

The work of creating a family life: Foster carers and Labour Law

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Abstract

Foster carers' recent unionisation and their campaign to be recognised as workers in the UK, will provide the basis to interrogate the public/private divide in this paper. I will argue that the rejection of foster carers' claims that they are workers by English and EU courts, as well as the previous Conservative Government, have problematically relied on traditional conceptions of care work belonging in the private sphere. This highlights the pervasiveness of public/private divide, which is still thought to separate the work of family life, from 'proper' work, performed by those with a job. This paper will draw on the ethic of care to show that all caring labour is work, and could be protected by labour law. Even if the breadth of labour law is unchanged, foster carers' work clearly straddles both spheres, so they should be protected.

1. Introduction

Foster carers have recently unionised, opening the Foster Care Workers Union (FCWU), a branch of the Independent Workers Union of Great Britain (Foster Care Workers Union). One aim of unionisation was to challenge foster carers' self-employed status. Although being self-employed does have advantages, such as tax relief on their allowances, this also comes with considerable disadvantages, namely, the lack of labour law rights. To access basic workplace protections, including guaranteed minimum wage, holiday pay and sick pay, the

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FCWU argues that foster carers should be protected as workers. This is a broader category than employee, which the FCWU considers best reflects foster carers status.

The union's case highlights a long-standing problem; how care work should be treated within labour law. This is a result of the public/private divide. This is an ambiguous concept, but in this paper, it will signify the separation of the family, which is consigned to the private sphere, from the public sphere of the workplace (Fredman, 1997, 16-17). Labour law applies to the public sphere and excludes unpaid care work. Feminists challenge this exclusion, not only to promote equality and justice, but also on analytical and conceptual grounds (see Conaghan, 2018, 272). Foster carers are in a unique position. As their work is creating a family life, they straddle both the public and private spheres. I will argue that this dual sphere role has frustrated foster carers' attempts to be recognised as workers in both English and EU cases. It also underpinned the previous Conservative Government's (2017-2019) denial of worker status. Examining foster carers highlights that the public/private divide is a social construct, 'reliant on a gendered configuration of productive and reproductive activities that has become increasingly untenable,' as a result of women's formal entrance into the workplace (see Conaghan, 2018, 272). This paper will add to the existing body of literature which shows that all care work should be included within labour law, because it challenges care's designation to the private sphere.

This paper will start by analysing care work and its problematic consignment to the private sphere. This has concealed caring labour's importance, and prevented it being recognised as work. The ethic of care will be the key theoretical underpinning of this argument. After examining the role of foster carers, I will argue that their work is rightly covered in the public sphere. The rest of this paper will consider 'worker' status and how it

could be applied to foster carers in English law. I will argue that the reasons relied on by the previous Conservative Government, as well as the Court of Justice of the European Union (CJEU) and English courts, for rejecting recognising foster carers as workers, are unjustified. The last section will argue that the higher level of protection afforded by employee status, which comes with a higher level of control, would not necessarily be inappropriate for some foster carers. Overall, greater recognition of their work in the public sphere, would be a benefit for foster carers.

2. The public/private divide and the undervaluing of care work

Due to the reproductive imperative, the heterosexual family unit has an assumed ‘naturalness’ (Fineman, 1995, 150). Within this family, roles and attributes have traditionally been assigned according to gender. Men were associated with the mind and soul, and were thought to be better suited to the public sphere. By the Industrial Revolution, for most people, this meant working in factories and offices. This was deemed ‘proper’ work, as it was performed in the workplace, ‘expressed in formal legal relations of mutuality and exchange’ (Conaghan, 2018, 275-6). Most importantly, it generated a wage. In contrast, women were associated with the body, so had responsibility for feeding and caring for families. Before industrialisation, most women would have done this alongside working on the land, and caring was recognised as a ‘necessary economic contribution to social well-being’ (Conaghan, 2018, 276). It was the separation of ‘domestic’ and ‘industrial’ labour, along with dominant ideas about women ‘belonging’ in the home, which led to women, and their care work, being consigned to the private sphere of the family (Conaghan, 2018, 275-6). This was implicitly assumed to be inferior to the public sphere (Fredman, 1997, 17). Mothering ensured that caring came ‘to be perceived as an innate characteristic of women and therefore a natural determinant of women’s social possibilities and roles’ (Bowden, 1997, 8). This was

despite the fact that working-class women have always had to earn an income, as well as perform care (Fredman, 1997, 17).

Women's care work in the private sphere, was not treated as work, because it was deemed 'economically valueless and non-productive' (Conaghan, 1999, 39). Care work was not considered productive, just reproductive, because it maintains daily life (Fredman, 1997, 99). Furthermore, care work was treated as a marginal part of existence (Tronto, 1993, 111). This was partly because the everyday nature of care 'produces an aura of invisibility' (Bowden, 1997, 5-6). This invisibility was willingly reinforced, because care work deals with the negatives of the human body that society does not wish to acknowledge, like 'decay, dirt, death, decline, failure' (Twigg, 2000, 406). Needing care is considered tantamount to failure, so few people identify with dependency and want to be cared for. Accordingly, care work was hidden in the private sphere through common consent (Twigg, 2000, 405).

Caring work was further devalued because it is considered women's natural, biological focus. Women are still overwhelmingly associated with care work, and many still consider that this reflects biological, gendered differences (Herring, 2013, 36). This argument is deeply flawed. It cannot explain the fact that not all women provide care and not all women want to provide care. More importantly, the argument misunderstands caring labour, which cannot be understood simply as acting upon impulse, because it involves 'quite a lot of thought and interpretation, especially evaluation' (Nussbaum, 2000, 265). These are not skills which are 'simply there from birth; they have to be learnt' (Nussbaum, 2000, 265). Furthermore, caring is not 'high minded emotions, but hard work' (Herring, 2013, 18). Being a skilled carer, therefore, requires a sustained effort to develop the necessary skills, just like

other forms of work. It is care work's consignment to the private sphere which means it is still disregarded or largely ignored, despite the fact that it is life-sustaining work.

a) The ethic of care

The ethic of care has had an important role in challenging the social construction of the gendered division of labour, as well as the undervaluing of caring labour. This is based on Gilligan's breakthrough work which challenged traditional liberal ideas of autonomy by highlighting a moral orientation focused on intertwined relationships, fostering social need and co-operation (1982). This orientation was more associated with women and the private sphere. Although later research has challenged the notion that moral orientations can be easily distinguished, as well as arguing that Gilligan problematically reinforces gender role assumptions, the ethic of care has developed into a normative theory based on the universal need for care (on criticisms of Gilligan's work see, for example, Tronto, 1993, 82-9; Noddings, 2002, 24). It highlights that people are dependent every day of their lives, not just at the obvious times of childhood, old age, illness and disability (Herring, 2013, 2). Furthermore, it highlights that care work is important because it is life-sustaining.

