

Caring and the Prison in Philosophy, Policy and Practice: Under Lock and Key

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ABSTRACT *Care appears prima facie antithetical to punishment. Since the overlaps between care and punishment are greater than we paradigmatically expect, care ethics offers a more accurate account of prisons: recognising and critiquing both dehumanising carceral violence, and the necessity, presence, and inadequacies of penal care, as well as unlocking ways of thinking differently about structural change without losing sight of individual issues. After introducing care ethics and evidencing the presence of caring practices in present prisons, the article considers how we punish, in terms of the amount, method, and manner. Treating people in punishment as moral equals is important for liberal deontological penal theories. Treatment as equals requires context. Context is intrinsic to care-ethics praxis, which provides methods of and standards for accessing and applying this information.*

Introduction

Many theorists argue that prison is part of a justifiable response to crime, yet a rising chorus of voices from law, criminology, and campaign groups calls out the realities of prison conditions in England and Wales and the United States. Some demand reform, others abolition. No one defends the violence and dehumanization of present prison practices: we cannot ignore the brutalisation permitted and perpetrated by the state.

Structural problems ultimately need structural fixes, but viewed from the institutional perspective, the pervasive problems seem almost intractable. The institutional-level focus blinds us to the plight of particular people in prison. Yet there is more to penal reality than violence. I argue that, empirically, care *is* present in prisons (albeit woefully bad), yet *absent* from normative penal theory, perhaps because care seems counter-intuitive to punishment. Tronto suggests that thinking about prisons from a care ethics perspective will allow consideration of the structural failings that produce racialised bias and disproportionate punishment-by-imprisonment of socially or economically (or both) disadvantaged people.¹ This article begins this work.

Liberal penal theories focus primarily on the abstract, generalised individual or shift the focus to structural issues. Relational, narrative, situated care ethics provides a practice-based mode of moral reasoning focused on the particular. Care ethics permits us to recognise, value, critique, and improve the care that I evidence is present in prisons; and to admit, assess, and condemn penal violence. The methods and standards intrinsic to care ethics can further help evaluate present practice, generate, and rank options for improvement based on care aims and implement, evaluate, and improve practice.

An adequate penal philosophy must give account of both impermissible carceral violence *and* recognise the inescapable empirical role of care in punishment. McLeod distinguishes a penal abolitionist ethic from a reformation ethic. Care ethics is consistent with abolition, but they balances demands for radical long-run structural change with the immediate needs of people in prison and returning to the community. Context helps to identify which perspective is pertinent for the present problem, while retaining the insights of other perspectives.

This article breaks new ground in applying care ethics to penal theory by sketching some of the possibilities, and opening conceptual space to develop both literatures. The first half introduces care ethics and evidences the presence of care in punishment, despite the violence. The second half sketches how care ethics can help by reflecting on the guidance in existing penal theories on *how* we punish, distinguishing the amount, method, and manner of punishment. Some liberal deontological penal theories require treating people in prisons as moral equals during punishment, as one of 'us'. Care ethics aims overlap, facilitating this *instrumentally*. Methods and standards *intrinsic* to care help us apply this in practice. Care ethics unlock a different way of knowing, allowing us to simultaneously acknowledge individual, institutional, and structural factors, while also recognising social, relational, narrative context. Hence, this article indicates the potential of care ethics to provide radical institutional, individual, and structural keys to unlock reforms to penal theory and practice.

What is care ethics?

The ordinary labour of everyday living is often unnoticed and taken for granted: feeding, clothing, cleaning, and supporting. What counts as caring work is contested; however, childcare and nursing are exemplars. Caring work has historically been socially coded 'feminine', left to those with the least power and privilege, and lacks the status of economically productive activity.² Most care ethics literature is feminist work,³ of which some draws on the practical caregiving experiences of women, particularly as mothers.⁴

Several overlapping aspects make care ethics a powerful tool of moral reasoning to supplement familiar rights and duties. First, *care ethics is relational*. Relationships are intrinsically and instrumentally valuable and fundamental to human lives. Some relationships we choose, others not, but all come with responsibilities: to family and friends, to colleagues and students, and to our communities and ourselves.

Second, *care* and relational ethics more broadly *recognises our interdependence* and further *normalises needs*. We all have needs, some of which we cannot meet alone, and we need social goods that are available to us only through co-operation.⁵ All human lives include periods of complete dependency.

