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The Right to Care and Support: From Care Theory to Human Rights Law

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Abstract

Care and support are central to social policy, yet they remain conceptually marginal within normative frameworks of human rights. This article examines the emergence of a right to care and support across feminist care theory, UN human rights standards, and Latin American constitutional jurisprudence. It argues that the emerging right to care, when reconstructed through the disability-rights language of support, should be understood not as a derivative social entitlement, but as an autonomous human right with a critical function in ensuring other human rights. Political theories of care expose the limits of autonomy-centred models of justice and social policy by foregrounding dependency, vulnerability, and relationality as constitutive features of human life. The article shows how these insights are translated, albeit unevenly, into international human rights discourse and crystallised through judicial reasoning that treats care as a condition of dignity and of the effectiveness of rights. Rather than proposing a programmatic catalogue of entitlements, the right to care and support is conceptualised as a relational and structural norm that reorients social policy towards the conditions of lived inclusion. The article concludes by arguing that recognising care as a matter of right challenges social policy to confront its underlying normative assumptions and to rethink the relationship between dependency, responsibility, and justice.

Keywords

dependency; human rights; Inter-American Court of Human Rights; political philosophy of care; right to care and support; United Nations

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1. Introduction

Growing attention to care and support in legal and political discourse, including in relation to older people, has emerged alongside a widely shared diagnosis that existing arrangements of social reproduction are no longer sustainable or just, a condition increasingly described as a "care crisis." First articulated in the early 1990s by Susan S. Phillips (Phillips & Benner, 1994) and Arlie R. Hochschild (Hochschild, 1995), the concept has expanded into a broader critique of the organisation of social reproduction under late capitalism, encompassing demographic ageing, migration, gender inequality, and the erosion of public welfare infrastructures.

One response to this crisis has been an increasing turn to human rights language. As Luke Clements has argued, human rights discourse offers one of the most powerful contemporary vocabularies through which those directly involved in caring relationships can articulate their lived experience and contest their collective marginalisation (Clements, 2013). Rights language enables the translation of seemingly private relations of care and support into claims for public recognition, state responsibility, and social justice. Robin West has similarly argued that rights play their most protective role where aspects of human existence are systematically undervalued or insufficiently protected by ordinary political processes, with care being a paradigmatic example (West, 2002).

For the purposes of this article, care is understood not as a narrow interpersonal act of benevolence, nor merely as a set of welfare services, but as a socially organised practice through which human dependency, vulnerability, and interdependence are addressed. Following Fisher and Tronto (1990, p. 40), care may be understood as a "species activity" encompassing the practices through which human beings maintain, continue, and repair their world so that they can live in it as well as possible. Care is therefore both intimate and structural: It takes place in concrete relationships, but is shaped by labour markets, family norms, migration regimes, social-security systems, disability policy, and public infrastructures.

This understanding also resonates with the recent formulation of the Inter-American Court of Human Rights (henceforth, IACtHR or the Court), which describes care as a basic, inevitable, and universal need on which both human existence and the functioning of society depend. The Court further emphasises that care serves a fundamental individual and social function, enabling well-being, human activity, and the effective exercise of rights (IACtHR, 2025, paras. 47–49).

Over the last three decades, a distinct discourse on the right to care and support has gradually crystallised across several interconnected domains. First, within political philosophy, particularly feminist and care-ethical traditions, scholars have questioned the exclusion of care from dominant theories of justice, citizenship, and rights (Held, 2006; Kittay, 1999; Sevenhuijsen, 1998; Tronto, 1993). Second, within international human rights law, care has increasingly emerged as a cross-cutting concern, implicitly (Fredman, 2024) or as a self-standing right (Pautassi, 2007, 2023). Third, and most recently, judges, especially in Latin America, have begun to recognise care as an autonomous fundamental right, articulating its content and corresponding state obligations (e.g., Colombian Constitutional Court, 2023; Ecuadorian Constitutional Court, 2020; IACtHR, 2025).