Definitions of care vary greatly. An oft cited definition is the broad one adopted by Fisher and Tronto; care is 'a species of activity that includes everything that we do to maintain and continue and repair our "world" so that we can live in it as well as possible' (1991, 40). Such a wide definition of care is not required in this paper, which will focus only upon human relationships. In particular, the focus will be on 'the face-to-face occasions in which one person, as carer, cares directly for another, the cared for' (Noddings, 2002, 21-22). Noddings describes this as caring for, and contrasts it to caring about, which is 'when we cannot care directly for others...we rely on principles of justice that approximate (or enable

others to undertake) the actions we would perform if we could be bodily present' (2002, 3). Caring for is the focus because this is the work performed by foster carers. Furthermore, it is the most important type of care, because it is life-sustaining and meets a universal need. It provides a 'source of meaning and value to life' (Herring, 2013, 11).

Bubeck adopts a much narrower definition of care, arguing that it requires performance of a task 'where the need is of such a nature that it cannot possibly be met by the person in need herself' (1995, 129). Care is contrasted to acts of service, which involves performing an act that the other person could do for themselves, such as cooking a partner dinner. I argue that care cannot be construed so narrowly to exclude all things that people are physically able to perform themselves. Parents might not need to cook for their children, certainly as they get older, as they need to learn these skills themselves. Nonetheless, parents might still do this, to allow the children to finish their homework, for example. This shows that labour can be deemed caring work, even when the recipient can perform the work themselves. A second issue is the difficulty in determining when someone could perform the task themselves (Herring, 2013, 17). Children could be left to feed themselves, for example, but this might not be nutritious, or in their best interest. Furthermore, Bubeck's limited definition of care fails to capture the benefits that both parties can gain from the relationship. Caring is not unidirectional, as the person receiving care, also impacts on the carer. The roles are not always easily separated between carer and cared for. People, especially women, are relational in that they define themselves partly through their relationships (Gilligan, 1982, 156). Their own wellbeing is affected by others. This shows that providing caring labour can benefit both parties. Accordingly, excluding acts of service from definitions of care is unnecessary, as long as such work responds to needs appropriately, and does not treat 'the other as an object' (Herring, 2013, 18).

The ethic of care highlights that caring is productive work. Its function is to maintain bodies so people can live a decent life. The product created is a functioning human. Such work is clearly of benefit to all of society. Childcare in particular has been recognised as ‘a society-preserving task...[it] is essential to the future of the society and all of its institutions’ (Fineman, 2004, 43). This is because although children are autonomous, active participants in society (Anderson et al, 2006, 47), the state, and its people, are dependent upon them becoming workers, citizens, students and consumers when they reach adulthood (Fineman, 2004, 48). Furthermore, care work is needed to create a just society. This is because ‘unless there is caring there is no possibility for justice,’ as there will be no life to be treated justly (Herring, 2013, 68). Ideals of justice are dependent upon caring labour and the ideals of intertwined relationships, fostering social need and co-operation.

Caring is clearly work. It has not been recognised as such historically because of the socially constructed public/private divide. This hid and therefore minimised the importance of care work, which society is wholly dependent on. How labour law, the body of law which regulates work, should respond to this, will be the focus of the next section.

3. The scope of labour law in recognising care work

This public/private divide is still perpetuated today, despite women’s formal equal access to the workplace highlighting the fallacy that ‘the public is fully insulated from the private’ (Fredman, 1997, 17). Caring labour and paid work responsibilities will impact upon each other, so complete separation is impossible. Recognition that the public/private divide is a social construct, which does not reflect reality and is unsustainable, could have led to a fundamental restructuring of the workplace. The standard worker model, which assumes that

all workers' caring responsibilities are met by another so they can focus exclusively on their paid work, could have been replaced with something more realistic (see Conaghan, 2018, 285-6). However, all women's formal access to the workplace led to was the introduction of family-friendly employment legislation (see Employment Rights Act 1996, Part VIII). This has not fundamentally challenged the public/private divide, because such legislation only intervenes at the margins (Conaghan, 1999, 14). It makes it possible for employees to take some breaks from their paid work commitments to provide care, but only at certain times and when certain eligibility requirements are met. It does not challenge the standard worker model, or the idea that care work belongs in the private sphere at home, and proper work is done in public.

The standard worker model has increasingly been criticised, because it excludes growing numbers of people (Fudge, 2014). Recognition of the exclusion of those performing precarious work led the previous Conservative Government to commission the Taylor review to examine the idea of good work (Taylor et al, 2017). This fell significantly short of offering any fundamental change for those in precarious work, because the review was 'blunted by a high degree of satisfaction with the workings of the current labour market' (Bales, Bogg and Novitz, 2018, 49). Labour lawyers have been much more radical, increasingly arguing that the sphere of labour law needs to be widened to include more workers. Freedland and Kountouris, in their seminal book, developed the concept of the personal work contract, to recognise work without confining it to the dependent employment relationship (2011). They argue that labour law protections should be made 'dependent upon the working person's accumulation of entitlement from engagement in one or more personal work contracts or relations over defined periods of time' (2011, 368). This can be accrued in periods of unpaid work, too (2011, 340).

Although such an approach has much to be commended, Freedland and Kountouris maintain that labour law is distinctive, and caring relationships belong in family law. This is because applying labour law to caring relationships would involve transplanting ‘assumptions and techniques of regulation developed for one social field to another in which it is conventionally considered to be inappropriate’ (Fudge, 2014, 19). This clearly supports the continuation of the public/private divide. Fudge convincingly argues that there is no reason for this division and argues that ‘labour law be extended to include all of the processes of social reproduction’ (2014, 19). This would clearly involve unpaid care work, which the state is wholly dependent upon to raise new generations as well as feeding, clothing and supporting current workers.

Although such a radical change would be welcome, it seems unlikely that it will be introduced in English law soon, especially after the underwhelming Taylor Report and the previous Government’s response. The current Conservative Government’s manifesto certainly does not suggest that any revolutionary changes will be made; all that is mentioned is reinforcing the existing family-friendly legislation (The Conservative and Unionist Party, 2019, 39). Nonetheless, practical issues will continue to draw attention to the problems created by the public/private divide and the scope of labour law. One of these issues is how foster carers should be categorised within this model, highlighted by the FCWU. The union argue that foster carers should be considered workers and therefore be protected by more substantive labour laws than they currently are. In the rest of this paper, I will examine the claim that foster carers could be workers, and the cases which have considered the issue.

4. What are Foster carers?

Foster carers provide care for children who are looked after by the state. Most foster carers provide care for children whom they do not know before placement, but about 10% care for children they know (Narey and Owers, 2018, 22). These are widely known as kinship carers, and include friends or family who provide care for children. This number is likely to grow because when determining placements, local authorities must give priority to a 'relative, friend or other person connected with C[the child]' (Children Act 1989, s 22C(6)(a)). The local authority must also consider whether the carer has the same 'religious persuasion, racial origin and cultural and linguistic background' as the foster child (Children Act 1989, s22(5)(c)). Carers from the same family may be more likely to share some of these characteristics with the child because, for example, family influence remains very important for religious affiliation (Bengtson, 2013, 56). However, such similarities cannot be presumed.

