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# Reconceptualising socioeconomic rights: a case for care ethics

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## ABSTRACT

As the COVID-19 pandemic has unveiled, care is ubiquitous, critical for all aspects of daily life. However, equally visible is the deficit in care both within states and on the international level. Care, as both a practice and value, has advanced far beyond its conception within feminist theory and has since been employed in a range of disciplines within the social sciences and beyond. Of particular note is its ability to deepen understandings of power and contest inequalities through the exploration of relationalities. Nevertheless, the lens of care has yet to be sufficiently explored in the context of international human rights law. Meanwhile, concerns regarding human rights' susceptibility to appropriation by neoliberal forces are growing in volume and severity. Drawing on the work of Joan Tronto, this article suggests an appreciation of rights as interconnected and interdependent as the key to creating communities of care which level socioeconomic disparities on the international level. Chiefly, it proposes a rights-based approach informed by Tronto's political theory of care as a means of transforming socioeconomic rights into the counter-hegemonic tool required to more effectively challenge neoliberalism.

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## Introduction

Human rights, broadly defined as the fundamental guarantees all human beings are entitled to on account of their common humanity,<sup>1</sup> have been met with considerable criticisms including the inherently individualistic nature of Western formulations (Legesse, 1980, p. 124). Economic and social rights – understood in this article as entitlements which reflect the *conditions* needed for a life of dignity such as the right to be free from hunger and the right to adequate housing – (Ferraz, 2017) have faced their own category of critique. Much of this criticism has concerned the failure of socioeconomic rights to achieve redistribution of resources and their general powerlessness in the face of neoliberalism – an economic, moral and political project which promotes market mechanisms and reduced government spending to achieve prosperity on the individual and state levels (Moyn, 2014, p. 169; Neier, 2006, p. 1; Whyte, 2019, ebook 11; Wills & Warwick, 2016, p. 632). Indeed, there are growing concerns regarding neoliberal

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appropriation of socioeconomic rights whereby neoliberal policies co-opt the language of such rights in a way which undermines their foundational principles, namely through an emphasis on individual responsibility and conditionality (Moyn, 2017, pp. 137–161; Whyte, 2019; Wills, 2017, pp. 79–93). Nevertheless, human rights law has also made invaluable contributions, principally the framing of the enjoyment of the essential conditions for a dignified life as a universal entitlement which states bear responsibility for. Accordingly, instead of dispensing with rights altogether, there is value in considering approaches to socioeconomic rights informed by alternative philosophies to address the aforementioned limitations of the international human rights regime at present in pursuit of a more equal world (Moyn, 2018; Neier, 2006; Salomon, 2023).

One such lens which has yet to be sufficiently explored within human rights discourse and international human rights law itself is care.<sup>2</sup> Care is simultaneously an epistemic lens and a practice, instrumental in the diagnosis of issues – invariably a caring deficit – and the formulation of solutions (Tronto, 2005, pp. 130–145). Whilst a relatively young normative theory, the ethics of care has thus far borne three distinct generations of care ethicists unified in their valuing of care as the mainstay of human existence (Engster & Hamington, 2015). The elasticity of care ethics in comparison to dominant normative theories in Western philosophy renders it applicable to a variety of contexts; in its less than 50 year existence, care ethics has proved an invaluable device not only in nursing (Bowden, 1995; Green, 2012; Lachman, 2012) but increasingly in other fields including matters related to bioethics (deMoissac & Warnock, 1996; Furnari, 2007), business (Hamington & Sander-Staudt, 2011), and the environment (King, 1991; Whyte & Cuomo, 2016). Moreover, care has recently been brought to the fore following the COVID-19 pandemic which unveiled care work as critical for the functioning of society yet immensely undervalued and frequently unremunerated (See, for example: Bahn et al., 2020; Daly, 2020; Lokot & Bhatia, 2020). Whilst the value of care has been considered in related domains, such as global human security (Robinson, 2011) and international politics (Robinson, 2020, p. 130), it remains heavily underutilised by international human rights bodies and scholars alike.

This article suggests that an approach to rights informed by care ethics, which appreciates the totality of relations the rights-holder is situated within, could help bring socioeconomic rights closer to the counter-hegemonic tool necessary to overcome appropriation by neoliberal forces (Wills, 2017, pp. 79–93). As summarised by Wills, counter-hegemonic approaches entail ‘contestation of the legitimacy of the world view of the dominant hegemonic bloc by unifying pre-existing oppositional tendencies within subaltern classes into a coherent and systematic alternative world view that can win broad-based support across the subaltern classes’ (Wills, 2017, p. 25). The article proposes Tronto’s theory of care within its ‘full moral and political context’ (Tronto, 1993, p. 125), her creation of a comprehensive framework applicable both at national and international levels as it is personal relationships, and finally the numerous safeguards introduced against paternalism.

The article will begin by summarising criticisms of socioeconomic rights, illustrating that such rights as currently constructed are unable to target inequality and should be informed by more prescriptive underlying philosophies. It will then introduce care ethics, tracing its inception through to its transformation into a comprehensive political

theory of care. The article will provide an overview of Tronto's conceptual framework, identifying the characteristics that could strengthen socioeconomic rights in the face of neoliberalism. In doing so, the article will distinguish the political theory of care from similar theoretical perspectives – namely Honneth's theory of recognition (Honneth, 2012) and the contemporary dignity-based approach championed by McManus – (McManus, 2019) on account of its emphasis on practice and the active role care-receivers play in shaping processes of care.

The ostensible conflict between human rights and care/needs will be addressed, whereby it will be suggested that a fusion of the two is not only feasible but could also be a mutually beneficial exercise. This shall be followed by an examination of previous references to care within the work of international human rights bodies to identify entry points for engagement with Tronto's framework. The article will conclude by highlighting potential ways in which an embrace of the political theory of care within international human rights law could enhance the realisation of economic and social rights, overcoming the principal failures of the international human rights regime to date.

