AN ETHICS OF CARE AND THE U.S.-MEXICO BORDER

by

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THESIS
Presented to the Faculty of the
Honors College
The University of Texas at San Antonio
In Partial Fulfillment
Of the Requirements
For the Degree of

BACHELOR OF ARTS IN PHILOSOPHY
WITH HIGHEST HONORS IN THE HONORS COLLEGE

THE UNIVERSITY OF TEXAS AT SAN ANTONIO
College of Liberal and Fine Arts
Department of Philosophy & Classics
December 2016

ACKNOWLEDGMENTS

(Filler text)

December 2016

ABSTRACT

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The University of Texas at San Antonio, 2016

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As the result of the U.S. Border Patrol's deterrence strategy, over 5,000 migrants have died trying to cross the U.S.'s southern border since 1994. While the U.S. has the right to exclude, this situation is morally wrong, though not only because of its consequences. Proceeding from a care ethical position, I identify the *manner in which* the U.S. exercises the right to exclude along its southern border as morally wrong because it is uncaring. I contend that the manner in which institutions act should be constrained by a minimal care constraint. A minimal care constraint draws on the virtues of care (attentiveness, responsiveness, respect) as the basis for guiding institutional behavior and evaluating whether an institution is minimally caring. The minimal care constraint guides an institution to express attentiveness, responsiveness, and respect in its actions. The Border Patrol, by this metric, is uncaring and should not utilize its current deterrence strategy. This approach is advantageous because it informs us of when it is permissible and impermissible to exercise a non-absolute right, enjoys support from multiple normative theories, and promotes both actions that are more likely to achieve the aims of care and the aims of an institution.

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INTRODUCTION

In 1994, the Border Patrol introduced Operation Gatekeeper to deter irregular migrants from crossing the U.S.-Mexico border along California (Office of the Inspector General n.d.).[1] The strategists posited that if migrants could be deterred from crossing relatively safer parts of the border, then they would be forced to choose between refusing to migrate and crossing more dangerous areas of the border (n.d.). Upon implementation, Operation Gatekeeper successfully stymied migration through the San Diego sector (n.d.). However, migrants continued to enter the U.S. through areas to the east (Jimenez 2009, 8).

Upwards of five thousand migrants have died since the implementation of Operation Gatekeeper while the irregular migrant population has grown by approximately eight million. These deaths are directly attributable to Operation Gatekeeper because of the way the policy "intentionally forced undocumented immigrants to extreme environments that increased the likelihood of injury or death" (Jimenez 2009, 7).

My focus here is on the manner in which Operation Gatekeeper was formulated (Office of the Inspector General n.d.). I will contend that if the U.S. practiced the virtues of care—attentiveness, responsiveness, and attentiveness—in its formulation of border policy, then it would be less likely to formulate a policy that foreseeably leads to the death of thousands of people. I also contend that adherence to the minimal care constraint can improve the efficacy of institutional actions. In this specific case, I contend that if the Border Patrol had adhered to the minimal care constraint, the aim of reducing migration through the San Diego sector and in

[1] I follow Carens' lead in using the term "irregular" to describe migrants instead of "illegal" or "undocumented" because "each of these terms presupposes too much about the normative conclusions we should reach" (J. H. Carens 2008).

general could have been more closely achieved.

The flow of my paper is as follows: First, I give an overview of the ethics of care and outline the account I adopt here. Next, I provide a brief account of the U.S.-Mexico border relationship in the twentieth and twenty-first century. I define the minimal care constraint's intent and scope, ground its usefulness, and discuss an underlying premise concerning institutions expressing attitudes. I then develop the minimal care constraint by discussing the virtues of care and how they translate into a procedural code of ethics. The minimal care constraint, I note, is minimal because it only requires an institution to express attention, responsiveness, and respect to its stakeholders—it does not require institutions to pursue the other aims of an ethics of care. And it is a constraint because if an institution does not express attention, responsiveness, and respect, when formulating policy, it should not pursue said policy. The ultimate goal of the the minimal care constraint is to guide policy formulation such that it encourages minimally caring policies. I end the paper by applying the minimal care constraint to the U.S.-Mexico border situation.

AN OVERVIEW OF THE ETHICS OF CARE

There is great variation in the accounts given of an ethics of care. On one hand is an account like Michael Slote's (2007), which holds that care and empathy serve as the basis for a complete normative theory, an alternative to other accounts of justice. On the other hand, there is Fiona Robinson's (2011) critical ethics of care, which eschews prescription and refuses to "idealize caring relationships [or] posit care as morally superior to justice ethics" (28). Despite the variation, most, if not all, accounts of an ethics of care share a relational ontology, a focus on the virtues of care, a commitment to inclusiveness, and a non-ideal theory approach.

Care ethicists proceed from a relational ontology. As opposed to liberal theories, which hold that persons are autonomous, rational individuals who are free and equal, care ethicists maintain that persons are "conceived of as being in relationships" (Tronto 2011, 164), some of which are involuntary and many of which have an unequal power distribution, who are in varying states of dependency throughout their lives and depended upon by others (Engster 2007, 7). This difference in starting points leads care ethicists to focus on relationships and how care is provided and received.

This focus on relationships and how care is provided prompted care ethicists to ask the questions: What practices tend to ensure that people meet the aims of care? And what kind of caring relationship is morally desirable? Care ethicists have identified attentiveness, responsiveness, and respect as three virtues that ensure people meet the aims of their care and promote the health of a relationship.

Exercising the virtues of care increases the chance that the aims of care are met. To see this, consider situations in which the virtues of care are not exercised. Following an earthquake in Afghanistan, foreign relief agencies donated large amounts of food and clothing to the affected persons to alleviate the earthquake's effects (Noddings 2002, 58). Unfortunately, the Afghan people needed building supplies, not clothes, leaving them in need despite the attempt by foreign aid (58). Or consider the donor community's response to the Haitian earthquake. The most well-funded relief effort failed partially because the aid community neglected the virtues of care. Though displaced Haitians continue to need clean water and shelter, the donor community provided them with two soccer fields, a police station, and a cultural center (Gandhi and Morton 2015). The large-scale housing project that the donor community envisioned exhibited this

neglect: many of the housing models proposed by contractors relied on resources that are scarce in Haiti, particularly wood (2015).