Foster carers can provide short-term care to assist children and families 'overcoming a temporary crisis often related to parental absence...or where the child has been or is likely to be harmed' (Sellick, 2006, 69). They can also provide substitute care for children over a longer period because parents 'are either unable or unwilling to care for their children' (Sellick, 2006, 69). Despite the varied circumstances, Davis identifies that all foster carers share some distinguishing characteristics: they look after children who are not their own; they do not have parental responsibility; they provide the care within their own home; they provide care temporarily, rather than permanently, and; they 'agree to look after fostered children as if they were their own' (2010, 19). The last point is often recognised as the essence of fostering; 'effective foster caring means good parenting' (Sellick, 2006, 72). This

must refer to the function of parenting, which is to provide care to children, rather than the biological sense of being a parent.

The emphasis on the temporary provision of care is beginning to change through the introduction of long-term foster care. This is when the child, foster carer and biological parent agree that the foster carer will care for the child until they are no longer looked after (Care Planning, Placement and Case Review (England) Regulations 2010/959, reg 2). This was introduced to ‘ensure greater stability of placements and more certainty for children and foster families’ (Department for Education 2018, 19). This is important because most looked after children in England will be cared for by foster carers. In England, 72,670 children were looked after in 2017; 74% of these children were being cared for by foster carers (Department for Education and Office for National Statistics, 2018, 1 and 8). The numbers of children being adopted, are low; only 3,570 children were adopted between March 2018 and 2019 in England (Department for Education, 2019, 1). Although some looked after children return home, research suggests that many re-enter care again (Biehal, 2006). As most of the growing number of looked after children are being cared for by foster carers, it is right that this permanence is recognised.

5. Differences between foster carers and parents

Although the expectation of foster carers is that they care for the child as their parent, there are a number of differences between foster carers and parents. Firstly, foster carers do not have all the responsibilities associated with parenting (Children Act 1989, s 3). If a child is subject to a Care Order (which most children in foster care are), the local authority has parental responsibility (Children Act 1989, s 31). Birth parents also retain limited parental responsibility. So it is the local authority and parents who make decisions over children’s

upbringing, including where they go to school and medical treatments. Foster carers rarely have parental responsibility.

A second difference between foster carers and parents is the level of state intervention, not only over major decisions, such as medical treatment, but also more minor issues. Whilst parents are left largely to their own devices, foster carers have much less control. For example, the local authority can set formal requirements for pocket money or clothing allowances (Kirton, 2007, 13). A third difference is that foster care has wider social/public instrumental utility than parenting. There might be a wider public interest, given what has happened to these young children in their lives, for them to be looked after properly and to become better adjusted adults.

Finally, foster carers have a responsibility to promote contact with the child's birth parents. Parental contact is presumed to promote children's welfare (Children Act 1989, s 1(2A)). The local authority has a duty to promote contact between looked after children and their parents or relatives 'unless it is not reasonably practicable or consistent with his welfare' (Children Act 1989, sch 2, para 15(1)). Therefore, the birth parents are likely to remain involved with the children and foster carers have a duty to maintain that contact. This mitigates foster carers' parenting role; they have 'to share care with birth parents to avoid alienating their foster children's affections from their families of origin and treat as partners parents whom they might once have regarded as rivals or the sources of their foster children's ills' (Wilson et al, 2004, 9).

It could be argued that another difference between foster carers and parents is the availability of choice. Parents cannot choose to end the placement of their children with

them, or their relationship. In contrast, when fostering arrangements break down, the child can be moved to another foster family. Furthermore, stranger foster carers make a positive decision to become carers, which cannot be said of all parents. Yet this perceived difference can be overstated, particularly for kinship carers. To make a choice:

at least two positive alternatives are required. This means being able to choose between *a* and *b*...rather than a negative choice that would involve choosing between alternatives *a* or not-*a*. (Arksey and Glendinning, 2007, 168).

Kinship carers will be in such a situation extremely rarely. They will know that in most situations, if they do not provide the care, the child will go to a stranger. In this situation, many would consider it their duty to provide the care. People report feeling guilt, sadness and failure when they cannot meet the caring needs of dependents (Arksey and Glendinning, 2007, 170). This is because people's own wellbeing is affected by others. People, especially women, are relational in that they define themselves partly through their relationships (Gilligan, 1982, 156). Therefore, accepting the disadvantages that carers' face is understandable, when the alternative could be so detrimental, to both them and the child. These same feelings of guilt and sadness, will also make it hard for many stranger foster carers to end a care arrangement, even if this is a practical possibility. After all, stranger foster carers are just as able as biological parents to create real, loving relationships with the children they care for. Therefore, although some foster carers might have more choice than parents, I argue that this difference can be easily exaggerated. Choice is not an important distinction between foster carers and parents.

The differences between foster carers and parents mean that it is incorrect to argue that foster carers are expected to be parents. I suggest that foster carers' roles are better categorised as a 'mitigated parent'; they perform some of the role, but not all of it, or at least

in different ways than birth parents are expected to. This highlights that caring relationships are not uniform. The differences between the roles has been hidden because of caring work's consignment to the private sphere, alongside the valorisation of the sexual family. Foster carers are considered to be acting as parents, because of societal expectations parents should perform the childcare role. This expectation is so ingrained, that although foster carers are evidently not parents, they are still treated as such.

Foster carers' mitigated parenting role also shows that their work cannot be simply consigned to the private sphere. The role blurs the distinction between the public and private spheres; their roles may be likened to parents, but the fundamental differences suggest that this work could be protected within the public sphere. That foster care could be argued to belong in both spheres, shows that the public/private divide is clearly a social construction.

It has already been accepted that foster carers' unique role requires protection in the public sphere, because they are recognised as self-employed and are remunerated for the work they perform. This is the right sphere for foster carers, partly because 40% of foster carers report being required or pressurised into giving up their job (The Fostering Network and the Department for Education, 2014, 7). This suggests that foster carers are swapping one public sphere activity for another; they are changing jobs. Secondly, foster carers are performing more demanding work than before, including facilitating parental contact.

Furthermore:

...the care system has become increasingly concentrated on children who enter because of abuse and neglect, with a higher proportion who have already experienced repeated 'failures' at home. Such children frequently, although of course not

invariably, pose greater demands on carers and require greater skill in caring for them (Wilson et al, 2004, 40).

The more specialised and skilled care required of foster carers highlights a third reason foster carers could be protected within the public sphere; training, standards and qualifications are becoming increasingly important (Schofield et al, 2013, 47). 81% of foster carers have had some training when children come to live with them (Sykes et al, 2002, 38). This is something obviously more associated with the public sphere of paid work, and is not considered necessary in the private sphere. The training, specialist knowledge and experience of caring for challenging children, is one reason that increasingly some foster carers consider themselves part of a team of professionals caring for the child (Schofield et al, 2013, 47). This again highlights the different ways in which children's needs are met in the 'private' sphere of the family; it cannot be assumed that these needs are met by parents, without any interference from the public sphere.

