

5-2015

The Discursive Ethics of Jack Sammons

David T. Ritchie

Mercer University School of Law, ritchie_d@law.mercer.edu

Follow this and additional works at: https://digitalcommons.law.mercer.edu/jour_mlr



Part of the [Legal Education Commons](#), and the [Legal Ethics and Professional Responsibility Commons](#)

Recommended Citation

David T. Ritchie, *The Discursive Ethics of Jack Sammons*, 66 Mercer L. Rev. 447 (2015).

This Article is brought to you for free and open access by the Journals at Mercer Law School Digital Commons. It has been accepted for inclusion in Mercer Law Review by an authorized editor of Mercer Law School Digital Commons. For more information, please contact repository@law.mercer.edu.

The Discursive Ethics of Jack Sammons

by David T. Ritchie*

I.

Professor Jack Sammons has been a widely celebrated teacher, community activist, and distinguished member of the bar. He is also a prolific scholar; perhaps the most prolific scholar the Mercer University School of Law has ever seen. My interest in the body of Jack's work, and hence my focus here, is on what I consider to be the core of his scholarly agenda. I would like to caution that this is my reading of Jack's work as a corpus. I am not entirely sure that Jack would agree with this reading (especially later on when I will make some connections to philosophical positions I am not sure he would necessarily endorse), but I hope this will be perceived as a friendly interpretation. It is certainly meant in that vein.

How would we characterize the corpus of Jack Sammons' work? What kind of scholar is he? Is he a philosopher of religion? Is he a legal theorist? Is he a rhetorician? He is all of these things and more, of course. I will not focus on any of these domains in what follows, however. Instead, I want to make the claim that Jack is at base an ethicist. The one patent theme I see running throughout his work is his

* Professor of Law and Philosophy, Director of International Initiatives, Mercer University School of Law; Global Ethics Fellow, Carnegie Council for Ethics in International Affairs. I would like to thank Senior Vice Provost Gary Simson for supporting the idea for this Symposium when it was originally presented, and to Dean Daisy Hurst Floyd for her continuing encouragement. I would also like to thank Professor Mark Jones, Nicholas Garcia, and Cameron Saunders for their hard work in ensuring that the Symposium came together in exemplary fashion. I owe a debt of gratitude to the other participants in this Symposium, for without their contributions the program would not have been as dynamic and intellectually engaging as it was. Finally, I am humbled by the opportunity to have worked with Jack Sammons. He is an example for all who know him, and for those who have been exposed to his work.

concern with moral judgment. More specifically, his is a concern about the ethical engagement of those embedded in discursive communities: art, law, philosophy, politics, and religion. Jack has written about all these areas, of course, but the common thread—on my reading—is ethics. Virtually all of his work relates to moral reasoning by those operating within one or more of these communities. To borrow a phrase from our mutual friend Linda Berger, Jack’s scholarly work is ethics “all the way down.”¹

II.

On its face, the claim that Jack Sammons is an ethicist might seem somewhat obvious to those who know Jack and his scholarship. He has, after all, taught legal ethics and professional responsibility for years.² Jack is, indeed, considered an expert in that field by many.³ I want to go somewhat further, though. My claim here is that all of his interests and works—whether they are focused on poetry⁴ or music,⁵ history⁶ or politics,⁷ language⁸ or Samba⁹ (which, it turns out, is about all of the above¹⁰)—can be viewed as coalescing on a robust and sophisticated normative ethical theory.

1. Linda Berger, *Studying and Teaching “Law as Rhetoric”: A Place to Stand*, 16 J. LEGAL WRITING INST. 3, 6 n.9 (2010). Professor Berger, in turn, borrows this phrase from Dean Francis Mootz. Francis J. Mootz III, *Rhetorical Knowledge in Legal Practice and Theory*, 6 S. CAL. INTERDISC. L.J. 491, 572 (1998).

2. Jack also wrote a very early and influential book on lawyer professionalism. See JACK L. SAMMONS, JR., *LAWYER PROFESSIONALISM* (1988).

3. Timothy W. Floyd, *The Relationship Between Christian Theology and Legal Ethics in the Thought of Jack Sammons*, 66 MERCER L. REV. 313 (2015); Patrick Emery Longan, *Further Reflections on Teaching Professionalism: A Thank You Note to Jack Sammons*, 66 MERCER L. REV. 513 (2015).