The article deliberately uses the formulation "care and support." While feminist care theory has made visible the social and political value of care, and Latin American jurisprudence has primarily relied on the language of care, disability-rights standards require that this language be read alongside support, autonomy, independent living, and participation. Disability-rights scholarship and activism have also shown that the language of care may reproduce paternalistic assumptions when it frames persons primarily as passive recipients of protection. The concept of support is therefore used as a distinct but also corrective concept. It foregrounds autonomy, agency, participation, and independent living. Understood from this perspective, the right to care and support reorients the architecture of rights around relationality, interdependence, shared responsibility, and the prevention of violence and oppression. As the IACtHR has recently held, care is not derived from any single right. It constitutes an essential normative condition for the effectiveness of rights as such (IACtHR, 2025, paras. 108–113).

This article proceeds in several steps. Section 2 reconstructs the emergence of the right to care within political philosophy. Section 3 examines how care has been reframed within human rights discourse, culminating in the articulation of a complex, multidimensional right to care and support. Section 4 analyses the role of constitutional jurisprudence, particularly in Latin America, in giving this right concrete legal form. The concluding section reflects on the implications of the right to care for social inclusion, democratic governance, and the future of human rights.

2. Feminist Origins: From the Political Philosophy of Care to the Right to Care

The right to care and support emerges from an intellectual tradition rooted in the political philosophy of care, developed in critical dialogue with liberal theories of justice and rights. Early work, especially by Carol Gilligan, did not frame care in political or rights terms, but later feminist theorists challenged the separation between the private and public spheres and brought care into political theory. Seyla Benhabib helped open this move, while Joan Tronto placed care decisively at the centre of political analysis (Benhabib, 1986; Held, 2006; Tronto, 1993; Urban & Ward, 2020).

A key step was Fisher and Tronto's (1990) inclusive definition of care as a broad social practice rather than a private virtue. Later, in *Moral Boundaries*, Tronto (1993) further developed this insight by grounding care in need and identifying care as a response to human vulnerability and dependency. Human beings, Tronto argued, are not autonomous individuals who occasionally become dependent. Vulnerability and dependency are constitutive features of the human condition. A political order that fails to recognise this reality excludes vast domains of human experience from justice.

Other feminist theorists have followed Tronto's approach, albeit from different perspectives. Bubeck (1995) approached care through Marxist feminism, Sevenhuijsen (1998) linked it to democratic citizenship, and Kittay (1999) reformulated justice in light of dependency and the position of informal caregivers. Together, these interventions reconceptualised the political subject as embodied, relational, and vulnerable. Moreover, they also exposed a deeper limitation in liberal theories of rights and citizenship. The formally independent rights-bearing subject has historically depended on a background economy of care work, much of it unpaid and disproportionately performed by women, including racialised, migrant, and economically marginalised women (Fraser, 2016; Glenn, 2010; Kittay, 1999). Feminist political care theory reveals that this background is not external to justice but constitutive of it: autonomy, labour-market participation, political agency, and

the enjoyment of rights presuppose ongoing practices of social reproduction (Federici, 2012; Sevenhuijsen, 1998; Tronto, 1993; West, 2002). The right to care and support can therefore be understood as a response to this hidden infrastructure of rights. It asks not only whether women are formally equal before the law, but whether the social organisation of care and support allows all to enjoy rights without being consigned to unpaid sacrifice, economic precarity, or moralised expectations of availability (Fineman, 2004; Fredman, 2024; Kittay, 1999; Pautassi, 2007).

2.1. Theoretical Invention of the Right to Care: Caring as a Human Rights Concern

The near-absence of care in human rights theory is not accidental. Dominant liberal accounts of rights have often been shaped around subjects who approximate the ideal of independence. Those whose lives are structured by dependency, whether as caregivers or care recipients, appear as marginal or residual subjects of justice. The gradually developing political philosophy of care not only emphasised the necessity of linking care with questions of justice but also opened the way towards a different conception of rights (Engster, 2007).

This reconceptualisation aligns with relational theories of rights (Hansbury, 2022). According to these theories, rights structure relationships. For example, in relations of care and support, rights do not simply ensure equality or dignity; they constitute the experience of equality or dignity by shaping relations. Care becomes central within this framework because it is through caring relationships that individuals acquire, maintain, and exercise rights (Minow & Shanley, 1996; West, 2003; see also Nedelsky, 2011). Seen from this perspective, the move from care ethics to the right to care and support marks a transition from moral critique to normative expectations and possibilities for rights-based transformative change. In the political philosophy of care, the right to care has been discussed in the context of citizenship theory (Knijn & Kremer, 1997) or democratic theory (Tronto, 2013), with reference to needs and dependency (Engster, 2007; Noddings, 2002), Martha Nussbaum's capabilities theory (Busby, 2011; West, 2001, 2003), or the theory of the relational subject (Kittay, 2009).

