



Introduction to the Duty of Care - Stephen Downes

Where we start when we start talking about the duty of care is with what might be called ‘data ethics of power’. It’s more or less where we left off when we were talking about approaches to ethics and especially when we asked, ‘who speaks for us?’ when we’re talking about ethics.

Here’s Gry Hasselbalch:

A data ethics of power can be described as a type of *post-modernist*, or in essence *vitalist*, call for a specific kind of ‘ethical action’ to free the living/human being from the constraints of the practices of control embedded in the technological infrastructures of modernity that at the same time reduce the value of the human being.¹

We start with “very concrete discussions regarding specific information technology tools” but it’s not long before they evolve “into reflections concerning general challenges to established legal frameworks, individuals’ agency and human rights, as well as questions regarding the general evolution of society.”²

Hasselbalch is calling for a specific kind of ethical action, an action that will free us and also reclaim our status as a human being. This sense of freedom – ‘absence of control’ – is arguably a naïve sense of freedom, but I think we can get a sense of what he intends here in the words of one Danish minister at the launch of a data ethics expert group, says Hasselbalch. “This is about what society we want,” he says.

Maybe the scholars of history would say that we’re progressing toward a more liberal and more progressive society.³ But I think also if we’re going to look at it that way, we’re essentially saying

we're progressing toward a society where individuals are more free. But the phrase 'more free' is not really helpful on its own; it needs to be discussed and defined.

The overall idea here is to try to define ethics, and his idea here is to try to define the society that we want as something that is more human. So, more human ethics? This desire reflects a reaction to not only new technology, not only to surveillance and things like that, but a reaction to



Figure 1 - As one Danish minister said at the launch of a national data ethics expert group: "This is about what society we want" (Holst, 11 March 2018).

<https://www.berlingske.dk/politik/regeringen-vil-lovgive-om-dataetik-det-handler-om-hvilket-samfund-vi-oensk>

industry and industrialization in general, to technocracy in general, and perhaps even to the military industrial complex and to the dynamics of the modern nation state. And these are all about management control, hierarchy, and power, and this is a reaction to that.

So what does that reaction look like? Well, it's a move away from what Robert Nozick called 'coercive philosophy'. This is the sort of philosophy we get when we say, "arguments are powerful, and best when they are knockdown... arguments force you to a conclusion." Now, we know that this isn't the case. We've learned that sometimes the opposite is true.

In fact, the argument doesn't force anyone to a conclusion. If anything, it forces people who disagree to retrench. We see this, I would suggest, with radical alt-right sites like Parler, Gab or truth.social. These are sites set up by neo-conservatives as a response to Facebook and Twitter, as a response against what they perceived as censorship.⁴

And the thing is, if you engage in arguments with the proprietors of a site like Parler, you're actually doing what they would like you to do. You're not convincing them that they're wrong. That will never happen through argument. Rather you are granting them legitimacy. That's why people say, "don't feed the trolls."⁵ Getting into an argument is what they want, and if they have their way, the argument will never end.

It's hard to come to grips with this idea that argument fails. But it does tell us that moral and ethical values are in a certain sense different from and perhaps deeper than argument. The reaction to a data ethics of power requires this new type of ethics, a post-modernist or even vitalist ethics, to free the human being from the constraints of the practices of control and try to define the sort of society that we want. And this society that we want is something that is beyond argument.

As we've seen in the past in our experience of trolls, as we've seen with power, with technology, and with industry generally, we cannot define and win our way to what we want through argument. Getting into arguments with the other side of is often just what the other side wants. It

legitimizes the power and standing of technology and industry. It grants them right and standing as though by fiat. The act of engaging in argument ensures the defeat of the argument.

So what does this new kind of society look like? We can start by saying, “not that.” And we as ordinary citizens living in a free and open society can simply recognize Parler for what it is, and we deplatform or defederate the site because it is repugnant and offensive⁶, and we have no obligation to convince them of anything. Our *reaction* to Parler is our argument

And if readers, perhaps of a more conservative inclination, don't like my use of an example of Parler, they can pick their own example. They can find something that's repugnant and offensive and say, “okay, well, we'll deplatform that.” This is in fact exactly what conservatives do. People who question Elon Musk are not welcome on Twitter.⁷ Books that advocate transgender inclusivity are rejected for inclusion in libraries.⁸ They understand that *argument* will not sway someone who is liberal and progressive. So they don't try.