Care ethicists needed to identify morally desirable relationships because early critics thought that the ethics of care could lead to a valorization of exploitative relationships that women have been to subject to (Card 2006). In response, care ethicists identified relationships in which "power is diffuse and shared, rather than consolidated in a hierarchy of top-down authority" as healthy and morally desirable (Groenhout 2012, 3). The virtues of care promote a relationship with this kind of power arrangement, which discourages exploitative relationships.

One of feminists' biggest issues with dominant ethical theories (utilitarianism, Kantianism, and other rights-based accounts) is that they have often excluded groups of people from moral personhood, including women, people of color, the cognitively disabled, and those with atypical gender identities (Kittay 2009, 131). Eva Kittay (2009) points to Peter Singer and Jeff McMahan's work on the moral status of animals as clear examples of work that excludes the severely cognitively disabled from moral personhood. Singer and McMahan assert that the "category of human being is not a morally significant one, and that moral personhood ought to be assigned on the basis of cognitive capacities" (131). Though they make provisions for those who have had or will develop the cognitive capacity required for personhood, Singer and McMahan deliberately bar the severely cognitively disabled from the moral realm (Kittay 2009). Kittay (2009) points out that these widely read works fail to take into account the history of discrimination and violence towards the severely cognitively disabled and may encourage violence against them (131).

This has led care ethicists to make a commitment "to be inclusive of all." Further, it has led care ethicists to adopt a non-ideal theory approach (122). The theory does not rely on

idealizing assumptions, such as an assumption of strict compliance (that nearly everybody strictly complies with the principles of justice) or an assumption that favorable conditions hold (that historical, economic, and social conditions "do not preclude the possibility of a just [well-ordered] society") (Stemplowska and Swift 2012, 375). Instead, the ethics of care rejects these assumptions in favor of dealing with "obstacles to a well-ordered society due to injustice… and socioeconomic limitations" (375) so that marginalized persons are not excluded from moral personhood and their exclusion is no longer seen as "inevitable, unavoidable, and fully justified" (Kittay 2009, 123).

Historically, accounts of the ethics of care have eschewed principles and rules. The abstraction required to formulate a principle or rule obscures the important moral considerations of various situations and this is in tension with the commitment to inclusion and non-ideal approach.

For example, Ruth Groenhout (2012) has surveyed liberal and libertarian approaches to the problem of brain drain. She argues that one of the reasons their solutions have been so ineffective in stemming the flow of medical professionals from developing countries with struggling healthcare systems to affluent, developed countries is because they have all been developed as one-size-fits-all solutions (2). Theorists' endeavor to provide a solution general enough to succeed in all countries leads them to ignore distinct cultural features and, thus, overlook country-specific solutions (2). With this insight, she proceeds to argue that, given Ghanian culture's emphasis on one's reputation and honor, an effective approach to mitigating brain drain might involve shaming medical professionals who emigrate and honoring those who do not (13). Both liberals and libertarians could support this approach, however, the solution only appears "when we begin to pay attention to the particularities of an individual context" (13).

This creates a prima facie discrepancy between an ethics of care and the minimal care constraint—if care ethicists reject principles and rules, then it should reject the minimal care constraint since it is formulated in terms of rules. Yet this takes care ethicists' rejection of principles too far. For one, it is not a categorical condemnation. Groenhout notes that "rules and principles are of vital importance in the international context" just as "cultural contexts are important… to our ethical deliberations" (3). Secondly, care theorists have also taken into account the practical benefits of using rules. Noddings (2013) acknowledges that rules are a "boon to the one-caring whose energies are, after all, finite" which help people save time and energy (51).

However, Noddings (2013) includes some caveats in her concession that a caring person can make use of rules in their moral judgment. First, the one-caring, to use her term, does not act "automatically by rule" since caring involves trying to understand another person's nature, needs, and desires (51). Secondly, the one-caring is not motivated by merely trying to obtain "credit for caring" by following rules (51). Lastly, the one-caring will keep concrete subjects in mind during deliberation and, ultimately, prioritize judgments which stem from this more personal approach (54).

Contrary to the supposed discrepancy, the minimal care constraint is formulated with the intent of encouraging institutions to have a rich account of the salient features of moral situations. That is, in essence, the virtue of attentiveness, which is later formulated as a rule. As such the feature of principles and rules that theorists criticized—abstraction that leads to obscuring morally-relevant considerations—is not a feature of the minimal care constraint's rules.

The account I use relies on the all of the features outlined above. It is a prescriptive account. It is not a particularist account. I do not contend that an ethics of care is a complete ethical theory on its own. Instead, I proceed as if it is a supplemental ethical theory to make the minimal care constraint more appealing to a plural of ethical theories. I do not describe what exactly institutions should aim to do, but how they should go about carrying out those aims.

A final note on diction: "Care" can signal a few different things. For example, there is care as disposition ("she tends to treat people in a caring manner"), care as attitude ("she cares for her"), and care as practice ("she provides care to her"). In this paper, I use "care" in the latter sense. A statement like, "Institution X cares for Y," should not be read as stating that institution X has an emotional interest in Y or is disposed to care for Y, but should read as saying that institution X provides care to Y.

U.S.-MEXICO RELATIONSHIP IN THE PAST CENTURY

Prompted by the labor shortage during World War II, the U.S. and Mexico began a guest worker program, the Bracero Program, in 1942 (Whitaker 2009, 365). U.S. businesses, particularly the agricultural and railroad sectors, temporarily employed Mexican migrants (365). The program introduced U.S. businesses to inexpensive migrant labor (371).