Although protecting foster carers would not necessitate an expanding of labour law, analysing their work clearly supports it. Despite the differences between foster caring and parenting, the fundamentals of the work is the same; to provide a safe and loving environment for a child to grow. If foster carers' work is considered productive, in the sense that it creates the adults which society is completely dependent upon, then parenting must also be considered productive.

The FCWU argues that foster carers deserve better labour protection as they are subject to too much control from the local authority to be self-employed. The Supreme Court have also recognised that characterising foster carers as 'carrying on an independent business of their own...would fail to reflect many important aspects of the arrangements' (*Armes v*

Nottinghamshire County Council [2017] UKSC 60; [2018] A.C. 355 [59]). The next section will therefore consider the next highest level of protection, that of worker, that the FCWU are fighting for.

6. Defining workers in English law

There are two ways one can be deemed a worker. First, if someone is an employee, they must also be worker. Secondly, workers includes those who work under ‘any other contract...whereby the individual undertakes to do or perform personally any work or services for another party...whose status is not...that of a client or customer of any profession or business undertaking carried on by the individual’ (Employment Rights Act 1996 s 230(3)(b)). Workers have to perform the work personally, so they cannot arrange for another to perform the work in their place (*Cotswold Development Construction Ltd v Williams* [2006] I.R.L.R 181 [55]. Confirmed in *Hospital Medical Group Ltd v Westwood* ([2013] I.C.R. 415. [20]). Yet they might not have the requisite control,² or mutuality of obligations,³ to satisfy the test for employee status, which attracts extra protection including maternity pay and other family-friendly employment measures (Employment Rights Act 1996, part VIII), as well as protection from unfair dismissal (Employment Rights Act 1996, s 94). Therefore, the category of workers creates a level of protection in between employees and the self-employed. By extending basic labour law protections to those in subordinate and dependent working relationships which are similar to employment, the worker category has been used to protect vulnerable workers from harmful or abusive working relationships. This

² Employees are considered to be under control if they do not have ‘the power of deciding the thing to be done, the means to be employed in doing it, the time when and the place where it shall be done.’ (*Ready Mixed Concrete (South East) Ltd. v Minister for Pensions and National insurance* [1968] 2 QB 497, 515. MacKenna J). The Supreme Court confirmed the importance of this test in *Autoclenz Ltd v Belcher and others* ([2011] I.C.R 1157).

³ Mutuality of obligations requires an exchange of service for remuneration and a promise by both parties to further performance. See Freedland, 1976, 20.

is because workers are entitled to the basic protection of labour law, including holiday pay (Working Time Regulations 1998/1833, reg 13), sick pay (Social Security Contributions and Benefits Act 1992, s 151 and s163) and the national minimum wage (National Minimum Wage Act 1998, s 1), amongst other rights. The FCWU argues such entitlements are needed to protect foster carers.

The development of consistent principles and clear criteria which allow for predictable identification of the boundaries between different categories of paid work has not been straightforward. In *Hospital Medical Group Ltd v Westwood*, it was confirmed that in most situations, the integration test should be adopted to determine if someone is a worker ([2013] I. C. R. 415, 427). This focuses upon ‘indicative factors such as...integration in the business of the other party to the contract,’ although there was no guidance given on a uniform approach ([2013] I. C. R. 415, 426). Many foster carers could arguably satisfy this vague requirement, as their work providing childcare for those in need, is a core part of local authorities’ business. Personal performance of the work must be also be a ‘dominant feature’ of the contract, with only limited opportunities to substitute another to perform the work (*Pimlico Plumbers Ltd and another v Smith* [2018] UKSC 29, [32]). It is clear foster carers have obligations to personally perform the work. Another cannot stand-in to create a family life for looked after children.

In addition to satisfying these two elements, foster carers would also need to show that they are not a self-employed, independent contractor, providing services to a client or customer. In determining this, the courts consider a multitude of factors, including the integration test (see for example *Express & Echo Publications Ltd. v Tanton* [1999] I.C.R. 693). Although some considerations might point towards foster carers being self-employed,

such as the use of their own materials and tools, most suggest they are not. For example, despite retaining a lot of autonomy over day-to-day life, foster carers are clearly subject to some subordination, as they perform a mitigated parenting role. Another relevant factor is mutuality of obligations. This refers to there being ‘some obligation upon an individual to work, and some obligation upon the other party to provide or pay for it,’ and points away from self-employment (*Cotswold Development Construction Ltd v Williams* [2006] I.R.L.R 181 [55]. Confirmed in *Hospital Medical Group Ltd v Westwood* [2013] I.C.R. 415. [20]). The understanding of mutuality of obligations has recently broadened, reflecting the courts recent tendency to find worker status, and is now satisfied when an individual turns up to work or accepts an assignment (see for example, *Pimlico Plumbers Ltd and another v Smith* [2018] UKSC 29, *Uber BV v Aslam and others* [2018] EWCA Civ 2748, *Addison Lee Ltd v Gascoigne* [2018] I.C.R. 1826). It is clear mutuality of obligations is satisfied when a child is in placement with a foster carer; the authority has an obligation to continue to make that work available, whilst the carer has an obligation to provide the care, subject to child welfare exceptions.

EU law also impacts here, for now, despite the fact that ‘there is no single definition of worker in Community law’ (case C-256/01 *Allonby v Accrington & Rossendale College and Others*, [67]). The CJEU has ruled that categorising someone as self-employed does not mean that they are. The court will instead examine if a worker’s ‘independence is merely notional, thereby disguising an employment relationship’ (case C-256/01 *Allonby*, [71]). Member States’ definitions of workers cannot ‘lead to the arbitrary exclusion of that category of persons from the protection offered’ (case C-393/10, *O’Brien v Ministry of Justice*, [51]). The CJEU have therefore adopted a ‘fairly generous and nuanced notion of subordination that...can effectively amount to a power of “control”, “direction or supervision” or “to

cooperate”, especially when such workers are “an integral part of” the company they provide services to’ (Kountouris, 2018, 203).

Both the English courts and the CJEU could therefore recognise foster carers as workers. The English law multi-factor test points away from foster carers being classed as self-employed. Yet both courts have rejected foster carers’ claims to be protected as workers.

7. The rejections of foster carers’ claims

A number of English cases have considered whether foster carers are workers (*Bullock v Norfolk County Council* Employment Appeals Tribunal/0230/10; *Lambert v Cardiff County Council* [2007] 3 FCR 148; *Rowlands v City of Bradford MDC* [1999] EWCA Civ 1116). All the claims were dismissed because there was no contract; the terms of the foster carer’s work were decided by statute. This reasoning has recently been confirmed again by the Employment Appeal Tribunal in *National Union of Professional Foster Carers v Certification Officer v IWGB, Secretary of State for Education, Local Government Association, European Children's Rights Unit* ([2019] 7 WLUK 366). The union’s claim to be recognised was dismissed, because they were not representing workers. An appeal remains outstanding.