4. See Jack L. Sammons, *On Teaching the Legality of Televising Capital Punishments*, 42 J. LEGAL EDUC. 139 (1992) [hereinafter Sammons, *Televising Capital Punishments*].

5. See Jack L. Sammons, *The Law’s Melody*, 55 VILL. L. REV. 1143 (2010).

6. See H. Russell Cort & Jack L. Sammons, *The Search for “Good Lawyering”: Some Approaches to Resolving an Historical Debate*, 1 ANTIOCH L.J. 7 (1981).

7. See J. Owens Smith & Jack L. Sammons, *Public Rights in Georgia’s Tidelands*, 9 GA. L. REV. 79 (1974).

8. See, e.g., Jack L. Sammons, *Legal Writing Scholarship, Making Strange, and the Aesthetics of Legal Rhetoric*, 61 MERCER L. REV. 925 (2010) [hereinafter Sammons, *Legal Writing Scholarship*].

9. See Jack L. Sammons, *Censoring Samba: An Aesthetic Justification for the Protection of Speech*, 37 STETSON L. REV. 855 (2008) [hereinafter Sammons, *Censoring Samba*].

10. See *id.*

So what sort of ethicist is he? My initial impulse was to assume that his long-standing interests in Aristotelianism¹¹ and the work of the contemporary moral and political philosopher Alasdair MacIntyre¹² would lead him to virtue ethics. If we look at his ethical views, however, it turns out that this assumption is not completely borne out. Jack is certainly influenced by the work of both Aristotle and MacIntyre, but he is not a virtue ethicist of either the Aristotelian or MacIntyreian stripe. He certainly employs virtue ethics at times, but he recognizes the weaknesses in that position and is not constrained by those weaknesses. He is not doctrinaire.¹³

I next expected to see some alignment with the moral intuitionism of Jack's friend and mentor, Robert Audi.¹⁴ While there are some echoes of this position in Jack's work, he is decidedly not a moral intuitionist.¹⁵ This is perhaps driven by Robert's preoccupation with the relationship between epistemology and meta-ethics.¹⁶ This is a fascination that he does not seem to share with Robert. Jack certainly has interesting things to say about this—and to see him and Robert discuss this is a joy to watch—but his work is not primarily in this genre. Jack is focused on far more practical concerns.

This last point might lead us to conclude that Jack is a practical ethicist. Practical ethics is sometimes referred to as applied ethics.¹⁷ But practical ethics is not a normative ethical theory, however.¹⁸ It is, instead, a grouping of a variety of ethical theories that are applied to particular areas of human concern: law, medicine, business, etc.¹⁹ In that sense, Jack's work—particularly his work on legal ethics—would fall under the umbrella of practical ethics. But this does not tell us the

11. THE ETHICS OF ARISTOTLE: THE NICOMACHEAN ETHICS (J.A.K. Thomson trans., 1953).

12. See, e.g., ALASDAIR MACINTYRE, AFTER VIRTUE: A STUDY IN MORAL THEORY (3d ed. 2007).

13. One could almost say that he is pragmatic in his utilization of virtue ethics.

14. See, e.g., ROBERT AUDI, THE GOOD IN THE RIGHT: A THEORY OF INTUITION AND INTRINSIC VALUE (2004).

15. He perhaps comes closest to the views Audi put forth here: Robert Audi, *Moderate Intuitionism and the Epistemology of Moral Judgment*, 1 ETHICAL THEORY & MORAL PRAC. 15 (1998).

16. A good resource on Audi's work in this vein is RATIONALITY AND THE GOOD: CRITICAL ESSAYS ON THE ETHICS AND EPISTEMOLOGY OF ROBERT AUDI (Mark Timmons et al. eds., 2007).

17. See THE OXFORD COMPANION TO PHILOSOPHY 44 (Ted Honderich ed., 2d ed. 2005).

18. See *id.* An alternative view can be found in PETER SINGER, PRACTICAL ETHICS (3d ed. 2011).

19. THE OXFORD COMPANION TO PHILOSOPHY, *supra* note 17.

normative philosophical framework Jack typically employs in his ethical work. In other words, while his scholarly work on the whole can fairly be characterized as practical or applied ethics, this does not capture the normative perspective driving Jack's positions.