One of the first works on the comprehensive right to care is an article by Trudie Knijn and Monique Kremer, who distinguished between the right to "time for care" and the right to "receive care" against the backdrop of the discussion on the obstacles to full citizenship faced by women. They propose that the concept of citizenship becomes inclusive by recognising care as a key dimension of citizenship (Knijn & Kremer, 1997).

The right to time for care must be analytically distinguished from the right to receive care; these are two interconnected but normatively different dimensions of the right to care. As Knijn and Kremer (1997) point out, the recipient of care cannot enforce their right to care from an informal caregiver, as such a relationship cannot be fairly structured through individual entitlement. The market cannot resolve this tension, as strict market logic would systematically exclude those who cannot afford to buy care. This implies an irreplaceable role for the state, whose responsibility is to organise and provide care as a public service available to all who need it.

It is the position of caregivers and their rights that became the central theme of Eva Kittay's work, *Love's Labor*. She did not yet explicitly speak of the "right to care," but formulated a normative framework that has fundamentally influenced human rights discourse. Kittay (2002, p. 242) proposes the concept of "doulia,"

which she defines as "the public responsibility to provide support for the caregiver so that the caregiver can give care without depleting herself and her resources." According to Kittay, this principle, which expresses the interdependence between the recipient of care and the caregiver, has not only a relational but also an institutional dimension, leading to a reconceptualisation of justice with regard to dependency (see also Kittay, 1999).

Robin West builds on Kittay in the context of human rights, explicitly introducing the "right of the doula," i.e., the right of caregivers to provide care without risking poverty or disadvantage (West, 2003, 2004). West argues that this right is comparable in its normative weight to classic liberal rights and that it is necessary to recognise it because care as work remains systematically unprotected by political and economic processes, its burden falls unequally on historically marginalised groups, especially women, and because care reflects the fundamental values associated with the physicality and vulnerability of human life. The "doula right" thus establishes enforceable claims to time, income, and services for caregivers, while being inextricably linked to the rights of care recipients and others; as West (2001, 2003) summarises, caregivers do not need rights that rest on a fiction of autonomy, but rights that openly recognise their relational reality and dependence on the support of others.

Within the political philosophy of care, rights are conceived in a distinctly pragmatic and instrumental manner (Held, 2006). From this perspective, the absence of recognition of a doulia right, that is, a right to care for the other and to sustain caring relationships, jeopardises not only care and support but also affects the whole family situation. This two-dimensional discourse of the right to care and support—caring and supporting the other and receiving care and support—was later taken up by Kittay (2009), who discussed a global right to care. Placing relationships at the centre of moral and legal analysis, Kittay argues that the most serious harm a person can suffer is the breakdown of their key relationships. To prevent such harm, she advances the idea of a universal right to care with two inseparable dimensions: the right to provide care and the right to receive it. For some, such as migrant women, the exercise of this right is marked by internal tension: While it is only imperfectly realised in their own lives, their labour simultaneously enables a more complete realisation of this right for those who employ them. The consequence is an interference with self-respect. While harm—a typical legal category—may remain analytically significant, the core concern in this relational perspective becomes the quality of relationships themselves. The guiding question shifts from identifying what harm has occurred to examining how a given legal situation, treatment, or practice shapes relationships: whether it renders them more considerate, secure, and resilient, or instead more threatening, oppressive, and fragile (Kittay, 2009).

Reorienting normative analysis towards the need for relationships can serve to justify the recognition of rights. Kittay's intervention explicitly foregrounds the situation of caregivers and the erosion of their key relationships with loved ones, arguing that recognising a complex right to care could render this neglected dimension visible within political and legal practice and, in turn, contribute to a more just social order. An emphasis on relationships and, thus, situatedness opens the possibility of understanding rights not merely as abstract entitlements but as instruments of concrete social transformation. Applied, for example, to the case of migrant care workers (Kittay, 2009), this perspective suggests that, beyond protection against precarious labour conditions, states should consider positive obligations to design and implement a range of supportive measures aimed at sustaining caregivers' own caring relationships with family members in their countries of origin, measures analogous to doulia rights that recognise the relational costs of care migration.

