis 1980, 205-210). Understood in this way, rights are legitimately subject to certain limitations of the common good – meaning here not the greatest good of the greatest number or the overall good of some abstract entity called the community, but the good associated with respecting and fostering the realization by each individual of his or her own personal good within the limits of sociability.

The prime example of this approach to rights in the classical natural law tradition is the right to private property. Natural law philosophers traditionally defend the right of individuals to own private property, but not as an absolute individual right (Langholm 1992). Finnis writes, for example, that “arguments for founding property rights on alleged ‘metaphysical’ relationship between persons and things with which they have ‘mixed their labour,’ or to which craftsmen have ‘extended their personality,’ are foreign to Aquinas” (Finnis 1998, 189). Private property rights exist according to natural law theorists as an expression of the duty of sociability. Taking

possession of something is legitimate only because and insofar as one “gets things ready for” and “shares them with, other people” (Aquinas II-II.66.2). Property owners within this framework are rightfully entitled to the first use and enjoyment of the fruits of their labor so that they may fulfill their own goods and provide for those of their dependents – a conclusion that also follows from an ethics of care. But they are obligated by the very nature of property rights to devote the remainder of their produce to the use and enjoyment of others, and government is well within the scope of its legitimate authority to make sure that they do so (Finnis 1980, 186-187). Other restrictions might similarly be placed on the use of property insofar as it impinges upon the good of others, such as regulations related to working conditions, wages and the environment. Roman law, for example, speaks of limitations on the right of one individual to raise a building that will obstruct a neighbor’s light (Finnis 1980, 209). Natural law theory thus re-introduces the “missing dimension of sociality” into rights talk by defining rights as guidelines for caring relations among people rather than an absolute metaphysical possession of individuals.

A care theorist such as Noddings might still object that formulating care ethics into a institutional political theory undermines and distorts the practice of caring. One may counter this objection with an assertion that cuts in just the opposite direction: caring demands that we work to develop caring political institutions. One reason that individuals in a society such as our own do not show more care for one another is precisely because the collective caring institutions are not in place to encourage and coordinate our caring actions. It is not that most people do not recognize the goodness of lending a helping hand to someone in need; yet they sometimes refrain from doing so because they wonder what their small contribution of time or money can actually accomplish. Caring political institutions can facilitate caring actions by providing individuals with viable outlets for their care. Indeed, one would expect (and here the argument must remain speculative)

that a caring political system would encourage individuals to themselves become more caring. Individuals would come to see their rights not as absolute possessions but as guides for intersubjective relations with others. They would be encouraged through the principle of subsidiarity to undertake caring activities within their communities. Most generally, the basic protection and support accorded to each in pursuing his or her goods would be likely to promote a more open and tolerant citizenry. Arguing for the rights of women in the eighteenth century, Mary Wollstonecraft appealed to the value of care. “Would men but generously snap our chains, and be content with rational fellowship instead of slavish obedience, they would find us more observant daughters, more affectionate sisters, more faithful wives, more reasonable mothers – in a word, better citizens. We should then love them with true affection, because we should learn to respect ourselves” (1995, 240-241). A similar argument can be applied to all citizens today. The best way to promote a more caring citizenry is to provide them with the opportunity to pursue their basic goods and encourage them to support others in all their particularity and diversity to do the same.

¹ Jessica Benjamin supports this position from the perspective of psychoanalytic object relations theory (Benjamin 1988; 1995).

² Noddings indicates as much in responding to Card's criticism (Noddings 1991).

³ A similar problem besets Nancy Hirschmann's proposals for a more caring political theory based upon participatory democracy in *Rethinking Obligation: A Feminist Method for Political Theory*, (Ithaca: Cornell, 1992). Like Tronto, Hirschmann associates care ethics with participatory democracy but more explicitly acknowledges the potential for participatory democracy to favor privileged groups and result in oppressive policies (256). To safeguard against these dangers, she introduces various attitudinal elements into her theory such as a commitment among citizens to recognition, trust, mutuality, reciprocity, inclusion and conversation. Once again, however, she provides little indication for how such attitudes are to be encouraged among the citizenry except to suggest that participatory democracy itself will foster their development.

⁴ Stephen White has similarly attempted to integrate the work of care theorists and postmodern theorists through a moral and political theory organized around what he calls a "lightness of care" (White 1991, 90-94). White's lightness of care involves the pairing of curiosity and care so that one attends to the needs of others only after taking sufficient time to register the concrete details of their lives. White's proposals ultimately do not advance us much beyond the views of Tronto and Benhabib in thinking about how to translate care ethics into an institutional political theory. Much like Tronto, he suggests that the institutionalization of care depends upon a combination of more democratic institutions and a more (lightly) caring citizenry. Yet he never explains how we might generate a more caring citizenry who would exercise their democratic powers to eliminate injustice rather than simply enforce their majority will.

⁵ In her recent work, Benhabib does develop some institutional recommendations for a multicultural society (Benhabib 2002).

⁶ Nussbaum's and Finnis's works share a number of similarities, but they draw some very different conclusions from them. See, for example, their differing views in "Is Homosexual Conduct Wrong? A Philosophical Exchange" in *The New Republic*, 209, 20 (November 15, 1993).

⁷ Traina similarly distances natural law theory from the hierarchical arguments of Aristotle and Aquinas, but retains much of their natural teleology (Traina 1999).

⁸ For a discussion of the differences between Sen's and Nussbaum's approaches, see Nussbaum 2000b, 11-15.

⁹ Finnis's argument draws upon and is closely allied with the views of Germain Griesez whose central works are listed in the works cited.