In her work on migration systems theory, Rajendra (2015) writes that migration systems, "in which two or more countries exchange large numbers of migrants" often originate from guest worker programs (363). She writes:

> While the guestworker programs were intended as temporary solutions to short-term labor shortages, in every case, guestworker programs led to increased permanent migration as guestworkers remained in the country and eventually reunited their families in their new

homes. (363)

When the program ended in 1964, many braceros either remained in the U.S., despite the law, or sought temporary residency or legal citizenship in the U.S. (Whitaker 2009, 372). These migrants created a migrant network, "the meso-structures developed by the migrants themselves," by sending for their families, forming communities, and beginning businesses (Rajendra 2015, 363). Migrant meso-structures sustain migration flows by helping new migrants "learn how to migrate, find employment opportunities in the host country, and navigate in a new social, political, linguistic and cultural context" (363).

In preparation for the migrants who did not elect to stay in the U.S., Mexico created maquiladoras, industrial factories exempted from Mexican laws that prohibited foreign ownership of businesses on Mexican territory. The maquiladoras attracted U.S. businesses because Mexico lacked stringent environmental and labor regulation, thus providing an opportunity to lower operating costs. While maquiladoras successfully encouraged foreign investment, they failed to employ the returning braceros.

The Clinton administration billed the North American Free Trade Agreement (NAFTA) as a panacea for Mexico's economic issues, however, the agreement destroyed its agricultural sector (Andreas 1996). Subsidized U.S. crops, specifically corns and beans, flooded the market and took revenue from local farmers selling more expensive goods (1996). The deterioration of the agricultural sector led to an increase in unemployment, especially in rural areas (1996).

Most importantly, NAFTA set up Mexico to export the goods which it has a comparative advantage in: labor and drugs (Andreas 1996). Though the Clinton administration sold the policy to the U.S. public with the promise of lowering rates of unauthorized immigration from Mexico, policy analysts foresaw a short-term increase in unauthorized migration (1996).

The nature of U.S. policy towards the U.S.-Mexico border changed in 1994. In San Diego, then the most heavily traversed section of the border, irregular migrants ran across highways, often causing injurious and fatal car accidents (Office of the Inspector General n.d.). Further, residents of the sector commonly experienced "vehicle theft, home break-ins, and other property crimes" (n.d.).

Before 1994, the U.S. government's approach towards irregular migration had never resembled a military operation. On October 1, 1994, the Border Patrol, tasked with restricting unauthorized migration along the borders, enacted Operation Gatekeeper at the Imperial Beach Station in the San Diego sector (Office of the Inspector General n.d.). The Border Patrol increased resources and agents in the sector with the intention of deterring migrants from crossing or shifting traffic eastward (n.d.). Agents were previously without a strategic plan, but Operation Gatekeeper now had them in a three-tiered line up, with the majority of agents placed in the first line as a deterrent (n.d.).

The Border Patrol expected their increased presence and the extreme environments of the eastern areas to deter migrants from crossing (n.d.). These areas include: the "Pacific Ocean to Otay Mountain, the Jacumba, Cuyamaca, and Laguna Mountains, and the Sonoran Desert" (Jimenez 2009). The Otay Mountain, in particular, is characterized by "steep mountains, deep canyons, thick brush, … an absence of urban infrastructure and transportation facilities… [and] extreme temperatures, ranging from freezing cold in the winter to searing heat in the summer" (Office of the Inspector General n.d.). If migrants could be deterred from crossing safe sections of the border, the rationale went, then they would be forced to choose between refusing to migrate and crossing dangerous areas of the border, and only few would risk migration (n.d.). After seeing the success of Operation Gatekeeper in deterring migrants from crossing the easy

entry points in the San Diego sector, other border patrol stations adopted its "prevention and deterrence" strategy (n.d.).

In assuming that only a few migrants would risk the danger of crossing through mountains or desert (n.d.), the Border Patrol failed to take into account the migrant network established by the Bracero Program (Rajendra 2015, 363). Now, twenty-one years later, Operation Gatekeeper's legacy is one of pushing migrants into the extreme and inhospitable environments to the east of the San Diego sector (Jimenez 2009). The operation succeed in deterring migrants from crossing easy entry points to the U.S., but did not deter them from crossing other areas (2009). Migrants continue to enter the country: the irregular migrant population grew from 3.2 million in 1993 to 11.4 million in 2012 (Sontag 1993) with the majority from Mexico, El Salvador, Guatemala, and Honduras (Baker and Rytina 2013). And the journey is now much more dangerous: the risk of dying in the deadliest section of the border "was 1.5 times higher in 2009 than in 2004 and 17 times greater than in 1998" (Jimenez 2009, 8). At least 5,000 migrants have perished from hypothermia, dehydration, and drowning as a result of having to traverse extreme environments (2009, 21). Despite this, the Border Patrol continues to employ the strategy of Operation Gatekeeper (n.d.).

INTENT AND SCOPE OF THE MINIMAL CARE CONSTRAINT

Since its inception in the 1980's, theorists have developed an ethics of care into a viable alternative to dominant ethical theories and recently began arguing that the theory is appropriate for international relations. Yet theorists have given a majority of attention to our obligations to caregivers (Mahon and Robinson 2011, Groenhout 2012). The role of an ethics of care in other areas of international relations is still a work-in-progress. Other work on an ethics of care and

international relations has been critical in nature. Additionally, there is a dearth of work on an ethics of care and institutional behavior.[2] The question of what constitutes a caring institution, or a minimally caring institution, in the international realm remains unanswered. The minimal care constraint is an attempt to provide a procedural code of ethics for institutions.

The care constraint is described as minimal because it alone is insufficient to deem an institution caring. Broadly speaking, an institution is caring if it acts according to the ethics of care. What exactly this means is not answered in this paper. The point here is that following the minimal care constraint does not mean an institution is caring. Instead, following the constraint means that an institution is meeting some of the basic requisites of care.