The right to care was subsequently explicitly addressed by Tronto in her 2013 book *Caring Democracy*, where she conceptualises care as a primary public value and a central concern of public practice, closely intertwined with democracy, citizenship, and equality. Tronto conceptualises care as a multi-phase process involving attentiveness to needs, responsibility for care, the practical work of caregiving, responsiveness to how care is received, and, finally, "caring with," which concerns the broader social and institutional conditions of trust, solidarity, and mutual respect.

This final dimension is especially important. Tronto argues that failures of "caring with" undermine trust in political and social institutions. Her response is to reconceive citizenship through universal vulnerability and to recognise a universal and complex right to care, one not confined to a single policy domain. This right includes three dimensions: the right to receive care, the right to care, including a negative freedom not to be coerced into care, and the right to participate in public decision-making about how care is organised and distributed (Tronto, 2013).

The political philosophy of care points toward a fundamental reorientation of law and social policy. Care and support are not peripheral concerns, but fundamental elements of social inclusion. Legal frameworks that ignore the central importance of care and support risk perpetuating exclusion even where formal rights and services exist. The shift toward the right to care and support reflects an attempt to address this gap. It signals a transition from treating care and support as a discretionary area of policy to recognising it as a matter of justice and rights, and thus of legal obligation and justiciability. In other words, moving care and support into the centre of how we imagine political societies affects how we design and enforce legal order (Herring, 2019). This development makes it necessary to engage in a political debate on how care and support should be organised, particularly in cases of "care poverty" (Kröger et al., 2019), where the right to care and support can be considered especially strong both epistemologically and politically (Rummery, 2025). It also determines the normative field in which such a debate must take place, including recognition of the critical tensions identified, particularly around the rights of persons with disabilities, typically concerning paternalism and independent living (Morris, 1997; Shakespeare, 2006; see also Maker, 2022).

3. The Road to Practice: Conceptualising the Right to Care and Support in Human Rights Law

The preceding section showed how feminist care theory transformed care from a moral relation into a question of justice, citizenship, and rights. Human rights law has followed a different but related path. The turn to human rights emerged as a strategic response to structural injustice. As Robin West argues, rights are most defensible where markets and majoritarian politics repeatedly fail to protect essential aspects of human life (West, 2001). Care and support exemplify such a domain: They are indispensable for human survival and flourishing, yet are consistently relegated to the private sphere, feminised, and rendered economically precarious.

Conceptually, the right to care and support is specific in three important respects. First, it is relational rather than individualistic. The right to care and support necessarily involves at least two positions: those who require care and those who provide it. These positions are not fixed; individuals move between them across the life course.

Second, the right to care and support is not exhausted by access to a specific service or benefit; rather, it concerns the conditions under which caring and supportive relations can be formed, sustained, and recognised without producing oppression. Time, continuity, trust, and attentiveness are not incidental but constitutive elements of care. A right to care and support that ignores these dimensions risks reproducing precisely the forms of domination and neglect it seeks to overcome.

Third, the right to care and support is structurally oriented. Rather than only addressing discrete instances of deprivation or abandonment, it targets the social organisation of care and support as such. This includes the distribution of care and support responsibilities across different actors, including the state. Indeed, the state's role in supporting or displacing care is indispensable. In this sense, it resonates with broader critiques of structural injustice, particularly feminist analyses of social reproduction.

3.1. Emergence of the Right to Care and Support: Caring and Supporting as a Human Rights Concern

Within international human rights law, care and support have long played an essential but largely implicit role. The human rights instruments address care primarily through the prism of status-based rights, most notably those of children, families, and, later, persons with disabilities. The 1959 Declaration of the Rights of the Child, for example, affirmed that a child should grow up in the care and responsibility of his parents, while simultaneously imposing duties on society and public authorities to provide special care to children deprived of adequate family support. This formulation already combined private and public responsibility, anticipating later debates on shared care obligations.

Similarly, care-related duties appear across core human rights treaties without being explicitly named. The International Covenant on Economic, Social and Cultural Rights protects rights to health, social security, and an adequate standard of living, all of which presuppose access to care and support. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) goes further by explicitly recognising the social value of maternity and addressing the unequal distribution of unpaid care work as a source of gender inequality. According to Article 11.2 (c) of the CEDAW, states should provide the necessary social support services to enable parents to combine family responsibilities with work and participation in public life, in particular by establishing community services for the care and support of children (A/80/170, para. 21). The role of the state is also emphasised by the requirement that states study domestic care, collect data on its extent, and include it in the calculation of gross domestic product (CEDAW/RG/17, 1991). Yet even here, care remains fragmented across different rights and policy domains.