Third, feminist-informed care ethics draws on *the practice of caregiving*. Tronto breaks this practice down into four phases: identifying others' needs; making logistical arrangements; the practical, often face-to-face, labour of care delivery; and the giving and receiving of the care receiver's response to the caring act, allowing a collaborative refinement of care.⁶ The aim of caring work is to allow individuals to 'survive, develop, or function' by *meeting basic needs, building capabilities, or avoiding unnecessary pain*.⁷ But it is not enough to go through the motions: good care requires integrity,⁸

bringing together the values, aims, and practices, to provide an ‘attentive, responsive, and respectful’⁹ approach. The open engagement¹⁰ required by the ‘attentive, responsive, respectful’ *methods* facilitates *caring-with*: treating care receivers as knowing, active subjects.

Fourth, Sevenhuijsen identifies caring-with as *solidarity*. Gould argues solidarity is a sympathetic understanding of the other’s position: empathising with their needs without necessarily sharing their experiences. Solidarity, situated in the context of particular individuals, is distinct from a difference-blind, generalised, abstracted, universal human fellow feeling,¹¹ although identifying shared ground remains important. Solidarity responds to needs, not anticipated gains implied by reciprocity and the ethics of mutual exchange. Solidarity is motivated *not* because the vulnerable are dependent, but rather because dependency and vulnerability are normal parts of human life.¹²

Fifth, because care ethics is tied to practice, it is a *situated* approach, recognising as relevant details of the *particular* situation: the person cared for, their social context, their needs as they understand them, and preferences for how these needs are met. This allows the person caring and the person cared for to reason *together* about how to proceed *in the context of* other responsibilities and needs and almost always in the context of limited time, resources, and knowledge. Reasoning together is necessary for understanding needs and preferred responses, and the reasoning together that it is appropriate to do with a small child is not the same as with an adult. Nevertheless, reasoning together should consider and facilitate the other’s capacity to develop and learn, expanding his or her capabilities as far as possible. How far this is again depends on the individual: as a petite, non-athletic person, I will never make the basketball team. But since we all have limits, limits like this should be expected.

Sixth, nothing in care benefits from compartmentalising care as a time-bound discrete act. Good care is offered when it is needed and takes as long as it takes.¹³ Almost always, a care receiver in one context will be a caregiver in another, with care often flowing both ways between related agents.¹⁴ A contextualised approach also shows the salience of many levels at the same time. For example, a patient may be a parent, a professional, a prisoner. All of these may be relevant for identifying the best treatment *for the patient*. Further, the patient is embedded within relationships: friends, family, work, professional bodies, and state institutions. A contextualised approach reveals the care receiver as a situated, whole individual and can help the parties to identify which set of competing principles to apply or emphasise in a particular situation.¹⁵ Similarly, the person exists across time. Just as it is unhelpful to understand care as discrete, one-way acts: we must recognise how the individuals’ personal history informs their present needs and how our present caring-with builds towards their future capabilities. Care ethics allows us to recognise individuals as socially situated within relational networks and temporally situated within their life course narrative.¹⁶

Care quality

I have drawn the boundaries of caring intentionally wide: some ‘care’ is so poor that it does not deserve the name. However, this allows us to call out failings, to apply care standards to see where and how practices fail, and to guide improvements. Poor care may include failing to meet needs; infantilising care receivers; ignoring care receivers’

own assessment of their needs, treating them passively; or parochially prioritising the caregivers' preferred needs-meeting approach.¹⁷

Good care requires competence and integrity. We should recognise needs and take responsibility for competent care, so we should seek help when we lack ability. We wrong others by persisting with our uninformed best-guess efforts when specialist help is easily available. The unskilled first aider should not rebuff the advice of an off-duty nurse. Where no other help is available, then we do no wrong in caring to the best of our limited ability, with insufficient knowledge, resources, or support.