### **Economic and social rights: a companion to neoliberalism**

The ability of economic and social rights – as constructed under international human rights law – to target inequality and help those most in need is widely challenged. The tolerance of the progressive realisation of socioeconomic rights in accordance with the state's maximum available resources enshrined within the International Covenant on Economic, Social and Cultural Rights<sup>3</sup> in comparison to the more stringent approach adopted by its sister treaty, the International Covenant on Civil and Political Rights,<sup>4</sup> has been extensively criticised for its watering down of the state's obligations in relation to this category of human rights (Beetham, 1995, p. 46; Craven, 1999, p. 5; Vierdag, 1978). Whilst the Committee on Social, Economic and Cultural Rights has clarified that the principle of progressive realisation aims to accommodate the varying capacities across its members and requires states to 'move as expeditiously and effectively as possible' towards full realisation of economic, social and cultural rights,<sup>5</sup> it has nevertheless been invoked by more affluent states in an attempt to justify their lack of action in pursuit of this aim.<sup>6</sup>

Yet, more troublesome is the human rights framework's failure to demand the redistribution of resources. By electing to promote a minimum standard of protection, economic and social rights do little to address global wealth inequality nor the sizeable socioeconomic disparities which exist within states (Moyn, 2018; Neier, 2006). As such, socioeconomic rights have been characterised as a 'companion' to neoliberalism, failing to disrupt the systemic causes of deprivation (Moyn, 2018, p. 181). This is not helped by the individualistic, Eurocentric origins of human rights language, which it shares with economic liberalism (Baer, 2017, p. 40; Bakker, 2007, p. 438). As Whyte highlights, human rights have historically been employed to support neoliberal policies, most notably in the late twentieth century during the Cold War and decolonisation (Whyte, 2019, pp. 22–27). By presenting human rights as the 'morals of the market', neoliberals have promoted a vision of rights that favours civil and political freedoms over social and economic justice (Whyte, 2019, p. 27). Increasingly, socioeconomic rights are also being

subject to neoliberal appropriation, with examples including the marketisation of education and the privatisation of public services such as healthcare and water (Chapman, 2014; del Cerro Santamaría, 2020, pp. 22–38; Moyo, 2011).

The political neutral approach of the international human rights regime similarly constitutes a ‘stumbling block to the counter-hegemonic capacity of socioeconomic rights discourse’, as per Wills (Wills, 2017, p. 255), illustrated by the weak stance adopted by the CESCR in its belated response to the proliferation of austerity measures enacted by states following the 2007–2008 financial crisis.<sup>7</sup> Thus, whilst international human rights law is able to articulate the desired outcomes, for example universal enjoyment of an adequate standard of living, its neutrality precludes instruction of the specific political processes necessary for its objectives to be delivered (Wills, 2017, p. 255).<sup>8</sup>

Ultimately, socioeconomic rights – at least as currently conceived within the international human rights regime – are unable to contest inequality and its ideological underpinnings. Yet, rights continue to be one of the few political avenues through which unmet needs can be clearly voiced to produce change (Pieterse, 2007, p. 819; Simon, 1986; Woods, 2005). Hence, as Pieterse underscores, there is tremendous value in exploring a more holistic approach to realising socioeconomic rights which incorporates other means of mobilisation and community action to address structural inequalities (Pieterse, 2007, p. 819). One such way in which this could be achieved is through a reconceptualization of socioeconomic rights through the lens of care ethics, as the remainder of this article shall explore.

## Care ethics and the political theory of care

Though care ethics acts as an umbrella term subsuming a variety of nuanced perspectives, each recognises care as a central, if not supreme, value without which mankind would cease to exist (Urban & Ward, 2020). A fundamental tenet of care ethics is the interdependency of human beings, with each individual oscillating between different levels of need across their lifespan (Held, 2005, pp. 13–14; Tronto, 1993, p. 21). Assuming this position reveals complete autonomy to be an illusion, underscoring the indispensability of caring environments which ensure all individuals have their needs met (Gilligan, 2011, p. 17; Slote, 2007, p. 62; Tronto, 1993, p. 21). An overview of care ethics’ short history will now be provided, delineating its evolution into the emancipatory political framework that the universal realisation of socioeconomic rights requires.

### Origins

The birth of the ethics of care dates back to Sara Ruddick’s 1980 essay ‘Maternal Thinking’, in which Ruddick observed the particular form of judging, self-reflection and feeling historically associated with mothers which she terms ‘maternal practice’ (Ruddick, 1980, p. 348). Whilst Ruddick presented maternal practice as a social account of motherhood (Urban, 2020), in doing so she sought to redress the historic undervaluing and marginalisation of caring within the public sphere through the emergence of a ‘feminist consciousness’ (Ruddick, 1980, p. 356). Thus, the ethics of care has possessed an inherently political quality since its inception, signifying its appropriateness in the context of this research (Urban, 2020, pp. 282–283).

However, the term ethics of care was first explicitly utilised two years later by Carol Gilligan in reference to a ‘different voice’ to that of the ethic of justice, the latter historically valued within developmental psychology (Gilligan, 2003, p. 16). Whilst acting as a research assistant to psychologist Lawrence Kohlberg, Gilligan noticed that girls commonly adopted a relational approach when responding to ethical dilemmas, whereas boys often exhibited the ‘formal logic of fairness’ traditionally accredited within theories of moral development (Gilligan, 2003, p. 73). Though the voice of care and the voice of justice may be simultaneously present, Gilligan concludes that one voice will likely dominate the other (Gilligan, 1989, p. 54). Though Gilligan prefaced her work by stressing that the different voice is characterised ‘not by gender but by theme’ (Gilligan, 2003, p. 2), the subtlety of her argument has nevertheless been misinterpreted as essentialising women as naturally more caring than men which has thereby thwarted its emancipatory value.<sup>9</sup> Yet, it is the parochial character of Gilligan’s ethics of care in comparison to later formulations which renders it ill-suited for the present exercise of reconceptualising socioeconomic rights, for her early studies concern primarily domestic relations (Tronto, 1993, p. 656).