In the context of women's rights, increasing emphasis is placed on the sharing of responsibility for care and support, often articulated through the principle of co-responsibility (CEDAW/RG/21, 1994). This principle refers, inter alia, to the active involvement of men in care and support tasks and to the obligation of the state to design legal norms and care-related policies in a gender-neutral manner, without excluding men from the possibility of providing care (A/52/38). Beyond formal neutrality, the principle also requires states to adopt concrete and targeted measures that enable men's active participation in care, thereby mitigating the structurally unequal impacts of care responsibilities on women. At the same time, co-responsibility entails recognition of the state's irreplaceable role and its comprehensive responsibility for care and support, including care for caregivers themselves.

The CEDAW Committee addressed the rights of women as informal caregivers in the decision *Natalia Ciobanu v. Moldova* (CEDAW/C/74/D/104/2016). The case concerned a sixty-year-old applicant who was denied an adequate old-age pension because she spent twenty years caring for her daughter with a severe disability. The period spent caring was not counted as a contributory insurance period under national law. The applicant argued that the pension framework disproportionately disadvantaged women, who are traditionally the primary providers of care. As a result, women were rendered economically dependent on their husbands not only during periods of intensive care, but also afterwards, since care work did not generate pension entitlements. Moreover, the system exposed them to heightened existential insecurity, compounded by the frequent experience of abandonment by partners once they "learn how it is to live with and take care of a severely disabled child" (*Ciobanu v. Moldova*, 2019, para. 3.1).

Unsurprisingly, the CEDAW Committee found a violation of the applicant's rights, reaffirming that even where caregivers do not contribute to social security due to unpaid domestic care, the state has a positive obligation to ensure access, in old age, to non-contributory benefits, social services, and other forms of assistance. Such non-contributory schemes must also take account of the structural reality that women are more frequently exposed to poverty, more often bear sole responsibility for care, and are less likely than men to qualify for contributory pensions. According to the CEDAW Committee, women caregivers should not be forced to sacrifice their life projects because of care responsibilities, but should have a right to support that enables, rather than compels, the meaningful integration of care and support into their professional and social lives.

The UN Convention on the Rights of Persons with Disabilities (CRPD) does not recognise a right to care and support as such. It does, however, place support at the centre of the right to live independently and be included in the community, especially through Article 19. Moreover, it contains provisions of a manifestly relational nature that foreground the position of caregivers and the state's role in protecting their rights, notably in the context of family life, where the Preamble affirms that the family as a whole is entitled to protection by society and the state.

The conceptual emphasis on support rather than care within disability-rights discourse, as noted by the UN Special Rapporteur on the Rights of Persons with Disabilities, mirrors the understanding of care as an ambivalent concept due to its oppressive connotations (Aguilar, 2016, paras. 23–24). Simply put, people with disabilities associate care with experiences of oppression (Williams, 2001). On a theoretical level, according to Tronto, the answer to this risk is to combine care with a theory of justice and to ensure that care is "relentlessly democratic in its organization" (Tronto, 2013, p. 171). At its core, it is about fulfilling a certain idea of what a political society should look like. According to Tronto, it should be a caring democracy.

The question is how to express this idea in legal terminology without reproducing the very hierarchies that disability-rights scholars and activists have criticised (Maker, 2022; Morris, 1997; Shakespeare, 2006). The answer is not to discontinue the use of the term "care," despite criticism. Rather, it is to create a conceptual constellation of care and support that would balance the risks of paternalism and parochialism. The difference does not lie in the claim that care is inherently paternalistic and support is inherently emancipatory. Both concepts require institutional design. Care must be democratised so that it does not descend into blind protectionism, while support must remain relationship-based so that it does not become merely a market-based service.