Poor care may further mask needs. Tronto gives the example of a school with no mathematics teachers. The school board instructs an inappropriately qualified teacher to hold 'mathematics lessons'. The students learn no mathematics, *and* their need for tuition is hidden by apparently attending mathematics class. When the teacher does their uninformed best with *integrity*, it is *not* the fault of the teacher that needs are unmet and masked: the school board is at fault for incompetent care provision.¹⁸

The abstract and the particular

The aims (to survive, develop, or function), methods (*attentive, responsive, and respectful open engagement*), and standards or values of care (caring well demands competence, solidarity, and integrity) may appear abstract. Care ethics has been said to resist formulation as rules.¹⁹ A better understanding is that the 'rules' are necessarily abstract to allow space for the particular: we have to zoom out to understand where to zoom in. Solidarity may also appear more abstract than an ethic of reciprocity for similar reasons. It is less clear what is required to show solidarity in advance since we can express solidarity through a variety of methods: direct interactions, activism and advocacy, scholarship, or music and poetry.²⁰ We are directed to consider the practical context, the needs empathised with, and the situation of the people involved. Further, while reciprocity suggests one-to-one relations, the ordinary language use of solidarity implies a many-to-many or self-to-many relationship, suggesting interdependence.

Care ethics normalises dependence and vulnerability as ordinary shared aspects of human lives. While care ethics generally foregrounds particularity in relational context *rather than* equality, there are exceptions: Kittay's connection-based equality, grounded in the human experience of care.²¹ Further, Koggel argues that the injunction to avoid harm, common across care ethics work, presupposes a moral principle of equal concern and respect.²² While I cannot develop the argument here, relational understandings of 'equal concern and respect' illuminate what is substantively required for treatment as an equal because they are thick with particular context. However, there are sufficient overlaps with a thinner liberal understanding of equal concern and respect to provide a point for engagement with liberal penal theorists seeking treatment as equals.

Care in punishment

I assume punishment is a necessary evil. Criminal law requires enforcement if it is to serve a useful purpose. Humans are types of beings that make mistakes, do things which we later regret, and wilfully choose actions which we know to be wrong.

Criminal offending is a statistically significant, if minority, human behaviour: i.e. within the normal range. So, while society is composed of human beings and not angels, punishment will be necessary.

Not all punishment can (or should) be guided by care. Nor are all attempts at penal care successful. Most care in punishment is woefully inadequate. The obvious place to look for care in criminal justice is restorative justice, where Walker identifies values and practices consistent with and central to care ethics. Yet Walker does not claim that ‘what is “really” going on’ in restorative practice is always caring.²³

Similarly, I argue that *some* prison practices overlap with the values and practices of care. While care is present partly because it is necessary for human life, I do not claim that ‘what is “really” going on’ in prisons is always or only caring. Instead, where these practices and aims overlap, the values, methods, and standards of caring can help improve shared-aim delivery: contributing to achieving existing aims of penal theory and practice, such as treating people in prison as equal moral agents and providing proportionate punishment. This overlap is greater than we paradigmatically expect, since we typically assume punishment is antithetical to care.

Care in the prison

Without reference to prison, a lawful practice of temporarily truncating rights, we lack the language to discuss punishment.²⁴ As the prison, central to popular, political, and philosophical penal thought, is characterised by austere, hard treatment; it is significant that caring is found in paradigmatic prison practices.²⁵ *The Prison Rules* in England and Wales encourage ‘a good and useful life’ on release.²⁶ *The European Prison Rules* expect prison officer training to go beyond duties ‘required of mere guards’, facilitating ‘the reintegration of prisoners into society ... through ... care and assistance’.²⁷ *The United Nations Standard Minimum Rules for the Treatment of Prisoners* (the Nelson Mandela Rules) similarly require that people in prisons receive individualised (i.e. responsive) treatment (Rule 89), as members of the community (88) that fosters their self-respect, sense of responsibility, and equips them to lead self-supporting law-abiding lives on release (91).²⁸

Prison officers in England and Wales work one-to-one, reasoning with people in prison as personal officers, helping ‘with anything from sentence planning to food requirements to bereavements’.²⁹ This requires meeting needs (e.g. dietary requirements), building capabilities (rehabilitative or educative sentence planning), and avoiding harm (facilitating bereavement support), meshing surprisingly well with Engster’s characterisation of caring. Where personal officers cannot provide appropriate help, they may signpost the individual to other services (e.g. trained bereavement counsellors). “Referring on” illustrates an officer’s recognition of their competence to provide specific types of care, minimising potentially poor care. Officer’s awareness of an individual’s needs through engagement and caring-with, adapting support as necessary, reflects Engster’s attentive-responsive-respectful method. Time, resources, and the prison environment constrain officers’ capacity to care well.³⁰ Nevertheless, the policy intent was to include practices and values central to caring: understanding individuals’ needs³¹ as part of officers’ core duties.³²

These are cherry-picked cases: prisons are often violent and dehumanising. Yet, these are purposefully everyday examples of obscured penal care, to challenge

perceptions of prison and care as antithetical. Including care in penal theory throws penal violence into sharp relief.