### ***Tronto’s political theory of care***

Cognisant of the dangers of gender essentialism associated with the ethics of care, Tronto is unequivocal in her identification as care as a ‘species activity’ (Fisher & Tronto, 1990, p. 40). Under this broad approach, care is understood as ‘everything that we do to maintain, continue and repair our “world” so that we can live in it as well as possible’ (Fisher & Tronto, 1990). By adopting this definition, Tronto prevents the ethics of care from being quickly dismissed as a ‘women’s morality’, overcoming a severe failing of Gilligan’s (Tronto, 1987, p. 655). In doing so, Tronto widens the theory’s application beyond the domestic context, extending to actions taken on the national and international levels (Fisher & Tronto, 1990, p. 38).

In contrast to the ‘blunted effects’ of Gilligan’s work, Tronto transforms care into a radical tool which illustrates its suitability for the present endeavour to reconceptualise socioeconomic rights (Tronto, 1993, p. 63). Her work challenges the rigid boundary constructed between morality and politics, recognising that care is invariably ‘infused’ with power and thereby political (Tronto, 2015, p. 9). Significantly, Tronto appreciates that care is not only a moral value, but equally provides the blueprint for a political system which enables society to flourish (Tronto, 1993, p. 9). Through Tronto’s contributions, care has therefore evolved from a moral theory to a comprehensive political framework which prescribes changes needed on the institutional level in order to address systemic inequalities (Tronto, 1993, p. 18).

### ***Cycle of care***

The political theory of care appreciates that care is cyclical, consisting of separate processes of care (Fisher & Tronto, 1990, pp. 41–48; Tronto, 2013, pp. 22–23). Alongside each process of care articulated by Tronto and Fisher is an ethical element intended to illustrate the relevant behaviour and qualities expected of the care-giver at each point in time (Tronto, 1993, p. 127). The first process of care, ‘caring about’, consists of the care-giver identifying the caring need and therefore necessitates attentiveness (Fisher & Tronto, 1990, pp. 41–42). Second is the process of ‘taking care of’, where the

care-giver is required to assume responsibility for meeting the caring need and to assess ways this can be taken (Fisher & Tronto, 1990, pp. 42–43). The third process of care, ‘care-giving’, refers to the ‘direct meeting of the needs of care’ whereby the care-giver must exhibit competence in ensuring the care provided fulfils its intended outcome (Fisher & Tronto, 1990, pp. 43–44; Tronto, 1993, p. 107, 133–134). Tronto’s political theory of care thus bears some resemblance to Honneth’s theory of recognition, the latter of which contends that social justice is achieved where all individuals receive the recognition needed to fulfil their human potential (Honneth, 2012, pp. 35–56). Both theories further critique neoliberalism and its overemphasis on autonomy and independence (Honneth, 2012, pp. 56–97; Tronto, 2013).

However, Tronto’s framework is distinguished by its distinct focus on care as a *practice*, the everyday contexts in which care is provided and crucially how individuals and institutions manage and respond to unmet needs. Whether the care needs have been suitably met can only be ascertained through a study of how the care-receiver reacts to the care provided (Tronto, 1993, pp. 107–108). Thus, it is imperative ‘care-giving’ is followed by the fourth process of care, ‘care-receiving’, which centres the response of the care-receiver (Tronto, 1993). Care-receiving is one of the crucial safeguards against paternalism – often a fatal flaw of theories centred around care or vulnerability – which Tronto builds into her framework (Crigger, 1997; Durmuş, 2022, p. 9; Tronto, 1993, p. 170). Power imbalances routinely dictate caring relations, with the fulfilment of the care-receiver’s needs contingent upon the more privileged position of the care-giver (Tronto, 1993, p. 146). Indeed, through the lens of necropolitics, a sociopolitical theory devised by Mbembe which explores how political power dictates who is subject to death, suffering or neglect, one could argue that ‘care’ is differentiated depending on one’s position in a highly stratified global system (Mbembe, 2003).

Significantly, Tronto acknowledges that to rely solely upon the care-giver’s assessment of the care provided disregards the lived experiences of the care-receiver which will often render the latter the more appropriate judge. Accordingly, the care provided must be constantly reviewed through dialogue with the care-receiver to identify any unmet needs and, in turn, explore alternative means of provision which elevate the quality of care delivered (Mbembe, 2003). The care-receiver’s transformation into an active subject within caring relations, as opposed to merely an object cared for, sets Tronto’s theory apart from other conceptual frameworks predicated upon care which deprive those cared for of power and thus is a fundamental process within the cycle of care (Tronto, 2020, p. 181, 186).

Aware that the care-receiver’s needs are unlikely to be wholly satisfied through a singular act of care, Tronto’s emphasises that the cycle of care is continuous (Tronto, 1993, p. 103, 141; Tronto, 2015, p. 7). The provision of care is to be followed by the identification of new needs, returning to the first process of care (Barnes, 2022, p. 41; Tronto, 2020). The cyclical construction of care within Tronto’s framework cannot be understated for it underscores the active role demanded of the care-giver, continuously supporting the care-receiver.