Argument is effective, and coercive philosophy desirable, only if there's a requirement that we *agree*. But we're not going to argue our way to finding, or not finding, something repugnant or offensive. Or desirable, as in the sort of society we desire. And in just this way our response to the constraints imposed by industry and technology can be visceral and *human*. They go beyond argument. And we want society to respect this.

And that's what leads us to something like an ethics of care. Here is how David Weinberger characterizes it:

Instead thinking about morality in terms of relationships with distinct and particular individuals to whom we owe some responsibility of care; it takes as its fundamental and grounding moral behavior the caring of a mother for a child.⁹

Now, how literally we want to take that? This might be a subject of discussion and debate, but that would be to miss the point. Let's take this as a starting point that we're working from, an expression of the sentiment or feeling that leads to a duty of care.

Let's cash that out a little bit. Where we normally begin with this kind of discussion is with a thing called ‘the duty of care’ which applies to health care professionals. This ties back into the discussion of ethical codes that we had earlier.

These codes, or at least some of them, have their basis in what we call a duty of care. Today, it's a legal duty. There's also a moral and ethical and professional aspect to it as well.¹⁰¹¹ In this way,

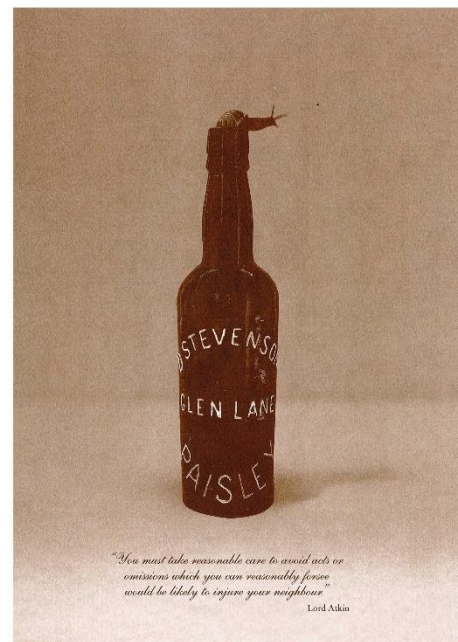


Figure 2 - <https://www.ticliblaxland.com.au/snail-in-the-bottle/>

we might say, the ethics of care reformulated itself into this discussion of ethical code, especially codes for professionals.

The beginning of the duty of care was something called ‘the snail in the bottle case,’ which took place at a restaurant in Coffs Harbour in 1932.¹² Someone bought a bottle of ginger beer in a dark bottle, poured a glass out of the bottle, had a drink, refreshed the glass, and out popped the decomposing snail.

That's happened to me in the past, not with ginger ale and not with a snail, but the same sort of thing, and it's really gross and disgusting and horrible.

The question is, did the people who created and bottled the ginger beer have any responsibility toward the person who drank the drink, and especially for the ill effects suffered by the specific person who eventually consumed the beverage? The court decided in a split decision that yes, they did, that they had an obligation of care to whoever purchased the product that there was this relationship here and that you couldn't just serve ginger beer and say buyer beware. And that's where it begins.



Figure 3 - An obligation to others - <https://www.youtube.com/watch?v=zmjll4eyJXM>

Since then the concept has developed quite a bit, and later we'll look at more other details, but the idea here is that it developed into a formal legal principle, specifically, a legal obligation, and I'm quoting here from Wikipedia, “a legal obligation which is imposed on an individual requiring adherence to a standard of reasonable care while performing any acts that could foreseeably harm others.”¹³

Now that's quite different from the concept of care with mother and child, and we need to keep these two senses in mind, because we can observe that in the actual discussion of these, there's a lot of overlap between them, even though we have two distinct perspectives, two distinct points of view, the one being the care from the mother's perspective, the other being the care from the professional's perspective.

Mark Feffer, an author of one of the ethical codes discussed earlier, maintains that these often conflict.¹⁴ “As a representative of the company, you have one set of responsibilities. As a concerned private citizen, you have other responsibilities. It's nice when those converge, but that's not always the case.” We see that with professional ethics a lot. Usually such questions emerge where a professional like a doctor or a lawyer is working in a company or for an institution, a school university. They have responsibility toward their client but they also have a responsibility toward their employer.