Other prison staff help to meet needs and build capabilities. Chaplaincy workers discuss personal or emotional problems. Even strict definitions describing caring as *only* face-to-face, and occurring *only* when the recipient could *not possibly* meet their own need, explicitly identify discussing problems as a caring practice.³³ Other staff provide education, vocational training, addiction support, and mental and physical healthcare. The University of Mississippi Prison-to-College Pipeline Project, launched in 2014, aimed at academic success (building capabilities); but by explicitly including students in prison as members of the University community also affirm students' basic humanity,³⁴ an as-equals status essential for mending relationships. US prison-based animal programs enable people in prison to train abandoned dogs, building trusting relationships with and caring for their charges. Research shows these programs can build empathy, compassion, patience, and self-reflection. This equips individuals with skills, widely acknowledged in the criminology literature, essential for changing their own personal narratives as part of the process of desistance from offending.³⁵

These practices all *potentially* meet basic needs or develop capabilities necessary to 'survive, develop, or function' in society. While current penal care is often far from good, supportive penal practices are not novel. Although potentially consistent with care, few rehabilitative services follow from concern for wellbeing. Most rehabilitative programs under mass incarceration follow risk-management logic.³⁶ Other penal theories discussed in the second half of this article, such as Duff and McLeod, address the deficiencies of risk-focused approaches. Nevertheless, penal theory does not adequately acknowledge the presence of caring in prisons.

Prison officers as front-line state agents

Prison ethnographers argue that welfare and discipline, care and power, work best in harmony, not in conflict.³⁷ Bernardo Zacka's ethnographic work on US welfare-administration street-level bureaucrats (SLB) identifies three modes of moral disposition central to SLB work: efficient indifference, enforcement, and caregiving.³⁸ Zacka stresses that these moral approaches are each native to *and essential in combination* for the work of SLBs; yet they are reductively pathological should agents focus on only one mode to the exclusion of others.³⁹ Current prison ethnography suggests this combination is also necessary for front-line prison officers. I suggest penal philosophy's exclusion of caregiving may be similarly problematic.

Tait argues that care is integral to relationships between staff and people in prison.⁴⁰ There is tension between the security and caring aspects of officer's roles, but many officers view security as a necessary foundation for support. Many caring practices are relations of unequal power.⁴¹ Officers hold significant power over the lives of people in prison, since they mediate access to food, opportunities, and services. This power puts into the hands of officers institutional and individual keys to unlock positive futures for people in prison. While some officers distinguish *caring for* prisoners – providing basic necessities and protection from harm – from *caring about* prisoners, the 'best' officers balance empathy for the needs and situation of individuals with security concerns.⁴² Prison officers are responsible for locking down inmates behind cell doors, but the purpose of a door is to open.

Is it problematic, then, that the opportunity to unlock prison care is provided by the same staff who coerce and contain? Prison officers act, at least *prima facie*, in legally permissible ways, although the legitimacy of an officer's power is undermined by structural problems of racial injustice in combination with mandatory sentencing policies. Contrast this with kidnappers⁴³ who tend to hostages in pursuit of personal gain. Prison officers' relationships with, and power over, prisoners is potentially permissible. Kidnappers always act wrongfully. We should criticise present prison care as poor, not as misplaced. Since prison conditions reduce officers' chances of providing good care, prison officers are more like Tronto's teachers in underfunded schools than they are like kidnappers.

How to punish: treatment as moral equals

What does penal theory say about *how* convicted people are treated in punishment? I distinguish the amount, method, and manner of punishment. Many deontological theories of punishment require treating people as moral equals, to hold them accountable as members of the community of moral agents, as one of 'us'.⁴⁴ Central to liberal penal theories, Duff identifies a recognition of individuals as responsible moral agents, bound together through shared commitments and mutual respect and concern.⁴⁵ The Nelson Mandela Rules emphasise prisoners' continuing community membership (88). I have argued that people in prisons should be included as subjects of state care: as one of us, deserving of care and support.⁴⁶ Including care ethics in penal theory, then, can help us respond to people in prisons as moral equals.