This EAT judgment was per incuriam because it failed to recognise that the law has moved on since the earlier cases. In *Armes v Nottinghamshire County Council*, the Supreme Court found that local authorities were vicariously liable for foster carers, because this is a relationship akin to employment ([2017] UKSC 60). This was because local authorities retain a high level of control, over who could be foster carers, their supervision, as well as over more day to day decisions, such as holidays and medical treatment. Lord Reed JSC noted that

characterising foster carers as ‘carrying on an independent business of their own...would fail to reflect many important aspects of the arrangements’ ([59]). He explained:

it is impossible to draw a sharp line between the activity of the local authority, who were responsible for the care of the child and the promotion of her welfare, and that of the foster parents, whom they recruited and trained, and with whom they placed the child, in order for her to receive care in the setting which they considered would best promote her welfare. ([60]).

The Supreme Court judgment positively recognised that foster carers cannot be considered self-employed workers, highlighting that they are under local authority control. This decision, therefore, should have been considered by the EAT. However, only one mention was made in a footnote, which disregarded all these issues. The Tribunal needed to evidence why foster carers should be classified as self-employed, showing how the ratio of the Supreme Court was not applicable, rather than simply dismissing that they were workers. This lack of reasoning shows how uncomfortably foster carers fit into the public sphere; they are not considered workers, but neither should they be self-employed.

This sense of uncomfortableness was also highlighted in a quote that Slade J relied on in one of the preceding cases, *Bullock v Norfolk County Council*: ‘the whole concept of worker...fits uneasily with the relationship of foster carers’ (EAT/0230/10, [42]). It was stated that these disputes would be more appropriately heard in a different forum, rather than Employment Tribunals, although no suggestion is made as to where. Both parties in *Bullock* noted that judicial review is open to foster carers, but this is not explored in the judgment, nor in *NUPFC* ([2019] 7 WLUK 366, [26] and [23]). Judicial review could be useful and would provide some limited protection, ensuring the right procedures had been followed. It is

assumed that this is the more appropriate forum Slade J refers to, because foster carers are not protected elsewhere. Without parental responsibility, they are unable to bring claims in the Family Courts. However, it is unclear why bringing claims for judicial review would be a more appropriate court process than relying on the employment tribunals. Both involve the foster carer contesting in a public forum, their treatment at the hands of a local authority, or a body acting in its place. Judicial review is not available to parents, just like employment tribunals. Therefore, there is no clear reason why judicial review should be preferred over employment tribunals, especially as judicial review has more limited grounds for review (see *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374). It is suggested, that the reasoning, again, reflects the place of care work. Employment tribunals are seen as less appropriate for foster carers, because their labour is not considered work.

Under EU law foster carers have also been problematically denied worker status. In *Sindicatul Familia Constanța and others v Direcția Generală de Asistență Socială și Protecția Copilului Constanța* (C-147/17) the CJEU recognised that Romanian foster carers, who were classified as workers nationally, satisfied the definition of worker within the Working Time Directive (2003/88). Yet, they were denied protection under the Directive because they fall into the ‘unmeasured working time’ derogation. They are excluded from health and safety measures because they perform ‘specific public service activities’ (89/391/EEC, Art 2(2)), which form ‘part of the essential functions of the State’ (C-147/17 [61]). Granting workers’ rights was thought to undermine the aim of foster care; ‘to integrate the foster child on a continuous and long-term basis, into the home and family’ ((C-147/17 [62]). Fixed daily working hours, annual leave, rotation or replacement of foster carers, would fail to uphold the vulnerable children’s best interests (C-147/17 [71]-[72]).

It might be argued that as the derogation on unmeasured working time excludes a number of professions, who would clearly be recognised as workers in other situations, this should not stop foster carers being recognised as workers.⁴ However, the reasoning the CJEU adopted, that recognising foster carers as workers would impact the children's welfare, is likely to set back the foster carers' cause. The same reasoning was also adopted by Theresa May's previous Conservative Government (2017-19), amongst other factors, to deny foster carers' worker status (Department for Education, 2018, 29). In the next section, I argue that none of these reasons justify denying foster carers' worker status.

8. Challenging the arguments against professionalisation

a) Professionalisation is not in children's best interests

Like the CJEU, the previous Government's main reasons against recognising foster carers as workers focus upon this undermining children's best interests. There are two clear elements of this; first, foster care cannot be "just a job," as it will make children commodities (Department for Education 2018, 29). Altruism is required because foster carers provide 'an antidote to a bureaucratic and otherwise "uncaring" system' (Kirton, 2007, 12). The stable, possibly permanent attachment and emotional connection improves children's welfare (Kirton, 2007, 12). Secondly, professionalisation would undermine children's sense of a substitute family. Both of these factors speak to concerns about foster carers prioritising their own needs over vulnerable children's (Department for Education 2018, 29).

It is misleading to highlight the vulnerability of foster children without recognising the same in foster carers. Unfounded allegations of abuse can have a profoundly negative

⁴ This includes those working in emergency services, teachers, as well as junior doctors, other hospital workers and security services (see 89/391/EEC, Art 2(2)).

impact on foster carers (Lawson and Cann, 2019, 31). They also often struggle with little financial security. Kinship carers are often forced into poverty, because they have to give up work (Selwyn and Nandy, 2012, 50). Financial insecurity is ‘a direct source of stress both in adults and children’ (Park et al, 2002, 157). Parents who are worried about money are more likely to be inconsistent and sometimes unresponsive to children’s needs (Park et al, 2002, 158). Yet the Government and local authorities have opted to make many foster carers face these issues. Interests in caring relationships become intermingled; ‘to harm one person in a caring relationship is to harm the other’ (Herring, 2013, 60). Recognising that each person’s wellbeing is linked within a caring unit, highlights how the Government’s reasoning that the child should be prioritised over the foster carer, is misguided. The current system undermines fostering relationships, and the child’s best interests, by disregarding foster carers.

Furthermore, although foster carers must be concerned for their children, it is unclear why this needs to be selfless. The argument that foster carers need to be altruistic is problematic for a number of reasons. First, as 83% of foster carers across the UK are women, the government’s treatment of foster carers reinforces the damaging normative message that women are, and perhaps should be, endlessly self-sacrificing (Lawson and Cann, 2019, 6). Secondly, it is not expected that parents would entirely neglect themselves to care for their child. Instead, the importance of parents performing self-care is increasingly promoted (see for example, Dimbylow, 2018). The third problem is that the total self-sacrifice required to become a foster carer is also likely to deter many potentially excellent candidates from ever considering the role. Altruism is required in other jobs as well. For example, people become teachers mainly because they want to work with children, ‘in spite of the limited potential it offers for personal affluence, pleasant working conditions and social kudos’ (Cockburn and

Haydn, 2004, 5). However, even the many teachers who are not driven by self-interest, are unlikely to become foster carers. This is because they will be denied even the limited status and affluence associated with teaching. In addition, the lack of pay between placements and the possibility that they will have to give up their job, means they would also have to sacrifice their own standard of living. This is likely to make foster caring practically impossible for many, as lifestyle choices tend to reflect incomes, and teachers and others in jobs associated with altruistic tendencies, still 'need to pay the rent and feed their children' (Held, 2009, 23). Therefore, purposefully underpaying foster carers to attract only those with altruistic intentions, is likely to deter many from applying altogether. This also highlights a fourth and final issue with the Government's emphasis on altruism; it undervalues informal education, taught in the home. This is despite research showing that skills learnt informally are often indispensable, unlike those learnt in a formal environment (Coffield, 2000, 1).