### ***A fully-fledged political theory of care***

Two later additions to Tronto’s framework have cemented its applicability to the state level and beyond. Influenced by Sevenhuijsen’s work on the incorporation of care



within conceptions of citizenship (Sevenhuijsen, 2004, p. 113; 151), Tronto extended her cycle of care formulated with Fisher to include the process of ‘caring with’ (Tronto, 2020, p. 14). This final stage prescribes care as the key organising principle in the public realm, termed by Tronto as the ‘new democratic ideal’ (Tronto, 2020). ‘Caring with’ envisions a fundamentally caring society whereby all individuals undertake acts of care and concurrently see their own needs fulfilled (Tronto, 2020). The notion of ‘caring with’ thereby shows a degree of commonality with McManus’ critical legal conception of dignity stemming from the capabilities approach of Sen and Nussbaum, which calls for ‘the establishment of fair decision-making procedures that equally value all individuals’ opportunities to participate in deliberative authorship of the laws that govern them’ through individuals’ deployment of their ‘expressive capabilities’ (McManus, 2019, p. 69). McManus’ conception is more appreciative of relationality than traditional Western formulations of dignity and further displays a sensitivity to individuals’ unique and context-specific needs (Regilme, 2022). However, crucially, within Tronto’s framework, so far as is possible, it is the care-receiver who defines their own needs. Thus, the construction of needs within the political theory of care is both more realistic and less paternalizing of the care-receiver.

Though the creation of such a caring societal culture to a great extent requires individuals to perform acts of altruism benefitting those beyond their immediate relations, the state too bears a sizeable role in this departure from the individualism which has been encouraged by neoliberalism – especially in light of the substantial measures needed to redress socioeconomic inequalities (Tronto, 2002; Tronto, 2020, p. 14; Ward, 2022, p. 56). Whilst the implications of Tronto’s framework for the state have been augmented within her later work, Tronto has stressed since the outset that politics is underpinned by the apportion of caring responsibilities and hence democratic deficits and deficits of care are one and the same (Tronto, 1993, pp. 17–18). As such, the solution to the former involves resolving the latter and vice versa (Tronto, 1993).

The potential for care ethics to be applied to the subjects of international human rights law is implicit in Tronto’s most recent work via her situation of the cycle of care within the caring democracy, referring to determinations pertaining to the provision of care – such as the assignment of responsibilities and the specific practices involved – being reached through democratic processes (Tronto, 2013, pp. 154–155). The caring democracy and the process of ‘caring with’ are inextricably linked; though ‘caring with’ imagines all individuals undertaking reciprocal caring acts, it simultaneously requires state action to address existing deficits of care (Tronto, 1993, pp. 17–18). Hence, like international human rights law, the political theory of care decidedly emphasises the central role the state must play in the universal satisfaction of basic needs. However, in keeping with efforts in human rights law to cast the net wider and to expand the circle of duty-bearers, Tronto’s wide-reaching definition of care as all acts undertaken to ‘maintain, continue and repair our “world”’ ought to be understood as encompassing the work of non-state-actors also such as businesses or armed groups (Fisher & Tronto, 1990, p. 40).

The concept of caring democracy addresses a common critique of care ethics: that not all forms of care are inherently good (Narayan, 1995, p. 135; Schwarzenbach, 1996). Post-colonial critiques emphasize the risk of care being exploited as a ‘self-serving’ tool for the powerful, as seen during the British Empire (Narayan, 1995, p. 136). Narayan, for



instance, points out how British imperialism in India was justified through a narrative of care, questioning whether care ethics can truly serve as the basis for a political framework when it has been used within oppressive systems (Narayan, 1995, pp. 135–136, 139–140). However, Tronto's caring democracy would reject such abuses, as it is grounded in a commitment to genuine equality of voice and the reduction of power imbalances, ensuring that democratic discourse is truly inclusive (Tronto, 2013, p. 33). While it is true that not all care is good care, caring democracy promotes only care that genuinely benefits the care-receiver, free from the caregiver's ulterior motives. This approach is more nuanced than those of Bubeck (Bubeck, 1995, p. 129) and Kittay (Kittay, 2011, p. 612), who regard care as an inherently positive 'success term' and fail to challenge caring practices that, while meeting basic needs, may still be unjust (Collins, 2015, p. 70). In contrast, the caring democracy actively seeks to dismantle systems of power that marginalise people based on race, gender, and class, making it resilient to such critiques (Hankivsky, 2004, pp. 23–24).

Ultimately, the logical structure and versatility of Tronto's framework make it well-suited for application on a myriad of levels, including international legal governance.

### **Uniting care and human rights: a mutually beneficial exercise**

The perceived tension between the ethics of care and the ethics of justice has framed care/needs and human rights as opposing forces, overlooking the potential value of a fusion of the two (Pettersen, 2011, p. 54). The ethics of justice advanced by developmental psychologists in the twentieth century valorises an appreciation of rights; to reach the post-conventional level at the apex of Kohlberg's model of moral development, an individual must ground their responses to moral dilemmas in abstract reasoning using universal ethical principles such as the right to life (Kohlberg, 1973, pp. 29–30). The ethics of care emerged in response to draw attention to the value of relational approaches to decision making (Gilligan, 1989, p. 54). Feminist critique of human rights as androcentric, both as a cause and consequence of women's historic exclusion from the public sphere, has furthered the purported conflict between the two (Baier, 1994, p. 26; Fisher & Tronto, 1990, p. 36; MacKinnon, 1983, p. 642, 658; Smart, 1989, p. 159). As such, whether gender equality can be realised through human rights has been severely called into question by many feminist scholars who therefore advocate for non-legal alternatives (Smart, 1989, pp. 138–159). As a feminist ethics, the ethics of care appears to be incompatible with human rights.