And I think we can say here that with this discussion the attempt is being made to tip the balance away from the formal institutional structure of employment management and toward the clients or the person who is actually in our care. This is the response to the formal, the response to the institutional or industrial, the response to the technological.

There's also a story about where care comes from. If you have an analytical side, like me, you want to know where the concept originates, how it shapes our thinking, and you're asking, “What do you even *mean* by care?” We could assemble all the definitions of care. Or we could create a database with all the different elements of care. But in the context of the current discussion, what we *really* want is a sense of what it means in terms of ethics. What is, if you will, the *biological* story? The *human* story? How do you get care from a bunch of neurons, a body and an environment?

So here is a depiction of it, and then I stress that this is a *depiction* of it.

First of all, we begin with the observation that not just humans but animals in general care for themselves and show care for others. These behaviors are, at least in part, evolved behaviors. You can see that in the relation between a duck and ducklings or a mother cat and kittens. It's not universal; some animals will just push their young out of the nest or abandon their eggs in a burrow and say good luck. But we do see it in some cases at least.

Now we can ask whether care properly so-called is something that is unique to humans. I'm inclined to be skeptical about that. Care comes from, we are told, attachment.¹⁵ Attachment is essentially a disposition to extend care to others. When we use language like this, we're almost using behaviorist language. I don't want to use behaviorist language to describe this, but we'll use it for now. So, okay. Attachment equals care. To care for something is to be attached to it or perhaps results from attaching to it.

So, we can generate a gender-specific account of care that comes from the specific idea that when a mother has a child, or a cat a kitten, the placenta releases hormones, these act on neurons and create something like a nesting urge.¹⁶ Now, I cannot attest to the accuracy of that biological principle. I am not a biologist, and I never will be a biologist. So I'm depending very much on secondary and third-hand sources for this, but it is plausible, *prima facie*, that there are



Figure 4 - A Duty to whom?
<https://mangahub.io/chapter/scarlet-empire/chapter-10>

psychological effects from giving birth. It would shock me if there weren't, but again, not having the expertise in the subject, I can't comment on it a whole lot.

The *interesting* thing about maternal care, from my perspective, is that this results in almost a convergence of self-interest and interest to others, characterized as where 'protect myself' tactics feel the same as 'protect mine' tactics. I think that's the important thing here.

I've told a biological story, but if I were going to tell a story about ethics here, it's not going to be a kind of biological naturalism. This is a theory that might explain where care comes from, but where it comes from doesn't tell us what it is. It just tells us where it comes from, and I think the actual ethical importance here is how these things *feel*, how these social animals carrying for each other feel about each other.

What does attachment feel like? Is it a sensation? What does the sensation of attachment feel like? And similarly, what does the 'protect mine' sensation feel like? That will form the basis for our ethics, I think, at least with respect to an ethics of care.

Ethics as Empathy



"This whole thing is not about heroism, it's about decency."

Figure 5 - <https://www.openculture.com/2020/04/what-is-albert-camus-the-plague-about-an-introduction.html>

Some might suggest that a way of characterizing it is as empathy.¹⁷ That's not to say that empathy captures all and only care. But we can get an intuitive sense as to what we mean when we talk of ethics of care as empathy. When people talk about empathy, they're not talking about following rules, they're not talking about making arguments, they're not talking about adhering to principles, you know, they're not even talking about standards of behavior or anything like that.

What we mean here is captured in this quote from Albert Camus's *The Plague*: "This whole thing is not about heroism, it's about decency, right?"¹⁸ And this idea, this sense of basic decency, this sense of basic empathy for others is, probably closer to what we mean by a duty of care than some legal principle or standard of conduct. Again, I'm glossing over a lot here because this is just an introduction. But we'll look at that in more detail.

In the literature we can observe various dimensions of care. We won't consider such a depiction definitive of care (as Plato would say, listing the various types of a thing doesn't tell us what the thing is). I'm not even going to say that these are separate and distinct properties of care. All I'm going to say is that these are words or concepts that came up in the literature when people were trying to describe care.

Here's the list: empathy, justice, equity, cultural responsiveness, inclusion, empowerment, and I can probably add more, and that will be one of the things that we think about in this chapter: what are these dimensions of care? Does it make sense to draw them out and list them? Can we talk about what they look like? Do they characterize both the feeling of care and the practice of care?