Respect

Penal treatment as equals has at least two necessary requirements: respectful treatment and proportionate punishment (developed below). People in prison should be treated with equal concern and respect, reflecting their as-equal status as community members. The fact of offending results in a loss of standing for individuals. Nevertheless, the individual should still be respected *qua* person.⁴⁷ Darwall distinguished *recognition respect*, owed to us simply as persons, from *appraisal respect*, which evaluates our moral conduct.⁴⁸ Margaret Falls⁴⁹ similarly distinguishes *unearned desert* (as moral equals) from *deserved* moral praise and blame, *earned* through our conduct. Respecting individual's rights is one way of conveying respect for others as equal moral agents. Especially when some rights are temporarily truncated in punishment, recognising residual rights becomes more important for communicating the other's standing as a moral equal and community member for liberal deontological penal theories. Although equality concerns are less common readings of care ethics, at a minimum, care ethics can instrumentally help us to achieve this end.

Treating people in prisons as moral equals requires *recognising* their *unearned* entitlements. Equal concern and respect relies on contextual information to identify what 'as-equal' treatment means in these circumstances. Dworkin illustrates his distinction between as-equal and equal (identical) treatment by considering two sick children, one uncomfortable and the other in mortal danger, in the context of limited medical resources. Context tells against equal shares or coin tossing when the full last-remaining dose is required to bring the gravely ill child out of peril.⁵⁰

Respectful treatment depends on contextual information to identify what constitutes as-equal treatment. Care ethics approaches can instrumentally facilitate access to context necessary for treatment as equals. Before developing how care ethics helps us, I discuss proportionality as a means to provide treatment as equals, limited by equal concern and respect, and consider two objections.

Proportionality

Over-punishment is inconsistent with treatment as moral equals. At minimum, punishment should not exceed the severity ordered by the sentencing court. Sentence severity is a function of the *method* of punishment or type (prison, fines, unpaid work), *amount* of punishment (two months, 20 years, 200 hours, \$2000), and the *manner* in which it is delivered.

Consider a prison sentence. The manner of the sentence is a function of the tangible conditions in which it is served and the moral qualities of the interpersonal interactions between officers and individuals serving sentences. The same sentence will be different if served in a well-resourced, well-maintained prison, with supportive programmes and motivated, skilled staff or a crumbling, overcrowded, understaffed facility, with long wait-lists for any available support. The same sentence will also differ depending on whether we are treated with respect or with contempt; whether our individual needs are recognised or whether we are dehumanised. Lippke argues that when the harshness of prison conditions increases, proportionality implies reducing the sentence length.⁵¹ In Lippke's example, solitary confinement intentionally raises the harshness of the sentence over 'mainstream' conditions, *because* austerity is increased and interpersonal interactions minimised and diminished in quality. So, getting the manner of the punishment right, the conditions and qualities of the punishment, or the *context* in which it is served, is important for proportionality.

Moreover, if the state has a special responsibility to treat citizens as moral equals, then the sentencing court must also have been bound by a principle of moral equality. Punishments that undermine equal recognition and respect fail to fulfil the individual's unearned moral desert and cannot permissibly have been what the court intended. To keep punishment proportionate, the punishing authority must therefore treat individuals with respect during punishment, in order to avoid making the manner of the sentence (conditions and interpersonal interactions) worse than intended, and so disproportionately severe. So, proportionality is limited by respectful treatment, which I have argued depends on context.

Is respect in prisons possible?

Treating individuals as moral equals requires proportionate punishment limited by respect, and contextual information is needed to understand what constitutes 'as-equal', respectful treatment. Prisons in England and Wales are often violent, overcrowded, and under-resourced.⁵² American prisons 'subject human beings to extreme violence, dehumanization, racialized degradation and indignity'.⁵³ None of this is consistent with respect, and McLeod calls for abolition.

Yet, as McLeod notes, alternative practices are illustrated by Scandinavian institutions.⁵⁴ Many Scandinavian prisons operate on principles of normalisation: conditions

must be as close to ordinary life as possible and must not frustrate the individual's chances of a normal life on release.⁵⁵ Danish prisons are legally required to provide grocery shopping and self-catering facilities, as well as access to healthcare, addiction treatment, voting rights, education, social security, religious practice, and other lawful activities, on as close to the same terms as the wider society as possible.⁵⁶ Scandinavian normalisation is rooted in democracy to safeguard respect for civil rights, rather than Welfare.⁵⁷ James Q Whitman notes that German prison officers are required to address people in prison politely by name and to knock on cell doors to respect individual dignity.⁵⁸ These respectful practices are also consistent with care ethics, yet not recognised as such in theory, policy, or practice.