One may wonder why I am advocating for a minimal care constraint as opposed to a more demanding standard of care that concerns both the action and the manner in which the action is taken. It is not the case that I think an ethics of care is insufficient to guide us in determining which action to take. My goal here is to make the minimal care constraint compatible with a plurality of ethical theories because its adoption will bring about more caring outcomes. Institutions have the option of supplementing another action-guiding ethical theory with the constraint to guide the manner in which it acts.

To illustrate this goal more clearly, imagine a scenario in which a cook, Frederick, wants to help Joseph, a person who is food insecure, by providing a meal. He justifies this by concluding that, generally, people have a right to minimally nutritious food. Frederick talks to the Joseph, cooks a meal, and delivers it. The Frederick is attentive, responsive, and respectful, so he asks Joseph what kind of food he likes, tries to make a meal he desires, and delivers it without degrading Joseph. Now imagine a second scenario in which Frederick does not exercise

[2] An exception to this is Michael Slote's (2007) *The Ethics of Care and Empathy*.

the virtues of care. He does not ask the Joseph what kind of food he likes, cooks a dish he dislikes, and takes a photo of Joseph with the food without asking. Frederick satisfies Joseph's right to some food in both cases, yet the manner in which he does is certainly of moral value. The minimal care constraint is compatible with Frederick's end goal even though the goal is justified from a rights-based ethic. However, the minimal care constraint is not compatible with the second way in which Frederick meets his aim.

The scope of the minimal care constraint defines who the proper subjects of attentiveness, responsiveness, and respect are. It is not the case that an institution must attend to everybody, regardless of their relation or lack of relation. An institution adhering to the minimal care constraint must only be attentive, responsive, and respectful to its stakeholders.

It is important to define the scope to include an institution's stakeholders as opposed to limiting it to constituents for obvious reasons. Institutions, to some degree, are able to choose their constituency, but they cannot choose their stakeholders. Pre-1960's America and Apartheid South Africa are patent examples in which an institution excluded groups of people from their constituency. It certainly is not the case that the U.S. had no obligation to demonstrate attentiveness, responsiveness, and respect to African Americans or women before passage of civil rights legislation. So limiting the scope to stakeholders is appropriate.

GROUNDING THE NEED FOR A CARE CONSTRAINT

The minimal care constraint has a number of advantages attached to it. First, it could improve the chances that institutional actions meet caring aims and some other aims. Second, it enjoys pluralistic ethical support. Third, it provides criteria for judging when it is morally

permissible to exercise a non-absolute right. Fourth, it is accessible, rendering its application straightforward.

Earlier, I made the claim that institutions adhering to the minimal care constraint would be less likely to formulate a policy with uncaring consequences. This seems obvious on reflection. An institution's stakeholders are going to advocate for their actions that benefit their wellbeing. An assumption I am making is that a person, without severe cognitive disability, is "capable of understanding and expressing their needs" better than a third-party might (Engster 2007, 31). So if an institution is seeking to understand what their stakeholders are experiencing and are amenable to their desires, they will be swayed towards actions that meet their stakeholders' needs. It would be more difficult to justify actions that radically depart from the desired consequence of the stakeholders.

I also stated that adhering to it would improve the chances that an institution's actions actually met their aims. I contend this because attentiveness would encourage institutions to more directly address the root of issues instead of its symptoms. An example of this is given in the case study section of the paper.

There are important exceptions to the aims that adherence to the minimal care constraint would help institutions secure. Though it could certainly secure uncaring ends, it seems prima facie impossible for an institution to both adhere to the minimal care constraint and achieve egregiously uncaring ends. I have in mind an end like slavery. It does not seem possible that an institution could be attentive and responsive to a population that is being considered for enslavement. It could certainly not both respect and enslave persons. Before objections are raised, I want to note that this is an intentionally biased example. The line between egregiously

uncaring aims and the aims that institutions adhering to the constraint is not distinct. It is conceivable that an adhering institution could, for example, pursue war.

There are at least three possible rationales that other theories could use to support the minimal care constraint. Starting with the intentional maxim, "When I want to care for another, I will be attentive and responsive," it is possible for Kantians to argue that this passes both tests for universalizing an action: the contradiction in conception test and contradiction in will test.[3] This is best seen when trying to universalize the maxim, "When I want to care for another, I will not be attentive and responsive." To care, as defined by care theorists, is to be attentive and responsive. Thus, to universalize care that lacks attentiveness and responsiveness changes the meaning of the terms used in the intentional maxim, which leads to it failing the contradiction in conception test. The maxim also fails the contradiction in will test because it would fail to achieve its aim. An inattentive, unresponsive, disrespectful institution would fail (and has failed) to provide care for the victims of an earthquake.

Kantians could argue that the constraint's prescribed practices just are a respect for human dignity. This rationale relies on a modified account of respect dignity than is traditionally employed by Kantians. If one understands respect for human dignity as actually entailing a rich account of a situation's morally relevant considerations, then it is easy to see that the virtues of care are entailed by respect (Graper-Hernandez 2015).[4]

[3] Respect is conspicuously absent from the intentional maxim simply because the ability to universalize an action implies that it is respectful, according to Kant.

[4] Both of the Kantian rationales face a challenge from those who contend that Kantianism and attentiveness are in tension, such as Blum (1991) and O'Leary (1993). However, I cannot cover those in detail here.

Rule-utilitarians could argue that generally being attentive, responsive, and respectful increases utility. This position would largely rely on evidentiary concerns, but there certainly appears to be some evidence to support this claim. If utility is taken as happiness and if it is true that caring for and being cared for tends to make people happier, then the position that the virtues of care ensure caring aims are met entails that their practice tends to ensure greater utility. We may again look to the donor response to the Afghan and Haitian earthquakes or just consider the care practices adults employ in raising their kids. Alternatively, we may point to the diffuse power arrangement the virtues encourage, entailing that practice of the virtues of care discourages exploitative relationships.