However, the apparent discord between care and human rights has been overemphasised and further overlooks the possibility of a reconciliation of the two to benefit those most in need (Barnes, 2012, pp. 33–34). Throughout her work, Tronto laments the domination of the language of rights from precluding a consideration of care (See, for example: Tronto, 1993; Tronto, 2010, p. 163; Tronto, 2013, p. 163), yet the same could be said for the prioritisation of civil and political rights in the West over economic and social rights. During the Cold War, the conflicting ideologies of the capitalist West and communist Soviet Union prevented the creation of a single treaty that would encompass both the civil and political and economic, cultural and social rights contained within the UDHR (Aka & Browne, 1999, p. 442; Donnelly, 2018, p. 23). As a result, two separate Covenants were established, with only the former initially paired

with a communication mechanism for alleged violations, reifying the division between the different categories of rights (Schrijver, 2016, p. 457). The neglect of care/needs is thus more accurately comparable to the treatment of so-called ‘second generation’ rights, for they have both been side-lined in favour of negative liberty.

Tronto’s political theory of care suggests that a fusion of care and human rights is not only possible but desirable to overcome their respective weaknesses (Tronto, 1993, p. 167). Firstly, care counters the ‘moral indifference’ within society promoted by the individualistic framing of rights, for it brings to light the interdependency of all human beings (Sevenhuijsen, 2004, p. 108). The adoption of such an approach underscores the degree of relationality between individual rights-holders; for instance, a child’s right to adequate food, clothing and housing is in many cases contingent upon their parent(s)/carer(s) right to work and/or right to social security. In situations where parents/carers resources are limited, they will often sacrifice meeting their own needs in favour of fulfilling their child’s (Harvey, 2016, p. 242; Knowles et al., 2015, p. 27). By scrutinising caring relations on the national level, the lens of care prompts an examination of how policy may be revised to ensure that the realisation of one’s rights does not come at the cost of another’s.

Crucially, the political theory of care prescribes the specific governmental processes required to target socioeconomic inequalities (Tronto, 1993, p. 44; Ward, 2022, p. 56; Wills, 2017, p. 255). Whereas socioeconomic rights have fared poorly against the trend towards commodification of essentials such as food, clothing and housing, an application of Tronto’s theory requires reconceptualising rights to contest neoliberalism and the ‘caring deficit’ it has produced (Tronto, 2013, p. 17, 37-38). Indeed, a departure from neoliberalism is a central aim of the political theory of care, illustrating its potential as the counter-hegemonic tool the rights regime must be accompanied by if socioeconomic rights are to be universally enjoyed (Tronto, 2013, p. 38). In rejecting the market model of provision, the political theory of care makes stronger demands of the state to ensure all caring needs are met (Tronto, 1993, p. 177; Tronto, 2002). The political theory of care is therefore similar to the international human rights regime in that it contends that individuals should be able to expect more from the state to fulfil their basic needs, yet has the potential to be more disruptive than socioeconomic rights are at present due to its emphasis on the global redistribution of resources to level inequalities within society (Tronto, 2002; Ward, 2022, p. 56). The care perspective is much more prominent than rights-based discourse in this context, calling for the recognition of the ‘universal need for care’ rather than prioritising market mechanisms (Tronto, 2002). Rejecting the dominant neoliberal narrative which asserts that individuals must earn access to care, the universal need for care asserts that all people are entitled to care as inherently interdependent beings. A reconceptualization of socioeconomic rights through Tronto’s political theory of care could therefore overcome criticisms of the ‘congenital neglect of material inequality’ within rights-based approaches (Lino, 2019, p. 282).

Considering the advantages care offers in comparison to human rights, one may question the purpose rights serve within this conceptual framework. Whilst some contend that rights ‘enshrine the tenets of bourgeois individualism’ (Fraser, 2013, p. 81), replacing socioeconomic rights with needs could potentially empower governments that are already hesitant to provide adequate welfare for their populations. Needs claims pertaining to socioeconomic conditions are greatly strengthened when underpinned by human

rights for they are anchored in the concept of dignity, which maintains that all individuals possess ‘an irrevocable moral worth by virtue of their human personhood’ (Regilme, 2022) which transcends legal rights (Mutua, 2016, p. 140). Human rights also have a clear symbolic and expressive function; as McManus stresses, ‘the language of rights is simultaneously popular enough to mobilise attention and articulate concrete demands and semantically open enough to express the interests and commitments of many different groups.’ (McManus, 2019, p. 68). Additionally, human rights promote acts of care amongst society and by institutions, rather than just between close relations and hence are indispensable to the political theory of care. Replacing rights with care could shift the focus away from achieving universal access to the essential conditions for a dignified life. It may prioritise addressing the needs of individuals with the most unmet care requirements, rather than challenging the power structures that perpetuate these disparities.

Moreover, a failure to recognise the care-receiver as a rights-holder may permit the provision of ‘bad’ care to the detriment of already marginalised groups (Tronto, 1987, p. 662). This is exemplified through Regilme’s observation of the ‘dehumanisation of individuals with minoritised socio-economic identities during the COVID-19 pandemic’ worldwide – including the denial of welfare entitlements – ostensibly in the interests of the state (Regilme, 2023, pp. 559–568. See also: Odigbo et al., 2023). In sum, a fusion of care and human rights presents a novel means of targeting socioeconomic inequalities effectively, which could greatly exceed the value of either individual approach.

## Care within international human rights law

Care is not an alien concept within international human rights law, featuring within work of the Special Procedures of the Human Rights Council as well as human rights treaty bodies. Whilst the majority of references to care concern domestic labour,<sup>10</sup> care has also been examined in other contexts including acts of care for the natural environment.<sup>11</sup> However, it has yet to achieve the status of a regular component within the guidance issued by such actors, nor in the analysis of state reports.