The Norwegian criminal justice system requires prisons to offer education, drug treatment, and mental health programmes. Practices cannot simply be dropped wholesale into a very different jurisdiction and social context. Nevertheless, Bhuller et al. argue Nordic examples offer proof of concept that, *with support to meet needs and build capabilities*, individuals *can* successfully return to society.⁵⁹ They note American investment is often lacking in supportive prison programmes and conditions, suggesting savings from reducing recidivism could be reinvested here.

Is care suitable for penal theory?

Prison reform projects fail, criminologists argue, due to poorly managed complex relations between security and care and lack of attention to an individual's personal difficulties prior to prison.⁶⁰ Drawing together security and care echoes Tait's ethnography of prison officers and Zacka's work on street-level bureaucrats. 'Difficulties' prior to prison resonate with the 'systemic, persistent, exclusion' in Duff's work,⁶¹ powerfully illustrated by Shelby's 'ghetto poor'⁶² example.⁶³ These prior difficulties or social injustices contribute to the contextual, narrative information that is important for respect and proportionality. Since context is necessary for good care, care ethics approaches prioritise collecting this information. Care ethics approaches instrumentally foster engagement with the context criminologists identify as missing. But can care ethics respond to violent crime?

Caring meets needs and maintains peaceful relationships. Yet an ethic of care is not pacifist. As Virginia Held observes, care ethics necessitates resilience and the ability to manage conflict, since everyday caring requires negotiating conflicting needs in conditions of scarcity. Care ethics can recommend coercion and force *now*, as a last resort, in order to better achieve caring aims in the long run.⁶⁴ For example, the narrative progression of meeting needs, building capabilities or avoiding pain might necessitate resisting aggression, responding to destruction, or forcefully protecting rights.

Holding people relationally responsible, as one of 'us', for their crimes and enforcing rights can be caring aims. Responding to offending takes seriously the wrong done against the direct victims of crime: holding responsible individuals accountable as moral equals. Censuring criminal conduct underscore rights and responsibilities, which can be employed to ensure basic needs are met. Solidarity allows us to see relationships, however badly damaged, with those who are punished and to recognise our mutual interdependence. Despite 'tough-on-crime' political rhetoric, most people in prisons will eventually return to their communities. Their lives and narratives must be allowed to move on. The community benefits when all members have the skills to live

well: the abilities to meet their own needs, those of their dependants, and to contribute to our shared social world more broadly. Care ethics is capable of responding to violent crimes and recognising and addressing institutional carceral violence.

Care ethics and penal theory: aims, methods, and standards for penal practice

Treatment as moral equals requires respect and proportionality, which requires context. As a situated, practice-focused approach to moral reasoning, care ethics relies on gathering contextual information and providing instrumentally valuable access to context for penal theory. Good care can only be delivered through processes of continual context monitoring, reasoning with, and decision-making with the other. Should these information gathering and reviewing practices fail, we cannot provide *good* care. While care ethics approaches cannot guarantee best-practice context gathering and use, it does better than simply hoping to provide treatment as a moral equal.

Care ethics offers more than a direction to collect and apply context: intrinsic to care ethics are both *methods of* and *standards for* practice. Care ethics *methods* of practice require attentive, responsive, and respectful open engagement, working with the cared-for person to understand their context: situation, needs, preferences, responsibilities, relationships, available resources, and so on. Practices that fall short of these methods can be internally procedurally critiqued as failing to meet care ethics *standards* of practice: competence, integrity, and solidarity. Procedural failures include the following: misapplication (gathering the wrong information); insufficient application (not gathering enough available context); or poor quality of application (failing to use sufficient attention, respect, and responsiveness) of the methods.

In addition to procedural failures, care ethics standards can further identify substantive outcome failures. When sufficient context is gathered but inadequately used, this results in sub-standard care: incompetence, lack of integrity, or poor care (parochialism, infantilisation). This highlights these intermediate-level problems that *will likely* contribute to failing to treat people as moral equals *before* this failure is fully realised and providing the information and language to identify problems at earlier stages. Identifying injustice alone does not defeat it, but it is a necessary step towards acknowledging and addressing injustice.