The constraint could also serve as guidance in exercising non-absolute rights. For example, Christopher Heath Wellman (2011) argues that states have a right to exclude, though the right is not absolute. Wellman highlights instances when exercising the right to exclude is impermissible, yet does not provide a method for determining this (2011). The care constraint provides some straightforward criteria for judging this: when exercising a right means that one is inattentive, unresponsive, or disrespectful, the institution should refrain from exercising it.

The most important feature of the minimal care constraint is its accessibility. The virtues of care spring from universal practices of care and their presence or absence is patently obvious. Thus, it easily lends itself to incorporation into an institution's code of ethics. Adherence to the constraint is not something that an academic would have to check because adherence or lack thereof would be obvious. Accessibility makes adoption easier. If it is the case that relationships in which "power is diffuse and shared" yield caring outcomes, such as those that elevate or meet another's needs as opposed to marginalize or exploit them, then widespread adoption of the care constraint can lead to an increase in the amount of caring policies (Groenhout 2012, 3).

INSTITUTIONAL ATTITUDES

One of the underlying assumptions made in formulating the minimal care constraint is that the actions of institutions express normative attitudes towards people. This is especially important when discussing institutional respect. In support of this premise, I draw on Christian Schemmel's (2011) analysis of the unjust scenarios provided by Thomas Pogge.

In World Poverty and Human Rights, Thomas Pogge (2008) provides four illustrative scenarios in which institutions, be they organizations or the law, create a shortfall for a disadvantaged group of people:

> [Imagine four] different scenarios in which, owing to the arrangement of social institutions, a certain group of innocent persons is avoidably deprived of some vital nutrient V – the vitamins contained in fresh fruit, say, which are essential to good health. The four scenarios are arranged in order of their injustice, according to my preliminary intuitive judgment. In scenario 1, the shortfall is officially mandated, paradigmatically by the law: legal restrictions bar certain persons from buying foodstuffs containing V. In scenario 2, the shortfall results from legally authorized conduct of private subjects: sellers of foodstuffs containing V lawfully refuse to sell to certain persons. In scenario 3, social institutions foreseeably and avoidably engender (but do not specifically require or authorize) the shortfall through the conduct they stimulate: certain persons, suffering severe poverty within an ill- conceived economic order, cannot afford to buy foodstuffs containing V. In scenario 4, the shortfall arises from private conduct that is legally

> prohibited but barely deterred: sellers of foodstuffs containing V illegally refuse to sell to certain persons, but enforcement is lax and penalties are mild (47).[5]

Pogge suggests that the "implicit attitude of a social institution" explains the differing degrees of injustice in each scenario, but then immediately dismisses the explanation as outside the scope of his project (48). Schemmel (2011) follows Pogge's brief thought and identifies the attitudes expressed in the first two situations as hostility and contempt, respectively (134). Scenario three and four are examples of neglect (136).

The assertion that institutions are capable of expressing attitudes rests on the the inability to reduce the expressive assessment of institutions to the expressive assessment of the actions of individuals (Schemmel 2011, 135). Pettit and List (2006) lend an example to bolster this claim: a three-member court is considering whether (P) "the defendant did action X," (Q) "the defendant had a contractual obligation not to action X," and whether (R) "the defendant is liable fro a breach of contract" (91). The propositions P, Q, and R are formulated so that "(P and Q) if and only if R" is true (91).

Now imagine that the first judge believes that P, Q, and R are true (93). The second judge believes that P is true, but Q and R are false (93). The third judge believes that Q is true, but P and R are false (93). So two judges believe that P is true, two believe that Q is true, one believes that R is true, and all of the judges believe that "R if and only if (P and Q)" is true (93). Assuming that a group's beliefs are founded on the beliefs of the majority leads to a logical

[5] Pogge (2008, 48) lists two other situations: one in which the shortfall arises from *avoidably leaving unmitigated the effects of a natural defect*, and another in which it arises from *avoidably leaving unmitigated the effects of a self-caused defect*. Whether these arrangements express disrespect is suspect and require argumentation outside of the purpose of this example.

contradiction: the court believes P, Q, and "(P and Q) if and only if R" but does not believe R (93). Formally, the court believes:

1: P and Q

2: Not R

3: (P and Q) if and only if R

Even if the requirement is relaxed such that group belief for some propositions is founded on a majority belief and and other propositions are founded on "different function[s] of the individual judgments," the contradiction is still generated (94). Proceeding from these results, Pettit and List conclude that group beliefs are irreducible to individual beliefs (100).

This example helps ground the assertion that institutions are distinct agents that form their own "beliefs and intentions on the basis of a constitution of decision rules adopted and upheld by (a sufficient portion of) the involved individuals" and that their expressive attitudes cannot be reduced to the expressive attitudes of individuals (Schemmel 2011, 135).

PROPERTIES OF THE VIRTUES OF CARE

Before discussing what the virtues require, some preliminary notes are in order. By contrasting the virtues of care with Aristotelian virtues, the unique properties of care virtues are highlighted. Aristotelian virtue ethics is commonly criticized for not providing specific prescriptions. A second critique is leveled when there is a prima facie conflict between virtues. It is also criticized for not providing guidance in some moral dilemmas. How do the virtues of care differ so that they avoid these criticisms?

The first criticism cannot be answered by appealing to a difference between Aristotelian virtues and care virtues. Rosalind Hursthouse (2013) responds to the first criticism by observing

that each virtue implicitly contain positive and negative prescriptions: charity implies "act charitably," and "do not act uncharitably," while honesty generates "act honestly," and "do not act dishonestly" (648). Following Hursthouse's response, we can see that the virtues of care generate their own six rules: be attentive, do not be inattentive, be responsive, do not be unresponsive, be respectful, and do not be disrespectful.