The concept of support should be understood in relation to the experience of independence—thanks to support, people can experience independence even in very dependent situations—in both the personal and public spheres (Shakespeare, 2000). Support is directed not merely at protection or maintenance, but at enabling persons to pursue self-actualisation in the world (Quinn, 2022, para. 21), which necessarily includes participation (Morris, 2001). The dyadic constellation of care and support has also been recognised by the IACtHR (2025, para. 202), according to which:

> In summary, the Court finds that States have the obligation to adopt the measures required to ensure the right to care of persons with disabilities from a perspective of "support" and not merely of "attention," within the framework of respect for their rights to autonomy, independence, safety, and a life free from violence. This means that the care and support provided to persons with disabilities should be based on their recognition as subjects of rights and not merely as recipients of care.

As regards the relational logic, it implies that failures in the availability of services affect not only persons with disabilities but also their close relatives, their right to care and to self-care, and conversely obliges the state to provide adequate, accessible support services, including counselling, respite, and financial support, as an integral part of ensuring an adequate standard of living and social protection under Article 28 of the CRPD, not only for persons with disabilities but also for their families (CRPD/C/GC/5, para. 68).

The CRPD Committee examined these issues in *Bellini v. Italy*, a case concerning an informal caregiver providing round-the-clock care to both her daughter with severe disability and her ill partner. The CRPD Committee emphasised a relational understanding of rights, noting that the lack of legal recognition and support for family caregivers has serious consequences not only for caregivers themselves but also for the rights of persons with disabilities, including their ability to live independently in the community. It further stressed that caregivers must be able to make autonomous life decisions and claim support tailored to their specific needs, just as persons with disabilities do.

Although the state pointed to existing measures, such as limited paid leave or extended care leave, the CRPD Committee found these insufficient because they did not address situations requiring continuous assistance. What was missing were individualised and comprehensive forms of support, including financial assistance, affordable and accessible services, respite and home care, counselling, flexible working arrangements, housing support, and recognition of caring periods within social security systems. The CRPD Committee underlined that providing generic services is not enough: Support must be designed around the actual circumstances and needs of families. The CRPD Committee therefore found a violation of her rights, emphasising the risks that arise when adequate support is absent. These include financial and social precarity for families and the resulting pressure toward unwanted institutionalisation, with severe consequences for family life and care relationships. While the decision stops short of explicitly recognising a right to care and support, it significantly contributes to defining its substance, illustrating how UN treaty body jurisprudence, together with cases such as *Ciobanu v. Moldova*, marks a gradual shift toward a more explicit articulation of state obligations in the field of care and support.

A specific lesson stemming from *Bellini v. Italy* and *Ciobanu v. Moldova* concerns the problem of enforcing the right to care at the expense of its moral and relational character. A legal order cannot force one person to care about another, and any attempt to compel intimate care and support from a specific person would

risk violating the rights, autonomy, and bodily integrity of the caregiver. This objection is decisive against a privatised or interpersonal reading of the right to care and support. It is not, however, decisive against a structural human-rights reading. The right to care and support should be understood as a claim against the state and relevant institutions to organise conditions under which care can be provided, received, refused, shared, and supported without coercion. Its legal content, therefore, lies not in compelling affection or sacrifice, but in duties to provide available and accessible services and frameworks, including personal assistance, respite, income protection, social-security recognition of care periods, community-based support, labour protections, and participatory mechanisms through which caregivers and care and support recipients can enjoy all their human rights on an equal basis with others.

4. Judicial Construction of the Right to Care

Existing case law has so far articulated care more explicitly than support. This article analyses the case law alongside standards concerning the rights of persons with disabilities in the areas of support, autonomy, independent living, and participation, with a view to clarifying the broader concept of the right to care and support. The emergence of this right within human rights discourse does not represent a straightforward extension of existing rights, such as the rights to social security or to health. Rather, it reflects a deeper conceptual shift: Some courts have begun to articulate care not merely as an object of policy or a derivative characteristic of already recognised rights, but as a self-standing human right, and, more importantly, as a condition affecting the enjoyment and exercise of other rights.

Decisive in this regard has been the Latin American trajectory, where feminist legal scholarship, regional policy processes, and social-movement activism jointly shaped the emergence of care and support as a rights-based agenda. It was within this region that the right to care as a three-dimensional right was introduced and promoted (Pautassi, 2007), resulting in a unique judicial evolution (Pautassi, 2025). The decisive moment within the judicial trajectory is the advisory opinion of the IACtHR, which was preceded by important judgments of the Ecuadorian (2020) and Colombian (2023) Constitutional Courts. From a theoretical perspective, alongside Tronto, courts have drawn on the work of the Argentine feminist legal theorist Laura Pautassi, who, as early as 2007, raised the question of how to integrate the complexity of care into the logic of subjective rights. Pautassi criticised the dominant approach that treats care either as a service targeted at "needy" groups or as a private responsibility of the family and proposed a reorientation toward a universal entitlement (Pautassi, 2007, 2023). This academic development was accompanied by feminist activism and regional policy processes, including advocacy networks that connected civil society, academia, and state institutions to advance care as a public agenda (Navarro, 2025).