The Government's reasoning that children would just become commodities and foster care would be "just a job," if they were recognised as workers, is also problematic. This disregards that foster care is already commodified; carers are reimbursed for their work. To some, this may already be "just a job" (see for example, Department for Education 2018, 29). Recognising foster carers as workers will not alter the current situation. Furthermore, close and longstanding relationships can be created in situations when the carer is paid. For example, nannies providing childcare often report a strong bond with the children they care for (Macdonald, 1998, 37-39). Many of these vulnerable children will likely be better off, living with and being cared for by a professional parent, as their natural parents had been unable to adequately care for them. Therefore, there is likely no connection between recognising foster carers as workers and the role being perceived as 'just a job.'

The second concern highlighted by the previous Government, as well as the CJEU, is how professionalisation ‘would have a fundamental impact on the family-centred nature of fostering’ (Department for Education 2018, 29). Foster carers would be distanced from ordinary parenting, if they took annual leave, for example. These concerns are misplaced, partly because foster carers cannot act like ‘ordinary parents.’ Not only are they paid to perform this work, they have to keep up to date notes and reports. Most will also be facilitating contact with the children’s birth parents. Therefore, this is not a convincing reason to deny foster carers worker status.

The argument that foster carers taking time off would be harmful, is overstated and misleading. They are already entitled to respite care and can have breaks without the foster children, which is clearly akin to holiday. Many of the perceived changes are therefore likely to be less drastic in reality, than imagined. Furthermore, as Bogg notes:

It is amazing how effectively enforced social rights can prompt changes in working practices in ways that might have been unanticipated and unforeseen. It is better for judges not to pre-empt the outcomes of reflexive processes, which rather misses the point of them. (Bogg, 2018)

It is well within the scope of labour law to impose such duties upon employers. A good example of this is duty of reasonable adjustment to accommodate disabled workers (Equality Act 2010, s 20). This is an extensive duty, which places the onus on the employer to consider innovative and wide ranging solutions, including ‘adapting the premises, reallocating duties, altering the house, modifying equipment or providing training, interpretation or supervision’ (*Archibald v Fife Council* [2004] S.C (H.L) 32, [57]).⁵ Therefore, it would have been

⁵ A similar provision has also been codified in EU law (renamed as reasonable accommodation), which requires ‘a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer.’ The Employment Equality Directive 2000/78/EC, art 5.

appropriate for the Government and the CJEU to have made these social rights available to foster carers, and left it to local authorities to determine how best to incorporate them.

Furthermore, the perceived tension between work and family has been exaggerated. For foster carers, ‘their family is their work and their work is their family – so roles are not so clearly separated and boundaries are not so clearly defined’ (Schofield et al, 2013, 46). Research suggests that many foster carers move happily between both public and private roles, and find them ‘complementary and mutually rewarding,’ so the dual role creates little conflict (Schofield et al, 2013, 53). The tension the Government perceived is therefore not experienced in reality, but is a result of the imposition of the public/private divide.

None of the previous Government’s concerns about recognising foster carers as workers undermining children’s best interests, which were shared by the CJEU, are convincing. Both conflicts, over love and money, as well as balancing public and private roles, have been overstated. The arguments also fail to recognise the relational nature of care. Yet commentators have also noted other issues with the professionalisation of foster care.

b) Tension over the need for training

Kirton argues another reason foster carers should not be recognised as workers is because of the tension over the need for training and qualifications as opposed to tacit skills ‘derived from life experience and practice wisdom’ (2007, 15). It is often the latter, gained as a parent, childcare worker or in another role, which makes a good foster carer. Kirton argues it is ‘important both that formal training complements rather than undermines tacit knowledge and that capable carers are not unduly penalised due to lack of formal qualifications’ (2007, 15).

These concerns are easily overcome. Many jobs prioritise tacit social skills. For example, confidence and communication are more important than qualifications in interactive service work (Thompson et al, 2001). In such work, training will therefore be just one thing that good employers look for. If training was a formal requirement, prudent employers would consider supporting those with the necessary tacit skills, through the training. A similar approach would be expected to be adopted in foster care. Local authorities would recognise that technical skills can be learnt, such as how to understand and respond to each individual child, but this cannot eclipse the vital tacit skills required.

Professionalisation requiring the training of foster carers, therefore, does not create any practical issues. Theresa May's Government took a different tack to Kirton, arguing that 'training and preparation is essential for placement stability' (Department for Education 2018, 25). This emphasis exposes the contradictory and unsustainable position of the Government; foster carers should be professionals, but should not be recognised as such.

c) Lack of homogeneity between foster carers

Another argument against professionalisation is that it would wrongly exclude some kinship carers (Kirton, 2007, 15-16). Separate treatment for kinship carers is established in regulations, allowing them to foster children they know, when they would not be approved as carers for non-family members (The Fostering Services Regulations 2011, no 581. reg 26(8)). Kinship carers are also less likely to receive formal training, often considering it redundant because they know the child and what they need (Sykes et al, 2002, 41). Due to these differences, it is thought professionalisation would exclude kinship carers.

There are two issues with this argument. Firstly, it is not clear why the separate treatment of kinship carers would be more problematic if foster carers were recognised as workers. The current approach recognises that kinship carers provide something incredibly useful and valuable to the child; a pre-existing relationship. If foster carers were workers, this familiarity and attachment would continue to make kinship carers suitable foster carers, for children they know. This would simply remain a hurdle that stranger foster carers could not pass. This would be congruent with the system applied to stranger foster carers, who also do not have to be able to foster all children. Usually, carers are given ‘terms of approval which set out the number and age of children and any other information about the type of foster care that they are approved to provide’ (Lawson and Cann, 2019, 29). As local authorities recognise the different capabilities of each foster carer, the fact that not all kinship carers are able to care for strangers, would therefore not exclude them from the professionalisation of foster carers.

Secondly, kinship carers’ rationale that they need less training, may be correct. Although it might be appropriate for them to attend some basic training, this is a clear example of the importance of tacit skills, learnt through their experience and interaction with that child. Kinship carers’ lack of training is therefore not an issue prohibiting the professionalisation of foster care, if they already have the necessary skills to do the work.

d) Lack of consensus within fostering about worker status

A final argument against recognising foster carers as workers, is that some do not want this. Many foster carers consider it a lifestyle choice or a vocation, and do not consider themselves workers (Department for Education 2018, 28). This does not justify rejecting professionalisation. As recognised earlier, caring skills do not come naturally. Dismissing

foster caring as a ‘calling,’ fails to recognise the hard work and effort it takes to develop those skills.