We need to find, then, a better and more precise characterization of Jack's ethical theory. On my reading, Jack can best be classified as a discourse ethicist.²⁰ Briefly stated, discourse ethics is the theory that normative value is determined by the nature of discursive practices²¹ within a community. It is the embeddedness of actors within a rhetorical or (as I prefer) discursive community, and the intersubjectivity of those so embedded, that both determines normative meaning and evaluation.²² Moral judgments, in effect, are based on norms determined by the discursive practices of actors in particular social contexts.²³ It is important to note that this is not a theory that is primarily concerned with the ethical rules we ought to observe during communicative actions.²⁴ Instead, discourse ethicists are interested in how moral judgment is related to, derived from, and gives expression to situated discursive communities.²⁵

Discourse ethics is, of course, related to discourse theory; principally that found in continental philosophy.²⁶ Discourse theorists analyze the way in which language helps to order how we think about and understand the world. For our purposes here, it's enough to mention that discourse theorists concern themselves with the relationship of humans to their linguistic communities. These communities are reconstituted through the socialization of their members. As the German social, political, and legal theorist Jürgen Habermas puts it: "[T]he lifeworld reproduces itself to the extent that [] three functions, which transcend the perspectives of the actors, are fulfilled: the propagation of cultural

20. See KARL-OTTO APEL, *THE RESPONSE OF DISCOURSE ETHICS TO THE MORAL CHALLENGE OF THE HUMAN SITUATION AS SUCH AND ESPECIALLY TODAY* (2001); see also RICARDO BLAUG, *DEMOCRACY, REAL AND IDEAL: DISCOURSE ETHICS AND RADICAL POLITICS* (1999).

21. Discursive Practice is a theory of the linguistic and socio-cultural characteristics of recurring episodes of face-to-face interaction—episodes that have social and cultural significance to a community of speakers. See, e.g., PETER GOODRICH, *LEGAL DISCOURSE: STUDIES IN LINGUISTICS, RHETORIC AND LEGAL ANALYSIS* (1987).

22. JÜRGEN HABERMAS, *Discourse Ethics: Notes on a Program of Philosophical Justification*, in *MORAL CONSCIOUSNESS AND COMMUNICATIVE ACTION* 43-115 (Christian Lenhardt & Sherry Weber Nicholsen trans., 1990).

23. *Id.*

24. APEL, *supra* note 20, at 39-49.

25. *Id.*

26. A good introduction to this is JÜRGEN HABERMAS, *THE PHILOSOPHICAL DISCOURSE OF MODERNITY: TWELVE LECTURES* (Frederick Lawrence trans., 1987).

traditions, the integration of groups by norms and values, and the socialization of succeeding generations."²⁷ Discourse theory is not just about linguistics, then; it gets to the very fabric of social organization.

Discourse ethics is an expression of how the interactions amongst and between members of particular discursive communities ought to be handled. Generally speaking, discourse ethicists attempt to define and modulate the manner in which participants within a discursive community may carry out their interactions.²⁸ In an important way, there are certain preconditions to the formation of discursive communities. Once formed, the continued existence and evolution of these communities depends on the sustained recognition of a set of norms and practices that enable communicative action to carry meaningful content as well as resolve disputes or misunderstandings. Ethical action is action that recognizes and comports to these norms and practices. These sorts of relationships happen in all types of discursive communities: linguistic, political, professional, religious, etc.

To give you an example of what I mean, you might imagine how the participants in a political community agree upon the rhetorical practices that can be employed during conversation about public issues and events.²⁹ The actors in this community will also typically determine social parameters (and often cultural and professional parameters as well) to participation and so on.³⁰ Those practices, or norms, are then used to evaluate the tenor and content of public discourse.³¹ Those who fail to adhere to these norms in their discursive practices are judged to be failing in their obligations as members of the community; they are acting immorally.³²

A more concrete example would be the manner in which members of a profession carry out their business. Lawyers, for instance, have a complex set of norms and practices that guide and constrain their actions. Ethical action within the discourse community of the law demands that these norms and practices are observed and followed. Further, actors within this domain will (or should) incorporate these norms and practices into their identity. In fact, discourse theorists go so far as to say that actors within the domain of the law will see the world, and make sense of what they see, by employing the norms and

27. *Id.* at 299.