Ultimately, Hursthouse rejects this approach to the virtues because virtuous agents do not simply apply rules when confronted with a moral situation (649). These concerns echo those Noddings (2013) expressed about the one-caring prioritizing rules over the cared-for (51). However, I think a rule-approach is appropriate for institutions because of their dissimilarity with people. Speaking of an institution as caring is to say that the institution's actions express compassion and further caring ends or something similar (Slote 2007, 100). It is not to assert that institutions have a moral character that is improved by exercising virtues. Further, the examples that Noddings (2013) uses to illustrate the problems of adhering strictly to rules are all concerned with prioritizing a rule over a person and failing to have a rich account of the morally relevant considerations (54). Yet it is difficult to imagine what prioritizing "be attentive" over a person would actually mean. And "be attentive" is just to say that an institution needs a rich account of morally relevant considerations.

Applying the second and third criticisms reveals two properties of the virtues of care that differ from Aristotelian virtues: situational concurrence and incompleteness. It is a key feature of the virtues of care that they are exhibited in every situation. One is attentive at t_0, responsive at t_1, and respectful at both t_0 and t_1. Which virtue is more appropriate in a given situation is not a question that the care ethicist needs to ask; all three virtues must be exercised in each situation. With only three virtues—virtues which function together—no conflicts seem possible.

The third criticism, regarding moral dilemmas in which the virtues cannot seem to guide the agent, does not threaten the virtues of care either. Why? The virtues of care are neither meant to provide guidance in every situation nor able to generate moral dilemmas. The virtues of care are not a comprehensive normative guide on their own—they are a part of a fully-fledged ethics of care or supplements to another normative theory. Where the virtues of care are to no avail, rely on a normative theory.

Continuing with this understanding of care virtues, a minimally caring institution is one that adheres to the minimal care constraint and adherence to the minimal care constraint entails institutional behavior in accordance with the six rules generated above. What do these rules actually entail though?

ATTENTIVENESS

The central question for attentiveness: What does "be attentive" and "don't be inattentive" mean for institutions? When discussing individuals, attentiveness is easy to pick out. Lawrence Blum provides the following example:

> John and Joan are sitting riding on a subway train. There are no empty seats and some people are standing; yet the subway car is not packed so tightly as to be uncomfortable for everyone. One of the passengers standing is a woman in her thirties holding two relatively full shopping bags. John is not particularly paying attention to the woman, but he is cognizant of her. Joan, by contrast, is distinctly aware that the woman is uncomfortable (1991, 702).

In this situation, Joan is attentive to the woman's discomfort through her capacity to perceive and judge the situation as one which requires a moral response. By acknowledging and valuing

morally relevant considerations, Joan is in a position to determine how to respond to the situation presented.

John, on the other hand, just notices the woman. Noticing is "something that happens to a person" based, partly, on their dispositions (O'Leary 1993, 144). What distinguishes John's noticing and Joan's attentiveness is the active and intentional nature of attentiveness. Attentiveness is not simply a passive, perceptual experience; attentiveness requires purposefully focusing on somebody and considering them in a moral light. Joan sees this woman and registers her discomfort as something that she must consider in regards to what is right and wrong. Attentiveness is not merely noticing (O'Leary 1993, 144).

Institutional attentiveness is slightly more difficult to identify than individual attentiveness. The obvious difficulty is that institutions are not perceiving entities in the way that humans and other organisms are. To say that an institution sees an uncomfortable woman on the subway is strictly a figurative statement. It is appealing to draw an analogy between our senses and members of an institution; to say that, in the way our senses feed us information and allows us to be attentive, employees of an organization collect information that allows the organization to be attentive. Yet this does not take into account the attentive-notice distinction. Instead, I want to suggest that institutional attentiveness is the product of institutional action. This is just to say that when Frederick prepares a meal for Joseph, he is exercising individual attentiveness and not institutional attentiveness.

Institutions can exercise attentiveness in any number of ways. They might have public input and feedback sessions, a mechanism by which stakeholders can voice their concerns, conduct surveys or read those that other institutions have conducted. What is important to accomplish attentiveness is an open communication channel. An institution's stakeholders are

many and placing complete responsibility on one to attend to them all can be impractical. Providing a venue in which stakeholders can communicate their needs and signal that they desire attention makes the task more achievable. However, by sharing the responsibility in such a manner, institutions need to make sure that the communication channel is reasonably accessible to its stakeholders. A public input session held at 3am would not exercise attentiveness because most stakeholders would certainly miss it. "Be attentive" says that an institution should at least provide this venue.

The example of John and Joan can reveal another facet of attentiveness. John perceived the uncomfortable woman just as Joan did, yet he did not recognize it as a moral situation. This may occur for a number of reasons. An institution may be aware of a situation yet not recognize that the situation is the proper subject of attentiveness. For example, factories that emit greenhouse gases could not tie their actions to climate change until the concept was introduced. We might say that factories did not attend to the environment, but saying that they were inattentive implies that they were in a position to see the effects of their actions in a moral light. When evaluating an institution as adhering to the constraint or not, one must take into account the institution's ability to connect their action or inaction to a consequence given the knowledge available to them.

Yet, inattentiveness is not necessarily an instance of ignorance. An institution might acknowledge a situation, but, under political pressure, deny the situation is a moral one, or one which requires a moral response. "Be attentive" encourages institutions to thoroughly consider whether they are in some way have moral responsibilities in a situation. Their ability to connect their action or inaction to a consequence is sometimes limited by the state of knowledge, but it is

important this is not used as an excuse to repackage a situation as one that does not require a moral response.[6]

RESPONSIVENESS

"Be responsive" is not short for "Be responsive by doing X." It does not specifically pick out right action for an institution. Responsiveness guides institutions to inquire into what action another party desires from the institution and directs the institution to give this action special consideration. It does not demand that the institution act however its constituency wants it to. To see why this is so, consider that many American citizens desire closed borders. Some go so far as suggesting fences, ignoring how impractical this demand is. On the other side of the boundary are people who are directly impacted by U.S. border policy, many of whom desire a more porous border.