Care ethics offers a more accurate account of prisons: recognising and critiquing *both* dehumanising carceral violence *and* the necessity, presence, and inadequacies of penal care. Tools intrinsic to care ethics permit identifying intermediate-level inadequacies *before* the full damage is done. This clearer account and early warning allows precious time to attempt to remedy or mitigate harm. Finally, the methods of care provide information for identifying, and standards for assessing and ranking, potential remedies.

Applying care ethics: What should theorists think when practice falls short?

Because punishment often fails to treat individuals as moral equals, Duff acknowledges present penal practices are unjust and unjustified. But, he challenges, what is to be done? ‘We cannot just throw up our hands and say, “Nothing”’. Institutional changes take time. Meanwhile, we are caught between complicity in wrongs

‘administered in our names’ in state responses to crime⁶⁵ and failing victims and communities by failing to respond to crime.

McLeod’s response is proper acknowledgement of systemic penal violence and dehumanisation. She argues for abolition, moving away from violent punitive prevention, towards social preventative regulation, through gradual de-carceration. McLeod distinguishes a penal abolitionist ethic from a reformation ethic.⁶⁶ The more radical abolitionist ethic better identifies violent and dehumanizing carceral realities as structural issues, urgently pressing for replacement. In contrast, a reformation ethic views violence and dehumanisation as superficial failures of practice, justifying cost-reducing reforms.⁶⁷ She criticises narrow economic justifications, since they ignore the costs of incarceration, borne by convicted individuals, families, and communities.⁶⁸

McLeod hopes ‘an abolitionist preventative framework’, overseen by social regulation – not structurally flawed criminal justice institutions – will offer ‘less violent, less racialized, less coercive, and more just modes of reducing risks of interpersonal harm and promoting human flourishing’.⁶⁹ I share her concerns, structural diagnosis, and aims of both promoting flourishing and reducing harm. These aims overlap with caring aims: meeting needs and building capabilities facilitate flourishing, and avoiding pain reduces harm.

Yet, I am cautious about abolition. First, the concrete rights protections that criminal due process recognises is needed and at least attempts to provide to those accused and convicted (presumed innocence, the right to a fair trial, proportionate punishment) are unmentioned under McLeod’s social preventative institutions. Second, McLeod’s abolitionism is an aspirational, gradual process⁷⁰ of institutional capacity building to reduce reliance on prison. Gradual change sounds like reform, which may desirably render prison obsolete. Since structural changes take time, I doubt obsolescence is possible in the short-to-medium term, partly because McLeod highlights the difficulty of ‘the dangerous few’:⁷¹ those *very* few who need ‘containing’, albeit in facilities and conditions distinct from ‘caging’ and ‘confining’.⁷² Third, then, ‘containing’ is neither abolition nor obsolescence. Communities will do better to be honest about the prisons we *do* use: permitting vigilance against violence and supporting, and protect the rights of, those ‘contained’. We will do better to be honest about penal care and its failings and use the methods and standards of caring to support these practices.

McLeod’s problematisation of the regime and architecture of prisons echoes James Gillian, who likened modern prisons to old-fashioned, inhumane zoos.⁷³ It is brutal to keep human beings in cages.⁷⁴ She proposes community reforms to ‘expand the space in which people are safe from interpersonal harm’ and can develop more equal relationships, redirecting investment from punitive to social preventative strategies focused on ‘promoting social flourishing’ and ‘preventing harm’.⁷⁵ ‘Creating safe harbours’⁷⁶ echoes the community justice literature: investing in public spaces and improving physical design to discourage crime.⁷⁷ Alternative jurisprudence practices – punitive on McLeod’s account – divert convicted citizens from prison to support unpaid work requirements, cleaning and improving community spaces, exactly as McLeod recommends.⁷⁸ She calls for alternative livelihoods, thinking creatively about developing legitimate options that provide decent livelihoods for all, as Shelby highlights the need to address the intersecting effects of limited opportunities with disadvantage and poverty. Her ‘de-criminalisation’ calls for constructive responses to harm wherever possible,⁷⁹ mending the social fabric and damaged relationships in ways consistent with care ethics.