28. See generally APEL, *supra* note 20; HABERMAS, *supra* note 22.

29. See BLAUG, *supra* note 20.

30. *Id.*

31. HABERMAS, *supra* note 22.

32. *Id.*

practices they have integrated in this way. In a very real way, they live these norms and practices; they are constitutive.

Jürgen Habermas is perhaps the most famous and notable discourse ethicist.³³ Habermas, and fellow German Karl-Otto Apel³⁴ (who is credited with coining the term discourse ethics³⁵), developed competing frameworks by which normative judgments should be made by those embedded within discursive communities.³⁶ Habermas bases his framework on Kantian deontology,³⁷ Apel bases his largely on pragmatism³⁸ (primarily the pragmatism of Charles Sanders Peirce³⁹). Jack does not use either of these frameworks directly, although I am sure he employs elements of both in places. He is somewhat pragmatic in his use of a variety of ethics frameworks. His discourse ethics is similar to another normative ethical perspective, however, one that I will discuss below in more detail. Suffice it to say that Jack's ethical position on discourse and communicative action is decidedly different than that offered by either Habermas or Apel. Arguably, then, Jack Sammons offers a unique and competing discourse ethics; but in my mind discourse ethics it is!

III.

Let me turn now to making out the claim that Jack Sammons is a discourse ethicist. When we look at Jack's works we see a startling—perhaps I should say prolific—array of topics represented. For example, he has written about issues as diverse as art,⁴⁰ clinical education,⁴¹ linguistics,⁴² music,⁴³ play,⁴⁴ poetry,⁴⁵ politics,⁴⁶ rheto-

33. *Id.*

34. See APEL, *supra* note 20.

35. Matthias Kettner, *Discourse Ethics: Apel, Habermas, and Beyond*, in *BIOETHICS IN CULTURAL CONTEXT: REFLECTIONS ON METHODS AND FINITUDE* 299 (C. Rehmann-Sutter et al. eds., 2006).

36. *Id.*

37. See Jürgen Habermas, *Morality and Ethical Life: Does Hegel's Critique of Kant Apply to Discourse Ethics?* 83 NW. U. L. REV. 38 (1989).

38. See Tibor Goossens, *The Foundation of Morals in Apel's Discourse Ethics* (unpublished manuscript), available at <http://www.tiborgoossens.nl/Documents/Foundation%20of%20Morals%20in%20Apel's%20Discourse%20Ethics.pdf> (last accessed Nov. 12, 2014).

39. See generally KARL-OTTO APEL, CHARLES S. PEIRCE: FROM PRAGMATISM TO PRAGMATISM (John Michael Krois trans., 1981).

40. See Jack L. Sammons, *Can Law Be Art?*, 66 MERCER L. REV. 527 (2015).

41. Sammons, *Televising Capital Punishments*, *supra* note 4; Sammons, *Legal Writing Scholarship*, *supra* note 8; see also Jack L. Sammons, *Traditionalists, Technicians, and Legal Education*, 38 GONZ. L. REV. 237 (2003).

42. See Jack L. Sammons, *The Impossible Prayers of James Boyd White*, in *LIVING IN A LAW TRANSFORMED: ENCOUNTERS WITH THE WORKS OF JAMES BOYD WHITE* (Julen Etxabe

ric,⁴⁷ and yes, even samba.⁴⁸ When we look at these works, though, we see that his true concern is with the discursive, professional, and social practices of actors within each of these domains. What are the standards we find within conversations in these domains? What do these norms tell us about producing art, educating practitioners, writing poetry, and so on? And correspondingly, what does the carrying on of these activities tell us about ourselves—individually and collectively? What can we derive ontologically from the various norms and practices that undergird various discursive communities?