The most in-depth study of care undertaken at the international level was conducted over a decade ago by the former Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda (United Nations General Assembly, 2013). Though Sepúlveda’s discussion centred on unpaid care work and its perpetuation of gender inequalities worldwide, many parallels can be drawn between the general comments made and Tronto’s political theory of care. Sepúlveda not only utilises the same terminology as Tronto, referring to care-givers and care-receivers, but also crucially recognises that both are rightsholders whose rights are ‘intertwined’ (ibid. 5). By stressing the relationality of beings and the fulfilment of their needs, Sepúlveda produces a far richer conception of socioeconomic rights than the orthodox Western individualistic account. Equally, her appeal for care to be addressed as a ‘human rights issue’ affirms that human rights and care do not have to be viewed in opposition.

Sepúlveda’s concern of the ‘overburdening’ of caregivers with unremunerated labour and its detrimental impact upon the quality of the care provided leads to the conclusion that ‘the cost of care must be assumed more broadly’ for the rights of all care-givers and care-receivers to be realised (ibid. 5). Specifically, the state is implored to formulate policy which takes into account caring needs, echoing the political theory of care’s emphasis upon the ‘inherent logic of the public solution’ (Stensöta, 2020, p. 84). Whilst Sepúlveda’s

recommendations primarily pertain to free public service provision of health care and primary education, there is also the suggestion that other necessities such as water, sanitation and transport be available at an affordable cost (Stensöta, 2020, p. 22). Thus, whilst Sepúlveda's critique of neoliberalism is tempered in comparison to Tronto's, both display an awareness of the inability of market-based and charitable models of provision to adequately fulfil caring needs.

More recently, the language of care has recently enjoyed a revival within UN outputs, triggered by the COVID-19 pandemic. Whilst much of the emphasis has been placed on the pandemic's exposure of care work as acutely undervalued labour in spite of its criticality for the functioning of society,<sup>12</sup> there are equally remarks which encapsulate the merit of adopting a caring lens in relation to human rights more broadly. For instance, in his vision report as Special Rapporteur on the right to food, Michael Fakhri not only makes extensive reference to care, but presents a holistic understanding of care which closely resembles Tronto's (United Nations General Assembly, 2020b, paras 14–22). In defining care as 'all activities that nourish and nurture', Fakhri touches upon three key contributions of Tronto's theory, namely: a recognition that humans experience situations of heightened interdependency, the importance of caring through institutions and a valuing of care as the mainstay of human existence (ibid., para 21).

The utility of the lens of care is reinforced in Fakhri's assessment of the threat of COVID-19 upon socioeconomic rights. Whilst the pandemic has been widely considered by scholars to be 'crisis of democratisation' (Regilme, 2023, p. 556), Fakhri recognises the failure of governments and businesses to deliver a timely response to have also thrust individuals into a 'crisis of care' (Regilme, 2023, para 18). A caring deficit underlies countless international human rights issues beyond unpaid domestic work, extending to the treatment of migrant food workers as 'expendable' and land grabbing of Indigenous farmlands (ibid., para 26).<sup>13</sup> Hence, there is an unquantifiable merit in adopting the lens of care to both identify violations of socioeconomic rights and formulate solutions.

Evidently, there are several existing hooks for the integration of care into the international human rights regime which signify the viability of this project. Consequently, attention shall now turn to the potential future for care in international human rights law as a means of transforming state obligations in order to target the systemic cause of socioeconomic inequalities.

## **A more caring future for international human rights law**

The incorporation of the political theory of care within international human rights law could have wide-reaching implications, including a possible shift towards a less anthropocentric understanding of rights (See, for example: Cross, 2018; King, 1991, pp. 75–89; Whyte & Cuomo, 2016, pp. 234–247). That being said, the remainder of the article will focus on three key ways in which Tronto's framework could strengthen the duties states and non-state actors owe in relation to socioeconomic rights.

### ***A violations approach***

The tolerance of the progressive realisation of the socioeconomic rights contained within the ICESCR under Article 2(1) has been recognised to create uncertainty as to when a

violation has occurred (Corkery & Saiz, 2020). This is complicated by the often protracted nature of non-enjoyment of socioeconomic rights, such as hunger or homelessness, which may be difficult to attribute to a singular act of the state. A reconceptualization of socioeconomic rights through the political theory of care could help overcome such dilemmas through its recognition that everyone has needs coupled with human rights which the state must satisfy. The caring government at the centre of Tronto's framework is responsible for ensuring all needs are met, hence an idealist account would see any instance of deprivation as a state failure. However, the acceptance of limitations of rights under certain circumstances is inevitable, not only on account of the constraints of the state's power and resources, but also to balance competing rights claims, conflicting considerations of a social and ecological nature, and the interests of current and future generations (Humphreys, 2012; Robertson, 1994; Shue, 2014).

Accordingly, the political theory of care would align best with a 'violations approach' to socioeconomic rights on the international level which focuses on identifying criteria for establishing when a lack of progressive realisation can amount to a violation and strengthening the remedies available for victims (Chapman, 1996, p. 38). This firmer stance, Chapman proposes, would sharpen the tools available to human rights monitoring bodies; as Chapman recognises, 'the stigma of being labelled a human rights violator is one of the few "weapons" available' to such entities, hence '[a] violations approach offers the possibility of wielding that weapon more effectively and fairly' (Chapman, 1996).

Such a widening of state responsibility is required to capture instances where state policies are an underlying, though not necessarily the singular, cause of the non-enjoyment of economic and social rights. For example, whilst the global economic recovery following COVID-19, the war in Ukraine and poor harvest conditions owing to climate change have each contributed to the rise in food prices and energy bills in countries worldwide, the trust many states have placed in market solutions in place of strengthening social security programmes cannot be ignored (Nolan, 2023, p. 10). By turning to the political theory of care, states would be less able to invoke external factors to negate its culpability, lessening the enforcement problem plaguing the international human rights regime.