These are situated responses to harm that aim to repair damage and relationships. These measures respond to the needs of victims, perpetrators, and the community collectively,⁸⁰ recognising the interdependence between these needs and the community-wide repercussions of carceral violence. Her proposals are consistent with needs-meeting, capability-building, pain-avoiding care practices and the responsive, respectful, attentive open engagement that good care requires. These aims are best achieved, I suggest, when we recognise them for the care they are and employ the methods and standards of care ethics – working in solidarity, from a context-sensitive starting point of interdependence, guided by care standards, to thinking creatively about how we ‘expand the space in which people are safe from interpersonal harm’ *into and within prisons*. Care ethics would demand structural change to better deliver needs meeting, capability building, and harm avoidance and is therefore consistent with abolition. But care ethics also permits McLeod’s abolitionist ethic to guide radical reform: demanding structural change in the long run without ignoring the immediate needs of people in prison. Abolition is not the only answer to the problems of prison and mass incarceration. Shelby also favours reform over abolition,⁸¹ although Shelby and I share the concerns of McLeod, Angela Davis,⁸² and Michelle Alexander⁸³ on the wrongs of prisons as they are and the wider structural injustices that underpin them.

Theorising the prison from the perspective of care ethics may therefore be exactly the ethical ‘elaboration’ of ‘less violent, less racialized, less coercive, and more just modes of reducing risks of interpersonal harm and promoting human flourishing’,⁸⁴ that McLeod endorses. The contextual information gathered through a care ethics approach, and the methods and standards of caring, are primarily intended to produce the supportive needs meeting and capability building necessary for McLeod’s safe-space creation, more equal relationships development, and harm reduction.

Why theorise from care ethics?

Institutionally, so much of the present practice of prisons is so bad that we might wonder what the additional insight or ‘early warning’ of care ethics might add. While structural problems ultimately need structural fixes, from McLeod’s institutional perspective, the problem is so vast it is hard to know where to begin. The institutional focus of much penal theory blinds us to the plight of particular people in prison. We cannot afford to be paralysed by indecision stemming from the lack of knowledge or resources. A care ethics approach recognises the individual and the institutional, with other context, to illuminate problems on the ground and inform how we – the individuals in prison, officers, and the community inside and outside the prison – can work in solidarity to address these.

The absence of care from penal theory may be a contingent problem: theorists have yet to explore this area. In this case, including care ethics recognises overlooked ways of thinking, reclaiming practices that were always necessary and always present, but hidden in plain sight. Alternatively, this is a structural problem: the framing of penal theory assumes the incompatibility of care and punishment, significantly restricting our ability to consider the fundamental role caring plays in punishment practices and how prisons might be radically changed. I do not commit here one way or another: the cause of the problem is not important for the argument that, empirically, care *is* present in practice and *should be* reflected in normative penal theory. However, the

absence of care suggests that it is at best difficult to think about care in punishment from the standpoint of mainstream penal theory.

A care ethics approach to penal theory can help us change the way we theorise and practice punishment. We can recognise clear wrongs of violence and dehumanisation on an institutional scale, while simultaneously prioritising attention to particular contexts and interpersonal interactions between individuals and officers. Care ethics allows us to draw on social, relational, and narrative context, to think together in solidarity about how to challenge, resist, and change practices. Wider context is necessary for a complete consideration of care and penal theory, which I have been unable to fully develop here. Yet, this article lays the ground for and invites further work in the overlap between care ethics and penal philosophy. Care ethics' relational concern for personal narrative and wider context implies support for practices which minimise harm and build capabilities by supporting individuals and families and mending community relations. Care ethics aims towards needs meeting and capability building for flourishing and avoiding pain through responses to crime that are 'less violent, less racialized, less coercive, and more just modes of reducing risks of interpersonal harm'.⁸⁵ Care ethics facilitates thinking differently to offer radical institutional, individual, and structural keys to unlock and open up support for individuals and communities through reforms to penal theory and practice.

Conclusion

I have illustrated the presence of caring practice and policies in prisons and sketched how a care ethics perspective can help us to achieve the same aims as some existing deontological penal theories: treating people in punishment as moral equals. Including care ethics in penal theory can provide an alternative theoretical framework and a more complete account of the prison. This approach recognises the wrongs and structural failings of punitive institutions doomed to human imperfection: identifying pervasive violence, dehumanisation, and racially prejudiced practices as urgent structural problems. Further, we can identify, and critique, the obscured, under-resourced and consequently often poorly practiced instances of caring as equally human practices of care and support. Caring practices, and the methods and standards intrinsic to care, offer radical institutional, individual, and structural keys to unlock individual support. Care ethics also opens up possibilities to develop state crime prevention and punishment practices that promote social flourishing for returning community members and their families, prevent harm, build safe spaces, and facilitate equal relationships and perhaps ultimately challenge the necessity of prison.

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NOTES

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