When we look at Jack's published writings it becomes apparent that he has developed—over the last two decades—a robust notion of how discursive practices shape and influence our ethical decision-making, and in turn how moral judgment forms (or reconstitutes) the norms and practices within these domains.⁴⁹ In a piece about the Nazi Albert Speer,⁵⁰ for example, Jack tells us that Speer's moral failings were directly traceable to his abandonment of an overlapping set of discursive norms found in a variety of social and professional roles which Speer occupied simultaneously (architect, father, German, Christian, etc.).⁵¹ His most important failure, however, was that he did not practice his primary professional role—that of architect—in a sufficiently discursive and ethical way. Jack says,

The public-private conversation Speer could have as an architect could place him in a community outside this “society of totally isolated individuals” in which he could only see himself. By doing so, it could give him a moral distance from Hitler, and the skills he needed to spell out his full engagement with the world.⁵²

& Gary Watts eds., 2014).

43. Sammons, *The Law's Melody*, *supra* note 5.

44. See Jack L. Sammons, *Justice as Play*, 61 *MERCER L. REV.* 517 (2010).

45. Sammons, *Televising Capital Punishments*, *supra* note 4.

46. Jack L. Sammons, *Some Concluding Reflections—Recovering the Political: The Problem with Our Political Conversations*, 63 *MERCER L. REV.* 899 (2012) [hereinafter Sammons, *Some Concluding Reflections*].

47. Sammons, *Legal Writing Scholarship*, *supra* note 8.

48. Sammons, *Censoring Samba*, *supra* note 9.

49. See, e.g., Jack L. Sammons, Jr. & Linda H. Edwards, *Honoring the Law in Communities of Force: Terrell and Wildman's Teleology of Practice*, 41 *EMORY L.J.* 489 (1992).

50. Jack L. Sammons, Jr., *Rebellious Ethics and Albert Speer*, in *AGAINST THE GRAIN: NEW APPROACHES TO PROFESSIONAL ETHICS* (Michael Goldberg ed., 2001).

51. *Id.* at 126-27.

52. *Id.* at 130.

Because he did not fully engage the embedded norms and practices of his professional identity, Speer was unable to act ethically in any of the overlapping discursive communities of which he was a part.⁵³

In a short piece Jack wrote for me when I was editing a monthly column in a now defunct publication on professional communication—which he entitled *The Lawyer's Moral Obligation to Write Well*⁵⁴—Jack maintained that authentic engagement in the discursive practices shared by members of the legal community (and by extension the shared human experience) is “the” path to ethical action.⁵⁵ Drawing on the work of Professor James Boyd White, he says there:

[T]he language of the law is used well when it is used honestly to persuade another person, when the identification between writer and reader that persuasion seeks is an accomplishment of the conversation itself rather than a recognition of a shared identity formed prior to it, and when the language is, in James Boyd White's term, the “living speech” of a fully human person, a real self at work behind the words.⁵⁶

The manner in which we carry out the conversations that constitutes our “selves” is, in an important way, the very definition of ethical engagement.⁵⁷ This comes across most clearly in the conclusion of his essay *The Radical Ethics of Legal Rhetoricians*⁵⁸ when he says, “When we return our ethical thinking to context, as we must, when we take seriously who we are and what we do, we must inevitably return to the ethics of the practices that constitute our lives.”⁵⁹ This is precisely the sort of embeddedness that discourse ethics presupposes.⁶⁰

This discursive engagement in ethical practice is not just a manner of being in any particular moment, but is a shared project within the community of engagement.⁶¹ Similar to (but much more comprehensive, and therefore more profound, than) Ronald Dworkin's serial

53. *Id.* at 142-43.

54. Jack L. Sammons, *The Lawyer's Moral Obligation to Write Well*, THE COMPLETE LAWYER (Feb. 2, 2009), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1336542.

55. *Id.*

56. *Id.*

57. Sammons, *Justice as Play*, *supra* note 44.

58. Jack L. Sammons, *The Radical Ethics of Legal Rhetoricians*, 32 VAL. U. L. REV. 93 (1997).

59. *Id.* at 103.

60. See, e.g., JÜRGEN HABERMAS, BETWEEN FACTS AND NORMS: CONTRIBUTIONS TO A DISCOURSE THEORY OF LAW AND DEMOCRACY 222-37 (William Rehg trans., 1996).