Equally, non-state actors such as businesses would be seen as part of a broader web of care held accountable through the caring democracy to embed care ethics into corporate practices. Engster's exploration of the integration of care ethics within stakeholder theory highlights how the former would encourage businesses to actively address power imbalances within their relationships (Engster, 2011, pp. 93–110). This would be facilitated through the promotion transparent decision-making processes that ensure marginalised stakeholders have a voice, such as stakeholder advisory panels, public consultations and collaborative problem solving forums (Engster, 2011).

A centralisation of care within the work of international human rights bodies and mandate holders is the key to catalysing this shift. Whilst the language of care has become in vogue following the COVID-19 pandemic, extending to the domain of human rights, it is imperative that its use is sustained within this context in light of its potential to unlock more progressive solutions which place uncompromising demands upon the state. Noticeably, the CESCR has yet to engage with the term in the same way as it has been within the aforementioned Special Rapporteur reports. As the treaty body principally responsible for monitoring the realisation of socioeconomic

rights, the CESCR is strongly encouraged to utilise care within its communications to reinforce the sentiments already expressed by the Special Procedures of the UN Human Rights Council. Coordination between these actors is fundamental if care is to be used to its maximum potential, which can be facilitated through recourse to the political theory of care.

Moreover, Special Rapporteurs should operationalise the process of care-receiving within their country visits, engaging with individuals as far as possible to determine whether the socioeconomic conditions necessary for satisfying their needs are present and, if not, how the state's provision of care can be improved. The language of needs is often more accessible to the layperson than the language of human rights, thus the former must be explored as a means of involving care-receivers within the review of national policy (Oomen & van den Berg, 2014). Non-governmental organisations would be instrumental within this process of needs diagnosis on account of their proximity to, and relationships of trust they have established with, care-receivers. These insights should then be incorporated into communications issued to states to highlight the causes of unmet needs and trigger the revision of policy accordingly.

### ***Combating commodification***

The valuing of free market competition within neoliberal philosophy has rendered basic necessities such as food, housing and water a commodity subject to price volatility, whereby access is limited to those who can afford it (Wills, 2014, p. 12). Socioeconomic rights have thus far done little to combat such commodification, casting doubt on their ability to ensure the basic conditions needed for a life of dignity for all.

As Fakhri highlights, food – and other such essentials – ‘transcends and challenges the assumption that the economy of goods is distinct from the economy of care’ for production, distribution, preparation and consumption of food are controlled are dictated by processes of care (United Nations General Assembly, 2020a, paras 76–83). Like Tronto, Fakhri understands that that a departure from the ruling market ideology which prioritises profit over human well-being and equality must be targeted if all human needs are to be met (ibid.). Fakhri identifies that the full realisation of the right to food will not be achieved without ‘a shift to a solidarity economy’ (ibid., para 80), referring to an economy ‘governed by principles of horizontal cooperation and coordination’ (ibid., para 64). Such an economy is to be predicated upon unity, inspired by mutual benefit societies, cooperatives and other similar entities of collective power. Whilst Fakhri is concerned with the right to food, the same could be said of the array of entitlements contained within the ICESCR. For example, the right to clothing must similarly be underpinned by democratic governance in place of ‘profit and ceaseless growth’ in order to uphold the rights of garment workers and to protect the environment (ibid.). This participatory model resembles the final stage of ‘caring with’ within Tronto’s framework, for both envision inclusive decision making on the state level in order to meet human needs.<sup>14</sup>

Notably, the ‘solidarity economy’ is less overtly radical than other possible means of combatting commodification which align with the political theory of care. For instance, Fraser envisions a socialist society where ‘shelter, clothing, food, education, health care, transportation, communication, energy, leisure, clean water, and breathable air’ are all treated as public goods, guaranteed by the state as of right (Fraser, 2022, p. 156).



Whilst Fakhri's recommendations are significantly more conservative, his advocacy of anti-capitalist mechanisms such as cooperatives marks a welcomed change from the political neutrality of the CESCR. Further, Fraser's proposal raises numerous conceptual challenges that remain unresolved, the foremost being the question of what constitutes essential food that the state ought to provide. Even within items easily identified as necessary for meeting nutritional requirements, such as milk, bread, fruits, and vegetables, ambiguities arise. For instance, determining whether non-native fruits such as jackfruit or pineapple fall under the category of basic needs becomes a subjective matter. Although local alternatives may provide the same nutritional value, the issue becomes more complex when non-nutritional factors, a key component of the right to food, are considered.<sup>15</sup> Meat and animal products would also likely spark debate, given the growing number of people adopting plant-based diets or reducing their consumption of such foods – especially in light of environmental concerns linked to the food industry amid the climate crisis, as well as the reported health benefits of vegan diets.<sup>16</sup> Logistical challenges also arise, including the state's ability to manage a scheme tailored to individual needs, alongside significant opposition from businesses and national governments. Thus, a shift to the solidarity economy constitutes the more feasible route to be pursued in order to bring care to the forefront.

### ***Resource redistribution***

Lastly, whereas international human rights law presently 'ties its own hands on progressive development' through the acceptance of a minimum baseline in relation to socioeconomic rights (Kennedy, 2002, p. 110), the political theory of care recognises that the redistribution of wealth and resources within and between nations is necessary to achieve equality (Tronto, 2002; Ward, 2022, p. 56). Accordingly, the incorporation of the political theory of care within the international human rights regime would likely impose more robust duties upon states in comparison to the present command to 'take steps individually and through international assistance and co-operation' to progressively realise the rights contained within ICESCR.<sup>17</sup> As Salomon stresses, '[m]eeting basic socioeconomic rights is of critical importance, but it may not – indeed cannot given the features of the international political economy – exhaust the scope of obligations in this area' (Salomon, 2011, p. 2155).