Secondly, the perception of some foster carers’ that they are not performing work is an important reminder of the dominance of the view that care work performed in the private sphere, is not proper work. Many foster carers will have internalised and accepted that they are not performing work. Therefore, arguments against recognising foster carers as workers that are based on this incorrect perception of work, are groundless.

The previous sections have also shown that forcing foster carers into worker status would have little impact on their day to day lives. They are already entitled to something akin to annual leave, and foster carers can, and often do, take their looked after children on holiday with them. Such options would remain open to foster carers; worker status would just ensure they are paid when they take this holiday. Another concern often raised about professionalisation is that it would be undesirable to increase local authorities’ control. Yet in the final section, I will demonstrate that even if foster carers were recognised as the most protected level of employee, they would not be subjected to undue control.

9. Could foster carers be employees?

Following the Supreme Court’s recent decision in *Armes* that foster carers are akin to employees, it could be queried why foster carers could not receive the highest protection, of an employee ([2017] UKSC 60; [2018] A.C. 355). It has long been considered that foster carers are not subject to enough control to gain this protection (*Ready Mixed Concrete (South East) Ltd. V Minister for Pensions and National insurance* [1968] 2 QB 497, 515. This was recently confirmed in *Autoclenz Ltd v Belcher and others* [2011] I.C.R 1157). Employee

status requires that an employer has a contractual right to some degree of control in the relationship, such as being able to give instructions (*White v Troutbeck SA* [2013] EWCA Civ 1171, [41]). Yet Lord Reed noted in *Armes* a number of ways local authorities can manage foster carers. They ‘controlled who the foster parents were, supervised their fostering, and controlled some aspects of day-to-day family life, such as holidays and medical treatment’ ([2017] UKSC 60; [2018] A.C. 355 [65]). This level of control is likely to still be too limited for most foster carers to be recognised as employees. Local authorities are restricted in giving instructions, as foster carers have autonomy over the running of the home, deciding how, when and where they will integrate the child into the family.

However, the level of independence varies between foster carers; the recent Scottish case of *Johnstone & Johnstone v Team Foster Care Glasgow City Council* recognised two foster carers as employees because of ‘the very high degree of control which is exerted over the claimants’ (4103972/2016 & 4103973/2016 [64]). They were unable to take on any other work, had to provide a daily report and attend weekly meetings, even when they had no child to care for. The Court determined they were elite foster carers, who ‘had no real discretion as to how they carried out the work’ ([65]). These unusual facts meant that these foster carers were employees, but the judgment was clear that this was not ‘a finding about the status of ordinary mainstream foster carers’ ([66]).

It is interesting that the requirements placed on the Johnstones, which made them employees, were relatively minor: daily reports; weekly meetings; and partaking in no other work. This shows that foster carers can submit to the employee level of control, without substantially undermining the independence needed to create a family life. The exception is requiring them to partake in no other work, as this clearly does have a major impact.

However, as previously noted, many foster carers are already required to accept this most life-changing form of subordination, without any recognition. That foster carers can maintain a relatively high level of independence, yet still be recognised as an employee, highlights clearly that foster care is compatible with the public sphere of work. It shows that it is possible, maybe even sometimes desirable, for foster carers to receive this protection. Furthermore, the standard for control would be much lower if foster carers were recognised as workers. This evidences that the arguments that professionalisation would undermine independence, are incorrect. If foster carers were recognised as workers, there would be little difference in how they manage family life.

Another issue for foster carers claiming employment protections would be continuity. As noted earlier, foster carers clearly satisfy mutuality of obligations when they have a child in placement (see *Cornwall County Council v Prater* [2006] EWCA Civ 102). However, a week's break could interrupt continuity and thereby negate employment rights accumulated over time, such as unfair dismissal (Employment Rights Act 1996, s108). This was not an issue in the Scottish case as the local authority were 'under a duty to offer work and the claimants are under an obligation to do it' (4103972/2016 & 4103973/2016 [64]). Even when no child was in placement, they still had to attend meetings and were paid. These conditions are not present in most foster care arrangements. Very few receive a fee when in-between placements; only 19% of local authority foster carers can get a retainer (Lawson and Cann, 2019, 23). Even those who do get a retainer get paid very little over a short period of time. In addition, some foster carers may choose to take a break in between placements or be selective in who they foster. This theoretical freedom to turn down work, and the breaks between placements, may cause difficulties for foster carers claiming employment protections.

The gaps could be bridged, if they are considered only a temporary cessation of work (Employment Rights Act 1996, s212(3)(b)). Whether or not this is satisfied is a question of fact. For foster carers, it would require consideration of things like the length of the break, as compared to the total length of time they had a child in placement (see *Ford Appellant v Warwickshire County Council Respondent* [1983] 2 A.C. 71, 83-84). This exception could therefore provide protection to some, but not all, foster carers, if they were recognised as employees.

Despite this bridging provision potentially providing limited protection to some foster carers, it is clear that few would be classified as employees because of the control test. Nonetheless, *Johnstone* highlights that some foster carers are employees, and decisions must be reached on a case by case basis. Indeed, this case shows that submitting to an employee level of control, would not place excessive constraints on foster carers. The ruling in *Johnstone* might make foster carers being employees less likely in practice, as it may deter local authorities from offering more beneficial conditions, to avoid increasing their liability. Nevertheless, the fact that some foster carers can be considered employees, strengthens the argument that all of them could be workers.

10. Conclusion

This paper has demonstrated that foster carers are clearly performing work. Furthermore, this is important work for which they deserve better protection in the public sphere. Recognising foster carers are professionals, would not be problematic. It would be beneficial to foster carers and, because of the relational nature of care, the looked after children. In dismissing foster carers' claims, judges at English and EU level, as well as the previous Government,

have been too swayed by traditional conceptions that care work should be confined to the private sphere.

Examining foster carer worker status highlights the fragility of the socially constructed public/private divide, showing it is not fit for purpose. Foster carers do not fit perfectly into either of these spheres, and so to some extent, have fallen down a societal-imposed gap, without the necessary protections. Recognising this should bolster support for a change to the scope of labour law to include care work, because it shows that the deeply flawed public/private divide is no longer fit for purpose (if it ever was). Although this paper has identified key and important differences between foster carers and parents, there is no escaping that the main aim of their roles is the same; to raise and support their children, and to become active members of society. Therefore, recognition of foster carers' role could play a role in helping to reconceptualise the concept of work.

Bibliography

Anderson, Priscilla, Joanna Hawthorne and Margaret Killen, 2006. The Participation Rights of Premature Babies. In ed Michael Freeman *Children's Health and Children's Rights* Leiden: Martinus Nijhoff Publishers 31-50.

Arksey, Hilary, Caroline Glendinning 2007. Choice in the Context of Informal Care-Giving. *Health and Social Care in the Community* 15: 165-175.

Bales, Katie, Alan Bogg, Tonia Novitz 2018. 'Voice' and 'Choice' in Modern Working Practices: Problems with the Taylor Review. *Industrial Law Journal* 47: 46-75.

Bengtson, Vern L. 2013. *Families and Faith: How Religion is passed Down across Generations* New York: Oxford University Press.