61. *Id.*

authorship notion,⁶² Jack suggests that we are always already engaged in a continual and shifting writing and rewriting of norms *in situ* and on the fly.⁶³ Recognizing this, and negotiating our role in these ongoing narratives of discursive engagement, is to act ethically.⁶⁴

I could go on to discuss how all this fits into Jack's interests in continental and postmodern philosophy, hermeneutics, rhetoric, and all the rest of it. But the careful reader has probably already started to realize the many connections in what I have said thus far. What appears, on the surface, as a widely diverse set of interests (and it is surely that at some level), begins to shape into a coherent—and tightly wound—normative framework the deeper we look. This framework hinges on social and professional embeddedness, rhetorical practice (particularly conversation), and authentic engagement of a community of selves similarly situated.⁶⁵ That, simply said, is discourse ethics.

IV.

I mentioned above that I see a connection between Jack's discursive ethical position and another normative position (the one I'm not so sure he will endorse). When I look at Jack's positions, his commitments to inclusion and voice, his preoccupation with conversation and role, I see an undeniable connection to what has been called "the ethics of care."⁶⁶ The ethics of care was developed by feminist theorists like Carol Gilligan,⁶⁷ Nel Noddings,⁶⁸ Virginia Held,⁶⁹ and others near the end of the last century in response to what was perceived as a devaluation of certain social and discursive practices.⁷⁰ These practices, such as conversation, interconnectedness and intersubjectivity, role embeddedness, and so on, are either outright rejected or at least severely denigrated by the major ethical theories (particularly deontological and consequentialist theories).⁷¹

62. See RONALD DWORKIN, *LAW'S EMPIRE* (1986).

63. Sammons, *The Lawyer's Moral Obligation to Write Well*, *supra* note 54.

64. *Id.*

65. *Id.*

66. See JOSEPH P. DEMARCO, *MORAL THEORY: A CONTEMPORARY OVERVIEW* 111-15 (1996).

67. See CAROL GILLIGAN, *IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN'S DEVELOPMENT* (1993).

68. NEL NODDINGS, *CARING: A FEMININE APPROACH TO ETHICS & MORAL EDUCATION* (1984).

69. VIRGINIA HELD, *THE ETHICS OF CARE: PERSONAL, POLITICAL, AND GLOBAL* (2006).

70. See NODDINGS, *supra* note 68; HELD, *supra* note 69.

71. HELD, *supra* note 69, at 58-64.

Advocates of an ethic of care suggest that the traditional concentration on universal principles of justice and abstract moral reasoning miss the importance of human interconnectedness and contextualized concern for the situated needs of others.⁷² Nel Noddings explains this as follows: "The source of my [moral] obligation is the value I place on the relatedness of caring. This value itself arises as a product of actual caring and being cared-for and my reflection on the goodness of these concrete caring situations."⁷³ This is a shift on what counts as one engages in moral deliberation. It's a move away from abstract moral rules, virtues, and universal theories of right. As Joe DeMarco explains:

Care is a local phenomenon; it responds to the demands of a situation. An ethics of care does not admit proper control of actions by rules or universal principles. Yet care itself is universal. Natural caring is the same in all places and all times, and becomes the base of universal concern in ethical caring.⁷⁴

It is not as though the ethics of care is relativist, then. Instead, rules and customs are shifting and institutionalized.⁷⁵ This is a sophisticated form of ethical contextualism.⁷⁶

Under the ethics of care, how one acts morally depends on the role one occupies and the circumstances occurring at the time of ethical decision-making.⁷⁷ Those who advocate for this sort of moral reasoning maintain that the key component of ethics ought to be the focus on caring for those who will be affected by the decision. The impact of any given decision on all who will be affected (and not just the decisionmaker) is a crucial aspect of the ethics of care. Further, advocates of an ethics of care recognize the embeddedness of individual moral agents within a community of other such agents. As Milton Mayeroff puts it:

The more deeply I understand the central role of caring in my own life, the more I realize it to be central to the human condition. My world becomes intelligible for me through caring and being cared for. . . . In the sense in which intelligibility means being at home in the world, we are ultimately at home not through dominating or explaining or appreciating things, but through caring and being cared for.⁷⁸

72. NODDINGS, *supra* note 68.

73. *Id.* at 84.