Whereas currently 'a marginally tolerable life nonetheless passes the human rights test' (Salomon, 2011, p. 2143), the political theory of care would require more of states to ensure that individuals worldwide are sufficiently cared for. Within states, this could be achieved via progressive tax systems which are more demanding of the wealthy elite. Under this approach, raising taxes in proportion to income would be considered the 'small price to pay' to ensure that all caring needs are met (Engster, 2007, p. 111).

On the international level, states must work together to address the structural causes of global wealth inequality, principally those in the realm of trade and investment (Mahutga, 2006, pp. 1863–1889; Prell et al., 2015). National governments and international institutions must bear the burden of proving that they are fulfilling the entirety of their human rights obligations, including those which are extraterritorial (Salomon, 2011, p. 2155). In doing so, the political theory of care could help clear socioeconomic rights of the charge of promoting inequality.



## Conclusion

Socioeconomic rights are presently a companion to neoliberalism on account of their individualistic and politically neutral framing, failing to redistribute resources. However, though socioeconomic rights have thus far failed to target inequalities, this does not necessitate their abandonment altogether. Yet, these rights will need to be informed by alternative underlying philosophies if they are to challenge the underlying causes of violations.

This article suggested a rights-based approach informed by the lens of care, specifically Tronto's political theory of care, as a means of bringing socioeconomic rights closer to the counter-hegemonic tool required to combat neoliberal appropriation in pursuit of a more equal world. An overview of Tronto's framework emphasised its applicability to the international level to expedite the realisation of socioeconomic rights through the prescription of specific governmental processes, as well as its inbuilt safeguards against the risk of paternalism associated with care-based approaches.

The embrace of the lens of care within the work of Special Rapporteurs was identified as an entry point for the incorporation of the political theory of care within the international human rights regime, which if adopted by all other human rights enforcement bodies would unveil the structural systems of power which perpetuate socioeconomic disparities. The article concluded that the political theory of care would drive the realisation of socioeconomic rights through three principal means: the augmentation of state responsibility under international human rights law, the shift of necessities from commodities to universal entitlements, and the redistribution of resources.

## Notes

1. Universal Declaration of Human Rights (adopted 10 December 1948) United Nations General Assembly (UNGA) Res 218 A (III) (UDHR) art 1.
2. The utility of care ethics has recently been considered in the context of the European Court of Human Rights' vulnerability analysis under Article 3 of the European Convention of Human Rights as a means of strengthening socioeconomic protection, see: Morris (2023).
3. UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3 Art 2(1).
4. UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171.
5. UN Committee on Economic, Social and Cultural Rights (CESCR), 'General Comment No. 3: The Nature of States Parties' Obligations', UN Doc E/1991/23 (1990), para 9.
6. For example, in its state report to the Committee, the UK cited its 'limited budgetary resources' as a reason it is unable to make equal progress in relation to all of the rights contained within the Covenant, see: UN Economic and Social Council, 'Fifth periodic reports submitted by States parties under Article 16 and 17 of the Covenant: United Kingdom of Great Britain and Northern Ireland', UN Doc E/C.12/GBR/5 (2008), para 74.
7. CESCR, 'Letter Dated 16 May 2012 Addressed by the Chairperson of the Committee on Economic, Social and Cultural Rights', UN Doc HRC/NONE/2012/76 (2012); Wills and Warwick (2016).
8. Attention has been given to the relationship between socioeconomic rights and fiscal policy within the work of the Special Procedures and, since 2016, the CESCR - including reference to the value of redistributive tax systems as means of reducing inequalities. However, the framing of the adoption of such policy within these reports is often unduly deferential, allowing states to easily ignore such instruction. See, for example: Human Rights

- Council, 'Report of the Special Rapporteur on extreme poverty and human rights, Philip Alston', UN Doc A/HRC/29/31 (2015), paras 52–53.
9. Kerber (1986, p. 309); Greeno and Maccoby (1986, p. 315); Senchuk (1990, p. 249). In her later work, Gilligan explicitly rejects the contention that the caring voice is inherent within – and exclusively possessed by – women, see: Gilligan (1986, p. 327).
  10. See, for example: Committee on the Elimination of Discrimination against Women, 'General Recommendation No 21: Equality in marriage and family relations', UN Doc A/49/38 (1994), paras 18–19; Human Rights Council, 'Report of the Special Rapporteur on extreme poverty and human rights', UN Doc A/68/293 (2013); Human Rights Council, 'Report of the Special Rapporteur on the human right to safe drinking water and sanitation', UN Doc A/HRC/33/49 (2016).
  11. Human Rights Council, 'Human rights to safe drinking water and sanitation of indigenous peoples: state of affairs and lessons from ancestral cultures', UN Doc A/HRC.51/24 (2022).
  12. See, for example: Special Rapporteur on extreme poverty and human rights, 'Looking back to look ahead: A rights-based approach to social protection in the post-COVID-19 economic recovery', United Nations (2020) <[www.ohchr.org/sites/default/files/Documents/Issues/Poverty/covid19.pdf](http://www.ohchr.org/sites/default/files/Documents/Issues/Poverty/covid19.pdf)> (accessed 26 February 2024). See also Dugarova (2020).
  13. See, for example: Gilbert (2017); Ioannou (2023, pp. 816–823).
  14. Heier (2020, p. 68); UN General Assembly, 'Interim Report', 15.
  15. CESCR, 'General Comment No. 12', 3.
  16. Djekic (2015, p. 61); Xu et al. (2021, p. 724); Selinger et al. (2023, p. 9934). This study also identified potential risks associated with a vegan diet, such as fractures and negative impacts on cholesterol, highlighting that this remains a debated issue.
  17. ICESCR, Art 2(1).

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No potential conflict of interest was reported by the author(s).

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