4.1. Three Examples of Judicial Recognition

It appears that judicial recognition of the right to care has not followed a single path of argument. Instead, courts have reached this conclusion through different trajectories. The Ecuadorian Constitutional Court, the Constitutional Court of Colombia, and the IACtHR each approach the right to care from distinct perspectives. The Ecuadorian and Colombian cases are constitutional decisions within national constitutional frameworks, whereas the UN materials and the Inter-American Advisory Opinion fall under international human rights law. The legal force is not identical, but together, they show how care moves from political theory into positive legal reasoning.

The decision of the Ecuadorian Constitutional Court (2020) concerned violations of the rights of women who were pregnant, breastfeeding, or on maternity leave while employed in the public sector. Drawing on the lived experiences of nineteen women, the court identified systemic barriers such as workplace pressure during pregnancy, discriminatory job reassignment or dismissal after maternity leave, lack of facilities for breastfeeding, and pervasive stigmatisation. These experiences were not treated as isolated incidents but as manifestations of universal obstacles faced by women in care-related roles.

A central move in the reasoning of the Ecuadorian Constitutional Court was the distinction between production and social reproduction. While productive activities are socially recognised and economically rewarded, care-related activities that sustain daily life and social bonds remain structurally invisible. According to the court:

> 89. Society requires two types of activities that are fundamental to its existence and maintenance: production and reproduction.
>
> 90. Reproductive activities are equally important and essential for life in society, and are those related to care and the daily construction of social and emotional bonds. Activities such as feeding, cooking, changing nappies, cleaning the house, washing and ironing clothes, playing, and caring for the sick are not valued socially or economically.
>
> 91. Production and reproduction activities are complementary, and both are equally important and essential for a life of fulfilment…and dignity.

The court emphasised that production and reproduction are not hierarchical but complementary: Both are indispensable for a dignified life. This insight enabled the court to legitimise legal intervention in what is often framed as the private sphere of care and to translate the systematic devaluation of care into the language of structural discrimination.

Building on this foundation, the court conceptualised care, drawing explicitly on Tronto, as a practice essential to sustaining life and social cohesion (Ecuadorian Constitutional Court, 2020, para. 92). The persistent overvaluation of production and undervaluation of reproduction were identified as a form of inequality requiring a concrete legal response: the recognition and development of the right to care, so that care would be fairly valued and justly distributed. Crucially, the court rejected any reduction of this right to a "women's right" or to the rights of specific groups, such as older persons, affirming its universal character instead.

The court further grounded this argument in the idea that while care needs are common to all humans, their intensity varies across the life course. From the combination of universal dependency and situational vulnerability, the Ecuadorian court derived a three-dimensional structure of the right to care: the right to provide care, the right to receive care, and the right to self-care. This framework explicitly reflects core insights of the political philosophy of care concerning interdependence and fluctuating vulnerability.

The Colombian Constitutional Court (2023), by contrast, anchored its recognition of the right to care in the notion of a structural "care crisis." Responding to a case involving the lack of community-based services for a young child with Down syndrome, the court held that the issue could not be reduced to the right to health.

Instead, it exposed a broader social problem in which increasing care needs, women's labour market participation, and demographic change collide with inadequate public support, generating gendered and economic injustices. In concrete terms, the court reasoned:

> 95. The case analysed here…highlights how the most vulnerable individuals, such as children with disabilities, are severely affected in their access to fundamental rights such as health care when they do not have caregivers. It also shows how the simple statement of the mandate of solidarity, to assign the care component to families, is insufficient without addressing the gender perspective, insofar as women are the ones who take on most of these tasks, and when circumstances such as being in the formal labour market arise, children are paradoxically faced with the dilemma of accessing health services only if their mother gives up the job that provides them with the minimum subsistence income. That is why addressing these types of issues goes beyond the traditional scope of health and requires, as argued here, a perspective that views care as a right.