And when it comes up, and I alluded to it briefly earlier when I asked, whether these dimensions of care are essentially human. And of course, I was comparing humans with animals. But a question that can be asked is whether these dimensions of care are restricted to biological life, to carbon-based life. In *Matters of Care*, María Puig “contests the view that care is something only humans do, and argues for extending to non-humans the consideration of agencies and communities that make the living web of care by considering how care circulates in the natural world.”¹⁹ Could robots care? Could an AI care? And there are various approaches to understanding care that suggests that this may be possible.



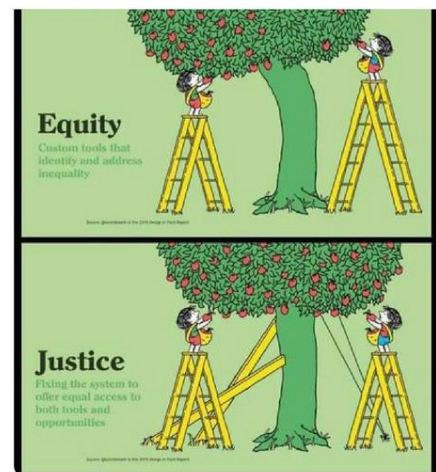
Figure 6 - Machines that care

Now, this points to a bit of a dilemma in the concept of care. If you think that care has as basis in a maternal instinct, then it's something that really is not possible for computers, because we can't really think of computers as having a maternal instinct. But if you think of care as a feeling that can be described as a result of various sensations, then maybe that is something that a machine can have. Or if you become more instrumentalist, or functionalist or operationalist and you think of care, not so much as the sensations, but rather the practice the attitudes and even the mechanisms described by th dimensions of care then, clearly, care is something that can be done by a machine. And part of this is how much either of these things matter. Does it matter if the feeling of care accompanies the practice of care, or can you conduct the practice of care without the feeling of care?

This becomes an interesting question in our field of learning analytics. Drawing from the concept of the duty of care, several authors have introduced the concept of a ‘pedagogy of care’.²⁰ Quoting from Maha Bali here who's written about it:

One of the most empowering ways to redress injustice is to put power of decision making in the hands of those farthest from justice, but ensure they have enough knowledge and tools to make a well-informed choice, and know how much leeway they have to design their own path.²¹

Admittedly, this quote is cherry-picked and out of context, and here as an illustration only. And she puts a pedagogy of care into terms of equity and justice, which takes a back to the very beginning where we were talking about data ethics of power. And much the same discussion, and many of the same considerations, apply.



And so it's a question of whether care has something to do with the power of relationship, whether care has something to do with the nurturing of a relationship is care something to do with the sensation or feeling. So what will do in this chapter is basically go through these considerations (I'm not going to call them arguments, because that's not the right way to think of this) and these different accounts of what we mean by care and what we think care is in order to try to come out with something like a coherent story about care.

And I think it's only going to be a story. I mean, I don't think we're going to have a full-blown theory with laws, rules and principles, but maybe we can approach an understanding of what we mean by ethics when we talk about ethics and analytics from the perspective of duty of care.

¹ Gry Hasselbalch, 2019 <https://policyreview.info/articles/analysis/making-sense-data-ethics-powers-behind-data-ethics-debate-european-policymaking>

² Gry Hasselbalch, 2019 <https://policyreview.info/articles/analysis/making-sense-data-ethics-powers-behind-data-ethics-debate-european-policymaking>

³ John Halpin and Conor P. Williams. The Progressive Intellectual Tradition in America. Part One of the Progressive Tradition Series. Aenter for American Progress. April 2010 <http://cdn.americanprogress.org/wp-content/uploads/issues/2010/04/pdf/progressiveintellectualism.pdf>

⁴ Rebecca Heilweil. Parler, the “free speech” social network, explained. Vox. Jan 11, 2021. <https://www.vox.com/recode/2020/11/24/21579357/parler-app-trump-twitter-facebook-censorship>

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⁶ Mike Masnick. A Few More Thoughts On The Total Deplatforming Of Parler & Infrastructure Content Moderation. TechDirt. Jan 15th 2021. <https://www.techdirt.com/2021/01/15/few-more-thoughts-total-deplatforming-parler-infrastructure-content-moderation/>

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