74. DEMARCO, *supra* note 66, at 114.

75. NODDINGS, *supra* note 68, at 46.

76. ROBERT L. HOLMES, BASIC MORAL PHILOSOPHY 219 (Peter Adams ed., 2d ed. 1998).

77. NODDINGS, *supra* note 68, at 46.

78. MILTON MAYEROFF, ON CARING 54 (Ruth Nanda Ashen ed., 1971).

As such, an ethics of care is not just an altering of one's ethical perspective. This view has both epistemological and metaphysical aspects. The ethics of care can be seen as an ontological perspective, then, one that implicates the way we exist in the world.⁷⁹ An ethics of care requires all moral agents to practice consistency, courage, honesty, hope, humility, nurturing, patience, and trust.⁸⁰ They do so not only because this is morally correct, but also because this is what gives life meaning and how we understand that meaning.

When I look at Jack's body of scholarship, I see a close affinity between his ethical commitments and the values resurrected and advanced by the ethics of care. Throughout his work, Jack continually comes back to the themes of moral deliberation in role, situated or contextual judgment, and the social or communal impact of discourse. All of these things are, or can be at least, directly related to the concerns expressed and perspectives promoted by Carol Gilligan, Virginia Held, Nell Noddings, Milton Mayeroff, and others. While Jack Sammons does not relate his moral position to the ethics of care in any of his published writings, I believe his ethical viewpoint can be easily dovetailed into those authors who promote that theoretical position. Jack's discourse ethics, like those of Apel and Habermas, alters the horizons of what counts as ethical decision-making. When viewed through the lens of the ethics of care, this expansion can gain important content and perspective.

The connection between discourse ethics and the ethics of care seems obvious to me at one level, because theorists working in both of these traditions are attempting to expand our conceptions of the ethical realm.⁸¹ Discourse ethics and the ethics of care both want to develop alternative accounts of what counts in moral reasoning.⁸² These accounts are, admittedly, more complicated (and perhaps messier) than traditional normative frameworks.⁸³ To me that is attractive, as human interactions are undeniably complicated and messy.⁸⁴ The robustness of Jack's discourse ethics goes a long way toward better

79. Sandra Garrison, *The Impact of Being Moral: An Ontological Explanation of Care Ethics* (2001) (unpublished M.A. thesis), available at http://scholarworks.sjsu.edu/cgi/viewcontent.cgi?article=3128&context=etd_theses (last accessed Nov. 10, 2014).

80. HOLMES, *supra* note 76, at 202.

81. See APEL, *supra* note 20; NODDINGS, *supra* note 68.

82. *Id.*

83. See, e.g., Fiona Robinson, *Stop Talking and Listen: Discourse Ethics and Feminist Care Ethics in International Political Theory*, 38 MILLENNIUM J. INT'L STUD. 845 (2011).

84. *Id.*

capturing these intricacies.⁸⁵ By adding the content of care ethics, the concentration of Jack's work would be that much more textured. I would love to see a dialogue between discourse ethicists like Jack Sammons and those who promote an ethics of care.⁸⁶ This seems like a rich area of possible collaboration and conversation; and that is what it's all about isn't it?

V.

The unifying theme of Jack Sammons' scholarship is his concern about the way discourse is carried out. His is a profoundly ethical perspective, a perspective that seeks to enable constructive dialogue about legal, political, and social controversies. As such, Jack's moral reasoning and discourse allows new horizons of engagement by those who have contested long-standing—and seemingly intractable—disputes. His concern about engagement and voice is exactly the sort of perspective that other discourse theorists (like Apel and Habermas) attempt to motivate. By continually reminding us that these acts of engagement require, at base, ethical relationships with those we address, Jack presents an explicit and robust discourse ethics.

Given that Jack has not presented his work in this way, one obvious avenue of further scholarly exploration would be to assess his work to tease out the elements of his ethical theory. I have tried to start that process in some small manner here. I think this sort of examination would be particularly fruitful if it was related to congenial ethical paradigms like the ethics of care. I, for one, am energized about the possibility of viewing the scholarly work of Jack Sammons through such a lens. Having an opportunity to participate in this important Symposium has given me a renewed appreciation for Jack's scholarly work and an excitement about where the ideas expressed in that work might lead me in my own scholarly endeavors.

85. See, e.g., Sammons, *Some Concluding Reflections*, *supra* note 46; Sammons, *The Lawyer's Moral Obligation to Write Well*, *supra* note 54.

86. There has been some work on this connection, but not nearly enough. See, e.g., Robinson, *supra* note 83.