The radically disparate desires of two groups, both of which are proper subjects of the virtues of care, and the absence of a simple way to reconcile them is one reason that institutions are not obligated to act in accordance with the desires of its stakeholders. It might be suggested that the desires of one group, those within jurisdiction, are elevated over another, those which are

[6] This last statement raises a possible misunderstanding. A critical reader might say, "Political pressure includes things like public opinion and the claims of constituents. Ignoring or remaining ignorant to them is the most effective strategy for resisting them. Does encouraging resistance to political pressure mean being inattentive to constituents? And, if so, ought we seriously question the desirability of a virtue which we can derive contradictory rules from?" This worry does not take into account the implications of resistance. To resist something implies a degree of intentionality. Resisting political pressure entails attention to said pressure. Otherwise, it is simply another instance of inattentiveness. Since resistance does not imply inattentiveness—instead requiring a degree of attentiveness—concerns about deriving contradictory rules and undermining the other virtues do not pose challenges.

directly impacted. Yet this practically renders the care constraint a dressed up and diluted version of moral realism.

What if there were no discrepancies between different stakeholders? Institutions are still not necessarily obligated to respond exactly how they want because this could entail using an unobtainable amount of resources. Neither of these two reasons, as compelling as they are, are the main reason for this. The main reason is that the care constraint is formulated only to inform the manner in which institutions act, not to specifically list which actions institutions ought to take.

What matters is that institutions respond in a manner that is consistent with the concerns of their stakeholders and expresses respect for the parties involved. "Be responsive" tells institutions to take the information they gather from their stakeholders and use this to formulate their response. Additionally, the action cannot be disrespectful and "degrade them in their own eyes or those of others" (Engster 2007, 31). This is expanded on in the following section.

Considering what has been said so far about attentiveness and responsiveness together, a practical concern presents itself: an obligation to the plethora of moral situations which require responses is too demanding. Further, many moral situations increase in severity if they are not adequately responded to by a certain point, at which point the burden of response becomes more onerous. This is a serious challenge that is not unappreciated.

Iris Marion Young points out, in formulating her social model for responsibility, that the amount and scale of structural injustice, injustices like institutional racism and extreme poverty, discourages individuals from attempting to respond to them (2011). She uses this "moment of awe" to support her claim that such situations must be dealt with collectively (2011). Though formulated for individuals, Young's insight provides one suggestion for dealing with the

problem a plethora of situations represents: institutions can form collectives. Partnering with other institutions expands the pool of resources available to respond to institutions. The U.S. Agency for International Development (USAID) is one of many examples of institutions that partner with large numbers of NGOs to further their aims for just this reason.

In addressing the complications of time-sensitive situations, Michael Slote (2007) provides us with an example in which miners have been trapped (25). We can elect to either save the miners now or install safety devices that would prevent a great deal more deaths in the future (2007, 25). Avoiding a simple utilitarian approach, Slote argues that priority be given to issues of temporal or perceptual immediacy because such action expresses compassion (2007, 26). Thus, it is morally better to save the trapped miners because their situation is more immediate and responding to it expresses compassion (2007, 26). This means of prioritizing the abundance of moral situations is one way of dealing with this concern, though it is not a requirement of the care constraint.

RESPECT

Respect, in this context, is not something as strong as the Kantian notion of respect. Here, "Be respectful" means "treating [others] in ways that do not degrade them in their own eyes or the eyes of others, and makes use of the abilities they have" (Engster 2007, 31). "Be respectful" entails a refrain from ridicule, shaming, shunning, segregation, discrimination, persecution, and violence, among other things (Anderson 2012, 43). For institutions, it entails a refrain from expressing hostility, contempt, and neglect, which typically result from the actions listed in the previous sentence. Additionally, It requires understanding that dependency is a natural state and that it is not a basis for judging others as inferior (Engster 2007, 31).

What makes respect different from the other two virtues is how it establishes a moral obligation between parties. Respect as "recognition that others are worthy of our attention and responsiveness" begins the process of caring (Engster 2007, 31). More importantly, respect continues even after one attends and responds to another. This continuance gives rise to a "care feedback loop". To illustrate this, imagine the caring version of Frederick mentioned earlier. He attends and responds to the Joseph's needs because he respects him, but this is not necessarily the end of the scenario. Frederick's respect for the Joseph continues after he has delivered the meal, meaning that Joseph, even after the meal, is still the proper subject of attentiveness and responsiveness. Thus, Frederick, upon encountering the Joseph again, may ask whether the meal satisfied him and if he is food insecure at that moment. Frederick, recognizing that Joseph is still worthy of attentiveness and responsiveness, may repeat his previous actions, though his care may improve because of the chance to obtain Joseph's feedback. The feedback loop can continue so long as the relationship persists and one is in a state of dependency.

It may concern one that this loop seems to establish and condone a perpetual dependency that is unwarranted. One may worry that Joseph could begin to get accustomed to the quality meals and would not attempt to establish food security without Frederick's help. This perpetual dependency loop is not what exercising the virtues of care imply though. For one, Frederick is not obligated to provide Joseph with a meal each encounter he has with him. Frederick should be attentive and responsive, but these are rather general prescriptions that do not specifically entail providing meals. If a perpetual dependency loop is a concern for Frederick, he may justifiably halt the loop. Of course, the minimal care constraint would guide him to do that in an attentive, responsive, and respectful manner.