Recognising care as an autonomous right allowed the court to address these intersecting dimensions through principles of equality, non-discrimination, and shared responsibility.

A third and distinct approach emerges from the 2025 advisory opinion of the IACtHR (2025), which framed care as an essential normative condition for the effective enjoyment of human rights. The court rejected the idea that care derives from a single substantive right, such as health or social security. Instead, it conceptualised care as a condition that critically forms the enjoyment and exercise of rights, thereby elevating it to a transversal human rights principle with unique value, even though it can be found as a component of many already recognised and well-defined rights. The formulation of this position is doctrinally significant because it locates care as a precondition for the enjoyment of rights—thus as a crucial normative element of broader rights architecture—rather than as their consequence:

> 108.…In the first place, care is an indispensable means for the enjoyment of the right to a dignified life…insofar as it allows individuals to develop fully and maintain their life project, particularly in situations of physical, mental or social vulnerability. Furthermore, care is fundamental to the protection of the right to personal integrity…since its omission may lead to situations of abandonment or neglect that compromise the dignity and physical or psychological integrity of persons, according to their stage of life and their differentiated capacities. These elements show that access to care is not merely a welfare measure, but rather an essential normative condition for the effectiveness of human rights.

By normatively framing care—and, logically, support as well, even though the IACtHR has been regrettably overly silent on support—the court shifts the analytical focus from individual entitlements to institutional arrangements. The question is no longer merely whether a specific service has been provided, but whether the overall organisation of care prevents situations of abandonment, neglect, or degrading treatment and discrimination for both caregivers and care recipients. In the court's words, it can be recognised that care is an essential component of several rights, yet:

> [Its] fragmented treatment—limited to partial aspects within other rights—is insufficient. This partial approach does not adequately address the numerous ways in which the omission of care can affect

> the dignity of individuals, nor does it provide adequate guarantees to those who perform care work. (IACtHR, 2025, para. 112)

Without recognising the right to care and support, the effective guarantee of human rights remains incomplete. What is at stake is the overall human rights architecture and its efficiency. Taken together, these strands of jurisprudence present the right to care as a context-sensitive right that can be juxtaposed to the limitations of traditional, individualistic human rights doctrine. It is grounded in relationality, interdependence, and solidarity, but it also has a strong instrumental value, opening possibilities for transformative change within the human rights paradigm.

5. Conclusion

By tracing the right to care and support across political philosophy, human rights discourse, and constitutional jurisprudence, the article shows how care and support have begun to move from the margins of human rights reasoning towards its conceptual centre. This shift is especially visible in Advisory Opinion OC-31/25 (IACtHR, 2025), where the IACtHR characterises care as an essential normative condition for the effective enjoyment of human rights. Political philosophy of care exposed the limitations of autonomy-centred models of justice and reoriented theoretical attention towards vulnerability, dependency, and relationality. Human rights law, following this theoretical development, has translated these insights, sometimes even explicitly, into the language of legal claims and obligations.

The gradual invention of the right to care and support has important implications for social inclusion. The recognition of the right to care—and support—has the potential to open up practical opportunities not only to address individual instances of exclusion but also oppressive and precarious structural arrangements. Moreover, its relational structure integrates the positions of caregivers and care recipients, enabling a more complex and nuanced structural perspective. Violations would rarely appear as isolated acts. There would be a pattern of neglect, underfunding, and regulatory failure. The right to care allows the judiciary to focus on the institutional design of care systems. It equips courts and policymakers with a normative lens to identify forms of harm that remain invisible in other rights analyses.

Looking ahead, the emergence of the right to care and support opens several avenues for further research and practice. Comparative constitutional analysis can deepen understanding of how care is articulated across different legal cultures. Empirical research can examine how care- and support-based rights claims are mobilised by caregivers and care recipients. Policy analysis can examine how care and support systems can be redesigned in line with principles of co-responsibility, with a gendered perspective on care and support. In an era marked by demographic change, social fragmentation, and repeated crises, the question is no longer whether societies can afford to recognise care as a matter of rights, but whether they can afford not to. By making care and support visible as a foundational condition of human rights protection and thus an inherent building block of rights architecture, the right to care and support offers a powerful normative response to contemporary forms of exclusion, and a reorientation of rights towards the realities of diverse situations of vulnerability.

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The author declares no conflict of interests.

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