Biehal, Nina 2006 *Reuniting Looked After Children with their Families. A Review of the Research* London: National Children's Bureau.

Bogg, Alan 2018. Foster parents and fundamental labour rights *UK Labour Law Blog*. available at <https://wordpress.com/view/uklabourlawblog.com>

Bowden, Peta 1997. *Caring: Gender-Sensitive Ethics* London: Routledge.

Bubeck, Diemut Elisabet 1995. *Care, Gender and Justice* New York: Clarendon Press.

Cockburn, Anne, Terry Haydn 2004. *Recruiting and Retaining Teachers: Understanding Why Teachers Teach*. London: Routledge.

Coffield, Frank (ed). 2000. *The Necessity of Informal Learning* Policy Press; Bristol.

Conaghan, Joanne 1999. Feminism and Labour Law: Contesting the Terrain. In *Feminist Perspectives on Employment Law*, ed. Anne Morris and Thérèse O'Donnell. London: Cavendish 13-42.

Conaghan, Joanne 2018. Gender and the Labour of Law. In *Philosophical Foundations of Labour Law*, ed. Hugh Collins, Gillian Lester, Virginia Mantouvalou. Oxford: Oxford University Press 271-286.

Davis, Lynn 2010. *A practical guide to fostering law fostering regulations, child care law and the youth justice system* Philadelphia: Jessica Kingsley Publishers.

Department for Education 2018. *Fostering Better Outcomes: The Government response to the Education Select Committee report into fostering and Foster Care in England* (Cm 9662) Crown. Accessed at <https://www.parliament.uk/documents/commons-committees/Education/Correspondence/Government-response-Fostering-better-outcomes-Cm9662.pdf> on 19 February 2020.

Department for Education 2019. *Children looked after in England including adoption: 2018 to 2019* Crown. Accessed at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/850306/Children_looked_after_in_England_2019_Text.pdf on 10 January 2020.

Department for Education and Office for National Statistics 2017 *Children looked after in England (including adoption), year ending 31 March 2017* London: Crown.

Dimbylow, Lucy 2018. 13 ways to practise self-care when you're a busy parent. *The Metro*. 3 August. Accessed at <https://metro.co.uk/2018/08/03/13-ways-to-practise-self-care-when-youre-a-busy-parent-7776940/> on 13.02.20

Fineman, Martha Albertson 1995. *The Neutered Mother, the Sexual Family and Other Twentieth Century Tragedies*. New York: Routledge.

Fineman, Martha Albertson 2004. *The Autonomy Myth: A Theory of Dependency* New York: The New Press.

Fisher, Berenice and Joan C Tronto 1991. Toward a feminist theory of care. In eds. Emily K. Abel and Margaret K. Nelson *Circles of Care: Work and Identity in women's lives* Albany: State University of New York Press 36-54.

Foster Care Workers Union. *A Brief Synopsis of the IWGB / FCWU* [online] accessed <https://www.fcwu.org.uk/who-are-we/> on 21 June 2018.

Fredman, Sandra 1997 *Women and the Law*. Oxford: Oxford University Press.

Freedland, Mark 1976. *The Contract of Employment* Oxford: Clarendon Press.

Freedland, Mark, Nicola Kountouris 2011. *The Legal Construction of Personal Work Relations*. Oxford: Oxford University Press.

Fudge, Judy 2014. Feminist Reflections on the Scope of Labour Law: Domestic Work, Social Reproduction, and Jurisdiction. *Feminist Legal Studies* 22: 1-23.

Gilligan, Carol 1982 *In a Different Voice: Psychological Theory and Women's Development* Cambridge/London: Harvard University Press.

Held, Virginia 2009. Care and the Extension of Markets *Hypatia* 17: 19-33.

Herring, Jonathan 2013. *Caring and the Law*. Oxford: Hart.

Kirton, Derek 2007. Step Forward? Step Back? The Professionalisation of Fostering. *Social Work and Social Sciences Review* 13: 6-24.

Kountouris, Nicola 2018. The Concept of 'Worker' in European Labour Law: Fragmentation, Autonomy and Scope *Industrial Law Journal* 47: 192-225.

Lawson, Kate, Robert Cann 2019. *State of the Nation's Foster Care: Full Report* London: The Fostering Network.

Macdonald, Cameron L. 1998. Manufacturing Motherhood: The Shadow Work of Nannies and Au Pairs *Qualitative Sociology* 21: 25-53.

Narey, Martin and Mark Owers 2018. *Foster Care in England A Review for the Department for Education* London: Crown.

- Noddings, Nel 2002. *Starting at Home: Caring and Social Policy* Berkeley: University of California Press.
- Nussbaum, Martha C 2000. *Women and Human Development: The Capabilities Approach* Cambridge/New York: Cambridge University Press.
- Park, Jiyeon, Ann P. Turnbull, H. Rutherford Turnbull III 2002. Impacts of Poverty on Quality of Life in Families of Children with Disabilities *Exceptional Children* 68: 151-170.
- Schofield, Gillian, Mary Beek, Emma Ward and Laura Biggart 2013. Professional foster carer and committed parent: role conflict and role enrichment at the interface between work and family in long-term foster care *Child and Family Social Work* 18: 46-56.
- Sellick, Clive 2006. From Famine to Feast. A Review of the Foster Care Research Literature *Children and Society* 20: 67-74.
- Selwyn, Julie, Shailen Nandy 2014. Kinship Care in the UK: Using Census data Estimate the Extent of Formal and Informal Care by Relatives. *Child and Family Social Work* 19: 44-54.
- Sykes, Jennifer, Ian Sinclair, Ian Gibbs and Kate Wilson 2002. Kinship and stranger foster carers: How do they compare? *Adoption and Fostering* 26: 38-48.
- Taylor, Matthew, Greg Marsh, Diane Nicol, Paul Broadbent 2017. *Good work: the Taylor Review of Modern Working Practices*. Department for Business, Energy & Industrial Strategy.
- The Conservative and Unionist Party 2019. *Get Brexit Done Unleash Britain's Potential: The Conservative and Unionist Party Manifesto 2019* [online]. https://assets-global.website-files.com/5da42e2cae7ebd3f8bde353c/5dda924905da587992a064ba_Conservative%202019%20Manifesto.pdf accessed 9 January 2020.

The Fostering Network and the Department for Education 2014 *Combining Fostering and Other Work* London: The Fostering Network.

Thompson, Paul, Chris Warhurst, George Callaghan 2002. Ignorant Theory and Knowledgeable Workers: Interrogating the Connections between Knowledge, Skills and Services *Journal of Management Studies* 38: 923-942.

Tronto, Joan 1993. *Moral Boundaries: A Political Argument for an Ethic of Care* New York: Routledge.

Twigg, Julia 2000. Carework as a form of Bodywork *Ageing and Society* 20: 389-411.

Wilson, Kate, Ian Sinclair, Ian Gibbs 2004. *Foster Carers: Why They Stay and Why They Leave*. London: Jessica Kingsley Publishers.