Another possible way to address concern is by emphasizing how respect requires making use of the dependent's existing abilities (Engster 2007, 31). Frederick, in helping Joseph, might encourage him to work on establishing his food security by making use of any abilities he has. If Frederick were to never encourage Joseph to establish his food security and were Joseph not in a situation in which he could not conceivably establish food security on his own, one may justifiably call into question Frederick's respect for Joseph. Does Frederick provide Joseph with meals because he is interested in improving Joseph's well-being or is Frederick seeking credit or self-gratification by providing him meals? Both of these approaches to the fear of creating a perpetual feedback loop are approaches that institutions can enact.

CASE STUDY: OPERATION GATEKEEPER

The stakeholders of the Border Patrol include the American public, border communities, and irregular migrants. The American public, in large part, determines the aims of the Border Patrol. Border communities, in both the U.S. and Mexico, and irregular migrants are directly affected by the Border Patrol's actions. Were the Border Patrol's actions consistent with the minimal care constraint?

On the one hand, the Border Patrol attended and responded to its San Diego stakeholders quite well. It took into account the community's concern with migrants causing car accidents by crossing highways and the frequent "vehicle theft, home break-ins, and other property crimes" (n.d.). It responded by moving from an approach that emphasized apprehension to one that focused on deterrence (n.d.). The deterrence approach did not disrespect its San Diego stakeholders.

On the other hand, the Border Patrol formulated Operation Gatekeeper without hearing any concerns from the Mexican government, border towns, or communities experiencing high rates of emigration (n.d.). Jalisco, Michoacan, Zacatecas, Durango, and Oaxaca are all states experiencing high rates of emigration that could have contributed to the policymaking process (Rodriguez-Scott 2002). In this regard, the Border Patrol was inattentive to its stakeholders. Their inattentiveness precluded responsiveness. This inattentiveness and unresponsiveness continues. The deterrence approach is still employed despite activists voicing their concerns (Jimenez 2009).

What is worse is that Operation Gatekeeper expresses an attitude of hostility towards migrants by officially mandating a strategy that has led to the death of migrants by pushing them towards the most dangerous points of the border. The militarization efforts began by Operation Gatekeeper continue with approbation from the Border Patrol and Department of Justice despite foreseeably leading to thousands of migrant deaths and failing to decrease the entrance of migrants (Office of the Inspector General n.d.). Hostility and contempt are further expressed by the methods of apprehension: High-speed chases and nail strips laid by the Border Patrol cause vehicle rollovers and crashes; Border Patrol agents use helicopters to kick up dust, blinding migrants so that the Patrol may apprehend them or leading to migrants getting separated from their group; "routinely [interdicting] migrants in areas calculated to take two days of walking to reach" so that those who survive are exhausted, sick, and accepting of arrest (Jimenez 2009, 35). Accounts of migrants who have been detained also support this narrative of hostility. Agents have reportedly forced migrants to run for thirty minutes to discourage them from crossing again, pushed detainees into cactus, and deny water to detainees while drinking in front of them (Jimenez 2009, 35).

Compounding this are claims that the Border Patrol decreased their search and rescue operations to make the journey more perilous (Jimenez 2009, 32). Humanitarian agencies have even accused the Border Patrol harassing them in their efforts to provide water to migrants, despite their legal right to do so, while encouraging vigilante groups to patrol the border (Jimenez 2009, 38). One improvement that the Border Patrol has made to their methods is Operation Desert Safeguard, a 2003 joint operation between the U.S. and Mexico intended to save lives "by deploying more and better-equipped Border Patrol agents… increasing Spanish language warnings of the dangers, and by taking more forceful measures against smugglers" (Storrs 2005).

In sum, the Border Patrol's actions were not consistent with the minimal care constraint and the continued use of a deterrence approach indicates neglect towards migrant stakeholders. So, how could policymakers formulate border policy in a way that adheres to the minimal care constraint?

The most obvious way would be to incorporate irregular migrants, their home communities, and the Mexican government in the policymaking process. This could significantly impact the way policy is formulated by humanizing those affected by the policy while allowing them to make suggestions as to how migration might be stemmed in a way that does not entail such a high death toll. This effort could prove fruitful.

Emily Ryo (2013) found that persons who are more likely to migrate without authorization believe "it is okay to disobey the law when one disagrees with it," "disobeying the law is sometimes justified," "the U.S. government has no right to limit immigration," and "Mexicans have a right to be in the United States" (585). This suggests that the U.S. should address its appearance as an illegitimate authority to discourage migration. Attending and

responding to the concerns of the communities experiencing high rates of emigration is one way that the U.S. could remedy this perceived illegitimacy, which would discourage people from even attempting to cross without authorization, thus obviating the need for such a high Border Patrol presence at the border and fences.

Policymakers could take into regard migration system established by the Bracero Program. Attention to the role the relational structures Rajendra (2015) highlights—families, communities, and immigrant-owned businesses—play in facilitating this migration system might reveal an alternative method of addressing the issue (363). It also would have revealed that a decision between remaining in one's source country and attempting a high-risk migration is not as one-sided as it first appears. This may have discouraged the use of a deterrence approach when formulating Operation Gatekeeper.

CONCLUSION

Proceeding from the ethics of care, I developed the minimal care constraint. The minimal care constraint guides institutions to be attentive, responsive, and respectful. Institutions can do this by providing an accessible communication channel to their stakeholders and responding in a manner that is both consistent with stakeholder desires and is respectful. The Border Patrol of 1993 does not meet the criteria for being considered even a minimally caring institution to many. It expresses care to its San Diego stakeholders, though at the expense of expressing hostility towards migrants.

Reflecting on what this paper covers and excludes, I see quite a few possible routes for future research and improvement on the minimal care constraint. First, a more nuanced treatment of the U.S.-Mexico border relationship and its effects on the people involved could benefit the

project. Second, more reading in an ethics of care and international relations, especially an incorporation of some of Joan Tronto's ideas about a democratic ethics of care, could have improved the project. I would also like to find the testimony of possible migrants to more thoroughly test the claim that Operation Gatekeeper expresses an attitude of hostility.

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